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PARLIAMENTARY DEBATES

(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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Abbreviation	**Party/Group**
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Monday 21 March 2016

2.30 pm

Prayers—read by the Lord Bishop of Chelmsford.

Introduction: Lord Price

2.39 pm

Mark Ian Price, Esquire, CVO, having been created Baron Price, of Sturminster Newton in the County of Dorset, was introduced and took the oath, supported by Lord Gardiner of Kimble and Lord Curry of Kirkharle, and signed an undertaking to abide by the Code of Conduct.

Oaths and Affirmations

2.43 pm

Baroness Hanham took the oath, and signed an undertaking to abide by the Code of Conduct.

Health: Neural Tube Defects

Question

2.45 pm

Asked by **Lord Rooker**

To ask Her Majesty's Government whether they will bring forward measures of preventative medicine to reduce the numbers of stillbirths, abortions and live births of babies with serious lifelong disability due to neural tube defects.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the Government are looking at all aspects of preconception health and preventive medicine. We currently have no plans to introduce the mandatory fortification of flour with folic acid. We plan shortly to engage with relevant stakeholders to identify other measures that can promote good preconception health, including how to redress the low blood-folate levels of women, which can lead to neural tube defects.

Lord Rooker (Lab): The Minister's Answer is clearer than some of the others, but we now know that the answer is no; that is what he has told us. English Ministers are knowingly doing nothing, basically. They know that half of all women who become pregnant are taking supplements, and only a small percentage of them actually take the correct amount. Moreover, does the Minister know that some food manufacturers are starting voluntarily to reduce the folic acid in their products, which they were going to do on the basis of mandatory levels being introduced following scientific advice? The Government are therefore relying on 80% of pregnancies being sponsored abortions as a management tool. That is the reality of what we are dealing with in England at present. Is this not like English Ministers having a polio vaccine and refusing to use it?

My final point is this. Does the Minister accept that it has never really been made clear that there is a direct and indisputable link between neural tube defects, lifelong serious disability in babies who are born alive and folate vitamin deficiency? It was the UK that told the world this in 1991, and 83 other countries have thanked us by using the policy to reduce the number of abortions and babies born with lifelong disabilities. The Minister should be ashamed of the situation he has been forced into by his colleagues.

Lord Prior of Brampton: My Lords, I am not going to argue the science, because the link between folate levels and neural tube defects is fairly well proven. Although our decisions should be informed by scientists and doctors, I do not think that they should be determined by them. The balance between individual responsibility and state responsibility is best left to political judgment.

Lord Rennard (LD): My Lords, given that the Minister accepts the link between a lack of folic acid in the diet and neural tube defects, why will he not look again at the advice from, for example, the Royal College of Obstetricians and Gynaecologists, the Food Standards Agency and the BMA that we should be putting folic acid into food products, as is done in many other countries, including the United States of America?

Lord Prior of Brampton: Fortifying bread with folic acid is not a silver bullet that would cure all babies with neural tube defects. The estimate is that it would have an impact on between 15% and 30% of babies. Some 965 babies suffer from neural tube defects a year, so we are talking about fortifying flour for the whole population in order to reach about 120 babies.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware that we have debated this issue many times and that the view around the House has been almost unanimous that something should be done to deal with this problem? Why, therefore, is it not done? On a previous occasion, I clearly remember someone saying that if you do not want the supplement you can have bread that is specifically made without the additives. In that way, the ordinary population can be catered for. Of course, women need the supplements before they get pregnant, not afterwards, when it is already too late.

Lord Prior of Brampton: My Lords, speakers in this House have by and large very much supported the views of the noble Lord, Lord Rooker—I entirely accept that. But I do not think that the case has been made outside this House perhaps as strongly as it has in other areas. If we are going to change the way we produce white bread in this country, a much stronger and broader case has to be made.

Baroness Hayman (CB): But, my Lords, it is not just in this House, is it? It is in the Scottish Government, who I understand are now laying out plans to introduce fortification. They are supported by the Administrations in Northern Ireland and in Wales. Why is England taking this isolationist view when across the world it has not been taken? Is it correct that Sir Nicholas

[BARONESS HAYMAN]
Wald, the leading scientific expert in this field, was granted an audience with the Minister for Health in Scotland, but not in England?

Lord Prior of Brampton: My Lords, I cannot answer the latter question, but I will try to find out and write to the noble Baroness. She is right that Scotland is considering this and looking at the practical issues around implementation. She is right that other countries in the world—I think 50—have done this, but many others have not, including all European Union countries.

Lord Turnberg (Lab): My Lords, I realise that the noble Lord is in the hands of his scientific advisory committee and cannot say anything without it, but I ask him to draw to its attention the fact that it may be using outdated research evidence if it believes that adding the small amounts of folic acid to bread has the same metabolic effect as taking 1 milligram of tablet a day. It does not. The very remote possibility that there is danger in taking 1 milligram of tablet a day is eliminated completely if you add it to food and take it during the day. Will he draw that to the committee's attention and ask it to think again?

Lord Prior of Brampton: I will certainly draw that point to the attention of the SACN. It would be surprising if it was not already aware of that fact, but as I said I am addressing not really the science but whether it is right or proportionate to fortify bread for everybody to reach such a small number of people.

Lord Hunt of Kings Heath (Lab): My Lords, the noble Lord made it clear that this is a political decision, for which we should be grateful. He also made it clear that the Government have decided that it is not going to happen. But does he accept that a 30% improvement is actually a large, positive outcome? The fact is that the voluntary approach that this Government have been wedded to is simply not working. If the answer is no, and if the voluntary approach is not working, what, then, will the Government do?

Lord Prior of Brampton: My Lords, the evidence given by the SACN is that it affects between 15% and 30%. My honourable friend in the other House, Jane Ellison, is bringing together a round table of all stakeholders interested in preconception health to discuss this matter.

Baroness Howarth of Breckland (CB): My Lords, does the Minister think that the resistance to this is in the general public or among the food producers? My discussions with many young women across the country do not give me the impression that it is among the general public. If it is among the food producers, of course they would be resistant if it does not benefit their profits. Where does the Minister think that attitude is, and can he advise us where we should put our energies in order to change it?

Lord Prior of Brampton: My Lords, I am not aware that the food industry is opposing the introduction of folic acid into white bread flour, but I will investigate that and write to the noble Baroness.

LGBTI: Human Rights Conference
Question

2.53 pm

Asked by ***Baroness Barker***

To ask Her Majesty's Government what representatives they intend to send to the forthcoming 2016 Global LGBTI Human Rights Conference to be co-hosted by the Kingdom of the Netherlands and the Government of Uruguay in Uruguay.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, the composition of the UK's delegation at the conference in July is not yet finalised. It is expected to include selected officials with experience of working on LGB and T human rights issues, for example from DfID and the UK's mission to the United Nations in Geneva. The chargé d'affaires at the British embassy in Montevideo will also attend.

Baroness Barker (LD): I thank the noble Baroness for that Answer. Under the previous Government, DfID built up a great deal of expertise on handling sensitive issues across social, political and religious lines. This conference is an opportunity to leverage that expertise with other international donors and the private sector. Will the noble Baroness tell us what the Government plan to announce at the conference regarding the implementation of DfID's new approach to LGBT rights?

Baroness Anelay of St Johns: My Lords, I am not able at this stage to say what is going to be announced as far ahead as July. As the noble Baroness will realise, these matters are usually announced at the event itself. But I can say, to assist her, that DfID has assured me that it recognises that the realisation of human rights underpins sustainable development and that across its work it will seek to protect the human rights of LGB and T people and ensure that all groups are able to share in the benefits of development regardless of sexual orientation or gender identity. That will underpin the announcements it makes in July.

Lord Cashman (Lab): My Lords, I have to express some concern that there is no clarity about who is responsible for LGBTI issues, either within DfID or at the Foreign Office. Given this very important conference taking place in Montevideo, I ask the Government to reconsider their position and follow the lead given by President Barack Obama and the Labour Party and appoint a global LGBT envoy—or, at the very least, a Minister to lead on these important issues.

Baroness Anelay of St Johns: My Lords, I lead on issues of equality and human rights at the Foreign and Commonwealth Office and I have the great advantage of knowing that, around the world, there are 267 Foreign and Commonwealth Office posts and that the heads of those missions, whether they be ambassadors or high commissioners, play a very strong role in promoting equality and human rights, paying particular attention to LGBTI issues. I might add that during my visits last week to Colombia and to Panama I saw this at first hand.

Lord Campbell of Pittenweem (LD): It is comforting to hear the noble Baroness commit the Government to human rights. Can we be certain that when it comes to considering the application of Turkey for membership of the European Union there will be a similar, wholehearted commitment, all in accordance with the Copenhagen criteria?

Baroness Anelay of St Johns: The noble Lord makes an extremely important point. We have made it clear to Turkey that accession to the European Union comes only to those countries that abide by human rights rules. Of course, Turkey would have to do that. We are concerned about some of the human rights violations which have taken place, particularly with regard to freedom of expression. My right honourable friend the Prime Minister made that clear at recent meetings.

Lord Lexden (Con): How much priority are the Government giving to their objective of securing the decriminalisation of homosexuality in the many countries where it remains against the law?

Baroness Anelay of St Johns: My noble friend is right to raise this. The UK Government believe that laws to criminalise consensual same-sex relations are wrong and should be changed and this underpins the work that we do, both as Ministers and throughout our posts around the world. We have, of course, carried out a lot of lobbying on this and I am very pleased to see that Mozambique recently changed its penal code so that "acts against nature", which had previously been widely interpreted as homosexuality, have now been decriminalised.

Lord Harries of Pentregarth (CB): Would the Minister say that there were some positive results from the recent Commonwealth conference, and will she ensure that those who go to the next conference take those positive results with them?

Baroness Anelay of St Johns: Indeed. That is a very important point. Both my right honourable friend the Prime Minister, David Cameron, and my noble friend Lady Verma, the DfID Minister, raised these issues at the Commonwealth Heads of Government Meeting. In fact, my noble friend Lady Verma held a side event on these very issues. I have undertaken to take these matters forward at the Human Rights Council and in the United Nations.

Lord Scriven (LD): Will the Minister advise the House whether, since the 2015 general election, as part of the official development assistance programme, a budget has been allocated specifically to LGBT issues? If so, what is the criteria for bids against that budget?

Baroness Anelay of St Johns: My Lords, funding from the Government with regard to promoting equality of action comes not only from DfID but from other sources: for example, from the Foreign and Commonwealth Office. I explained earlier that DfID has ensured that equality for LGBTI people will underpin the work it does generally and will always be considered when funds are to be disbursed. There is no specific hived-off part of the funds, as far as I am aware—if I am wrong I will, of course, write to the noble Lord—but I point out that this year the Foreign Office has doubled its Magna Carta fund for human rights and democracy to £10.6 million, which is the most we have ever had. I understand that bids are already coming in for LGBTI projects.

Lord Fowler (Con): My Lords, would it not be a good idea if a government Minister from either DfID or the Foreign Office attended this conference as well as officials? I say this because no Minister from either department turned up at the last two world AIDS conferences. That was a great pity.

Baroness Anelay of St Johns: My Lords, I will certainly take back my noble friend's view to the FCO for consideration. I am, of course, aware that because this event is being co-hosted by the Governments of the Netherlands and Uruguay, their Ministers will be there. As far as I am aware, other attendees are intended to be officials but I will take further advice on that.

NHS: 111 Service

Question

3 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what assessment they have made of the safety and reliability of the National Health Service 111 service.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, NHS 111 is a vital service helping people to get medical advice quickly and easily. It has received more calls this year than in the same period in 2014-15 but continues to perform well overall. The Care Quality Commission has announced that it will inspect all NHS 111 providers by September 2016. The CQC will assess whether the services are safe, caring, effective, responsive to people's needs and well led.

Lord Hunt of Kings Heath (Lab): My Lords, is not the problem that when the excellent NHS Direct service was replaced, very many experienced nurses ceased to work for the new 111 service and were replaced by call handlers with a few weeks' training who have to follow instructions on a computer rigidly? The evidence is that there have consequently been misdiagnoses. One ambulance trust fiddled the response time for 999 calls routed through 111 to meet the targets. There have been a number of personal tragedies as a result. Therefore, in addition to the CQC's inspection, will the noble Lord institute a review of the safety of 111 and return to having qualified nurses handling the calls?

Lord Prior of Brampton: My Lords, the decision to stop NHS Direct was, of course, taken in 2008, when I think the noble Lord was in post. He shakes his head, so perhaps he was not, but the decision was taken in 2008, before this Government were in charge, if you like. The new system uses the NHS Pathways algorithms developed by the Royal College of GPs, on which the BMA and the Royal College of Paediatrics and Child Health sit, so we have considerable confidence in the algorithms used. We will also increase the number of

[Lord Prior of Brampton]
clinicians. I accept the noble Lord's point that we need to have more clinicians answering these calls rather than call handlers, as he puts it. It is our intention progressively to increase the number of clinicians in these 111 hubs.

Lord Kakkar (CB): My Lords, I declare my interest as chairman of University College London Partners. What assessment did the Government make of the training needs of the individuals who were to deliver the 111 service prior to its introduction, and what determination have the Government made subsequently of the appropriateness of that training?

Lord Prior of Brampton: My Lords, as I said, the decision to set up 111 was made back in 2008. The operation of 111, which includes the training and the capabilities of the people working in it, is carefully monitored by the CCGs—which commission 111 services by the licence under which 111 operates the NHS Pathways algorithms—and, of course, by the CQC.

Lord Allen of Kensington (Lab): My Lords, is the Minister confident that the NHS England workforce development plan will ensure that no chief executive or senior NHS staff can support covert operations, as we saw with South East Coast Ambulance Service, which affected up to 20,000 people? Is the Minister confident that this will be put in place?

Lord Prior of Brampton: My Lords, the noble Lord will be aware of the very severe problems at South East Coast Ambulance Service. The chairman has resigned. The chief executive is, I think, on gardening leave at the moment. NHS Improvement is very clear that it needs to sort out the management structure in that ambulance service.

Baroness Humphreys (LD): Will the Minister explain how the 111 service will be improved to ensure that ambulances for life-threatening conditions arrive in a timely fashion and are not delayed or cancelled by 111 call handlers?

Lord Prior of Brampton: My Lords, the 999 service runs in parallel with the 111 service. If you have an emergency, you should ring 999; if you have an urgent request you should ring 111 and a decision will be made then on whether to call an ambulance. Interestingly, of the 27% of people who ring 111 who would otherwise have gone to A&E, only 8% are actually referred to A&E.

Lord Campbell-Savours (Lab): My Lords, the Minister's response is astonishing. Has he not been reading in the national media the repeated reports of a breakdown in the service all over the country? Has he not read these reports? I am astonished by his responses.

Lord Prior of Brampton: There have been a number of terrible tragedies. The most recent of these was William Mead, a very young baby who died as a consequence of not getting the right treatment quickly enough. NHS England has done a root-cause analysis. Some of the problems lay within 111 but others were with the out-of-hours service and with diagnosis by the GPs concerned. The noble Lord is wrong to say that the 111 service is not operating well throughout the country. Some 90% of all those who use 111 believe they get a good service from it.

Lord Patel (CB): My Lords, what suggestions does the Minister have for improving the performance of the 111 service?

Lord Prior of Brampton: My Lords, there are two things which we need to do to improve the 111 service. First—and this is in response to part of the Question asked by the noble Lord, Lord Hunt—we need to have more clinicians within the 111 hubs. Secondly, people need to have access to the patient's electronic summary care record so that they can see what has gone on before coming to a final judgment.

Baroness Farrington of Ribbleton (Lab): My Lords, the Minister referred to 90% satisfaction. How many people are involved in the other 10%? It does not strike me that 90% is acceptable.

Lord Prior of Brampton: My Lords, 100% is clearly the only acceptable level but, realistically, it would be extremely difficult to get to that. Referring back to the charge of complacency, we recognise that significant improvements need to be made to the 111 service, but it can be a vital part of the way that we deliver urgent care in Britain.

Lord Clark of Windermere (Lab): My Lords, we all accept the Minister's commitment to the NHS. He has just stated that improvements to the service need to be made. When are they going to be made?

Lord Prior of Brampton: My Lords, it may sound trite, but we need to make continuous improvement in all aspects of the NHS. We can never be satisfied with where we have got to. Interestingly, the licensing arrangement which underpins the NHS Pathways—the algorithm developed by the Royal College of GPs—has within it an audit to ensure that continuous improvement is being made.

Food Safety: Glyphosate

Question

3.08 pm

Asked by ***The Countess of Mar***

To ask Her Majesty's Government, in the light of the European Union Ombudsman's finding of maladministration by the European Commission over pesticides, published on 22 February, and given that several EU countries including France, the Netherlands and Sweden have indicated that they will not support an assessment by the European Food Standards Agency (EFSA) that glyphosate is harmless, whether they support the EFSA view that that chemical should receive a licence for a further 15 years.

Baroness Chisholm of Owlpen (Con): My Lords, the Government support pesticide use where scientific evidence shows that this is not expected to harm people or to have unacceptable effects on the environment.

UK experts participated in the European Food Safety Authority's assessment of glyphosate and support its conclusions, particularly that glyphosate does not cause cancer. The Government therefore support the continuing approval of glyphosate. If glyphosate is approved, we will review the authorisations of glyphosate products, to ensure that they meet current standards.

The Countess of Mar (CB): My Lords, I thank the noble Baroness for her Answer. Is she aware that the World Health Organization's IARC has found glyphosate to be a probable carcinogen? Research over the last 20 years has found that it is genotoxic, cytotoxic, is an endocrine disrupter and is a powerful chelator—in other words, it blocks out the essential minerals and trace elements from our food.

The European Union looked only at glyphosate, whereas the World Health Organization looked at the commercial formulation and found that some of the additives make it 10,000 times more powerful as a poison than the original glyphosate itself. The authorisation in this country, by the Chemical Regulations Directorate, is for the commercial formulation. Will the noble Baroness ask the directorate to look very carefully at the distribution of glyphosate and perhaps restrict it, like other organophosphates, to professional agricultural and horticultural use and remove it from domestic use?

Baroness Chisholm of Owlpen: I thank the noble Countess for her Question and I know she has been at the forefront of looking into all pesticides. If the European Commission approves glyphosate, the UK will be required to reassess every product containing the substance, and these products will get new authorisation only if they fully meet current safety standards. But I should add that there is a hold-up with the licensing process. The European Chemicals Agency is to come out with a report next year and several member states have stated that they would like to see that report before licensing glyphosate. If there is not a vote before June, glyphosate will not be licensed and it will be withdrawn over a period of time to allow manufacturers to replace it.

Viscount Ridley (Con): My Lords, given that laboratory tests show that caffeine is 10 times more carcinogenic than glyphosate, that glyphosate is non-volatile and non-persistent, and that it has made a significant contribution to eliminating hunger and malnutrition from large parts of the world, and indeed to improving the environment through no-till agriculture, will my noble friend the Minister encourage the European food standards agency to stick to its guns?

Baroness Chisholm of Owlpen: What my noble friend says is true. There are arguments for glyphosate. It is highly effective. It adds to the yields. You need to sow less, which leaves more headland, hedges, et cetera, for the environment. What my noble friend says is certainly true.

Lord Greaves (LD): My Lords, there is a dispute among scientists about glyphosate. As I think the noble Countess alluded to, the International Agency for Research on Cancer last year said that products containing glyphosate are "probably carcinogenic to humans". Is it the case, as is being alleged, that some of the research that the European food standards agency is relying on has not been published or peer-reviewed? Should not such research studies and reports be in the public domain so that all those who are experts can look at them and assess them?

Baroness Chisholm of Owlpen: UK experts certainly participated in the EFSA's detailed review of the health data. The EFSA concluded that,

"glyphosate is unlikely to pose a carcinogenic hazard".

and we agree with that conclusion. A wealth of studies is taking place. There have been huge studies in America and studies in various places in the world. From all these studies, the majority of experts concluded that there was very little evidence for an association between glyphosate-based formulations and cancer.

Lord Naseby (Con): Is my noble friend aware that the branded product in the UK for use in gardens has been on the market since the 1970s? Is it not unbelievable now, with the evidence from Europe, that this product, in its slightly diluted format for people to use in their gardens, can possibly be causing any real problems?

Baroness Chisholm of Owlpen: What my noble friend says is true. Each pesticide has specific conditions of authorisation, which are set out on its label. The level of safety must be achieved without reliance on training or special equipment. As my noble friend says, for domestic use glyphosate is very much diluted and comes mainly in trigger packs, which means that it is very safe for use.

Baroness Jones of Whitchurch (Lab): My Lords, in the light of the conflicting research which I think has been acknowledged exists on this matter, is not the common-sense approach to apply the precautionary principle, given the potential danger? Should we not only take immediate steps in any way we can to limit the use of glyphosate but make sure that the public are much more aware of the potential threat to their health, while the ongoing research and licensing process is reviewed?

Baroness Chisholm of Owlpen: If the European Commission approves glyphosate, all member states will be required to reassess every single product that contains it. These products would get new authorisation only if they fully meet current safety standards. We will not know what is going to happen until we know more about whether the European Commission will vote before June. If it does not vote before June, the licence will not be allowed in this country.

Arrangement of Business

3.16 pm

Lord Bassam of Brighton (Lab): My Lords, I am sorry to detain the House, but I wish to draw your Lordships' attention to today's business, last Thursday's business, tomorrow's business and Wednesday's business, as well as business on 11 and 13 April. The eagled-eyed will have spotted that they have one item in common:

[LORD BASSAM OF BRIGHTON]
the Housing and Planning Bill. I know we are in the middle of a housing crisis, but this is overkill. Today's business concludes with the Housing and Planning Bill, and it is said that the government Chief Whip intends the House to sit until midnight and is prepared to do the same tomorrow.

This cannot be right. Four consecutive days on one Bill—what precedent is there for such a process? The *Companion* is clear about business intervals and about concluding at 10 pm, and we have generously stretched that, probably too far, on many occasions so far. Noble Lords need to know that this part of the usual channels does not agree to this as a way of working. Our office offered the Chief Whip four different ways of managing the business which would have avoided this unfortunate car crash, but none of them was accepted. The current plan makes it impossible for opposition parties to do their job properly. It is well-nigh impossible for our research staff to assist. We have only one staffer supporting our shadow Ministers, while the Government have an army of civil servants as back-up, and even then the poor Minister gets so tired that she cannot give us answers.

Can the Chief Whip please consider this issue urgently and give the House an assurance that the Government will not do this again? Can he assure the House that they will not do this on Report? Finally, can the government Chief Whip ensure that in the future his office has a more realistic view of how long difficult, incoherent, inchoate, poorly drafted and badly thought through Bills take in your Lordships' House? We stand ready to be helpful, but we can be helpful only if the conditions exist in which we can do that work.

Lord Taylor of Holbeach (Con): My Lords, I think the noble Lord has strayed slightly into a critique of the Bill rather than focusing on the substance of his objection, but I am grateful for the advance notice he gave me that he wished to raise this matter. Because he and I have been discussing this for perhaps three or four weeks—it certainly seems quite a long time—he will know that we have had to try to find ways of accommodating this slow-moving Bill in the Government's programme.

There have been extensive discussions in the usual channels, and I have been very grateful for the co-operation that I have had. We have discussed the Committee and Report stages of the Bill—the noble Lord referred to some dates for Report on the Bill. As a result of those continued discussions, we have provided an additional, eighth day tomorrow, 22 March. Following the good progress we made on the Bill last week, for which I am grateful to noble Lords, we agreed in the usual channels that we would table the Bill for Wednesday as well. We aim to allow the House to have proper time to perform its role in scrutinising this Bill. This scrutiny will continue after the Easter Recess on Report. I know that my noble friend has undertaken to make available a great deal of information, which the noble Lord has highlighted. It is proper that that is for discussion when the Bill itself is discussed.

Lord Bassam of Brighton: My Lords, I want to make one thing clear. I did not agree it, but I certainly acknowledge that the noble Lord put this forward as a way of doing the business. I do not think that it is right that the House does business in this way. There is plenty of time in which we can consider the Bill; we do not need to push it so far and so fast that it makes it impossible for our side to do our job, and well-nigh impossible for the Minister to perform her duties.

Scotland Bill

Third Reading

3.20 pm

Lord Taylor of Holbeach (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Scotland Bill, has consented to place her interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Before the House begins the Third Reading of the Scotland Bill, it may be helpful for me to say a few words about Third Reading amendments. In line with our procedure on Third Reading amendments, the Legislation Office advised the usual channels last week that the amendment in the name of the noble and learned Lord, Lord McCluskey, and the further amendment in the name of the noble and learned Lord, Lord Wallace of Tankerness, and the noble Lord, Lord Stephen, on the Marshalled List for today's Third Reading, fall outside the guidance. On the basis of that advice, the usual channels, who met today, have agreed to recommend to the House that Amendments 1 and 2 should not be moved. However, I expect my noble friend to address the issue raised by those amendments in his opening remarks on the government amendments in the same group. I hope that this approach will commend itself to the House, which is the ultimate arbiter in these circumstances.

Clause 2: The Sewel convention

Amendments 1 and 2 not moved.

Amendment 3

Moved by ***Lord Keen of Elie***

3: Clause 3, page 2, line 21, at end insert—

"The subject-matter of section 43(1AA) of the Representation of the People Act 1983."

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, before turning to the government amendments in this group, I should like to address some points that noble Lords have previously expressed in relation to Clause 2. This clause is to implement the provision in the Smith commission agreement that the Sewel convention should be put on a statutory footing. The Smith commission agreement did not suggest any change in the effect of the convention. The clause recognises that this Parliament will not normally legislate on a devolved matter without the consent of the Scottish Parliament, but the convention recognises that the decision whether to legislate is for this Parliament to take.

I have noted the points made by noble Lords who have made clear in previous discussion of this clause their view that the word "normally" is not a word

sufficiently precise for a statutory restriction. Of course, we are not seeking, and nor are we able, to impose a restriction on parliamentary sovereignty, and it has also been made clear in discussion that the word is suitable for indicating how a discretion will be exercised. This clause is clearly intended to indicate that the discretion of Parliament to legislate for devolved matters will continue exactly as before and that it is not intended to subject that discretion to judicial control. I would add that the words "it is recognised" that appear in Clause 2 also reflect the continued sovereignty of the United Kingdom Parliament and that it is for Parliament to determine when a circumstance may be considered not normal. This is not a matter that the courts could meaningfully engage with.

I turn to a number of technical amendments that we have tabled to Clauses 3 and 5 of the Bill. Noble Lords will recall that we gave notice on Report that we would table these amendments, which are necessary to ensure that the clauses in the Bill relating to elections work as intended. Under the Bill, and in line with the Smith commission agreement, the timing of Scottish parliamentary elections is devolved to the Scottish Parliament, subject to the provision that Scottish parliamentary ordinary general elections may not be held on the same day as a UK parliamentary general election, a European parliamentary general election or ordinary local government elections in Scotland. We have tabled amendments to Clause 3 to improve the drafting of the part of the reservation relating to the timing of ordinary local government elections in Scotland. These amendments do not change what is reserved, but rather clarify the drafting to ensure that the reservation achieves the intended outcome—that an ordinary local government election in Scotland may not be held on the same day as ordinary general elections for the Scottish Parliament.

In addition, we have tabled amendments to Clause 5 of the Bill to improve the drafting of the new provisions to be inserted into Section 43 of the Representation of the People Act 1983. These provisions relate to the reservation of the timing of ordinary local government elections where they clash with the date of an ordinary general election to the Scottish Parliament, and provide a mechanism for the Scottish Ministers to change the date of the local government elections where such a clash occurs. The amendments improve and clarify the drafting of the provisions providing a mechanism for setting an alternative date.

Amendments 3 to 9 are technical amendments, which will ensure that there is clarity in the clauses in the Bill relating to elections and that they operate as intended. I beg to move.

Lord McCluskey (CB): My Lords, I accept that Amendments 1 and 2 could not be moved, and will not be moved by me or by the noble and learned Lord, Lord Wallace of Tankerness. However, in the light of the Minister's statement, I make a brief comment. It sounds to me very like a Pepper v Hart type of statement, designed to guide a court, when a court sits down to decide on an ambiguity in the interpretation or application of the provision. I am not at all sure that it will work, but it is no doubt the best that the Minister could come up with, even with the assistance from behind him of the noble and learned Lord, Lord Mackay of Clashfern, who is unfortunately unable to be here today. It does not solve the problem, but it is better than nothing.

The very fact of making the statement appears to be to concede the point that we were all making, that the provision in the clause is just a shibboleth, because Pepper and Hart statements have no locus at all unless in a court of law when a statement is invoked to assist the interpretation. However clear the statement is, it is not binding on the court, which has a duty to apply the words of the statute to determine what it means. However, I welcome it, while regretting that the Government did not pick up on the amendment proposed by the noble and learned Lord, Lord Wallace of Tankerness, which would have solved the problem within the statute itself, and we would not have needed this. However, in the light of the Government's attitude, we have to leave it there.

Lord Wallace of Tankerness (LD): My Lords, following on from the noble and learned Lord, Lord McCluskey, it was with some considerable regret that I agreed not to move Amendment 2, part of which I shall come back to in a moment. I welcome the Minister's statement as far as it goes, which is not very far. I agree with the noble and learned Lord, Lord McCluskey, that it is an attempt at a sort of Pepper v Hart statement, but I make two observations on that. First, for Pepper v Hart to come into play, there has to be an ambiguity that has to be resolved. If, in fact, there is no ambiguity—and I am not sure whether the absence of something that has been debated in Parliament and expressly rejected by the Government could amount to an ambiguity as they have made it very clear that they do not wish for Devolution Guidance Note 10 to be part of what is on the statute book—I am not sure that Pepper v Hart would come into play.

3.30 pm

Secondly, the point would be conceded that there would be litigation. It may be litigation that the Government could conceivably win. Who knows? Once the genie was out of the bottle and the case was in court, a number of things could happen, which is the why the amendments, which have been debated previously—the amendment which the noble and learned Lord, Lord McCluskey, put down for today but has not moved and the amendment in my name and that of my noble friend Lord Stephen—make it very clear that the application of this clause,

"shall not be questioned in any court of law".

That would have settled it. It would not even get to the stage of a case being raised. The wording that we used was taken from the Parliament Act 1911, and 105 years is a reasonably good test of time as to its effectiveness.

I note what the noble and learned Lord, Lord Keen, said about "normally" and that he said that the exercise of the legislative consent Motion will continue exactly as before, but I want to push him to be even clearer, because by using the words in the statute, which were used by Lord Sewel in 1998, the implication must be that that is all that is covered by the statute in fulfilment of the Smith commission recommendation. In fact, the Government seem to be trying to take this as narrowly as they can.

[Lord Wallace of Tankerness]

Therefore, it is arguable that we have a two-tier legislative consent Motion convention. There are the Sewel words, which are in statute, and the provisions that have triggered legislative consent Motions since the outset of the Scottish Parliament, and are found in Devolution Guidance Note 10, which are not in statute. Does Clause 2 have legal meaning? In which case, does the Minister accept that there are two tiers of legislative consent Motion? What are the implications of that? Or is Clause 2 legally meaningless, a bit of legislative window dressing, in which case why have we spent so much time debating it? Will he clarify which it is? Is this meant to have some legal meaning or not? If the courts were asked about this, it is not unreasonable for them to think that Parliament, having spent hours debating it, meant something to be said. How does he expect that would be interpreted?

Will the Minister address the concerns that have been reflected in the evidence to the Devolution (Further Powers) Committee of the Scottish Parliament, which produced its final report on the Scotland Bill on 11 March? These concerns reflect the interaction between legislative consent Motions and future legislation on the repeal of the Human Rights Act and the possible establishment of a British Bill of Rights. There was some concern that the Government might be trying to provide themselves with a loophole to get out of any means to get the Scottish Parliament to agree to things they might bring forward in their much-heralded and long-awaited reforms to human rights legislation.

Indeed, in May last year at the launch of the report by the Bingham Centre for the Rule of Law, *A Constitutional Crossroads: Ways Forward for the United Kingdom*, the very distinguished Professor Adam Tomkins, who was a member of the Smith commission and advises the Secretary of State for Scotland on constitutional matters, speculated whether a legislative consent Motion would be needed in the Scottish Parliament to repeal the Human Rights Act, but appeared very clearly to take the view that if any British Bill of Rights contained new rights infringing on the Scottish Parliament's legislative powers or Scottish Ministers' executive powers, a legislative consent Motion would be required, no doubt by reference to Devolution Guidance Note 10.

The Minister can make it very clear and allay all these concerns from the Dispatch Box in the next few minutes by saying that it is certainly not the Government's intention to, as it were, thwart the Scottish Parliament having a legislative consent Motion if one were required under DGN10 in the event of a British Bill of Rights that would confer new responsibilities within the legislative competence of the Scottish Parliament or new legislative responsibilities on the executive competence of Scottish Ministers. These matters may not lead to litigation, but they could well do. In recent times, we have seen that the Trade Union Bill and the Immigration Bill, both currently before your Lordships' House, have produced disagreements between the Scottish Government and the United Kingdom Government, so the question is by no means academic.

The final point, which is a new one, is on the words "devolved matters", which appear in this clause. We are particularly disappointed that the clerks did not see fit to think that this fell within the rules for Third Reading. I certainly give notice that I will take this to the Procedure Committee, because if something happens between Report and Third Reading, surely it is reasonable that the House has an opportunity to consider it. What has happened here is that we have had the final report of the relevant Scottish Parliament committee, which specifically recommended that the words "devolved matters" should be clarified. It says:

"Furthermore, the Committee also seeks clarification from the UK Government on the legal meaning of the term 'devolved matters'".

I think I am right in saying that those words do not appear anywhere in the Scotland Act at the moment. Reserved matters are defined in Section 30(1) and by reference to Schedule 5, but of course there are other matters not within the competence of the Scottish Parliament that Section 29 of the Scotland Act sets out, and in so doing it brings in Schedule 4 to the Scotland Act. I would be interested if the Minister took this opportunity to give us a very clear understanding of what the Government mean when they use the words "devolved matters" in the Bill. It is a term that, as I understand it, has no legal definition at the moment, yet it clearly could be of some importance. I am sure that the Minister will welcome an opportunity—albeit that he could not do it in response to an amendment—to help the House by defining what the Government mean by "devolved matters".

In conclusion, it is very regrettable that the Government have made no attempt whatever to move on these issues, despite some very compelling arguments. These are serious matters that are ripe for some constitutional conflict. If that happens, the Government have brought that upon themselves.

Lord McCluskey: The noble and learned Lord talked about the likelihood of litigation. Is he aware—I am sure he is—that the Human Rights Act itself is extremely productive of legislation at all levels of our courts in Scotland and elsewhere? Therefore, if the Government proceed with their intention to introduce a domestic human rights Act, and that has a direct effect upon the Scotland Act and the Human Rights Act in Scotland, then there is bound to be litigation that in turn will raise the question of the meaning of this so-called clause.

Lord Wallace of Tankerness: As I said, these are not academic issues but very real ones. The Human Rights Act could certainly give rise to them as indeed could measures in the Trade Union Bill. They would not necessarily be issues between Governments; they could be issues that impacted on other public bodies in Scotland, for example. That is why it is regrettable that the Government have not been more forthcoming and willing to look at the proposals that we want to put on the statute book.

Lord Cormack (Con): My Lords, both noble and learned Lords have made powerful points. I do not wish to make anything other than a very brief intervention, but I have amendments, strongly supported both in Committee and on Report, concerning the word "normally". I am extremely sorry that the Minister has not really met that point. It has been made with

great eloquence by noble Lords learned in the law, and it was made by those of us throughout the United Kingdom who share the concern of the two noble and learned Lords who have just spoken. I am sorry that their amendments have not been deemed admissible. Of course they have done entirely properly in not seeking to move them, but this is an unsatisfactory Bill and we are in an unsatisfactory situation.

I put it on record that I remain extremely concerned about the use of this very loose word "normally". I believe as a layman that it is clearly something that could be justiciable. I know not what will happen, but I fear that we are not putting on the statute book something that recognises what noble Lords in all parts of this House have recognised. In my opinion this is a flaw in the Bill, and it has been demonstrated as such by many people. I am sorry that the Minister has not felt able to move on this issue.

Lord Hope of Craighead (CB): My Lords, when I spoke on this matter on Report, having tabled an amendment which dealt with the issue in slightly different terms from those proposed by Amendments 1 and 2 on the Marshalled List, I said that I would come back to the issue at Third Reading. But, on consideration of the various rules and practices, I decided not to renew my amendment in recognition of the fact that it would not be proper to bring it forward in those terms.

I am grateful to the Minister for the statement he has made, which goes a little way to addressing the problem. But I feel very strongly that this is an example of a missed opportunity, which could have been taken to clarify exactly what the Sewel convention is, to remove some of the problems to which the noble and learned Lord, Lord Wallace of Tankerness, referred, and to deal with the complications raised by the use of the word "normally".

As I stressed on Report, my concern was to preserve the sovereignty of Parliament, which the Minister mentioned in his brief address. The problem with the method he has chosen is that it opens up the possibility of a challenge to the sovereignty of Parliament, which is the greatest danger of all, because it puts at risk the enforceability of legislation where the spectre, if I should put it this way, of the Sewel convention may be hanging over it. I understand that the Minister has gone as far as he believes he can—but, like others, I regret that he was not able to go further.

Lord Stephen (LD): My Lords, it seems that the Government had an important decision to make on this issue. Did they want the Sewel convention, or the legislative consent convention as it has now become known, at least in the Scottish Parliament, to continue as a convention or did they want to convert it into statute? In truth, the answer is that they are making a mess of that decision. In a sense they are trying to do both, and in doing so they are creating bad legislation. They are continuing the convention—we have been told that and I certainly hope that that is the case. I hope that all legs and all elements of the convention will continue to be operated between the Scottish Parliament and the UK Parliament, the Scottish Government and the UK Government. But the Government have decided to take one rather limited and narrow—although, I accept, important—part of the convention into statute, and to do so in as limited and as loosely worded a way as possible, with words such as "normally" and with new expressions such as "devolved matters" that have not previously been used or defined in statute.

I now believe that the use of these words and the introduction of this vagueness has been quite deliberate on the part of the Government, to make it as ill-defined and declaratory as they possibly can. Why are they doing that? They are doing it to technically comply with the Smith commission's recommendations, but this is not in the spirit of the Smith commission and it is not being done in a clear, sensible or coherent way. In summary, it is not a good way to legislate. If the Government's excuse is that this is what the Smith commission told them to do, frankly, that is not a good enough excuse, because they can depart from the Smith commission—they have done so on the issue of abortion, for example—and the Smith commission was not perfect in every respect. On this issue it referred to only part of the Sewel convention—a mistake that I think the commission would readily admit to.

3.45 pm

We should therefore try to get this right in legislation. When the UK Parliament legislates on devolved matters, we should refer not only to the Scottish Parliament but to a situation where consent is given by the Scottish Parliament to the UK Government altering the legislative competence of the Scottish Parliament or the executive competence of Scottish Ministers, because that is the full legislative consent convention. Is that serious? Yes, I believe that it is. The noble Lord, Lord Norton of Louth, who is the constitutional expert on these matters—not only in the Conservative Party but, in many respects, for the whole of this Chamber—highlighted the problem in Committee, saying that,

> "I am quite clear that we really cannot proceed with Clause 2 as presently worded. As I say, either we have a convention or we have legal certainty in statute. I do not think we can try to have both".—[*Official Report*, 8/12/15; col 1495.]

Yet that is exactly what the Government are trying to do. There has been no change whatever from the Government: no variation, no compromise and no amendment.

Since the Second Reading debate on 8 December, more weight has been added to the argument against the Government's position. My noble and learned friend Lord Wallace of Tankerness has already referred to the Scottish Parliament's report. Very recently—on 11 March—the Devolution (Further Powers) Committee of the Scottish Parliament produced a 210-page document that looks at the proposals in the Scotland Bill, and in particular at Clause 2. That this sort of weighty, well-considered document has come forward at this late stage is complete justification for considering the amendments tabled by my noble and learned friend Lord Wallace and the noble and learned Lord, Lord McCluskey. The committee's report has a section on the legislative consent convention which makes it clear that that is the correct term for the Sewel convention, as we have said before. With the exception of the Smith commission and the UK Government, it seems that that term has fallen into desuetude. The Bill should therefore refer to the legislative consent convention.

[LORD STEPHEN]

Professor Neil Walker, who is the Regius Professor of Public Law at the University of Edinburgh, stated in evidence to the Scottish Parliament's Committee:

"I think that 'Devolution Guidance Note 10'"—

which, we should remember, is a 1999 devolution guidance note, so the UK Government have been somewhat slow to catch up—

"has to continue to apply, because it specifies a convention that applies regardless of what the law says. If we are to reduce conventions to law, it would certainly help if we did so fully and not just partly".

I hope that those words from the professor echo some of the comments I have already referred to, in particular the words of the noble Lord, Lord Norton, because this is exactly the point the noble Lord made. It was also made by my noble and learned friend Lord Wallace, and by the noble and learned Lords, Lord Hope and Lord Mackay. My noble friend Lord Steel, a former Presiding Officer of the Scottish Parliament, has confirmed the same point and it is my point, too.

In its conclusions and recommendations the Scottish Parliament Committee stated that the UK Government's approach, as currently drafted, has,

"the potential to weaken the intention of the Smith Commission's recommendations in this area".

It wished all strands of the convention to be covered by the Bill and noted its disappointment at the lack of a response from the UK Government on this issue. It regretted that no changes have been made by the UK Government. It stated its view, which is shared by the Scottish Government, that the Scotland Bill still falls short and that this failure to fully incorporate into statute all strands of the legislative consent convention, as set out in Devolution Guidance Note 10, will only cause difficulties in the future.

That is also the view of many noble and learned Lords from around the Chamber. Some of them have considerable parliamentary and ministerial experience; others have very considerable legal and judicial experience. But sadly the Government, of course, know better, and we find ourselves where we are today.

Lord Campbell of Pittenweem (LD): My Lords, it may be stretching the tolerance of the House for a fifth Scottish lawyer to join in this discussion, so I will confine myself to two issues. The first is Pepper v Hart. It is well worth understanding just how limited the application of that doctrine may be. If the noble and learned Lord the Advocate-General is looking for an illustration of the approach recently taken by the Court of Session, he will find it in the case of British Petroleum v Edinburgh and Glasgow licensing boards.

Secondly, this is about the most political piece of legislation that one could possibly imagine. Within its terms is the opportunity for great political disagreement. It seems to me that the way in which the Government are now proceeding will in some respects justify that disagreement by leaving open an important porthole for those who wish to challenge the will of this House and indeed of the other place.

Lord Keen of Elie: My Lords, I am obliged for all the contributions from your Lordships in respect of this matter. I will not seek to repeat the arguments that were rehearsed so fully in Committee and on Report but I wish to make some observations.

The Smith agreement was explicit in its reference to putting the Sewel convention on a statutory footing, and that is what has been done—essentially as the noble Lord, Lord Stephen, noted—in a declaratory sense.

Mention has been made repeatedly of the case of Pepper v Hart. I am not going to go there in any detail, but the starting point for that case is ambiguity. A number of noble Lords indicated that there was no ambiguity. I am inclined to agree with that—but not necessarily for the same reasons. However, it appears to me that if there were room for ambiguity then of course Pepper v Hart might come into consideration.

Reference was made to the LCM—the legislative consent Motion—process and the suggestion that it should be incorporated into the clause. With respect, the LCM is a process of the Scottish Parliament, not of this Parliament—it is what the Scottish Parliament does in response to us applying the Sewel convention—and therefore it would not be appropriate to bring it into Clause 2.

There is then the question of what is or is not a devolved matter. This point—and indeed the difference that I have with the noble and learned Lord, Lord Wallace—is perhaps highlighted by the amendment that he originally proposed. The last part of that amendment says:

"For the purposes of subsection (8), the words 'devolved matters' means any matter not reserved to the United Kingdom Parliament under this Act".

With respect, the Scotland Act 1998 is a great deal more sophisticated than saying that all matters listed in Schedule 5, which are reserved, are the only matters not requiring the consent of the Scottish Parliament. It entirely ignores the fact that, for example, it is not within the competence of the Scottish Parliament to modify any of the protected enactments listed in Part 1 of Schedule 4 to the Scotland Act.

Lord Wallace of Tankerness: Rather than read out his brief, will the noble and learned Lord acknowledge that I said that parts of Schedule 4 also exclude matters from being within the legislative competence of the Scottish Parliament? If I have not, with my own resources, got the amendment right, can the noble and learned Lord, with all the great resources that he has in his office—I know the expertise that he has there—say what definition he would give of "devolved matters"?

Lord Keen of Elie: There is no strict requirement to go into the definition of "devolved matters" at this stage, but it is perfectly clear from the amendment that the noble and learned Lord originally intimated that he contemplated it listing only the matters in Schedule 5 to the Act. I appreciate that in making observations in this House he qualified that statement, but the point is that the question of what is reserved goes well beyond Schedule 5 and includes all those protected enactments in Part 1 of Schedule 4.

The point that I was going to come to is this: one of the protected enactments is the Human Rights Act. This Government were elected upon a manifesto to

address the Human Rights Act and to amend its terms by way of a Bill of Rights. That matter will be addressed in due course, but this is not the time or the place to consider what the implications of that may or may not be in the context of all the devolved Administrations in the United Kingdom. I would not consider it appropriate to go there.

Lord Wallace of Tankerness: I am not asking the Minister to tell us what is going to be in it but, if a proposed new British Bill of Rights confers new responsibilities on Scottish Ministers, does he believe that is a matter to which Devolution Guidance Note 10 would apply and that the United Kingdom Government would respect it as such and expect a legislative consent Motion in the Scottish Parliament? He can clear this matter up if he is prepared to say yes to that. If he is not, we can only suspect the worst.

Lord Keen of Elie: There is no reason to suspect the worst. What we have to do is await the relevant Bill of Rights. Then, when we have considered its terms, we shall see whether it does or does not intrude upon matters covered by DGN10. If it does, then DGN10 will be addressed, as it always has been. There is a clear and consistent record of the United Kingdom Parliament and this Government proceeding in accordance with DGN10 in the context of devolved issues. I do not anticipate, and have no reason to anticipate, that that will change in the future. However, I am not going to comment on a Bill that is not before this House and the terms of which have not yet been finalised.

In these circumstances it appears to us that Clause 2 is sufficient for the purpose of expressing, essentially, a declarator of the Sewel convention in accordance with the Smith commission agreement.

Lord Purvis of Tweed (LD): Before the noble and learned Lord sits down, although that was perhaps his final point from the Dispatch Box on this, he said in response to my noble friend Lord Stephen that this is now stating in a declaratory way that the Sewel convention exists. However, it is worth reminding the House that paragraph 22 of the Smith commission report said:

"The Sewel Convention will be put on a statutory footing",

not that it will be declaratory that it exists.

Amendment 3 agreed.

Amendment 4

Moved by **Lord Dunlop**

4: Clause 3, page 2, leave out lines 30 to 33

Amendment 4 agreed.

Clause 5: Timing of elections

Amendments 5 to 9

Moved by **Lord Dunlop**

5: Clause 5, page 6, line 11, leave out "(1ZA)" and insert "(1AA)"

6: Clause 5, page 6, line 12, leave out from beginning to first "The" in line 13 and insert "After subsection (1A) insert—

(1AA) "

7: Clause 5, page 6, line 13, leave out "date specified by" and insert "day specified in or fixed under"

8: Clause 5, page 6, line 14, leave out "date is the same date as" and insert "day is the day of"

9: Clause 5, page 6, leave out lines 16 to 22 and insert—

"(1AB) Where subsection (1AA) prevents the poll being held on the day specified in or fixed under subsection (1), the poll is to be held on such other day as the Scottish Ministers may by order specify.

(1AC) An order under subsection (1AB) is subject to the affirmative procedure."

Amendments 5 to 9 agreed.

Clause 40: Roads

Amendment 10

Moved by **Lord Dunlop**

10: Clause 40, page 43, line 11, at end insert—

"( ) In paragraph (d) of that reservation, after "the Road Traffic Act 1988" insert ", except so far as relating to the parking of vehicles on roads,"."

Lord Dunlop (Con): My Lords, I shall speak also to Amendments 11 to 16 and 19 to 21. As I indicated on Report, a number of technical amendments are necessary to the roads provisions. Amendments 10, 11, 13, 16 and 20 are technical amendments and complement the amendment that the Government brought forward on Report on the issue of responsible parking. That amendment, which commanded cross-party support on Report, gives the Scottish Parliament the power to legislate for parking vehicles on roads, an issue that is of interest to many people in Scotland. That amendment now appears in the Bill at Clause 40(4). Following helpful discussion between the Department for Transport and the Scottish Government, these technical amendments will bring full clarity to the power. I will briefly set out the effect of each of these amendments.

Amendments 10 and 11 amend the amendment made on Report, which gave power to the Scottish Parliament to make provision for parking on roads. Amendments 10 and 11 make clear that on-street parking is excepted from the reservation of the subject matter of the Road Traffic Act 1988 and is not a general exception from all road transport reservations.

Amendment 13 removes a reference to the regulations made by Scottish Ministers being subject to the negative procedure. The reference is unnecessary as it is subsequently replaced by Amendment 20, which amends the Road Traffic Act 1988 to stipulate that regulations relating to parking made by Scottish Ministers will be subject to the negative procedure.

4 pm

Amendment 16 transfers the functions of the Secretary of State under the Road Traffic Act 1988 in relation to parking of vehicles on roads in Scotland to Scottish Ministers so far as is exercisable within their devolved competence. It does this by changing references to the Secretary of State to "national authority", which for these purposes is Scottish Ministers. Amendment 16 also includes a provision that will require the Secretary of State for Transport to consult Scottish Ministers if making regulations relating to parking of vehicles on roads in Scotland.

[LORD DUNLOP]

I can assure the House that the amendments, while necessary, do not alter the substance of the policy. They do not provide any further powers but simply seek to ensure that the implementation of the powers is effective. As I explained on Report, irresponsible parking has been of concern to many people across Scotland, and I am glad that we have been able to bring clarity to the legal position.

Amendments 12, 14 and 15, to which I alluded on Report, ensure that the functions being transferred to Scottish Ministers in relation to speed limits and road signs in this Bill are aligned with the powers being transferred to the Scottish Parliament. They are also consistent with the functions being transferred to Scottish Ministers for parking. Amendment 19 preserves the effect of amendments previously made to the Road Traffic Regulation Act 1984 by the Scotland Act 2012.

These amendments therefore ensure and clarify that the Secretary of State continues to be responsible for, for example, exempting vehicles used for the reserved purpose of defence from parking and speed limits and road signs in Scotland. The Secretary of State will need to consult Scottish Ministers before exempting such vehicles. Scottish Ministers will have powers to make provision by virtue of the Bill for road signs, parking and speed limit exemptions to the same extent that the Scottish Parliament can legislate for these same policy areas. Amendment 21 is a minor drafting correction to an amendment made on Report which will enable the Secretary of State to make provision in connection with reserved matters. I beg to move.

Lord McAvoy (Lab): My Lords, I thank the Minister for introducing these amendments. We particularly welcome those relating to pavement parking and recognise that the others are largely technical in nature. We are therefore more than happy to support them.

The amendments on pavement parking reflect amendments which this side of the House tabled both in the other place and in Committee in your Lordships' House and which were welcomed honourably by the Minister. The work of the organisations, Living Streets and Guide Dogs Scotland, was invaluable and I extend my thanks to them.

I know that in the grand scheme of things the amendments might be regarded as minor, but they are important to a big section of our community. Pavement parking is dangerous for pedestrians, especially people with sight loss, parents with pushchairs, wheelchair users and other disabled people. People with sight loss are particularly affected, as they can be forced into oncoming traffic which they cannot see. A survey by Guide Dogs Scotland showed that 97% of blind or partially sighted people encounter problems with street obstructions and some 90% of them had experienced trouble with a pavement-parked car. Pavements are not designed to take the weight of vehicles, and cars cause paving to crack and tarmac to subside. This damage makes pavements uneven, creating a trip hazard for pedestrians, particularly blind and partially sighted people. I know that the cost of repairing pavements is a parochial issue, but it is a burden for local authorities, which in Scotland are under particular pressure as a result of government cuts—SNP Government cuts, I hasten to add. We are therefore glad that the Scottish Government now have the necessary legislative competence to put measures in place to prevent this happening. I repeat my thanks to the Minister and welcome the amendments.

Lord Steel of Aikwood (LD): My Lords, before the Minister responds perhaps I could repeat a point I made in Committee about Clauses 40 to 42 and Schedule 2, and the amendments that the Minister has rightly laid before us today. I am emboldened to do so by a phone call from the noble Lord, Lord Sanderson of Bowden, who is a former constituent of mine. He wanted me to make it clear that there was never any risk of him voting for me, but on this issue we speak with one voice.

Those of us who live in the borders, whether on the Scottish or the English side, are naturally concerned about the growth of what appear to be quite minor changes in legislation concerning parking, traffic signs, speed limits, vehicle regulations and even the drink-driving laws. There is a danger that these regulations will become self-aggrandising. We have different regulations just for the sake of having different regulations. We find ourselves having to make journeys by road that cover both jurisdictions, and it is extremely confusing if there are too many regulations that differ. The point I want to put to the Minister is this. He referred several times to discussions between the Department for Transport and the Scottish Government. Can we be assured that those discussions will continue so that we can seek to minimise the differences in regulations on each side of the border?

Lord Dunlop: I thank the noble Lord, Lord McAvoy, for his comments and support. This was an issue that the party opposite raised in Committee and the Government are pleased to have been able to address what has been a long-standing lack of clarity in the law. With regard to the noble Lord, Lord Steel, yes of course I can assure him that discussions will continue between the Department for Transport and the Scottish Government. A theme that has run through all our debates on this Bill is the need for close intergovernmental co-operation. That is something which I feel strongly about, given my responsibility for these matters, so anything I can do to improve those intergovernmental relations, I will certainly do.

Before we move to the final group of amendments, as we near the conclusion of the Bill I want to take this opportunity to thank noble Lords for all their work, in particular all those who have moved amendments or spoken to them, and who have taken the time to meet me and my noble and learned friend the Advocate-General to discuss their concerns. I would also like to thank the Constitution Committee, the Economic Affairs Committee and the Delegated Powers and Regulatory Reform Committee for their very careful consideration of this Bill. Indeed, I thank my noble and learned friend the Advocate-General, who is no longer in his place because no doubt he is preparing for the Immigration Bill to come, and my noble friend Lord Younger of Leckie for all their support. Finally, I thank officials from across Whitehall who have provided invaluable support throughout the process. We have covered a lot of ground and many subjects, and their support is much appreciated.

Noble Lords have provided robust challenges at times; I recognise that opinions have been divided on aspects of the Bill and I respect the strong views that are sincerely held. Your Lordships' House has fulfilled its customary role of providing a thorough and penetrating scrutiny of the legislation. I said at Second Reading that I thought it was a precondition of earning the trust of the Scottish people, after the independence referendum, that we should keep the promises that were made during that referendum. That is exactly what this Bill does, as well as making the Scottish Parliament more financially accountable. I am particularly grateful to the Front Benches opposite for their support. It recognises that the promises made during the referendum were joint ones.

There was much talk during the independence referendum of Project Fear, and I think that it has already been observed elsewhere that the fears raised by the supporters of the union have proved all too justified while the fears put about by those arguing for separation have proved to be groundless. They have proved to be groundless because we have delivered on the promises we have made. I think that we have established beyond any doubt that pulling Scotland out of the United Kingdom could never satisfy the Smith no-detriment principle, and in its heart of hearts I suspect that the leadership of the SNP knows it.

Political discourse in Scotland is already changing as a result of the Bill. Now we must move the debate on from what the powers are to how they are used. I am confident that the new Scotland Act will prove an enduring settlement, strengthening Scotland's place within the United Kingdom.

Lord McAvoy: My Lords, I echo a lot of what the Minister said. There was a lot of contention and division in our country during the referendum following the vow, thanks to the *Daily Record*, and the Smith commission, about which a lot of mistrust was put about as to the final conclusions of how we would deal with it. I am proud of the part that my party and its members played in arriving at these conclusions. We have shown Scotland that the people who do not wish to separate from the rest of the United Kingdom can deliver, by all accounts, the demands and wishes of the Scottish people to have more powers for the Scottish Parliament without necessarily separating from our friends and colleagues throughout the rest of the United Kingdom.

Collectively, this House, despite some rumbustious moments, some slight scepticism and very heavy scrutiny, has fulfilled its role in passing the Bill and ensuring that it is a better Bill than when it came here. We will send it back to the other place and hopefully it will be accepted there.

Westminster as a Parliament has delivered the wishes of the Scottish people. We can regain their trust, despite the cynicism put about at the time of the referendum. Collectively—although there have been various differences, which no doubt will continue—I have no doubt that we have delivered for the people of Scotland and we can look them in the face.

Amendment 10 agreed.

Amendment 11

Moved by ***Lord Dunlop***

11: Clause 40, page 43, line 14, leave out subsection (4)

Amendment 11 agreed.

Clause 41: Roads: traffic signs etc

Amendments 12 and 13

Moved by ***Lord Dunlop***

12: Clause 41, page 44, leave out lines 34 to 37 and insert—

"(a) in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;

(b) otherwise, means the Secretary of State;"."

13: Clause 41, page 45, line 10, leave out subsection (24)

Amendments 12 and 13 agreed.

Clause 42: Roads: speed limits

Amendments 14 and 15

Moved by ***Lord Dunlop***

14: Clause 42, page 46, line 30, leave out "relevant" and insert "national"

15: Clause 42, page 46, line 39, leave out paragraph (g)

Amendments 14 and 15 agreed.

Amendment 16

Moved by ***Lord Dunlop***

16: After Clause 42, insert the following new Clause—

"Roads: parking

(1) The Road Traffic Act 1988 is amended as follows.

(2) Section 20 (parking on verges etc: definition of "heavy commercial vehicle") is amended as follows.

(3) In subsection (5) for "Secretary of State" substitute "national authority".

(4) At the end add—

"(8) In subsection (5) "national authority"—

(a) in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;

(b) otherwise, means the Secretary of State.

(9) Before making any regulations under subsection (5) in relation to vehicles used on roads in Scotland, the Secretary of State must consult the Scottish Ministers."

(5) Section 41 (regulation of construction, weight, equipment and use of vehicles) is amended as follows.

(6) In subsection (1) for "Secretary of State" substitute "national authority".

(7) After subsection (2) insert—

"(2A) In subsection (1) "national authority"—

(a) in relation to a function so far as exercisable within devolved competence, within the meaning of the Scotland Act 1998, means the Scottish Ministers;

(b) otherwise, means the Secretary of State.

(2B) Before making any regulations under this section in relation to the parking of vehicles on roads in Scotland, the Secretary of State must consult the Scottish Ministers.""

Amendment 16 agreed.

Amendment 17

Moved by ***Lord McCluskey***

17: After Clause 70, insert the following new Clause—

"The Barnett Formula

Within 30 days of the date on which this Act is passed, the Secretary of State shall publish as a memorandum, supplementary to the agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework, a document containing a full description of any agreement reached between the governments relating to the future of the Barnett Formula or its application, amendment, reassessment or replacement in the future, including any agreement as to when any such change is intended to be considered by the two governments in the future."

Lord McCluskey: My Lords, I promise to be brief. I have been in this House just short of four decades and I have noticed that the easy way to empty the House at the end of Oral Questions is to read out the name of a measure that contains the word "Scotland". In raising the matter that the amendment raises, I also realise that, to get a collective groan from around the House, the words "Barnett formula" are a pretty good start.

I do not want to repeat any of the arguments made. My one purpose in raising the amendment, which I think speaks for itself on what it seeks, is to assist the people of Scotland to understand the truth of the manner in which Scotland's public expenditure is to be financed following the arrangements made under the fiscal framework. I do not think that very many people in Scotland have grasped what has happened. Indeed, there has been no opportunity to discuss the matter in the other House before the Bill is passed. My only purpose in moving the amendment is to encourage the Government to produce a publication of the kind requested that shows the truth of that financing so that we can all go out, talk about it explicitly in the face of the superb SNP propaganda machine, which feels no obligation to tell the truth, the whole truth and nothing but the truth.

I would have sat down at that point, but because the Minister has made some general remarks of a kind that would normally have been made, in my early days here, on the Motion that the Bill do now pass, I simply say that I am unhappy with the Bill. It subordinated the United Kingdom Parliament to a group of 10 Members of the Scottish Parliament, who took eight or nine weeks to produce a document. Since May last year we have been obliged to spend our time implementing the Government's version of that document. I do not think that all the proposals in the Smith commission report were fully thought through and, of course, Ministers in this House were plainly given a brief to accept no amendments. They did particularly well in dealing with that difficult brief, but I do not think that their position was a very sound one.

One of our purposes was to give the other House an opportunity, before the Bill passed into law, to discuss the fiscal framework. I repeat what the noble Lord, Lord Forsyth, often said, which is that the other House should have been given that opportunity.

4.15 pm

Lord McAvoy: I am sure that the noble and learned Lord will recall, in speaking about the role of the United Kingdom Parliament, that my noble friend Lord McFall of Alcluith suggested that the Government should deliver annual reports to both the UK and Scottish Parliaments on the progress of the fiscal framework discussion and the devolution settlement in general. This was surely an important development.

Lord McCluskey: I shall conclude by saying that I acknowledge that that is exactly correct. It was an extremely worthwhile proposal and I am thankful that, one way or another, as the months and years pass by, we will be able to get the whole truth out about what has happened in relation to this settlement.

Lord Higgins (Con): My Lords, the noble and learned Lord, Lord McCluskey, says that he has been involved in these matters for some 40 years. I have been involved, at one end of the building or the other, for 50—33 at the other end and 18 or so at this end—dealing to a large extent with financial and Treasury matters, but I have to say that I cannot recall any financial issue, in either House, that has been dealt with in such an inadequate way as the legislation that we have in front of us. The fiscal framework, which is at the heart of the Bill, has still not been debated at all in the House of Commons. We had a very truncated debate in Committee, with no debate on the fiscal framework, and very limited debate thereafter.

The Minister referred, in the debate on the previous group, to the promises made in the course of the referendum campaign. He described them as joint promises, but they were made, of course, with absolutely no consultation. The so-called vow was made during the referendum campaign and the statement by the Prime Minister was made the morning after the referendum took place. The deal that has been struck perpetuates a grossly unfair balance for those paying taxes and involved with financial matters in England, Wales and Northern Ireland and perpetuates the very substantial subsidy that is given to Scotland. Members of Parliament have not had any opportunity whatever to debate this. One must hope that their constituents will hold them to account when the details begin to sink in to the consciousness of the public at large in the parts of the United Kingdom other than Scotland.

The noble and learned Lord's amendment is very much to be commended. We are stuck with the Barnett formula, which we all know the late Lord Barnett himself decided was obsolete long before his lamented departure. The reality is that we are now going to go on doing this with virtually no prospect of the matter being changed again in five years' time or beyond. That is a dreadful situation as far as taxpayers in the rest of the United Kingdom are concerned. I certainly support the noble and learned Lord's suggestion that we at least ought to know the details of what has been agreed.

Lord Cormack: My Lords, a constant theme in your Lordships' House is that the other place has inadequate opportunity to scrutinise legislation thoroughly. When we say that, we always then go on to say that in your Lordships' House things are different. In this case, they are not. It is nothing short of disgraceful that the

other place has not had an opportunity to debate the fiscal framework. Twenty-nine of us put our views on that on the record when we had a Division a few weeks ago, but it was a vain gesture.

I speak as a Member of your Lordships' House who feels proud of our reputation for scrutiny and our ability to look at Bills forensically and to get change by either passing more amendments or, more regularly, by getting the Government to recognise that points of substance have been made and that alterations of substance should follow. In this case, that has not been possible.

It is deeply regrettable that that is the case. I make no personal criticism of my noble friends on the Front Bench; they are men of great charm and ability. However, they have been working under orders and have not been able to respond to points of real weight and substance because the brief has not allowed them to do so. In so many ways, this is a one-off Bill. I trust, above all, that in the context of scrutiny it will remain a one-off Bill.

Lord Wallace of Tankerness: My Lords, like the noble and learned Lord, Lord McCluskey, I thought that the remarks made by the noble Lord, Lord Dunlop, in replying to the last amendment, when he thanked everybody, were more suitable for the Bill do now pass debate. However, although I did not take part in that discussion, I would not wish in any way to lessen the appreciation I express on behalf of my colleagues to those who have helped to get the Bill to its present state, not least the Bill team, with some of whom I have worked in the past and know of their exceptional quality and hard work. I particularly thank the Minister, who with his customary courtesy has gone out of his way to meet us, engage with us and discuss issues with us—regrettably, not always to any effect from my point of view, but no doubt from his point of view it has been very effective. That is very much appreciated.

Aspects of this process have not been at all satisfactory. The short period that we had in which to look at the fiscal framework was not satisfactory. The Bill could be in a better state than it is and perhaps more favourably reflect the spirit of the Smith commission. The House has not done much to respect, or even give proper consideration to, the points made by the Scottish Parliament's committee that looked at the Bill. Those are matters of regret and do not augur well for having mutual respect and trying to improve the relationships between the institutions of the Westminster and Scottish Parliaments. But that is where we are.

This amendment addresses the Barnett formula. The Minister referred to the vow in his wind-up speech. I happen to believe that the referendum was won in spite of rather than because of it. However, it is important that we celebrate the fact that we won the referendum and are not facing independence day on Thursday of this week, with one dreads to think what consequences.

I note that, when I stood where the Minister stands now, the most difficult question I ever had to answer in one of these debates came from the noble Lord, Lord Turnbull, who referred to the vow. It says:

> "We agree that the UK exists to ensure opportunity and security for all by sharing our resources equitably across all four nations to secure the defence, prosperity and welfare of every citizen".

It goes on to refer to the,

> "continuation of the Barnett allocation for resources".

I was asked how I could square the equitable sharing of resources with the continuation of the Barnett formula. I struggled to find an answer. I will allow the Minister to find his.

Lord Selkirk of Douglas (Con): My Lords, when the Calman commission sat, the most important principles that it was trying to support were equity and accountability; this echoes what the noble and learned Lord has just said. I remind the House that on 7 September 2004, the day the Scottish Parliament opened at Holyrood, the Reverend Charles Robertson, minister of the Canongate church, was first to speak during the regular time for reflection. He reminded us of the previous uses of the site for the newly-built Parliament. It had been a house of refuge, a soup kitchen for the destitute and Scotland's largest independent geriatric hospital, not to mention the site of a profusion of well-known and much-loved breweries. Given this history, it is perhaps not surprising that, on that day, the then First Minister, the noble Lord, Lord McConnell, urged MSPs to "raise their game".

This legislation—the amendment relates to the heart of it—will bring about major changes in the powers and competence of the Scottish Parliament as, for the first time, the majority of funds that the Scottish Government spend will come from revenues raised in Scotland. When the prevailing philosophy has been a culture of spend, spend, spend, popularity is relatively easily won. That will now change as tough decisions will have to be made on how services will be financed.

There seems to be some uncertainty about who observed:

> "With great power comes great responsibility".

Some attribute it to Voltaire. In a debate in the other place in 1817, William Lamb, later Prime Minister Lord Melbourne, made an exhortation to the press. He begged leave to remind them of their,

> "duty to apply to themselves a maxim which they never neglected to urge on the consideration of government—'that the possession of great power necessarily implies great responsibility'".—[*Official Report*, Commons, 27/6/1817; col. 1227.]

Similarly, on the same subject, Prime Minister Sir Winston Churchill said:

> "The price of greatness is responsibility".

What Churchill meant was that anyone who aspires to greatness must also be willing to shoulder the accompanying responsibilities. His advice still holds good today.

Lord Dunlop: My Lords, as the noble and learned Lord, Lord McCluskey, said, the Barnett formula has been the subject of significant debate during the passage of the Bill and has been raised in various statements and at other opportunities. I do not propose to go over well-worn ground, but I recognise the strong views that the formula evokes, particularly in this House. As has been said at other stages in the Bill's progress, the retention of the Barnett formula is a manifesto

[LORD DUNLOP]
commitment not just of the Government but of all three of the main UK parties. It will therefore continue to determine changes to the block grant resulting from changes in UK government departmental spending.

However, as my noble friend Lord Selkirk noted, the significance of the Barnett formula will be reduced, as over 50% of the Scottish Government's budget will, in future, come from taxes raised in Scotland. As has been said before, the size of that budget will be determined increasingly by changes in Scottish taxes.

The amendments tabled by the noble and learned Lord call for a memorandum to be published within 30 days of the Scotland Act passing, providing additional detail on the future of the Barnett formula. We are already delivering the intent of these amendments. On Friday, the Chief Secretary to the Treasury placed in the Libraries of both Houses a supplementary technical annexe to the fiscal framework agreement. This sets out in detail how Barnett will operate in future, alongside the adjustments for new tax and welfare powers. Much of the detail of how Barnett operates is already published in the *Statement of Funding Policy*, which was last updated in November. The details of how the devolution settlement operates are also set out at each fiscal event.

In addition, we have listened to the views expressed in this House about transparency and reporting. The UK Government and the Scottish Government have agreed to report annually on the operation of the fiscal framework. Finally, in response to the House of Lords Economic Affairs Committee, the Treasury has undertaken to look at how the whole operation of the Barnett formula can be made more transparent. We on this side of the House fully expect scrutiny to continue beyond the passage of the Bill and therefore I urge the noble and learned Lord to withdraw his amendment.

4.30 pm

Lord McCluskey: My Lords, I can be brief indeed. I am encouraged by what the Minister has said. Indeed, I have been encouraged by the remarks of other noble Lords who have supported me. The noble Lord, Lord Selkirk of Douglas, mentioned the concept of responsibility. I believe that it is our responsibility, having been fortunate enough to be here and to be informed about the details of what has been happening, to use what influence we can in Scotland, and indeed in the rest of the United Kingdom, to make known the truth about all the circumstances surrounding this settlement. I shall do my best. In the mean time, encouraged by what I have heard, I beg leave to withdraw.

Amendment 17 withdrawn.

Clause 71: Commencement

Amendment 18 not moved.

Schedule 2: Roads: consequential and related provision

Amendments 19 to 21

Moved by ***Lord Dunlop***

19: Schedule 2, page 80, line 25, leave out paragraphs 8 and 9 and insert—

"8 (1) Section 86 (speed limits for particular classes of vehicles) is amended as follows.

(2) For "national authority" in each place substitute "relevant authority".

(3) Omit subsection (9).

9 In section 88 (temporary speed limits) for "national authority" in each place substitute "relevant authority"."

20: Schedule 2, page 84, line 30, at end insert—

"Road Traffic Act 1988 (c. 52)

In section 195 of the Road Traffic Act 1988 (regulations) after subsection (4) insert—

"(4ZA) Regulations made by the Scottish Ministers under section 20(5), 36(5) or 41(1) are subject to the negative procedure.""

21: Schedule 2, page 87, leave out lines 20 to 26 and insert—

"(a) make any provision under section 87(1)(b) of the Road Traffic Regulation Act 1984 that could be made by the Scottish Ministers, and

(b) in connection with any provision made by virtue of paragraph (a), make any provision under any of the traffic signs powers mentioned in paragraph 33(3) that could be made by the Scottish Ministers."

Amendments 19 to 21 agreed.

4.32 pm

Motion

Moved by ***Lord Dunlop***

That the Bill do now pass.

Lord Steel of Aikwood: My Lords, I do not want to detain the House for more than a moment, but the passing of this Act by the House today is a major step in the history of Scotland. Donald Dewar was fond of repeating that devolution was not an event but a process, and so it has proved to be—and I have no doubt will continue to prove to be. This Act completes a process begun correctly in the original Scotland Act 1998. However, as I said at the time, that Act created a Parliament with substantial powers over expenditure but no responsibility for raising any of the money that it spent. This change is therefore of major significance and brings us closer to a quasi-federal relationship in Britain—closer in fact to the ideas in the Solemn League and Covenant way back in 1643.

In his magisterial new book *Independence or Union*, Professor Tom Devine says that his own preferred choice in the referendum,

"would have been to support a more powerful Scottish Parliament via some form of enhanced devolution. That opinion was in the end not available in the wording of the referendum. Many of those who thought like me were effectively disenfranchised".

That is what we have delivered and I believe that it now accords with the views of the majority of Scots, recognising as they do that we had a lucky escape in the referendum following the collapse of the global oil price.

That is nothing new. We have always been interdependent in these countries. One of our greatest Secretaries of State, Tom Johnston, put it thus during the great depression:

"What purpose would there be in our getting a Scottish parliament in Edinburgh if it has to administer an emigration system, a glorified poor law and a desert?".

We needed the strength of the United Kingdom then and we need it now. This Act creates an obligation and indeed an expectation that our two Governments will

act together in the best interests of our people. That means that Ministers such as George Osborne need to abandon silly anti-nationalist rhetoric when dealing seriously with annual budgets and that the SNP need to stop blaming London for every one of its own shortcomings. Scottish people expect better than that and this Act provides a sensible foundation for the way forward.

I have one final thought. We in this House have been able to adjust and improve the Bill since it left the Commons. We have had to do that without the assistance of the SNP, which continues its absence from this institution. I hope that that may change, not least so that it can join in the efforts to reform this Chamber and make it even more of a sounding board for the United Kingdom as a whole.

Bill passed and returned to the Commons with amendments.

Immigration Bill

Report (3rd Day)

4.35 pm

Amendment 116A

Moved by **Lord Dubs**

116A: After Clause 62, insert the following new Clause—

"Unaccompanied refugee children: relocation and support

(1) The Secretary of State must, as soon as possible after the passing of this Act, make arrangements to relocate to the United Kingdom and support 3,000 unaccompanied refugee children from other countries in Europe.

(2) The relocation of children under subsection (1) shall be in addition to the resettlement of children under the Vulnerable Persons Relocation Scheme."

Lord Dubs (Lab): My Lords, ever since I tabled this amendment, I have been surprised at the level of interest, and above all support, from the wider public over the need to do something for unaccompanied child refugees in Europe. I declare an interest at the outset, as I arrived in this country in the summer of 1939 as an unaccompanied child refugee. This country at the time offered safety to some 10,000 children. It is thanks to Sir Nicky Winton, who helped to organise Kindertransports from Czechoslovakia, that I got here at all—I almost certainly owe my life to him. In tribute, last week a postal stamp was produced in commemoration of his achievements, and I saw photographs of the stamp with the Home Secretary when it was launched.

I also happened to meet Theresa May at a birthday party at Nicky Winton's house in Maidenhead a few years ago. She was of course his MP and paid many tributes to him. I cannot help but feeling that he would be gratified if this House were to adopt this amendment today. In May, there is to be a memorial event for Nicky, who died last year at the age of 106, and it would be fitting if this amendment were on the statute book by that commemoration. Some years ago he expressed concern to me about unaccompanied children—in this case from the Horn of Africa—and wondered at the time whether similar schemes should be put in place. Although I cannot discount my personal experiences, the case for this amendment does not depend on them. There is a much stronger case for the amendment than what happened to me all those years ago.

Once in a while, there are major challenges that test our humanitarianism, and Europe's refugee crisis is surely one such challenge. But within that, there is a need to do something about unaccompanied child refugees in Europe. They are believed to be mainly Syrian, although I am sure among them there are also some Afghans and Eritreans. There is estimated to be some 24,000 such children in Europe at present. Save the Children, which has been particularly involved in making these estimates, has suggested that the UK's share should be something in the region of 3,000. I stress of course that we must deal with children who have claims for asylum under the 1951 Geneva Convention—there may be others in Europe, but they are not the subject of this amendment.

These children are in a vulnerable state. Some apparently have disappeared and there are fears that they may have become the victims of child traffickers and perhaps forced into prostitution or slave labour. According to the Italian Ministry of Labour, of the 13,000-plus unaccompanied children who arrived in 2014, some 3,700 have disappeared. In 2015, nearly 6,000 are unaccounted for. Is it not a dreadful thing that children have just disappeared in modern Europe? In any case, the winter is not over. In many parts of Europe, children may be sleeping rough, without adequate food or water. Many may be in Greece or Italy, but some are elsewhere, perhaps even in the Calais and Dunkirk areas.

I think that there are clear signs that the British people want to respond, and many have offered to be foster parents. It just so happens that early this afternoon, I received an email, which I should like to quote from. It says, "Please keep fighting for the rights of the refugee children who are unaccompanied. It is very distressing how these children are having such a dreadful time to just survive. England has plenty of room for these children and, just to show our humanity, our doors should be open to them. I would be happy to offer a place of safety for one or two, as I have been a foster parent many years ago. The best of luck today."

I believe that that is a typical response; I have certainly had such responses, and I am sure that many others have as well. I am confident that a widespread appeal by the Government and local authorities would achieve a positive response from people. Not everyone who wants to be a foster parent is qualified to do so, and we would have to set the highest possible standards, as we would for all other children in local authority care, to ensure that anyone wanting to foster is qualified to do so.

We have heard a lot about pressure in Kent, and I accept that Kent as a county has had difficulties, but I believe that there would be a response all over the country that would meet the need identified in the amendment. We do not want to put children and young people into care homes. Clearly, the aim of the amendment is that such children should be fostered and properly cared for, as were many of those on the Kindertransport, unless they already have relatives in this country, when the right course would be for them to be with them.

[LORD DUBS]

Local authorities have a key part to play in all this. Of course, they may need some extra help: it depends on the pressure on any individual authority. Let me stress that these children should be additional to the vulnerable persons relocation scheme. I accept that that is a good scheme—a bit small, but it does useful work. I think that 1,200 have already come in under that scheme and we are talking about 20,000 over the next four or five years.

The amendment deals with a different need. The figure of 3,000 is small, but would make an important contribution to helping a vulnerable group. It is surely right that we in this country should take a fair share of the responsibility. I hope that other countries in Europe would also share in doing that.

I have tried to understand the Government's objection to the amendment. I thank the Minister for several conversations with him; indeed, I have had a conversation with the Home Secretary as well; and I appreciate the frank exchange of views that we were able to have. The Government believe that if some of the children currently in Europe were allowed into this country, that would exert a pull factor and many more would arrive. That seems to be the nub of their argument against the amendment.

I do not think that there is that much hard evidence to support that belief, but in any case, the consequence of doing nothing for these children who are now in Europe must be much more serious than the possibility that an amendment such as this would attract others to follow. We are dealing with a desperately important crisis at the moment; that is the key to the amendment.

I am currently a member of one of our European Union sub-committees, and we are considering naval operations in the Mediterranean, especially Operation Sophia. Those operations are certainly saving the lives of people crossing from Turkey or Libya. To the extent that they do so, they lessen the risks of the sea crossing, so one could argue that they are also a pull factor, but that is no reason not to save the lives of people at risk in the sea, and no one suggests that those naval forces should cease their life-saving operations.

We are dealing with a refugee crisis in Europe of such magnitude that, frankly, the number in the amendment is rather small, and I have had people ask me: "Why so few?". Some people in European countries have family members in this country. The amendment is not intended to cover those children: provided that they can be identified, they already have the right to come under existing arrangements. The priority must surely be: what is in the best interests of the children? Some may already have parents or close relatives in another European country, and it would clearly be in their best interests to join them there, wherever they are.

In the House of Commons on 25 January, the Minister James Brokenshire said—and I think that the quote summarises the purpose of this amendment:

"The Government are clear that any action to help and assist unaccompanied minors must be in the best interests of the child, and it is right that that is our primary concern".—[*Official Report*, Commons, 25/1/16; col. 39.]

4.45 pm

In 1938-9, there was a crisis in Europe, as many Jewish children in Germany, Austria and Czechoslovakia were helped to escape to safety on the Kindertransport. At that time, most countries—in fact I think all countries—refused to help. Britain was the only country that said that it would help; we set the lead at that time and set a standard that I hope we can follow today. We said that it could be done and, as a result, thousands of children thank Britain for this humanitarian gesture. Many of them have developed successful careers here and made an important contribution to this country, and I think that the children that we are talking about in this amendment will go on to make a contribution that is also important to this country.

I have one other thought. Let us not insist that these young people will not be allowed to stay here beyond the age of 18. That is not the subject of the amendment, but it must be implicit that anything that helps those children should surely not say, "And when you're 18 we'll throw you out". In the best interests of those children, it might be that they should be allowed to stay. We cannot just turn them out to a country to which it might not be safe to return.

Noble Lords may not all be aware that just off the central Lobby there is a plaque in which the 10,000 children who came to this country on the Kindertransport gave their thanks to the people of this country. I was there when the plaque was put up, and it is an important thing to say—that people who are given safety are also grateful to this country. It was not just children from central Europe; some Basque children were also allowed to come here, following the bombing of Guernica.

It is only a few months ago that Sir Nicky Winton died, aged 106. He was the person who saved many children from Czechoslovakia. I would like other children who are in a desperate situation at the moment to be offered safety in this country and be given the same welcome and opportunities that I had. I beg to move.

The Lord Bishop of Chelmsford: My Lords, I, too, speak with a little, although rather different, experience of this matter. The church in Colchester, in the diocese where I serve, is at the forefront of welcoming refugee families to this country and is a wonderful example of what can be done when local government, the local church and local community work together. It is not just about welcoming people but about integrating them into a community. What we have started to do with adults and families we must urgently do with unaccompanied refugee children. As we have heard, it is estimated that there are 24,000 of them in Europe at the moment, many living on the streets and very vulnerable to trafficking, prostitution and other forms of modern slavery. This is the thick end of the wedge of the humanitarian crisis that we are facing, and it is an obvious and very identifiable need that we could do something about.

Why 3,000? Well, that feels like a fair share for the UK to take in terms of our size and place in Europe. This was debated in another place on 25 January, and the Government undertook to work with UNHCR to resettle unaccompanied refugee children from conflict regions and to set up a fund for this work. But of

course this does not quite amount to an undertaking to bring unaccompanied children here, which is why this amendment is so important and why I am so happy to put my name to it.

The Government are concerned that, if we take unaccompanied refugee children, their families might claim asylum for family reunification at a later date. Yes, this might happen—but against this, we must look at the plight of these 24,000 children right now. The church, therefore, with others asks the Government to work with UNHCR to bring refugee children who are in extreme risk to the UK in addition to the other pledges that we have made. The hard truth is that at the moment there are no refugee children like this from Europe being resettled in this country.

Clearly, if this were to happen, as the noble Lord, Lord Dubs, mentioned, the availability of foster parents will be an important issue. But I assure noble Lords that this is another area where the church, other faith groups and other charitable bodies stand ready, able and willing to help. Just last week, I was with a priest in Rayleigh who has fostered two children. One is a boy of 14 who is seeking asylum in this country, having escaped conscription in Eritrea for an unspecified and unlimited period. I spoke with him and was amazed at how, even after a few months, he is integrating into British society and feels that he has a future. There are also charities such as Home for Good which help with the work that we could do. Like the Kindertransport in 1938, we, too, could be part of a story of hope and generosity for children abandoned, bereft, perplexed and in danger in Europe today. This is a small but beautiful thing that we could do.

Lord Alton of Liverpool (CB): My Lords, like the right reverend Prelate I am a signatory to this amendment. I am delighted to be able to offer my support to the noble Lord, Lord Dubs, who made a compelling and eloquent case in support of Amendment 116A.

In opposing this, the Government have used various arguments. One is that you cannot distinguish between groups that suffer, but all of us who think about that for very long know that it is at best a disingenuous argument and at worst an unworthy one. The noble Lord referred to the other argument that the Government use about so-called pull factors. In the case of children, surely that cannot outweigh all the points that the noble Lord has just advanced.

Then there is the question of numbers. I was looking today at the total number of refugees who have come to the United Kingdom and the total number who have come out of Syria. Some 4.8 million refugees have come out of Syria over the past five years. Turkey is currently hosting some 3 million refugees, and we will no doubt hear more about this later in the Statement that will be given to the House. Before anybody else suggests that this country is being swamped, just look at the numbers: 5,845 Syrians plus 1,337 under the vulnerable persons scheme is 0.15% of the total. So to ask just for 3,000 unaccompanied minors to come into this country is far from being unreasonable.

In Committee on 3 February, I asked the Minister about a report which had appeared in the *Daily Telegraph* and *Observer* newspapers which reported the comments of Brian Donald, Europol's chief of staff. He said:

> "It's not unreasonable to say that we're looking at 10,000-plus children, who are unaccompanied and who have disappeared in Europe ... Not all of them will be criminally exploited; some might have been passed on to family members. We just don't know where they are, what they're doing or whom they are with".

He said that 10,000 was likely to be "a conservative estimate".

Arising from those shocking and disturbing figures, I hope that the Minister will tell us when he comes to reply what discussions the Home Office has had since 3 February with Europol about the children who have disappeared and what percentage Europol believes to have been unaccompanied. If thousands of child migrants have simply vanished in Europe while we have argued about how many angels you can fit on the top of a pin, it will be a lasting stain on our collective reputations.

The noble Lord, Lord Dubs, also referred to foster parents. I hope that when he replies the Minister will tell us what discussions he has had with local authorities about promoting fostering arrangements for these children. For obvious reasons, the noble Lord, Lord Dubs, also referred to the Kindertransport. The reputation of politicians and diplomats from that era is redeemed by the extraordinary bravery and determination of men such as Sir Nicholas Winton, the diplomat Raoul Wallenberg and Eleanor Rathbone, "the refugees' MP", as she was known. This year is the 70th anniversary of her death.

In 1938, after Kristallnacht, she established the Parliamentary Committee on Refugees. Two years later, on 10 July 1940 in a six-hour debate, she intervened on no fewer than 20 occasions to insist that Britain had a duty of care to the refugees being hunted down by the Nazis. She said that a nation had an obligation to give succour to those fleeing persecution—in her words,

> "not only in the interests of humanity and of the refugees, but in the interests of security itself".—[*Official Report*, Commons, 10/7/40; col. 1212.]

In words that have an echo in the debates we have been having during the course of this Bill, she wrote that discussions about asylum seekers and refugees,

> "always … begin with an acknowledgement of the terrible nature of the problem and expressions of sympathy with the victims. Then comes a tribute to the work of the voluntary organisations. Then some account of the small, leisurely steps taken by the Government. Next, a recital of the obstacles—fear of anti-Semitism, or the jealousy of the unemployed, or of encouraging other nations to offload their Jews on to us".

It is hard not to see the parallels. The debates about the Kindertransport continued in Parliament until literally hours before war broke out. In 2016 we should do no less than those who preceded us.

The amendment would require the Secretary of States to relocate 3,000 unaccompanied refugee children in European Union countries to the United Kingdom. These vulnerable young people have already had traumatic experience of the chaos and violence of war, the abandonment of hearth and home, horrendous journeys and separation from families, with some placed into the hands of smugglers and people traffickers and some facing exploitation of every kind. They are entitled to international protection and to respect for their rights as refugees—even more so than adults. Surely the lifeboat rule must apply.

Nelson Mandela once said:

"There can be no keener revelation of a society's soul than the way in which it treats its children".

Many of us will be dead when these children come to maturity, but they will never forget, as the noble Lord who moved this amendment has never forgotten, the values that made their futures possible. I am very happy to support an amendment that says the very best about the values of this country.

Lord Roberts of Llandudno (LD): My Lords, as one who signed the amendment, I am delighted to follow the noble Lords, Lord Dubs and Lord Alton. The heart beats strongly on this issue, but it has to beat strongly in the future as well. I imagine that as the years go by, with all sorts of issues such as climate change, war and famine, we will be discussing this issue time and again. We must somehow sort out our approach in the long term, and this is an opportunity to do so. It is an opportunity to say to 3,000 children, "You are welcome in our country". It is an opportunity to show the world that we are not going to be dragged kicking and screaming into receiving refugee children but that we are happy to do so.

It is seven or eight months since Save the Children started its appeal for 3,000 child refugees, and now we have the chance to bring it into being. What an opportunity for us in the House of Lords today to say, "Yes, we welcome children". The message will be carried to the Commons, and I do not see that they will be able to resist joining in with that welcome.

Alternatively, we could be hesitant and obstructive and say no, but I do not know what would influence anyone to vote against this amendment. Why should anyone go into the Not Content Lobby against children? Your Lordships had grandfathers, grandmothers, mothers and fathers—surely we can look at other children who are less fortunate than our own and say, "Yes, you are welcome, and we in the House of Lords will raise the banner of hope". That will demonstrate that we are determined to tackle this problem, not only to Dunkirk, Calais and other places but also to the future.

Let us be brave. Let us have a unanimous vote of welcome today. We do not have to vote against this. We do not just have to say no. I do not know how on earth anyone who is a parent, a grandparent, an uncle or an aunt will be able to say, "We are going into the Lobby to stop these children coming over". I am delighted to be able to support the amendment.

5 pm

Viscount Hailsham (Con): My Lords, I take a different view from the noble Lord who has just spoken, although I have a great deal of sympathy for the underlying sentiments of the noble Lord, Lord Alton, for example—I agree with much of what he and the right reverend Prelate said. But there is a difference between making an obligation mandatory, as is contemplated by the amendment, and exercising the discretion of government. There may very well be a good case for the Government to admit much larger numbers of unaccompanied children than is provided for under the existing scheme, and I would have no objection at all to that number being 3,000 or more. However, I object to it being mandatory, because it deprives the Government of any discretion.

The House needs to keep two things in mind. First, if you admit children who are not accompanied at the moment of admission, you expose the country to a whole range of further applications by those who are related to them; and if you make it mandatory, you have deprived yourself of the ability to regulate that flow. The second, and different, point is the pull factor. The noble Lord, Lord Dubs, for example, is not right to disregard that. We have seen the consequences of Chancellor Merkel's statement, which resulted in a very great pull factor. My own fear is that if the House made this obligation mandatory, that would encourage people to send their children from where they now are into Europe, unaccompanied, in the hope that they would take advantage either of this provision, if it is carried, or of a future provision which they might envisage being carried forward. I am not against the concepts and arguments which have been very eloquently expressed by noble Lords, but I am against making it mandatory.

Lord Carlile of Berriew (LD): My Lords, I join the noble Lord, Lord Dubs, in sharing the feeling behind this amendment, and I congratulate him on moving it. He is one of many distinguished examples of people who have contributed a lot to this country since they arrived here as part of the Kindertransport.

I want, if I may, to mention my own sister. She was born in 1937 in southern Poland and is my only sibling—in fact, she is my half-sibling; her mother died in Auschwitz after four and a half years as a prisoner there, but that difference in parentage has never affected us. I am afraid that I frequently telephone her and remind her how much older she is than me. Over the period of our lives together she has frequently reminded me of what she suffered as a child who did not have the opportunity to take advantage of the Kindertransport. Throughout the Second World War, from the time her mother was taken by the Nazis, she fled from persecution. She moved from place to place, and although people who had feelings for her tried to protect her, she did not have that carapace of parental protection which most of us have enjoyed and which to a great extent was enjoyed by the Kindertransport children. A few years ago she was able to have published her memoirs of the time between her third birthday and the end of the war, such as she remembers it. It is there for all who wish to read it and it is a searing story.

If by this amendment we can save one child from the sort of experience that my sister went through or save the children of one family from the feeling of being lost in an uncaring world, at no real disadvantage to this country, we should do it. Nothing in this amendment would disadvantage this country. If the Government wish to carry out a cost-benefit analysis, they need only to carry out a similar cost-benefit analysis of the Kindertransport children. These 3,000 children would be a jewel in this country's crown and would appreciate what this country had done for them, like my sister appreciated what it eventually did for her when she was able to come here as an eight year-old in 1946.

Baroness Sheehan (LD): My Lords, I pay tribute to the wonderful speeches that we have heard today. Your Lordships' House is a truly remarkable place. When I last spoke on this matter in Committee I cited the case of three unaccompanied refugee children and a dependent adult trapped in Calais, in whose favour the Upper Tribunal had ruled in January this year. The ruling that they be allowed to join their family in Britain forthwith was made under a clause of the Dublin III regulations that permits family reunification. It acknowledged that the proper process of applying through the French authorities had been followed, but that that process had failed and the children faced up to a year fending for themselves in the Calais camp while the French Government's request to the British Government to take charge languished, as these cases are wont to do in the dysfunctional French immigration system.

The initial euphoria on the part of those children has ebbed away as they await the outcome of our Government's sad decision to appeal the finding. That is the reason I support the laudable amendment tabled by the noble Lord, Lord Dubs. Although it is not necessary to enshrine in law our request that 3,000 of the 26,000 unaccompanied refugee children currently in Europe be allowed sanctuary in Britain, it is clear that the Government, despite their earlier protestations that they will look into the matter, have set their face against it.

Last Friday I was in Calais again. In the wake of the recent demolitions, I wanted to meet the heroic volunteers who have done so much to keep some of the most desperate people alive in wretched conditions through this winter. The Governments of France and Britain make much of the "pull factors"—as though making the atrocious conditions just that little bit more humane will be a magnet. However, the millions of people on the move are not fleeing their homes, their livelihoods and their communities for a better life in the West. As one Syrian told me recently, what they are leaving behind used to be so much better than anything they can hope for in Europe; but they have no choice. Among these refugees are children, some travelling without adult protection—some left home on their own, because parents could afford smugglers' fees for only one; some children's parents died on the journey or became separated from them. The best estimates are that there are some 28,000 refugee children fending for themselves in Europe, and 10,000 are now unaccounted for. Some of those children have family in Britain. With a will, using the safe and legal routes available to us, we could fast-track the assessment and processing of these child refugees and give them sanctuary. Lord knows, we have many able and willing volunteers ready to house them.

A census carried out in Calais just before the demolitions showed there to be 423 unaccompanied child refugees in the camp. Surely it is time for the Government to accept their moral obligation to look after those children with a legal right to come to Britain, and set up processing centres? Safe and legal routes is the right way to thwart the smugglers—not partaking in tortuous contortions of international law and returning refugees from whence they came.

It is my belief that in years to come all of us in Europe—save possibly with the exception of the German Chancellor, Angela Merkel—will look back at this period in our history and hang our heads in shame. A small piece of redemption would be to accede to this request to give sanctuary to 3,000 children, alone in Europe.

Baroness Lister of Burtersett (Lab): My Lords, I want to respond briefly to the noble Viscount, Lord Hailsham. In September, Save the Children made the proposal to bring 3,000 children to this country. Six months have passed and the Government have chosen not to exercise their discretion to do so. We have heard strong arguments as to why we should welcome those children here and, because the Government have chosen not to exercise their discretion in that respect, my noble friend Lord Dubs is putting forward this amendment to make it mandatory. We can wait no longer. Every day we hear of children being exploited and abused, and whose mental and physical health is deteriorating. Let us use this opportunity.

Baroness Butler-Sloss (CB): My Lords, perhaps I may also say something in response to the noble Viscount, Lord Hailsham. The short answer to the very practical point that he made is for the Government to come forward with an alternative that does not tie them to taking in 3,000 children on the understanding that, if the amendment is accepted, they will be under a moral obligation to do something very similar. One argument that the Government have raised is that this may encourage other children to be put on boats and sent over. That may be but, if the Turkish agreement is to be of any use, one hopes that everyone will then go back to Turkey, certainly from Greece. However, there is a chance that that will not happen.

What really worries me—and I am obviously not the only one to be worried—is the plight of the very young children. The noble Baroness, Lady Sheehan, talked about Calais. I understand that at least one child there is only nine. However, I am concerned about children under 14 and especially children under 12. They are particularly at risk not just from people traffickers but from those who would enslave them. Speaking as the co-chairman of the parliamentary group on human trafficking, I can say that there is a real problem with these children. Ten thousand-plus have gone missing. How many have gone into the hands of those who will use them for prostitution, benefit fraud, thieving and even forced labour?

We absolutely must do something to stop those children being victims. They are already victims by being in Europe if they are unaccompanied, but they are in danger of becoming slaves. As many have said much more eloquently than me, we have an obligation to look after at least some of them. As has already been said, we have a noble record of looking after children who are at great risk.

I admire the noble Lord, Lord Dubs, for putting forward this amendment and I support it in principle entirely. I have the feeling that the noble Viscount, Lord Hailsham, does not object to the proposal; he just objects to its mandatory nature. Therefore, I put in a plea to the Government. As I have already said, if

[Baroness Butler-Sloss]
they do not like the way in which the amendment of the noble Lord, Lord Dubs, is expressed, the very short answer to that is to bring forward a government amendment at Third Reading and they would have the whole House behind them.

Lord Lawson of Blaby (Con): My Lords, if I may say so, the noble and learned Baroness made a very important point. I imagine that there is a particular concern on all sides of the House about the very young children, but the problem is that, as I understand it, the amendment would apply to anyone up to the age of 18. That goes far too wide, particularly when the de facto age of maturity—or whatever the legal position is—has come down significantly. Therefore, I ask the Minister whether the Government might consider looking at an arrangement of this kind for children up to the age of, say, 12. I believe that as currently drafted, applying to children right up to the age of 18, the amendment goes far too wide. I hope that my noble friend the Minister will consider the Government coming forward with a statesmanlike compromise.

5.15 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, of course our hearts go out to unaccompanied children, especially the younger ones and particularly those under the age of 12—these are children who have somehow managed to find their way to an EU country. However, one thing rather concerns me about the provision as drafted, and it is this: ex hypothesi, the refugee children in other countries in Europe to whom this provision applies are already entitled to asylum in whichever EU country they already are. If we are to bring in some mandatory provision of this sort, for my part, I suggest that the requirement for them to be "refugees" be dropped. If the clause is restricted, say, to those under the age of 12 or to younger children, for them, frankly, the difference between being a refugee strictly entitled under the refugee convention and an economic migrant is vanishingly small.

Lord Judd (Lab): My Lords, I have the good fortune to know my noble friend Lord Dubs personally as a great friend, and we have worked together on many issues. The thing about Alf—if I may refer to him colloquially, because I cannot think of him in any other way—is that he has never forgotten what happened to him and, throughout his life and his whole career, he has been guided by what action that demands of him as a member of society. This is not a one-off by my noble friend Lord Dubs; this is another indication of the man who has put this forward.

I have listened to the legal arguments and complexities that are again being raised. However, I believe unashamedly that from time to time in life, and in politics, there comes a moral imperative, and when there is a moral imperative it is not just to speak; it is to act. My noble friend Lord Dubs has given us an opportunity to act and give substance to our words.

However, this must be seen against the frightening background. In the world at the moment, there are 19.5 million refugees, which is around 2.9 million more than in 2013. Of those, 5.1 million are Palestinian refugees registered with UNRWA. Who is looking after these refugees? Who is hosting them? The overwhelming majority—86% of the world's refugees—are cared for by developing countries that are desperately impoverished themselves, with many of their citizens not knowing what it is to live life as we live it. Think of that, and then think of this small action that we are being challenged to take today by my noble friend Lord Dubs. Beyond the refugees, there are of course all the internally displaced people—millions again.

This action gives hope, as the noble Lord, Lord Roberts, put it so eloquently. It is an indication of what, if we have any morality at all, that morality demands. It also means that we have to face up to the reality of the world. With climate change and all the conflict in the world, this problem will continue to grow. If we take this action, as I hope we do today, it must spur us on to consistent action as a nation in leading an international response to the global challenge that is increasing in size and complexity all the time.

The Earl of Listowel (CB): I wonder whether it is too far-fetched to think that there might be an element of self-interest in this. My mother has often talked to me about what it was like for her as a five year-old girl being evacuated from Croydon in south London to the Midlands during the Second World War. It was a very difficult experience for her and, of course, many of our children were sent off to the United States at that time for their own safety. We face an uncertain Europe. Perhaps one day we might need to turn to the United States or Canada to look for help for our children, and they might turn to us and ask, "Well, what did you do for the children arriving in Europe when they needed your help?". If we do not stand up now and show ourselves to be willing to accommodate these young people, it will make it harder for us when we are in desperate need and want the support of other nations to say, "We need your help for our children. I know that it is a bit far-fetched, but it is not impossible and it has happened in the past.

Baroness Neuberger (LD): My Lords, I support the amendment and congratulate the noble Lord, Lord Dubs, on moving it. My uncle came here at the age of 13—he would have failed the 12 year-old cut-off point—as a semi-unaccompanied refugee from Nazi Germany; my mother was an adult when she came. I want to say something about the courage of the British Government at that time. When we talk about not wishing to accept the amendment, we should think about just how brave were the British Government against other Governments who did not wish to show such generosity and kindness in the late 1930s and in 1939 itself. The noble Lord, Lord Dubs, paid tribute to Sir Nicky Winton, but, wonderful as he was, he was not alone—there was Trevor Chadwick, who worked with him. There were also British diplomats around Europe, particularly in Germany and in Austria, who played a major role in helping Jews and left-wingers get out of Germany and Austria. I pay particular tribute to Robert Smallbones, Arthur Dowden and the MI6 spy, Frank Foley, who does not receive enough tribute.

The reason for supporting this amendment is not only the moral one—it is the least that we can do—but something about what Britain is and what Britain should be and setting some kind of example. We could do it in the 1930s. Why cannot we do it now?

Lord Green of Deddington (CB): My Lords, this is a very difficult issue. The heart indeed speaks strong and it beats particularly strong, it seems, in this Chamber, but we also have to think it through a little. I entirely understand the good intentions behind the amendment, and nobody is better placed than the noble Lord, Lord Dubs, to propose it and the noble Lord, Lord Carlile, to speak to it. I would be perfectly content to support a Motion calling for HMG to accept a larger number of children and their families from the refugee camps elsewhere in the region. It is not a question of cost; it is a question of need and one that we should be ready to meet.

My concern is that the amendment refers specifically to unaccompanied children in Europe. These children are already in Europe and are initially the responsibility of the Governments in the countries where they find themselves. The idea seems to be that we, the UK, should take a fair share of these children, who indeed find themselves in terrible circumstances. But there is a risk, which we cannot dismiss—it is a serious risk—that in doing so we will make a bad situation even worse. We are not dealing here with a finite number of children—it is no use saying, “There are 24,000 children; we will take 3,000 of them”. We are dealing with a situation in which the families concerned have come to the view that if they can only get their children into Europe, they will be looked after, and as a secondary consideration they themselves might be able to follow them up later.

To my mind, the follow-up adults are not the issue, rather it is the risk that still more children will be put at very serious risk. A well-intentioned action could have the perverse effect that many more thousands of children will be sent off to face the terrible conditions that have been described. If so, we would not be solving the problem, and indeed we might be exacerbating it. That is why I believe that the Government are right to take refugees from the region, but not from Europe. It is unsatisfactory, but it is perhaps the least bad outcome. We have to consider this carefully. A point which has frankly been ducked in this debate—I think only one speaker has mentioned it—is the risk that this will generate very large numbers of children being put at risk and make a bad situation worse.

Lord Scriven (LD): My Lords, I rise to make two brief points. The first is in response to the noble Lord, Lord Lawson, who talked about anyone over the age of 12 not being vulnerable. I find that a quite incredible thing to say, not just in the sense that 13, 14 and 15 year-olds are vulnerable, but because when we talked about votes for 16 and 17 year-olds in your Lordships’ House, people on those Benches were saying that 16 and 17 year-olds were not mature. So there is a form of hypocrisy here in terms of the age of those who are seen as vulnerable.

My second point is that it is a complete nonsense to suggest that this amendment from the noble Lord, Lord Dubs, would act as a pull factor. It suggests that parents and children are sitting in a war-torn part of the world and suddenly say that because 3,000 children have been accepted into the United Kingdom they are going to send their children here. People are fleeing because they fear for their children’s lives and their own lives, not because of some rational thought about what is being said in the sanitised, oak-panelled walls of this Chamber.

I end by saying this. I was brought up to do the right thing, not necessarily the easy thing or the technical thing about the territorial boundaries of where a child in need is. The amendment moved by the noble Lord, Lord Dubs, is the right thing to do. It is the moral thing to do. It sends a message about the morals of this country: that we open our hearts and our arms to those in greatest need. We do not turn our backs on vulnerable children.

Baroness Hamwee (LD): My Lords, on behalf of these Benches, including my noble friends who have managed to restrain themselves from speaking—that is probably all of them—I want to say that the word “vulnerable” is overworked but entirely apt; this is not just about the youngest children. I have heard it said that a 14 or 16 year-old who has made his way from Afghanistan or Eritrea all the way across Europe is not a child. Well, he will certainly have had a lot of life experiences. Children come in a lot of shapes, sizes and ages, and a 14 year-old who is caring for his eight year-old brother still has the needs of a 14 year-old. The number of children who have disappeared must give us more than a hint of the abuse, exploitation and trafficking to which children can so easily fall prey. Even those who have not disappeared are unlikely to have avoided abuse and criminality entirely.

The Government have also claimed, although I do not think it has been referred to today, that accepting unaccompanied children risks separating them from their families. But the proposal, as I understand it, would apply to children who have been registered by the UNHCR as having no identifiable family in Europe or in their country of origin.

I turn to the pull factor. I will simply put it this way: there are so many push factors that we do not need to think about the pull factor. Something that has shocked volunteers working in northern Europe is the number of children involved, including some very tiny ones—their ages vary somewhat between the camps. This is not to deny the importance of assisting those who are in the camps in the Middle East, but to accept this amendment would be to acknowledge the huge public concern. When the noble Lord, Lord Dubs, referred to the contribution of refugees welcomed almost 80 years ago, I could see the nods of agreement right round the Chamber.

As to the mandatory nature of the amendment, I agree that it is not desirable to use legislation for a purpose for which it is not needed, but it would not have taken the form of an amendment if the Government had shown more movement towards the objective. Although the children in question may have rights in another European country, the situation surely is such that the UK should take the lead towards some sort of resolution.

[BARONESS HAMWEE]

I mentioned abuse, exploitation and trafficking. The noble and learned Baroness, Lady Butler-Sloss, did not mention the Modern Slavery Act, but I suspect that it was in her mind. The Government are proud of that legislation, which addresses exploitation, abuse and trafficking. Let us join up the dots.

5.30 pm

Lord Rosser (Lab): My Lords, estimates from Save the Children and the United Nations High Commissioner for Refugees suggest, as has been said, that there are some 24,000 unaccompanied child refugees in Europe. Europol estimates that more than 10,000 unaccompanied children registered after arriving in Europe over the past 18 months to two years have disappeared.

The Government's policy is to provide assistance to help those in Syria and those from Syria who have moved to adjacent countries. That is welcome, but it does not answer the question of what will happen to those unaccompanied refugee children already in Europe and what effective help will be directed towards them. Are we really going to say, based on an unsubstantiated argument, that relocating just 3,000 such unaccompanied refugee children to the UK will act as a serious pull factor for more children to be sent by parents and that we intend to do nothing to help along the lines called for in the amendment?

Where children have been identified as being unaccompanied, on their own and having fled from a country ravaged by civil war, where tens or hundreds of thousands have died, with many being brutally murdered, is it really still the Government's policy to overlook them as far as any relocation to the United Kingdom is concerned because they landed on their own on a Greek island, for example, rather than being in or near Syria? Should we, as a European nation, not accept responsibility for some unaccompanied children already in Europe? Doing nothing will not mean that those children will return to where they came from. It will simply mean that they will become more likely than ever to be exploited and abused by people traffickers and others of ill intent.

We support the amendment. If, having heard the Government's response, my noble friend decides to test the opinion of the House, we will vote for it.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, I preface my remarks with a few comments. First, no one doubts the situation that many of these people find themselves in and the enormous humanitarian crisis unfolding across the world. As all people agree, it is the worst humanitarian crisis since the end of the Second World War and it is happening right on Europe's doorstep. There is no question, in any shape or form, of the Government not getting it; this is an enormous crisis.

Secondly, I pay tribute to the noble Lord, Lord Dubs, who not only is a great parliamentarian but speaks with great moral authority in this area because of his personal story. We acknowledge that. I know from meetings with the Home Secretary that she takes a personal interest in this, because Sir Nicholas Winterton was a constituent of hers until he sadly died last year. She has been a great supporter both of him and, of course, of the wider Kindertransport tradition, and of what that says about the generosity of spirit of this country, which has been repeated on a number of different occasions, whether in the case of the Ugandan Asians or the Vietnamese boat people.

Thirdly, I want to say something about Save the Children. No one doubts its analysis, which is at the centre of the debate, the quality of that organisation or the incredible work that it is doing, which I have had the privilege of seeing for myself in the Bekaa valley in Lebanon. I had the privilege of visiting those camps and seeing what they were doing. It had a transformative effect on me, not least because it inspired me to come back and walk 518.8 miles to raise money for Save the Children to help in those very camps. So I am not critical. Nothing here understates the crisis or seeks to take away from the great moral authority and history with which the noble Lord, Lord Dubs introduced his amendment, and nothing that I am about to say takes away from our admiration for the work that Save the Children does on this campaign.

The area that we take issue with was probably summed up by the intervention of the noble Baroness, Lady Lister. She said that this report by Save the Children came out in September and that since then the Government have basically sat on their hands and done nothing about it. I put on record that, in September, the Prime Minister announced that we were going to take 20,000 Syrian refugees over the lifetime of this Parliament. When we were in coalition we struggled ever to get more than a couple of hundred under the Syrian resettlement programme. Of that 20,000 who have come so far, 51% have been children. One can therefore extrapolate that what the Government announced in September is more than three times the number of children the amendment seeks to support.

Moreover, the Prime Minister has led the charge in raising funds to help people in the refugee camps. Oxfam's latest report, which is entitled *Syria Refugee Crisis: Is Your Country Doing its Fair Share?* and was published in February 2015, highlights a figure of, I think, 227%. That is how much of our fair share the United Kingdom has placed in financial support to Syria. So when people start talking almost as if we should be hanging our heads in shame at the Government's record in responding to the crisis, I simply say that the facts do not add up to suggest that. We are doing an incredible amount. The Prime Minister led that excellent summit in February, which raised a further $11 billion for the crisis in Syria. Of course, further work is ongoing.

In the specific instance when the Prime Minister was asked about this case—I think by Tim Farron of the Liberal Democrats in December in the Commons—he said that he would go away and look at it. Again, the suggestion was somehow that the Prime Minister went away, shrugged his shoulders and forgot all about it. Far from it: he said that he would talk to the UNHCR, with which we work closely in the region, to put the best interests of children first.

We listened to its advice and concerns and we came back with an interim report in a Written Ministerial Statement on 28 January by James Brokenshire, which

said that we were first looking at whether we could introduce a scheme not that far away from what my noble friend Lord Lawson, the noble and learned Baroness, Lady Butler-Sloss, and the noble and learned Lord, Lord Brown of Eaton-under-Heywood, talked about. We said that we would look at that and discuss it with the UNHCR. That is exactly what we are continuing to do. The UNHCR has just enabled us to receive that report; it was received by James Brokenshire. We are now considering it and we will come forward with our proposals on how to respond to it. We need to be clear when we talk about the numbers that those numbers were an estimate. Save the Children recognises that. When it said 26,000, it was an estimate of the number of unaccompanied asylum-seeking children that had made their way through Italy and Greece in the period up to August 2015. That was an estimate. It is not as though those people are waiting in a particular area inside Europe.

My second point relates to age. This is a material point, because our Syrian vulnerable persons relocation scheme, which has brought 1,000 Syrians to this country already and has pledged to bring 20,000, is aimed at the most vulnerable. Questions can be asked, and I hear what the noble Lord, Lord Scriven, said about age, but we need to consider that 61% of unaccompanied asylum-seeking children who arrive in the UK are aged 16 or 17. We know that the prime country from which they come is not Syria but Albania, followed by Eritrea, Afghanistan and then Syria. The majority, 90% of those who arrive in this country as unaccompanied asylum seekers, are male. The central focus of the Government's strategy in supporting Syrians has been the protection of women and girls in particular. Therefore, again, the question is whether we are helping the right people.

My next point concerns the pull factor. I am not going to get into that kind of language, but here is what Europol says. Europol says that of the people who arrive in Europe seeking asylum, 90% have got here through a criminal gang. These criminal gangs are vast money-making machines exploiting human misery. I would have liked to have heard a great deal more moral anger directed at those criminal gangs and the way that they are exploiting these children and encouraging them to put their lives in peril by embarking on that journey. I would have liked to have heard a bit more about that. We have set up a task force to seek to clamp down on those criminal gangs that are at work and causing so much misery.

Are people from Syria arriving in the UK? Yes, they are. Every week they are arriving in the UK. They are arriving at airports such as Glasgow and Newcastle, they are arriving into London and they are being welcomed and hosted by British people. They come here not on their own but because we invite them in family units. They come here not to sleep in cardboard boxes but to go into local authority social housing, and they are provided with care and support, including healthcare and psychiatric care, and with the opportunity to work and earn a living. I think that that is in the best traditions of what the noble Lord, Lord Dubs, called for in this country. It is happening day in, day out in this country and it will continue. It may well be that it will actually continue at a faster pace as a result of the Prime Minister's initiative in asking us to look again at the report that Save the Children did and engaging with unaccompanied asylum-seeking children.

What is my central argument on this amendment? Basically, I question whether it identifies and provides help to the right people. The people who are in Europe, wherever they are in Europe, have the right to claim asylum here. The people most at risk—the most vulnerable— are those who are still in the region. That is why our scheme is designed to take people directly from the region to the UK. Noble Lords may seek to belittle some of what the Government are doing, but compared with our European colleagues, we are doing a great deal. We have relocated 1,000 already, as the Prime Minister said we would by Christmas. There was some scepticism as to whether he would deliver on that pledge; he actually exceeded the pledge and we are continuing to do it. In the whole period, the 27 other countries in Europe have managed to resettle 650. Only six countries actually take children, so when there is moral outrage at what the UK is doing in response to the Save the Children report that asked us to take our fair share, I hope that that moral outrage is being directed also at the 21 countries that have not actually taken one Syrian refugee.

5.45 pm

This country is doing a significant amount. Could it do more in the face of the crisis? Of course, it could do more in the face of the crisis, but is it working diplomatically? Yes; it is at the heart of the diplomatic efforts. Is it working on security? Yes; we have boats and ships in the Mediterranean seeking to stop people. We have people trying to clamp down on the people smugglers. We announced a new £10 million fund just last month—the debate proceeded as if it had not even happened—from the Department for International Development to help identify children at risk who have come to the European Union. That £10 million will be spent on helping to identify children at risk. We are dispatching the Independent Anti-slavery Commissioner, Kevin Hyland, to visit the particular reception centres referred to as the hot spots with child protection officers and come back and give us a report.

Lord Richard (Lab): I have listened to what the noble Lord has said about how well the Prime Minister and the Government are behaving. Do I take it that it is the Government's position that they will not take any of the children who are identified by Interpol as being loose in Europe? Yes or no?

Lord Bates: The noble Lord presses me to say yes or no. I am about to give him a yes-or-no answer, which is to say, no. We have a principled objection. The people most at risk are in the region. That is why we have doubled the amount of aid we are giving, which was already 227% of our fair share, from £1.1 billion to £2.3 billion. We did it because we wanted to help, as we are helping—keeping 223,000 people in schools, providing 2 million bits of medical assistance, and helping 600,000 with livelihoods and medical care there in the region, because we believe we can do that. We believe that we should not be doing anything that

[LORD BATES]

encourages one child to make that perilous journey, where they fall into the hands of the criminal gangs and put their lives at risk to cross those seas to get to Europe. We want the action to be taking place there. That is our principled objection to this amendment. The noble Lord may disagree on that but we are clear where we stand.

I hope the House will recognise, and that the noble Lord, Lord Dubs, will recognise when he responds to this debate, that the Government are not immune to the argument that has been put forward. We are not doing nothing in the crisis; we are doing a great deal more than any other country in the world to respond to the initiative that is happening. We will go on doing so, not because of the amendment but because it is the right thing to do. I will be very grateful if the noble Lord will do two things when he winds up. First, will he comment on my analysis of the numbers and the vulnerability? Secondly, will he say something about other countries in Europe which are not doing a fraction of what this country is doing?

The right reverend Prelate the Bishop of Chelmsford talked about the generosity of British people. I work with Richard Harrington, whom we have appointed as a Minister, by the way, to look after the Syrian vulnerable persons relocation scheme, and I know that every day he has a battle to persuade local authorities to take the children we already have coming through that scheme. The right reverend Prelate the Bishop of Rochester, in a previous debate, undertook to write to other dioceses to encourage them and their local authorities to come forward and offer spaces.

We currently have an 8,000 shortfall in the number of foster parents required, so all the offers to provide foster care are welcome. We desperately need those places for young people everywhere but there is no surfeit of people registered as foster parents waiting to take people in. As I say, there is a shortfall of some 8,000 that we definitely need to fill. I hope that the noble Lord will respond to the points I made about local authority capacity, and what other countries are doing, and to the questions I raised about the numbers and how they have been arrived at by Save the Children, and consider withdrawing his amendment.

Lord Dubs: My Lords, I am grateful to all noble Lords who contributed to the debate. It has been an emotional debate, which is not surprising as the subject is very emotional. I shall deal with only a small number of the points that were made as most Members of the House supported the amendment.

Of course we all condemn the gangs who have caused a lot of the tragedies in the Mediterranean and other tragedies and exploit vulnerable people for financial gain. They cannot be condemned enough and I agree entirely with the Minister on that point. As regards the numbers and the point made by, I believe, the noble Lord, Lord Lawson, the amendment talks about children. If, in seeking to co-operate with Save the Children and the UNHCR, the Government can identify the younger ones, there is nothing in the amendment which says that they should not concentrate on those. There is a figure in the amendment simply because we need to get the Government to respond clearly, as it were. If the amendment said simply "take some", there would be no pressure on the Government. It is better to have a number in the Bill. If the Government chose to focus on the under-14s, that would be perfectly acceptable in terms of the amendment. After all, although the Minister talked about 60% being over 16, that means 40% are under 16, which is still a fair number, and enough for us to get on with.

Some other countries—Germany has become the conscience of Europe in the last year or so—are doing a great deal. Others are not. But surely as a country we have set our own standards on how we should adopt a humanitarian approach to this enormous crisis. It is because I want Britain to take a lead in humanitarian action that I am keen that the House should pass this amendment. I appreciate what the Minister said about foster parents. He also commented on this issue in Committee. People have said to me in other parts of the country—not just south London—"We want to respond". Given that response, I believe sincerely that if the Government and local authorities said that they were looking for qualified foster parents who have passed the local authority vetting process—as they must—and who would play their part, the people of Britain would respond handsomely. A typical example could be a family with two children who want to take another child. I pay tribute to the Minister, who has done a lot of good work for Save the Children. Indeed, he went on a sponsored walk. I should have said at the beginning that I appreciate that, and he deserves credit for it.

The Minister said that some of these people were Albanians. I have said emphatically that we are talking about refugees—children who qualify under the 1951 Geneva Convention as having a well-founded fear of persecution, torture and death. They are surely the priority and they are the ones on whom we ought to concentrate. We are faced with an important decision. Our country will be judged on the decision we make tonight. I wish to test the opinion of the House.

5.54 pm

Division on Amendment 116A

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Amendment 116A agreed.

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6.12 pm

Schedule 10: Support for certain categories of migrant

Amendments 117 and 118 not moved.

Amendment 119

Moved by ***Lord Bates***

119: Schedule 10, page 168, line 26, at end insert—

"(1) Section 166 (regulations and orders) is amended as follows.

(2) In subsection (5) (regulations subject to the affirmative procedure) for the "or" at the end of paragraph (c) substitute—

"(ca) section 95A, or".

(3) After subsection (5) insert—

"(5A) No regulations under paragraph 1 of Schedule 8 which make provision with respect to the powers conferred by section 95A are to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

(5B) Subsection (5A) does not apply to regulations under paragraph 1 of that Schedule which make provision of the kind mentioned in paragraph 3(a) of that Schedule."

(4) In subsection (6) (regulations subject to the negative procedure) for the "or" at the end of paragraph (a) substitute—

"(aa) under the provision mentioned in subsection (5A) and containing regulations to which that subsection applies, or"."

Amendment 119 agreed.

European Council: March 2016

Statement

6.12 pm

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Prime Minister in another place. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement on last week's European Council, which focused on the migration crisis affecting continental Europe. The single biggest cause has of course been the war in Syria and the brutality of the Assad regime. But we have also seen huge growth in the number of people coming to southern Europe from Afghanistan, Pakistan and north Africa, all facilitated by the rapid growth of criminal networks of people-smugglers. More than 8,000 migrants are still arriving in Greece every week and there are signs that the numbers using the central Mediterranean route are on the rise again. So far 10,000 have come this year.

Of course, because of our special status in the European Union, Britain is not part of the Schengen open border arrangements—and we are not going to

be joining. We have our own border controls and they apply to everyone trying to enter our country, including EU citizens. So people cannot travel through Greece or Italy onward to continental Europe and into Britain and that will not change. But it is in our national interest to help our European partners to deal effectively with this enormous and destabilising challenge.

We have argued for a consistent and clear approach right from the start: ending the conflict in Syria; supporting the refugees in the region; securing European borders; taking refugees directly from the camps and neighbouring countries but not from Europe; and cracking down on people-smuggling gangs. This approach of focusing on the problem upstream has now been universally accepted in Europe, and at this Council it was taken forward with a comprehensive plan for the first time.

As part of this plan, the Council agreed to stop migrants leaving Turkey in the first place; to intercept those who do leave while they are at sea, turning back their boats; and to return to Turkey those who make it to Greece. There can be no guarantees of success but, if this plan is properly and fully implemented, in my view it will be the best chance to make a difference. For the first time we have a plan that breaks the business model of the people-smugglers by breaking the link between getting in a boat and getting settlement in Europe.

I want to be clear about what Britain is doing—and what we are not doing—as a result of this plan. What we are doing is contributing our expertise and our skilled officials to help with the large-scale operation now under way. The Royal Fleet Auxiliary ship "Mounts Bay" and Border Force vessels are already patrolling the Aegean. British asylum experts and interpreters are already working in Greece to help to process individual cases. At the Council I said that Britain stands ready to do even more to support these efforts. Above all, what is needed—and what we have been pushing for—is a detailed plan to implement this agreement and to ensure that all the offers of support that are coming from around Europe are properly co-ordinated. Our share of the additional money, which will go to helping refugees in Turkey under this agreement, will come from our existing aid budget.

But let me also be clear what we are not doing. First, we are not giving visa-free access to Turks coming to the UK. Schengen countries are planning to give visa-free access to Turks but, because we are not part of Schengen, we are not bound by their decision. We have made our own decision, which is to maintain our own borders, and we will not be giving that visa-free access.

Secondly, visa-free access to Schengen countries will not mean a backdoor route to Britain. As the House knows, visa-free access means only the right to visit. It does not mean a right to work. It does not mean a right to settle. Just because, for instance, British citizens can enjoy visa-free travel for holidays in America, that does not mean that they can work, let alone settle, there. Nor will this give Turkish citizens those rights in the EU.

Thirdly, we will not be taking more refugees as a result of this deal. A number of Syrians who are in camps in Turkey will be resettled into the Schengen countries of the EU but, again, that does not apply to Britain. We have already got our resettlement programme and we are delivering on that. We said that we would resettle 20,000 Syrian refugees over this Parliament, taking them directly from the camps, and that is what we are doing. We promised that 1,000 would be resettled here in time for last Christmas and that is what we delivered.

The other 27 EU countries agreed to two schemes. One was to relocate 160,000 within the EU, but by the time of last December's Council, only 208 people had been relocated. The second was to have a voluntary resettlement scheme for 22,500 from outside the EU, but by the end of last year just 483 refugees had been resettled throughout the 27 countries.

We said what we would do and we are doing it. Britain has given more money to support Syrians fleeing the war, and the countries hosting them, than any other European country. Indeed, we are doing more than any country in the world other than the United States, spending more than £1 billion so far, with another £1.3 billion pledged. We are fulfilling our moral responsibility as a nation.

Turning to the central Mediterranean, the EU naval operation that we established last summer has had some success, with more than 90 vessels destroyed and more than 50 smugglers arrested. HMS "Enterprise" is taking part and we will continue her deployment throughout the summer.

What is desperately needed is a Government in Libya with whom we can work, so that we can co-operate with the Libyan coastguard, in Libyan waters, to turn back the boats and stop the smugglers there, too. There is now a new Prime Minister and a Government whom we have recognised as the sole legitimate authority in Libya. These are very early days, but we must do what we can to try to make this work. That is why at this Council I brought together leaders from France, Germany, Italy, Spain and Malta to ensure that we are all ready to provide as much support as possible.

Turning to other matters at the Council, I took the opportunity to deal with a long-standing issue that we have had about the VAT rate on sanitary products. We have some EU-wide VAT rules in order to make the single market work, but the system has been far too inflexible and this causes understandable frustration. We said that we would get this changed and that is exactly what we have done. The Council conclusions confirm that the European Commission will produce a proposal in the next few days to allow countries to extend the number of zero rates for VAT, including on sanitary products. This is an important breakthrough. It means that Britain will be able to have a zero rate for sanitary products, meaning the end of the tampon tax. On this basis, the Government will be accepting both the amendments put down to the Finance Bill tomorrow night.

My right honourable friend the Member for Chingford and Woodford Green spent almost a decade campaigning for welfare reform and improving people's life chances and he has spent the last six years implementing those policies in government. In that time, we have seen nearly half a million fewer children living in workless households, more than a million fewer people on

[Baroness Stowell of Beeston]
out-of-work benefits and nearly 2.4 million more people in work. In spite of having to take difficult decisions on the deficit, child poverty, inequality and pensioner poverty are all down. My right honourable friend contributed an enormous amount to the work of this Government and he can be proud of what he achieved.

This Government will continue to give the highest priority to improving the life chances of the poorest in our country. We will continue to reform our schools. We will continue to fund childcare and create jobs. We will carry on cutting taxes for the lowest paid. In the last Parliament, we took 4 million of the lowest-paid people out of income tax altogether and our further rises to the personal allowance will take many more out, too. Combined with this, we will go on with our plans to rebuild sink estates, to help those with mental health conditions, to extend our troubled families programme, to reform our prisons and to tackle discrimination for those whose life chances suffer because of the colour of their skin. In two weeks' time, we will introduce the first ever national living wage, giving a pay rise to the poorest people in our country. All of this is driven by a deeply held conviction that everyone in Britain should have the chance to make the most of their lives.

Let me add this. None of this would be possible if it was not for the actions of this Government and the work of my right honourable friend the Chancellor in turning our economy around. We can only improve life chances if our economy is secure and strong. Without sound public finances, you end up having to raise taxes or make even deeper cuts in spending. You do not get more opportunity that way; you get less opportunity that way. When that happens, it is working people who suffer, as we saw in Labour's recession. So we must continue to cut the deficit, control the cost of welfare and live within our means. We must not burden our children and grandchildren with debts that we did not have the courage to pay off ourselves. Securing our economy and extending opportunity, we will continue with this approach in full, because we are a modern, compassionate, one-nation Conservative Government. I commend the Statement to the House".

My Lords, that concludes the Statement.

6.24 pm

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the Leader of the House for repeating the Statement made by the Prime Minister earlier today. I have to say that it was not quite the Statement that we were expecting after the media noise over the last day or so. She may have noticed when she was speaking that noble Lords were flicking through the Statement that was released, because the last part that she read out was not released to the Opposition or to your Lordships' House in the usual way. I do not imply any discourtesy, but I suspect that the crescendo that we heard in defence of compassionate Conservativism at the end probably had not been written in time for the printed copy.

As MPs and Peers left Westminster on Thursday evening, no one could have foreseen the events of the weekend. Clearly, problems were simmering at the heart of the Government, which led to the dramatic resignation of the Work and Pensions Secretary on Friday evening, just as many of us were about to turn in for the night. In the Statement, the Prime Minister paid fulsome tribute to Iain Duncan Smith for his work in government. But for those who read his resignation letter and watched him on TV yesterday, it is clear that his concerns and the reasons for his resignation are deeply held. Although some feel that this had been building up for some time, others such as the noble Baroness, Lady Altmann, took to the airwaves to condemn it as a more recent conversion. We may never know the truth.

I genuinely welcome the fact that, despite these distractions, the Prime Minister was able to focus on what was an extremely important EU Council, on which I want to focus. Europe is facing the most severe migration crisis since the Second World War. Many have observed that this is the biggest challenge that the EU has ever faced. Given the scale and the seriousness of the crisis, and the importance of the EU Council meeting, I find it disappointing that internal government political problems dominated the weekend's news coverage.

Before we get into the detail, we should just reflect on how the human misery at the heart of the crisis is too often lost in the language of EU agreements and treaties. This is nothing less than a matter of life or death for the people involved. You just have to imagine being a parent and paying your life's savings to someone you know full well to be a criminal just to try to possibly escape the horror that has convulsed your country, with no real prospect of peace in sight. We have seen this in Syria, Afghanistan and north Africa. Many of these families know that they face a great risk, but they believe that staying is a greater risk for them. We just have to imagine and think how absolutely desperate they must be. They have not packed suitcases to go off on holiday, nor have they have been able to sit down and make a rational choice to leave their homes. They feel that there is no alternative but to seek refuge and a better, safer life for them and their children elsewhere.

In 2015, more than 1 million people made that dangerous journey to Europe in a desperate search for safety. Upon arrival, if indeed they make it that far, despite the best efforts of charities, the authorities and volunteers, they all too often face appalling conditions. There is no proper access to all those things that we take for granted: homes, food, sanitation, healthcare and schools. They do not have them in the way that we expect to have them. This is a humanitarian crisis on the most enormous scale. Talk of migrants—especially "bunches of migrants", a phrase that we have heard—merely dehumanises each and every individual tragedy that we are faced with. Perhaps we should all try to remember that and think about how we speak.

It is right that our response to a crisis of this magnitude is an EU-wide response. It is also right that, through the EU, we engage with Turkey. The need for Europe-wide co-operation underlines the case for remaining in the EU. Labour supports Turkey's application to join the EU, but we also recognise that this is certainly not an immediate prospect: important issues have to be addressed first and conditions met. We want to be satisfied with regard to human rights,

governance, free media, the rule of law and Turkey's relationship with Cyprus. However, the agreement reached over the weekend, if implemented properly and fully, could relieve some of the pressure that both Turkey and Greece are facing. I welcome the clarification on Turkish visas and Schengen. We also pay tribute to those from our Armed Forces and military engaged in the EU naval operations for their vital work on this issue.

However, questions remain both on refugees and on the wider issues, which I hope the noble Baroness can address in her response. For those seeking refuge who are to be returned, what measures will be taken to ensure that they do not again fall into the hands of traffickers and that they are protected by international law? What measures are guaranteed for those claiming asylum in terms of access to interpreters and to legal advice and representation? Is the noble Baroness able to confirm whether Turkish travel documents have a sufficient level of integrity and security in line with EU standards, including on fingerprints? In repeating the Statement today, she gave some figures on the number of refugees who have settled in the UK. If she could update those figures, that would be helpful.

What progress has been made with ensuring that Turkey fully respects the Geneva Convention on human rights, to ensure that all those arriving from other countries receive formal international protection? What steps are being taken to ensure that those arriving in Turkey do not simply shift via other routes—for example, through Libya? What support is being given to Greece to enable it to execute the terms of the deal at such notice?

Finally, on the other issue that the Prime Minister mentioned, the tampon tax, I pay tribute to my noble friend Lady Primarolo, who is in her place. She tells the story of how, as a Treasury Minister, she sought and, in 2000, succeeded in reducing VAT on female sanitary protection to the then lowest level of 5% from the higher level that we as a Government inherited of 17.5%. It was not easy. She was told the justification for why it could not be reduced to the lower level of 5% in a scene worthy of "Yes Minister". She was told: "But Minister, it is only for essential products". When she asked for examples of what those could possibly be, she was told, "Well, Minister, essential products like razor blades".

Today, we welcome the progress made and recognise the efforts of my noble friend in getting us to this point. The right decision has been made. The Chancellor said last week in his Statement that the money raised from that 5% VAT would go to charities. Does that mean that charities will not receive that income, or will the Chancellor find some other way to make up the deficit of the money that they were expecting? I hope that the noble Baroness will be able to answer my questions.

Lord Wallace of Tankerness (LD): My Lords, I thank the Leader of the House for repeating the Statement. Given that much of it was about Turkey, I am sure that she and the House as a whole wish to place on record our condolences to the families of those who have been the victims of recent terrorism atrocities in both Ankara and Istanbul.

Faced with such an immense challenge, it would be unreasonable to doubt the good faith of those who have strived to reach some agreement between the European Union and Turkey over the past few days, but it should not come as a surprise when I say that we on these Benches have serious misgivings about the EU-Turkey deal which has emerged from the European Council meeting. The United Kingdom should be leading by example in the response to the refugee crisis. We should be using a significant influence to fight for an EU-wide response that is fair, just and respect the values that this country holds dear. Credit where credit is due: where this Government have played a leading role, such as in encouraging humanitarian relief in Syria and the region, we have been successful, not least at the Syria donor conference in London last month.

However, when we look at the agreement and the Statement from the Prime Minister, we find it shameful that the United Kingdom is demonstrating such reluctance to stand up for vulnerable refugees who have fled from war and terror. The noble Baroness, Lady Smith of Basildon, gave very clear substance to what those people are facing. Our continued inaction does not do justice to Britain's history and values.

When one reads the Prime Minister's Statement, one finds that we will not be taking more refugees as a result of this deal. Put that in a context where people are facing misery and need. One wonders whether this is really a manifestation of compassionate conservatism.

Safe and legal routes are crucial for moving the current process forward. The vast majority of refugees fleeing Syria and Iraq choose to stay in the region, as close to their homes as possible, but for those who cannot survive in the region, routes must be available to apply for asylum not only in the United Kingdom but in other countries as well. On these Benches, we support the measures set out by the United Nations High Commission on Refugees on 4 March: humanitarian admission programmes, private sponsorships, family reunions, student scholarships and labour mobility schemes. Direct resettlement from the region is part of that, and we should be scaling up our resettlement programme. Twenty thousand people over five years is insufficient. The United Kingdom should use its leadership in Europe to encourage other European countries to scale up their own programmes of direct resettlement.

We also need a system in place for those already in Europe, including the estimated 26,000 children who arrived in 2015, 10,000 of whom are now missing. In the vote in the earlier Division, the House made its view very clear on that.

On previous occasions the noble Baroness the Leader of the House and other Ministers have tried to argue that, by accepting those seeking asylum who have travelled the fraught journey to continental Europe, we are only encouraging more people to do so. I have always thought that it was a bit like saying that the Good Samaritan should really have passed by on the other side because, by stopping to help, he was only encouraging more acts of highway robbery on the road between Jericho and Jerusalem. If, as the Statement hopes, the agreement breaks the business model of the

[LORD WALLACE OF TANKERNESS]
people smugglers, what reason is there then for us not taking an equitable share of those who are already in continental Europe?

Clearly, the Dublin system is not currently sufficient to deal with this crisis. Instead, the United Kingdom should encourage the European Union to develop European-wide systems of responsibility for asylum seekers, including setting up a system for asylum requests to be distributed equitably across EU member states which takes account of different demographic projections, such as the high net migration in the United Kingdom, compared to forecast population decreases elsewhere.

Turning to the specifics, many people and well-recognised organisations have expressed concern that the proposals as they stand seek to address only the short-term concerns over European borders. Serious questions were raised after the 7 March proposals were published as to their standing in European Union and international law. Will the noble Baroness the Leader of the House give the House the Government's assessment of the international legal position in relation to this agreement? Can she give details of how full and proper asylum determination procedure will be carried out in Greece in full compliance with European Union law? The agreement states:

"People who do not have a right to international protection will be immediately returned to Turkey".

Can the noble Baroness provide more detail on who that covers? What provision is made for families and children, given that children and women now make up 60% of those crossing to Europe? Will those who have the right to international protection be granted asylum only in Greece, or will they be relocated elsewhere?

The one-for-one arrangement appears to apply only to Syrian refugees. What is the position regarding other nationalities, such as Iraqis and Afghans, who are also fleeing conflict areas? Not surprisingly, Greece is having great difficulty processing the number of people through the relocation provisions, so can the noble Baroness give us some detail as to how quickly people will be assessed and indicate what provision the United Kingdom is making for the assessment process?

There appears to be little in the way of concrete proposals to tackle trafficking within Turkey and other launch points, including Libya. Although we would like a full investigation into the cash flows of the smuggling businesses, in the mean time, can the noble Baroness assure the House that the money provided by the European Union to improve humanitarian conditions for refugees in Turkey will be closely monitored and, where possible, be funded through international organisations, including UNHCR, UNICEF and other NGOs?

Finally, the EU-Turkey statement reaffirms a commitment to re-energise the accession process. We have supported Turkey's application, but I do not think that anyone can be under any illusion that, however important it is, it will be a difficult and probably long process. Can the Leader of the House assure us and confirm that, given some of the actions of the Turkish authorities in recent months, there will be no watering down of the justice and rule-of-law requirements of EU membership?

In conclusion, we have seen in recent days the real colour of this Government on this and other issues. Whether it is in relation to the incredibly vulnerable unaccompanied children and families seeking refuge in Europe or the Chancellor of the Exchequer trying to pay for his bonus for the wealthy by punishing disabled people, it appears that, time and again, this Government's choices are driven by cynical politics and public image rather than economic necessity or indeed humanitarian concern.

Baroness Stowell of Beeston: My Lords, I am grateful to the noble Baroness and the noble and learned Lord for their responses. First, I join the noble and learned Lord in his tribute to and concern for the people in Turkey who have suffered at the hands of recent terrorist attacks.

I start by emphasising that a major development came out of the Council meeting last weekend. For the first time, there is now a serious and comprehensive proposal to deal with this very serious migration and refugee crisis in Europe. We, the United Kingdom, played a part in getting the programme in place, and we are proud that we are at the table and doing just that. As has been acknowledged, if it is properly implemented, the deal with Turkey will break the business model of those very wicked people, the people smugglers, by breaking the link between getting in one of their boats and getting resettlement in Europe. The purpose of that is to deter the most desperate people—the noble Baroness is absolutely right—from embarking on a very perilous journey to find refuge. This European Union programme for refugees in Turkey is comprehensive, and builds on the bilateral support that the United Kingdom is already providing to the many Syrian refugees in Turkey. One thing that is important for me to acknowledge, which is in a way a response to some of the points that have been raised by the noble Baroness and the noble and learned Lord, is the generosity of the people of Turkey in providing that refuge to so many people in their country. What we and the European Union are doing by introducing this programme and providing the financial support for Turkey is for that money to go very much to providing respite, refuge and an alternative, albeit temporary, way of life, until those very desperate people can return to their country.

The noble Baroness and the noble and learned Lord asked how we could ensure that this new programme could comply with international and European law. Of course, there is no way that we would sign up to any scheme that was not compliant with international law—and nor would any member of the European Union or the European Union itself. Of that we can be confident. As for the support to those who arrive in Greece and seek refuge and asylum there, the new processing centres or hotspots will include interpreting advice and ensure that they are all treated as individuals, in terms of their cases, as international law requires.

The noble Baroness asked about Turkish travel documents. Clearly, most of the people coming from Turkey are from Syria, but there are people coming through that route from other countries who are not from Syria. For the one-for-one scheme to apply, when a refugee from Syria is returned to Turkey, another

refugee has the opportunity to be settled in Europe. Those who use that route who are not from Syria, whether they come from Afghanistan or Pakistan, will be returned to Turkey but not be part of that scheme.

The noble and learned Lord asked how quickly people would be processed. I do not have any further details on how the scheme will be implemented at the moment, except to say that the implementation phase now is under way, which is one of the things that the United Kingdom is contributing to—actually getting that expertise there on the ground, to assist Greece in being able to process people. The noble Baroness asked about support to Greece so that it can handle this situation. That is very much part of this arrangement, and we have contributed additional funds to Greece for that purpose.

We can be confident that this programme is a response to the leadership that our Prime Minister took in Europe to come up with a plan very much targeted at addressing the root cause of the terrible situation and crisis in Europe at the moment. We have to deal with the political situation in Syria, clearly, but we have to support people as far as we can in countries close to their own country and break this terrible, wicked scheme, which criminals are making money out of and which puts so many people at risk.

On the other points that were raised, and on what the noble Baroness said about the tampon tax and VAT on sanitary products, and the story that she relayed from the time of the noble Baroness, Lady Primarolo, in the Treasury, I find that absolutely shocking. I cannot believe that razor blades are considered essential and sanitary wear not. I also find it quite surprising to hear men on the television and in Chambers such as this using the word "tampon". I still find that in itself quite a revelation, but I am pleased that finally after all this time we have been able to address that unfairness and do something about it.

In response to some of the points that the noble Baroness and the noble and learned Lord made about recent events, as I said in concluding the Prime Minister's Statement, I say again that this is a one-nation Conservative Government, and we are very much determined to support everybody in this country. I make it clear to your Lordships' House how proud I am to be a member of this Government, alongside everybody who sits around that Cabinet table.

6.45 pm

Lord Lea of Crondall (Lab): Would it be fair to say that this is a very important moment for the European Union, having for the first time agreed something concrete, if very difficult to implement, in this Statement? It goes to show that, when we are at the table, we can play a positive part in the deliberations of the European Union, as a country, and the result in this case is one that we would not have been able to contribute to if we had not been a part. Therefore, the moral of the story is very clear: whether or not we were part of the problem, we are certainly shaping up as a European Union, together, to be part of the solution.

Baroness Stowell of Beeston: I certainly agree with the noble Lord that it is because we are there at the table that we have been able to be influential in coming up with this comprehensive plan to deal with this very serious situation. Not only is that good, because it makes sure that we can fight for Britain's interests in coming up with a solution, but also, if we were not at the table, this problem would still exist, and we would not have been able to ensure that in its design we would protect the United Kingdom's interests as well as supporting these very desperate and poor people who need Europe's support.

Baroness Ludford (LD): Can the noble Baroness the Leader of the House explain why, notwithstanding her remarks just now, the Government stubbornly refuse to put their own efforts—their laudable humanitarian aid contribution and rather less admirable resettlement offer—squarely into a European policy framework, and then add a relocation effort under the criteria that my noble and learned friend mentioned? Surely, EU asylum policy is part of the European security agenda, on which the Prime Minister has rightly declared an intention to lead. Why cannot what we are doing be squarely in the European framework?

Baroness Stowell of Beeston: Because, my Lords, we work in Britain's overall best interests, and we are seeking to assist Europe in making sure that, in the package as a whole, what Europe does in protecting its borders and supporting people is very much in line with what we believe is the right thing to do, while retaining control of how we support these refugees. That will in future be very much in line with what Europe is doing. It is Europe that is following our lead—but what we are able to do is to retain control ultimately of the number of people who come into this country. That is what the British people want us to do—to be able to influence but to retain control. That is why, to coin a phrase, it is the best of both worlds.

Lord Baker of Dorking (Con): Could the Minister say whether she thinks that the Turkey deal is realistic? After the assessment of immigration status has been approved—either genuine refugee status or none—those who have been declined could amount in Europe to hundreds of thousands. They will have to return to Turkey, but suppose they just sit there and refuse to go to Turkey with their wives, their children and their sick parents. Will there be forcible repatriation? Whenever we have had to do this in Britain, there has been only a handful of cases a year and they are always very difficult. I should have thought that with hundreds of thousands it is well-nigh impossible.

Baroness Stowell of Beeston: I am sorry that my noble friend is quite pessimistic about the chances of this scheme working. It clearly requires a lot of expert planning to make sure it works properly. It will be regularly reviewed to ensure that it works. One of the main planks of this plan is for Turkey to protect its borders and ensure that people are not leaving there in the first place. The plan is not just about dealing with people once they get to Greece. It is about limiting the number who leave Turkey in the first place and about being very proactive in the water in terms of turning boats back before they have left Turkey's shores. This is a comprehensive plan, and it has to be executed in a very comprehensive way.

Lord Anderson of Swansea (Lab): My Lords, as the weather improves, the longer sea routes from Libya to Lampedusa, Sicily or Malta will increasingly be used. There may be a new Government, albeit a feeble Government, in Libya, but ISIS controls a substantial part of the coast, including the port of Sirte. How can we possibly hope for progress without the military defeat of ISIS, which plans to send jihadists from Libya to the European mainland? Can there be any serious progress without the military defeat of ISIS in Libya? What plans, if any, have we to do that?

Baroness Stowell of Beeston: The noble Lord is right to highlight that the root cause of all this is ISIS, or Daesh, and the appalling atrocities that it is performing in that part of the world. There is now a new Prime Minister in place in Libya and a new unity Government have just been established. The Foreign Secretary has already been in touch with the new Prime Minister. We stand ready to assist in Libya, but we will not take any action there without it being in response to a request. Clearly, if there was any extension of any activity in that part of world, the Prime Minister would want to return to the House of Commons. In the mean time, we have increased our presence as part of the NATO regime off the coast of Libya to try to do more to tackle smuggling before people leave the Libyan coast.

Lord Hannay of Chiswick (CB): My Lords, I confess my heart sank slightly when the first sentence of the Statement said that this was a migration crisis affecting "continental Europe". However, since the rest of the Statement said that it is quite clearly a crisis that affects the whole of Europe, I think we can pass that over in silence.

The Government have until now attached and still attach huge importance to taking Syrian refugees only from countries such as Jordan and Lebanon with the co-operation of the United Nations High Commissioner for Refugees. I think it is a bit excessive that they refuse even to contemplate those who reach Europe. Does the Statement mean that from now on they will accept refugees in Turkey who are registered as being genuine refugees? Will our 20,000—I am not seeking to raise the issue of numbers—include refugees taken from camps in Turkey and thus, of course, be helpful to the commitments that the European Union has entered into to help Turkey handle the increased number of refugees it will get when many are returned from Greece?

Baroness Stowell of Beeston: Yes, my Lords, we will of course take refugees from Turkey. Some of the refugees we have already received as a consequence of the Syrian crisis will be based in Turkey because they will be in some of the camps which are outside Syria on the border with Turkey. I can certainly reassure the noble Lord on that.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, following the events of the weekend, I wonder whether the Leader of the House can imagine with what delicious schadenfreude we on these Benches recall Mr Osborne's comment in the Budget that he had abolished the Liberal Democrats. I bet he is missing us now for we could be relied on in government whereas it is perfectly clear that his shambles of a party cannot.

Turning to refugees, the Government's case for refusing to assist a single refugee currently fleeing from the Syrian battlefield has been that to do so would encourage more to come. Since by the Government's own admission the Turkish scheme overcomes that problem, will we play any part in it and, if not, what dishonourable fig leaf of an excuse will they now raise in order not to assist a single refugee coming now from the Syrian battlefield?

Baroness Stowell of Beeston: I completely reject the way the noble Lord has described what we have done and what we are committed to do. We are supporting refugees from Syria in two very clear ways: first, by providing financial support and aid to those who are based in these camps at a rate unmatched by any country in Europe and second only to the United States. Our resettlement programme, which we put in place last year, has already started to deliver refuge to people who were in camps near Syria to a greater degree than that of those countries in Europe which were party to the relocation scheme. It is working.

If children who have fled from Syria and are in mainland Europe and have claimed asylum have family ties to the United Kingdom, our policy is to assist them in being reunited with their family, but they have to claim asylum in the country they are in. That is the policy, but it also reflects how much support we want to give.

As to the noble Lord's comments on the Liberal Democrats, the Budget did a huge amount to ensure that we are supporting future generations of this country. We have increased funding for our schools, we have taken yet more low-paid people out of tax, we have frozen fuel duty to help hard-working people and we are helping the poorest to save. We have done all that on our own in government, and we will continue to do that and to deliver our long-term economic plan because that is what people voted for, that is what they want from us and that is what will secure their future and that of everybody in this country.

Lord Mawhinney (Con): My Lords, I suspect I am not the only one in your Lordships' House who is grateful to the Prime Minister for having reminded us of the decisions of the two previous EU Council meetings and the number of people who were going to be helped as a result of those decisions and for telling us of the paltry number of people who actually have been helped. Given that stark contrast, does my noble friend really believe that the decisions taken this time are in practice going to turn out to be effective, as the other two sets of decisions have apparently not been?

Baroness Stowell of Beeston: My Lords, I believe they will be. The proof will be once this is fully implemented. The reason why I believe it will be effective is because this new European programme reflects the programme that we have already adopted, which is seeing better results than that which has been already used in Europe.

Baroness Royall of Blaisdon (Lab): My Lords, I would refute what the noble Baroness the Leader of the House has said about the Budget. All independent commentators say that it will exacerbate intergenerational strife.

In relation to the Statement, I do not think the noble Baroness has answered the question from my noble friend Lady Smith on the number of people who have already been welcomed to this country. I personally welcome the agreement with Turkey, but I am concerned that little or no heed seems to have been given to the situation in Turkey itself in relation to human rights, good governance, free media and the rule of law. Of course I deeply regret the violence that is now taking place in Turkey, but the Turkish Government must always pay heed to their obligations under international law, not just to the refugees, who are hugely important, but also to their own citizens.

Baroness Stowell of Beeston: The noble Baroness is right. That is why progress will not be made on the part of the deal that includes Turkey's accession to the EU until Turkey has complied with all the demands laid out for it to meet, and they have been in place for a very long time now. All Europe—including the UK, which has long been a supporter of Turkey's accession to the EU—recognises that Turkey has a huge amount to do before it would qualify for that membership. On the concerns that the noble Baroness raises about Turkey more generally at this time, yes, there are issues that have been raised, such as freedom of speech or the arresting of journalists, and we have heard about some of them and debated them in this Chamber. Those are all of great concern, but at the same time that does not detract from the generosity that Turkey has shown to the people of Syria. We need Turkey to continue providing that refuge to people. Yes, we need to continue to apply pressure on the matters that concern us regarding human rights, but we must not do so in way that somehow undermines the very positive work that Turkey is doing in support of very desperate people.

Lord Balfe (Con): My Lords, to follow up on the previous question, I read in the press cuttings this morning that a proposal has been brought forward by the Turkish Government that politicians and journalists could also be prosecuted for abetting terrorism if they say anything that even mildly suggests there might be two sides to the story. I speak as a long-standing friend of Turkey, but urge the Government not to lose sight of the increasing authoritarianism that I detect in that country. It is in our interests to firmly remind our friends in Turkey that the properly applied rule of law is an absolute precondition not only for coming into the EU, which is self-evident, but for being a part of the international polity of nations.

Baroness Stowell of Beeston: My noble friend is right to highlight these issues. As he will understand, it is not inconsistent for this Government both to raise concerns about any kind of abuse or human rights issues that exist in Turkey and at the same time to work with that country in order for it to provide the support that we think is essential to the people fleeing Syria.

Lord Green of Deddington (CB): My Lords, is the Minister aware that there is an important legal snag that has been overlooked? European legislation requires that those now being dealt with in Greece should have a right of appeal. That is in the reception directive. Will the Government therefore take steps to get that directive amended?

Baroness Stowell of Beeston: The noble Lord raises a point of detail that I am sure is being properly addressed in the normal processes. If I have anything I can add to that, I will of course write to him.

Baroness Lister of Burtersett (Lab): Will the noble Baroness explain how the agreement will effectively break the smugglers' business model, when it appears that it will do little to reduce the underlying demand for those smugglers? Would it not be more effective, and more in line with human rights principles, to introduce safe and legal routes, as mentioned by the noble and learned Lord, Lord Wallace of Tankerness, including the expansion of family reunion, which we will be debating shortly? Would such an approach not do more to make the smugglers redundant?

Baroness Stowell of Beeston: This scheme is all about making those smugglers redundant. We do not want people to think that the only way for them to leave the camps and find refuge in Europe is to get into a boat and pay money to criminal gangs and put their own lives at risk. We want to ensure that in the neighbouring countries, whether Jordan or Turkey, those camps provide a suitable way of life, albeit not at all what anyone would actually want, temporarily for them until they can go back to their own countries. Ultimately we want to see a thriving Syria. We want Syria to be back up and running in the way that it was before this terrible war and outbreak of terrible atrocities took place. If we encourage everyone to come to Europe, that is not going to work.

Lord Scriven (LD): My Lords, the noble Baroness the Leader of the House will know that Turkey does not apply the Geneva convention to non-EU citizens. Do the full rules of the Geneva convention apply to the scheme that has just been agreed and, if not, which protections are not given to those people who are sent back?

Baroness Stowell of Beeston: I will have to write to the noble Lord about that.

Welfare

Statement

7.06 pm

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, with the leave of the House, I shall now repeat the Statement made in the Commons by Stephen Crabb, the Secretary of State for Work and Pensions. The Statement is as follows.

"It is a privilege to stand here at the Dispatch Box as the new Secretary of State for Work and Pensions. First, I pay tribute to the work of my predecessor, the right honourable Member for Chingford and Woodford

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Green. My right honourable friend came into this job six years ago with a real sense of mission and purpose to transform people's lives for the better, and he achieved some remarkable things. I intend to build on this success.

As a one-nation Conservative, my vision is to support everyone to achieve their full potential and live independent lives. That means people having the stability and security of a decent job, and children growing up in a home with the benefit of that stability. There are now over 2 million more people in work than in 2010, and almost half a million more children now grow up seeing a mum or dad go out to work each day. We are ensuring that these opportunities extend to all those in our society, including disabled people.

Today, there are more than 3 million disabled people in work. In the last 12 months alone, 152,000 more disabled people have moved into work, 292,000 more over the past two years. That represents real lives transformed as we support people with disabilities and health conditions to move into work and to benefit from all the advantages that that brings. But we are also supporting the most vulnerable, and are determined that those with the greatest need are supported the most.

Our reforms have seen support for disabled people increase. In the last Parliament, spending rose by £3 billion. We are now, rightly, spending around £50 billion on benefits alone to support people with disabilities and health conditions. Devoting this level of resources is the mark of a decent society.

Personal independence payments were introduced to be a more modern and dynamic benefit to help to cover the extra costs faced by disabled people, something that its predecessor benefit, the DLA, did not do. PIP is designed to focus support on those with the greatest need, and we have seen that working. For example, 22% of claimants are receiving the highest level of support, compared to 16% under the predecessor benefit, DLA.

Before Christmas, the Government held a consultation on how part of the PIP assessment works in relation to aids and appliances. As the Prime Minister indicated on Friday, I can tell the House that we will not be going ahead with the changes to PIP that had been put forward. I am absolutely clear that a compassionate and fair welfare system should not just be about the numbers. Behind every statistic there is a human being, and perhaps sometimes in government we forget that.

I can also confirm that after discussing this issue over the weekend with the Prime Minister and the Chancellor, we have no further plans to make welfare savings beyond the very substantial savings legislated for by Parliament two weeks ago, which we will focus on implementing.

I want to turn directly to the welfare cap. First of all, it is right that we monitor welfare spending carefully. The principle of introducing a welfare cap is the right one, given the huge increases in welfare spending we saw under previous Labour Governments—up nearly 60%. The reality is that if we do not control the public finances, it is always the poorest in society who pay the biggest price, so we need that discipline. The welfare cap strengthens accountability and transparency to Parliament—something that simply was not in place under Labour. We make no apology for this. As we are required to do, we will review the level of the cap in the Autumn Statement when the OBR formally reassesses it, but I repeat that we have no further plans to make welfare savings beyond the very substantial savings legislated for by Parliament two weeks ago, which we will focus on implementing.

Against this backdrop, I want to build on the progress we have made in supporting disabled people. We made a manifesto commitment to halve the gap between the proportion of disabled people in work compared with the rest of the labour market. As I have outlined, we have made good progress in supporting disabled people into work, but to go further will require us to work in a way that we have not done before, to think beyond the artificial boundaries of organisations, sectors and government departments to an approach that is truly collaborative. That is why today I want to start a new conversation with disabled people, their representatives, healthcare professionals and employers. I want the welfare system to work better with the health and social care systems. Together we can do so much better for disabled people.

This is a hugely complex but hugely important area of policy to get right. Disabled people themselves can provide the best insight into how support works best for them. So I am determined that all views are listened to in the right way in the weeks and months ahead. I will be personally involved in these discussions. The events of recent days demonstrate that we need to take time to reflect on how best we support and help to transform people's lives. That is the welfare system I believe in. I commend this statement to the House".

That concludes the Statement.

7.13 pm

Baroness Sherlock (Lab): My Lords, I thank the Minister for repeating that Statement and for advance sight of it, and I welcome unreservedly the Government's dramatic change of heart on this matter. However, I would like to know how we got to this point. Last Thursday, at Questions, I asked the Minister specifically about the fact that the single biggest revenue raiser in the Budget Red Book was a £4.4 billion cut over five years in personal independence payments awarded to people who need aids and appliances to get dressed or manage their continence. The Minister defended it, claiming that those people did not in fact have extra costs and, anyway, it was not really a cut because the total cost of PIP was rising, even though 370,000 people would have lost up to £3,500 each per year as a result of the change. Of course, the total cost of any benefit is a combination of case load, value and running costs. If the total cost starts to rise but a Minister then decides to change the rules so that some people will not be eligible any more, thereby saving £1.2 billion a year on the anticipated bill, that is undeniably still a cut, not least for the 370,000 disabled people affected.

However, everything has changed since our debate last Thursday. What a difference a weekend makes. Since then, the boss of the noble Lord, Lord Freud,

Iain Duncan Smith, has resigned as Secretary of State for Work and Pensions, saying that repeated cuts to working-age benefits,

"just looks like we see this as a pot of money, that it doesn't matter because they don't vote for us".

I will not even start on what his junior Ministers said about him, or indeed about each other, with the notable exception of the noble Lord, Lord Freud, who has behaved with considerable propriety in this. The House should commend him for that. However, to offer him one small piece of advice, it might be wise to stay indoors during break time over the next week—just until the storm passes. I hope that he is having an entertaining time in the DWP at the moment, if not an easy one. Joking apart, caught in the middle of all this chaos are some confused and worried disabled people, in work and out of work, who depend on PIP, so I hope that we will be able to get some clear answers to questions today.

First, does the Minister now accept that it was wrong to propose taking £4.4 billion from disabled people to fund tax cuts that mostly benefit those on higher incomes and those with much greater wealth? Secondly, disabled people will be relieved to hear that the cut in PIP announced by the Government has been cancelled, but I think we all want to know where the money will come from to plug the £4 billion hole in the budget that it leaves. Can the Minister assure us that it will not be taken from anywhere else in the DWP budget? I am very glad to hear that it will not come from benefits, but will he assure us that it will not come from the department's budget elsewhere—for example, from the Work Programme, or other important activities the department will undertake? Also, the Minister has been trailing for a long time a major White Paper on disability. Can he confirm that this Statement means that no changes to benefits payable to disabled people will be considered in that White Paper?

The Statement says that support for disabled people rose in the last Parliament. It does not say that spending on disabled people is falling in this Parliament. The IFS says that it has fallen by 3% in real terms, and House of Commons Library research shows that, taking all disability benefits into account, the fall is over 6%.

Disabled people have suffered greatly at the hands of this Government. They remain among the poorest and most disadvantaged people in the country. If the new Secretary of State is indeed a one-nation Conservative and committed to helping disabled people to thrive, should he not start by reconsidering the repeated cuts that his predecessor made to their benefits? Perhaps he could help those who have lost their Motability cars, those suffering because of the closure of the Independent Living Fund, the two-thirds of bedroom-tax victims who are disabled, or those who will get £30 a week less in ESA in future because of legislation that we recently passed. I welcome this change unreservedly, but until those questions are addressed, it is very hard indeed to believe that we really are all in it together.

Baroness Manzoor (LD): My Lords, I wish the new Secretary of State for Work and Pensions every success in his new role—I mean that sincerely—and I am sorry that the Government find themselves in a difficult place. In fairness, however, they have had significant notice that there was much wrong with the way the welfare reforms have been tackled and are to be implemented.

As the Minister knows, we on these Benches have seen the welfare reforms through the prism of work, so we opposed cuts to tax credits, cuts to universal credit, the removal of support for people with disabilities, and measures that increased child poverty. We on these Benches want to ensure that government policy enables a fairer and more compassionate society, where the weak and the vulnerable are protected and people are supported to work, and supported in work when their incomes are low.

The Government have led us to believe that the weak and the vulnerable are being supported, but the events of the weekend say that this is not only about ensuring adequate support for disabled people but has been—as Iain Duncan Smith's letter says—about unnecessary cuts to hit a politically motivated target. If that is the case, I am sad to say that the Government may have lost their moral compass. Do the Government accept IDS's criticism, and do they not therefore owe disabled people an apology for being used as pawns in a cynical political game? I am pleased to note that the reassessment for PIPs will now be kicked into the long grass, but that is not good enough. The entire PIP cuts plan should be stopped. Will the Minister confirm exactly what the intentions for changes to PIP are? Are they to be fully stopped, as the Minister indicated, or just paused for the next six months or so?

Finally, given that the Government consulted on these proposals and until last Friday were saying that they were about giving the right support to disabled people, what is the Government's actual view on the use of aids and adaptations by disabled people? If they have changed their mind for political reasons, does that mean that the foundation for the Government's original claims was false, and—as IDS says—just an excuse to cut money? I am concerned about how the Government have treated the consultation process. Should there not be a review into whether they have made misleading claims in order to justify the cut, while ignoring the outcome of the consultation process?

We all have a duty of care to protect the most vulnerable in our society, to preserve their dignity and to help them live full and independent lives. All Governments should take that responsibility very seriously. To that end, I am pleased to note that the Statement says that the Government have no plans to make any further cuts in welfare, but can the Minister confirm that this applies throughout this Parliament? I am also pleased that they are re-setting the conversation, which is vital. I hope that this new conversation about welfare, health and social care will benefit the majority.

Lord Freud: There were a number of questions there. One of the main questions is about what is happening to PIP in terms of costs—various claims have been made. I reassure noble Lords that in this Parliament we are seeing an increase in the DLA PIP budget in real terms. I accept what the noble Baroness, Lady Sherlock, said; namely, the contrast between the

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PIP process we were undergoing last week and the tax cuts was wrong. This is almost history, but the reality was that we were looking at the issue in its own terms, following a report by an independent review that said there was a problem in the PIP process. Fundamentally, putting the two together has caused a great deal of upset. Indeed, Iain Duncan Smith raised that very point himself.

I shall not spend the whole time going through the PIP issue. I assure noble Lords that we have now stopped the PIP adjustment, full stop. It is not being delayed; rather, it is not happening. The question—a suspicious question from the noble Baroness, Lady Sherlock—is: where is the money coming from? I see. The answer is that we are not seeking to replace that money within the welfare budget. That is the point of the very explicit statement, which was made twice, that, looking ahead, we are not looking for welfare savings.

The noble Baroness asked about the White Paper process. That would be a reform process; there may be changes in the way we do things and how we support people, but that is following a consultation on what will work best and is not to do with the savings process that I described. There is no intention to use it in that way.

I shall pick up some of the other issues raised by the noble Baroness, Lady Sherlock, including, for instance, whether we will reconsider other things. There are 24,000 more people on Motability than at the start of 2013. They may be different people, but the process is being directed at the people who need it. The independent living fund was a transfer. The noble Baroness uses one set of statistics on who is disabled and the RSRS. The numbers come down very considerably when one looks at them on ESA. The final issue she raised was the ESA and WRAG. I remind noble Lords, and her, that that was voted on repeatedly in another place.

On the points made by the noble Baroness, Lady Manzoor, I reiterate that there is a full stop here; we are not moving things around on PIP changes. I defend the consultation process that we undertook. We made some changes as a direct result of the consultation, although we did not use four of the options. We went to one and then adapted option 5. I think I have now dealt with the Front Bench questions.

7.26 pm

Lord Fowler (Con): My Lords, I welcome entirely what my noble friend said about disabled people and the one-nation ambition. However, in looking at the challenge for the new Secretary of State, surely we should remember that there has always been tension between any social security Secretary and any Chancellor of the Exchequer. There have been rougher Chancellors than Mr Osborne. In future, it might be better to sort out the differences, as we did, without the intervention of spin doctors and anonymous briefers.

As to the substance and the issue of raising money, surely the time has come, with the new Secretary of State, to look again at payments such as the winter fuel allowance which, all too often, go to people who by no stretch of the imagination should be receiving social security benefits.

Lord Freud: I take that point from the noble Lord, who is very well informed in this area, on advisement. I accept his point that George Osborne is a pussy cat compared with some previous Chancellors sitting not very far from me.

Lord Low of Dalston (CB): My Lords, as the Minister has confirmed, events at the weekend have made it clear beyond any doubt that the Government's welfare reform programme has run out of road. Its contradictions stand revealed for all to see. Since exactly the same criticisms apply to the cuts to the employment and support allowance enshrined in the Welfare Reform and Work Bill as apply to the cuts to the personal independent payment, I repeat the question asked by the noble Baroness, Lady Sherlock: will the Government now reconsider implementation of the cuts to the employment and support allowance? They may have been voted through, but it is still open to the Government to reconsider the matter, as they have with the personal independence payment.

Lord Freud: The welfare reform programme is massive and we are pushing ahead with it. At its heart is universal credit, which is now moving at a pace. As I speak, more than 400,000 people have made an application for universal credit. We have a lot more to do, and we have a lot to do to implement the Bill that we have just passed. I have to disappoint the noble Lord by saying that there are no plans to reconsider the changes to ESA WRAG that we put through in that Bill.

Baroness Thomas of Winchester (LD): My Lords, it is excellent news that the cuts announced in the Budget have been abandoned, but there is an existing cut that urgently needs to be reversed. It has had less attention but is badly affecting working-age claimants of PIP. I refer of course to the 20/50 metre issue in the "moving around" section of the PIP assessment, which is resulting in 400 to 500 Motability cars a week having to be handed back. Will the Minister ask the new Secretary of State to look at this again, not least because reversing the cut would save money by helping many disabled people to get into work and pay taxes?

Lord Freud: At one level, the new Secretary of State will clearly look at his whole portfolio with a critical eye. At another level, there may be changes in who gets the higher-rate mobility component to allow them to qualify for the Motability scheme. More people are on the higher rate under PIP than was the case under DLA. Indeed, more people with mental health issues are going on to PIP than would have received DLA. So, while there is a change in who gets the top-level mobility component and is therefore entitled to the Motability scheme, the absolute number qualifying for the Motability scheme is now moving up. As I said, there are now 24,000 more people on the Motability scheme than there were in 2013.

Lord McKenzie of Luton (Lab): My Lords, the Minister will recall that we recently debated issues around rent restriction policy and local housing allowance changes for supported accommodation. There is a commitment in the Statement that there are no further plans to make welfare savings beyond the substantial

savings legislated for recently. Are the proposed changes to supported accommodation now off the table, and does the commitment also run to pensions and pensioner benefits?

Lord Freud: Supported accommodation is a vital issue and I am grateful for the noble Lord's question as it gives me a chance to offer the industry as much reassurance as possible. We have delayed two of the changes—the rent reductions and the LHA cap on supported accommodation—for a year because that will give us time to really understand the sector. In the short term, I expect to get a report on how the sector works so that we can look at how to support it most efficiently with funding and finance. The noble Lord will probably not remember how it is financed, as I do not think that anyone knew at that time. It has been quite a complicated issue. As for his question about the commitment and pensions, the pension element is growing rather rapidly, so, far from cuts, that becomes an irrelevant consideration.

Lord Lansley (Con): My Lords, those of us who know Stephen Crabb well are very hopeful about the approach that he will bring to this very important and challenging task. From these Benches we should pay tribute to Iain Duncan Smith for what he achieved as Secretary of State and indeed even before he became Secretary of State in his ambition to help the poorest and most vulnerable in society. Coming back to the questions that arise today, will my noble friend confirm that the OBR forecast published alongside the Budget now appears to indicate that the anticipated disability benefit budget, having risen by about £4 billion since 2010, will rise over the next four years by about another £2 billion? That highlights that, if we are to achieve meaningful reform in the future, it is not about, as my noble friend said, changing the amount of money paid to people with specific needs but about helping people back into work. The focus of welfare reform should be not diminished but refocused on the work and health programme and halving the disability employment gap.

Lord Freud: I am grateful to have the opportunity to pay tribute to Iain Duncan Smith. He was a remarkable champion for reform in the welfare state. I say with feeling that there is a reason why no one has transformed the system in the last 70 or 80 years and that is that it is very difficult to do. He had the political guts to get on and do it, and I am very proud to have supported him in getting the programme as far as it is. I think that he will go down in history for that achievement.

As my noble friend said, the OBR forecast shows that we gave more money to the disabled in the last Parliament, and the same is projected for this Parliament. In particular, a real-terms increase in the area of PIP/DLA is now baked in. My noble friend is of course right that the next step in the process is the need to find the right way to help disabled people back into the workplace and to achieve our objective of halving the disability gap.

Lord Davies of Stamford (Lab): My Lords, the noble Lord gave an assurance that the DWP will not replace the £4.4 billion of savings from the PIP programme, which it is now going to abandon, with cuts elsewhere in the DWP budget. However, he has not answered the obvious and important question of how those savings are going to be compensated. Surely there are only three possibilities. They will have to be compensated by spending cuts in other departments, by tax increases or by an increase in the fiscal budget being run by the Government. Which is it, or will it be a combination of all three? Surely it is the height of fiscal irresponsibility simply to announce that £4.4 billion of projected savings will no longer be arriving without any idea at all of how they will be replaced.

Lord Freud: My Lords, the Chancellor and the Secretary of State are saying that at the Autumn Statement we will look at the whole picture and at how the finances of the country should be organised. At that stage, there will be lots of moving parts and we will be able to see how this fits in.

Baroness Masham of Ilton (CB): My Lords, I agree with the part of the Statement that says that disability is very complex. There are very many different disabilities and many of them involve extra expense, such as extra food to keep fit. I also agree with the noble Baroness, Lady Thomas, about Motability. If you live in a rural area and do not have a car, you cannot get to work and are therefore stuck. Another very important issue is the people who do the assessments, about which there has been a lot of criticism. Can the Minister arrange better training for the people doing the assessments?

Lord Freud: I accept that one of the issues around the disability element is that we have a fairly one-size-fits-all approach. One thing that the new Secretary of State will be very interested to hear is how best to manage the process in the light of that complexity—I know that he is very aware of it. I have tried to deal with the Motability issue. It is different people who are getting that and it is based on a better test; PIP is a better test than DLA. We are putting a lot of resource into assessments and their quality is now showing some good improvement.

Lord Kirkwood of Kirkhope (LD): My Lords, I am pleased that the Minister paid tribute to the outgoing Secretary of State for Work and Pensions. He is a man I have known over many years and he had a sense of mission, which I think we should acknowledge. I hope that the new Secretary of State will have an equal sense of mission, particularly in relation to universal credit, which was, I think, what drove the past Secretary of State to distraction and out of his office. To me, universal credit is the most important thing that the Government still have to deliver. Will the Minister assure the House that the conversation that the new Secretary of State has announced in relation to disability will not delay the forthcoming White Paper process too long? I am in favour of consultation, and I am also in favour of the Government paying attention to consultative responses, but can he assure the House that the White Paper is still on track?

Lord Freud: I have known Stephen Crabb for a time. He was a Whip for the department and then he was in Wales, where he dealt with welfare issues. I have

[LORD FREUD]
high hopes for him in pursing the reform agenda. He is up for it and he will be pretty effective at it. I look forward to providing him with all the support that I possibly can in this agenda. Clearly, in getting this reform going, the conversation has to be balanced with the speed. He is conscious of that and will look to get something going at the fastest possible speed, commensurate with making sure that we get it right and get the views of quite a complicated set of constituencies.

Baroness Hollis of Heigham (Lab): My Lords, as my noble friend said, I think the whole House recognises the honourable way in which the Minister has behaved over recent days. I would like to associate myself with her remarks to that effect. However, I want him to return to the answer that he gave to one of her questions: she asked whether he would accept that the original decision to cut PIP was wrong. Listening to the Minister, I think he appeared to suggest that what was wrong—he used the word "wrong"—was its conjunction in the Budget with reduced wealth taxes for the better off. Do I understand from that that according to the Minister, had it not been conjoined with those Budget changes benefiting the better off, he would have supported, welcomed and gone ahead with the PIP changes?

Lord Freud: The noble Baroness deals me a compliment with one hand and a blow with the other in the way that I enjoy so much, as a masochist. I am not sure it is worth chewing over what I thought last week. We could do it, but I am not sure that it would be a valuable use of *Hansard* inches.

Baroness Hollis of Heigham: To clarify, it was what the Minister said—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, this is not a debate; it is a Statement. The noble Baroness has asked her question and my noble friend is responding to it. He will respond to it in one go and then we will move on to the next question.

Lord Freud: We were told by Paul Gray, who did a study of this, that there was something going wrong with the way that the aids and appliances element was adding up. There were eight different categories and the points were tiered up. He thought that that was not going right and that a large number of people were getting PIP purely on this one category—that the figures were adding up in an odd way. That is what the consultation was about: it was driven by the need to make sure that it worked. When it got wrapped up into a debate on savings, that was not the driving force and it became something that was not acceptable to Conservatives in the Commons. It was decided, therefore, that we would not go ahead with it. That is the honest and full answer.

Baroness Lister of Burtersett (Lab): My Lords, I welcome the Minister's Statement. When he said that there would be no further social security cuts looking ahead, does that mean that there will be no further cuts for the lifetime of this Parliament, as was asked by the noble Baroness, Lady Manzoor? Having paid tribute to his former boss, could the Minister say whether he agrees with him that the reduction in the welfare cap following the election was arbitrary and that therefore he—Mr Iain Duncan Smith—no longer could support it?

Lord Freud: The Statement said—and I think I need to stay very close to the Statement—that there will not be any further welfare savings. That is the Statement and I will leave it at that. What happened with the review of the level of the cap was that it came down post-election. However, that was not arbitrary: it reflected the level of welfare payments in those categories and was fixed at that level with a projection that ran the same way. If that sounds complicated, it is because it is quite complicated.

Immigration Bill

Report (3rd Day) (Continued)

7.47 pm

Amendment 120

Moved by ***Lord Hylton***

120: After Clause 63, insert the following new Clause—

"Family reunion: persons with international protection needs

(1) Rules made by the Secretary of State under section 3 of the Immigration Act 1971 (general provisions for regulation and control), shall, within six months of the passing of this Act, make provision for—

(a) British citizens and persons settled in the UK to be enabled to sponsor their children, grandchildren, parents, grandparents, spouses, civil or unmarried partners, or siblings, who are persons registered with the Office of the UN High Commissioner for Refugees or with the authorities responsible for the protection of refugees in the State in which they are present, to come to the UK on terms no less favourable than those under rules made under that section which apply to family members of persons recognised as refugees, save that it may be provided that those sponsored shall have no recourse to public funds; and

(b) applications for refugee family reunion from the children, grandchildren, parents, grandparents, spouses, civil or unmarried partners, or siblings of persons recognised as refugees or who have been granted humanitarian protection in the United Kingdom.

(2) An order shall be made by the Lord Chancellor under section 9(2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (general cases) in respect of family reunion for the persons described in subsection (1) within six months of the passing of this Act."

Lord Hylton (CB): My Lords, I thank the right reverend Prelate the Bishop of Southwark and the noble Baroness, Lady Hamwee, who have both signed my amendment. When we debated family reunion in Committee, the only crumb of comfort that the Minister could offer was that the relevant application form had been simplified and better guidance provided for caseworkers. For that small mercy, I am grateful.

Since the official text of the Dublin III regulation, which I have seen, runs to some 13 or more pages of official prose, it is very difficult for laypeople to understand. It was disappointing that the Government saw fit not to accept the very mild amendment from the Labour

Front Bench that simply asked for a review of the rules governing family reunion to be laid before Parliament. For this reason, I feel fully justified in bringing back my earlier amendment. This benefits only those people already registered as refugees or in clear need of international protection. It therefore chimes in with government policy to help the more vulnerable people to come to Britain.

The effect of Amendment 120 would be to assist families that are already split, with some members here and others overseas. By widening the categories it would prevent additional families becoming split; for example, by the current exclusion of children over the age of 18. It seems important to make family reunion possible for children of all ages—including adopted children, who are often currently refused. It should be possible also for parents, grandparents, siblings and civil spouses. In all cases, it could be a condition that there be no recourse to public funds. Your Lordships may have noticed the case of Mrs Myrtle Cothill, aged 92, who recently won the right to remain here despite Home Office opposition. Subsection (2) of the proposed new clause is important for securing legal aid for this category of refugees.

It can hardly be said that the Dublin process has been a resounding success. How are refugees to know about it? Let us take as an example those in the north of France. Most of them cannot speak French, and anyway distrust all officials, whether French or English. They and other split families need a simple, well-publicised procedure that overcomes a lack of knowledge of where close family members are and how to contact them.

Ideally, those in Britain should be able to sponsor their next of kin, while those overseas should be enabled to contact a central clearing house. This would prevent what the Minister calls "hazardous journeys", both cross-channel and from further afield. It would prevent people falling into the hands of traffickers and supply safe and authorised routes.

It may be argued that the Secretary of State already has discretionary power to give exceptional leave to enter or remain outside the normal rules. However, as the noble Baroness, Lady Hamwee, pointed out earlier, that power is used very sparingly, with only 12 cases known in 2014. Has the Minister a more recent figure than that? Once again, I ask: how can split families know that such a power exists? Further difficulties arise over access to British embassies and consulates, travel to which can be expensive or impossible. Even those who can reach our posts face heavy fees for visas and problems of documentation.

The British Red Cross laid out eight feasible improvements in its briefing dated January of this year. Have these been discussed and, if so, with what result? When I put down a Written Question calling on the Government to meet the Red Cross, the reply was, "We are constantly in touch". I think that we are entitled to know what has happened.

There is strong support for the amendment throughout the country. It is backed not only by the Red Cross but by Save the Children, Amnesty International, the Refugee Council and the Immigration Law Practitioners' Association. Taken together, these organisations have more members and supporters than the Conservative Party. I said in Committee that increasing family reunion provides a triple benefit: to the families themselves; to social cohesion in our communities here; and to the Government by increasing family incomes and reducing demands on statutory services. The Government's offer to take in 20,000 Syrians who have been approved by the UNHCR looks good, but will they ask the UN body to give priority to family reunion cases, even where the relationship may be more remote than is set out in the amendment? We want happy families, not just families who will be sad and isolated when they come here.

I realise that this amendment may be too widely drawn and is sure to draw the fire of my noble friend Lord Green of Deddington. If that is the case, I urge the Minister to take the amendment away. Either he can give us positive assurances that the procedures for family reunion will be radically improved without delay or he can undertake to come back with a text for Third Reading which puts the matter beyond doubt. I would particularly like to hear the Government's thinking on involving the UNHCR in family reunion and on the chances of having a clearing house for applications from overseas. I do not propose to press this amendment, but I understand that Amendment 122A, which I also support, may well go to a Division. I beg to move.

Lord Alton of Liverpool (CB): My Lords, my Amendment 122A, which my noble friend Lord Hylton has just referred to and to which he and the noble Lords, Lord Rosser and Lord Roberts of Llandudno, are also signatories—to whom I am grateful—seeks to address the inadequacies of the existing rules on family reunification to prevent families being torn apart and loved ones left behind because of age. It is an issue which we debated extensively in Committee and, in returning to it, I will try to be succinct and simply tell the House what makes this amendment different from that just described.

The Red Cross has provided me with case studies which eloquently illustrate why such a change is necessary, and I am happy to make them available to any Member of your Lordships' House but particularly to the Minister, who I know has not only been doing sponsored walks for Save the Children, as we heard in relation to an earlier set of amendments, but has done a sponsored walk for the Red Cross as well, walking most of the way across China. So I know that he has great admiration for those organisations. I shall not take the time of the House this evening by going through those examples, but I commend them to him. My noble friend has also set out the points about Dublin III and how the rules apply in that context, so I shall not exhaust the time of the House on that either.

Like the amendment tabled by my noble friend and those tabled in the other place—I pay tribute to the right honourable Yvette Cooper MP and those who have championed this cause in the House of Commons—Amendment 122A seeks to reunite those families but through a very different approach from that proposed in the amendments tabled previously. Instead of expanding the categories of family members who would qualify under the existing family reunion route, the amendment proposes a limited resettlement scheme based on schemes already operated, such as the Syrian vulnerable persons resettlement scheme. The scheme would be specifically

[LORD ALTON OF LIVERPOOL]
for the purposes of reunited family members and priority would be made for those family members who are currently unable to access existing routes to family reunification.

Amendment 122A seeks to address a key concern of the Government: the difficulty in determining how many refugees might be entitled to come to the UK if eligibility for family reunion were widened. The amendment provides for a managed and limited programme of resettlement specifically for the purposes of family reunification and it would provide a legal, safe route for families to be reunited while limiting the number eligible through such a route. Indeed, Amendment 122A is intended for family members in clear need who have no route to reunion under the existing rules. It states that those covered should include children—adult or minor, grandchildren, parents, spouses, civil or non-marital partners and siblings, and that the scheme should apply to family members of both refugees in the UK and British citizens whose family member has fled conflict or persecution.

The amendment would apply to refugee family members in Europe, such as those in Idomeni or Calais, as well as in Syria and other regions. Your family remains your family, whether in Beirut or Calais, and as the Red Cross and others will testify, the need is no less great.

Under this provision, the Secretary of State would be able to set a limit on the numbers accepted through this route after consultation, and surely that is the key concern of people like my noble friend Lord Green. He has raised the point during our proceedings. Clearly this goes nowhere near as far as the amendment tabled by my noble friend Lord Hylton, but it is a genuine attempt to meet the Government's concerns about open-ended commitments. Any number set would be in addition to the existing commitment to resettle 4,000 a year for five years from the camps around Syria.

It has been noted that the family reunion rules provide for a discretionary category which can sometimes apply to other family members in compelling and compassionate circumstances. Ministers have taken a position that these rules are sufficient to reunite those families which do not fall within the existing narrow categories, but the reality is that this has always been an exceptional and little-used category. The number of family members admitted through this route has in fact fallen during the refugee crisis. In 2011 some 77 were admitted in this way, and as my noble friend and the noble Baroness, Lady Hamwee, have pointed out, in 2012 that number had fallen to just 12.

8 pm

Viscount Hailsham (Con): Would the noble Lord clarify subsection (3) of the proposed new clause, where I see that the word "may" is used? Is it contemplated under this amendment that those persons falling within the categories shall be admitted, or is it contemplated merely that the power to admit is discretionary?

Lord Alton of Liverpool: I am happy to reassure the noble Viscount that it is the latter. That is why it does not use the word "must"; it is purely discretionary. It is deliberately designed in that way to meet the concerns that the Government have expressed. It does not go as far as I personally would wish it to and it does not go as far as the amendment moved by my noble friend, but it is an attempt to open up the possibility of helping families in this predicament.

Let me conclude by saying that this is an exceptional measure for exceptional times. It does not seek to change the rules in perpetuity; rather, it would provide a solution for those families which have been torn apart by the present crisis. It would provide a managed route to reunite refugee families and to allow British citizens who are desperately worried about loved ones stuck in conflict regions or makeshift camps across Europe the opportunity to be reunited. It also leaves the final decision, reverting to the point made by the noble Viscount, in the hands of the Secretary of State. I hope that if the Government are unable to accept my noble friend's amendment, they will respond to this amendment in the spirit in which it has been tabled.

Baroness Lister of Burtersett (Lab): My Lords, I rise to support the amendment. I was going to talk about the human rights implications, but given how the time is getting on I shall simply quote from one of the many emails that I am sure we have all received imploring us to support one of these family reunion amendments. This email rather touched me: "I have a very personal reason for my concern in that my family were privileged to foster a 14 year-old boy from Afghanistan for five months. He has now moved to an area of England where there are other people who speak his language, but he became such a special part of our family and we remain in very regular contact with him. His story was truly heart-breaking. His mother had been killed and he had been injured by the Taliban when he was 10 years old, and then in recent months his village in eastern Afghanistan had been targeted by Daesh/Islamic State who were forcing teenage boys to fight for them. His father felt there was no choice but to arrange for him to leave, otherwise he faced almost certain death. We have the utmost admiration for this boy. His courage and determination are just amazing and he is trying so hard to make a new life for himself. We are extremely proud of him and know he will be an amazing asset to this country. His sadness at being parted from his family is beyond comprehension, however, and that is where I would like to appeal to you". I replied and in the response I received the lady said: "I have never before felt moved to contact anyone in this way, but this subject has affected me hugely".

I take great heart from the fact that there are members of the public with direct experience and who care so much. I hope that we will do the right thing if it comes to a vote.

The Earl of Sandwich (CB): My Lords, I have one brief question for the Minister, who is going to rehearse the various stages of the resettlement schemes over the past few years going back to before he came to the Front Bench. Is it not the case that the Government dragged their feet rather with the original UNHCR resettlement scheme, which would have been very similar

to the scheme before us? Could he not therefore make up the ground, because I think the Government have already made their decision?

Lord Green of Deddington (CB): My Lords, the noble Lord, Lord Hylton, has correctly anticipated the thrust of my response to his amendment. There are of course provisions in the Dublin regulations for uniting refugee families and they are being implemented, albeit very cautiously—I accept that—but this amendment throws caution to the wind.

Subsection (1)(a) of the proposed new clause in Amendment 120 provides for almost any relative of a person settled in Britain to be treated as a refugee and admitted to the UK. All he or she would need to do would be to register as a refugee with the UNHCR, so there would be little of the careful investigation of individual circumstances that applies to those who claim asylum in Britain. We would in effect be outsourcing decisions on refugee status as well as risking the development of very large numbers indeed. The second part of the proposed new clause, subsection (1)(b), is not much better. Almost any relative of someone granted refugee status in Britain would automatically be admitted, irrespective apparently of their particular circumstances.

Let us not forget that, in the past 10 years alone, some 87,000 people have been granted asylum or humanitarian protection in Britain. This amendment would throw open the door to literally hundreds of thousands of people, whether or not they themselves were in danger. Let us not forget either the question of cost, which in this context I will raise. The costs are huge. Those granted refugee status are entitled to full access to the benefits system, to the National Health Service and to social housing, where they tend to get priority because their needs are probably greater than those of many of the indigenous population. I find it surprising, actually, that such a proposal should be made when Europe is almost overwhelmed by enormous numbers of refugees and asylum seekers making their way to this continent.

I think that the amendment should be firmly resisted, but Amendment 122A is a much more realistic proposal. The fact that it uses the word "may" rather than "must" is a help, and it sets a number, which is also a help. We have to recognise that whatever limit is set would come under pressure, but it seems to me a viable start, whereas Amendment 120, in my view, is not.

The Lord Bishop of Norwich: My Lords, I rise to speak briefly in the absence of the right reverend Prelate the Bishop of Southwark, who is a co-sponsor of Amendment 120. I will not repeat the cogent reasons for the amendment set out so well by the noble Lord, Lord Hylton, but I will offer one observation which I think also applies to the amendment proposed by the noble Lord, Lord Alton.

There is one outstanding reason for these amendments. It is that stable families make stable societies, which in turn make for a more stable world. Do we appear to believe this? A visitor from another planet attempting to understand our Immigration Rules—it would need to be a very intelligent life form to do so—but it would be unlikely to conclude that we did all we could to enable family reunion; quite the reverse. What sort of system permits refugees to be reunited with children aged under 18 with spouses or partners, but children who are recognised as refugees have no similar right to be reunited with their parents? They must rely on discretionary provision, which is frequently not given. Hence a child granted refugee status may have to endure prolonged family separation. The argument for this anomaly, which is the most polite way of referring to it, is that to grant family reunion will feed the practice of people smuggling and may cause hazardous and dangerous journeys to be undertaken. The probability must surely be that illegal means of travel and entry are more likely to be attempted than less.

Reuniting a family creates the sort of economic, social and emotional support that people need. It may well save money from the public purse that would otherwise be expended on dealing with the traumas and mental unhappiness caused by enduring family separation. I believe that the present rules do families no service and do our society no good. I hope that the Minister will look favourably on the spirit of these amendments and upon the value of family life as well.

Lord Rosser (Lab): My Lords, I shall speak to Amendment 122A, since my name is associated with it. Some 2,000 refugees are currently arriving in Greece on barely seaworthy boats every day. According to the UNHCR, the majority are now women and children, fleeing the fighting in Syria and around the Iraqi border. Some 4.8 million Syrians have been displaced since the war began.

The existing rules on family reunion simply were not designed to cope with such a mass and, at times, chaotic exodus of people, which tears families apart and potentially leaves individuals in pretty desperate circumstances. Under the Immigration Rules, people granted refugee status or humanitarian protection in the UK can apply to be joined by family members still living in other countries. However, there are a number of restrictions about which family members qualify for family reunion. For adult refugees in the UK, only partners and dependent children under the age of 18 will usually come under the definition of "family". As a result, families can be left with the invidious choice of whether to leave some members behind.

Amendment 122A seeks to provide an immediate route to reunite, in a managed and controlled way, those families caught up in the crisis. The Secretary of State would specify the numbers to be resettled through the scheme after full consultation with key stakeholders. The amendment would provide for that in a managed way on the basis of current resettlement programmes. It allows British citizens, as well as recognised refugees in the UK, to be reunited with family members through the programme, but, crucially, any number specified would be in addition to the Government's existing commitments on resettlement.

The amendment does not distinguish between refugee family members who have made it to Europe and those stuck in the region—people do not cease to be part of a family based on where they are in the world. It would help to prioritise those cases of family members who fall outside the existing rules and find themselves in desperate situations. We believe that Britain can do,

[LORD ROSSER]
and should be doing, more in this unprecedented crisis, which the amendment would enable the Government to do through the Secretary of State. Four thousand Syrian refugees resettled a year—none from within Europe—is certainly a start and I do not wish to stand here and suggest that it is not a real contribution, but one is entitled to ask whether it is enough when that number arrives in Greece over the course of just two days.

We support the amendment and we will vote for it if the mover, having heard the Government's response, decides to test the opinion of the House.

Baroness Hamwee (LD): My Lords, my name is to the amendment moved by the noble Lord, Lord Hylton. I prefer it to the amendment spoken to by the noble Lord, Lord Alton, but either is considerably better than the current situation. If the noble Lord, Lord Alton, decides to divide the House, we on these Benches will be with him. It seems to me that the Section 59 referred to in his amendment is designed for exactly this sort of situation, had anyone been able to envisage it. Children without their parents who have got to the UK alone are refugees, so by definition cannot return to their country of origin, but their being unable to be with their parents is a situation that I am sure no noble Lord would want to envisage.

When we debated the matter in Committee, the Minister gave a number of defences to the current position, including:

"Our policy is more generous than our international obligations require".

The vote on the previous amendment—a comparison was made in the debate on that between our generosity and that of others—answers that point. The Minister also said:

"Allowing children to sponsor their parents would play right into the hands of traffickers and criminal gangs and go against our safeguarding responsibilities".—[*Official Report*, 3/2/16; col. 1881.]

The issue of safeguarding can be argued either way; there are problems of safeguarding whether you do or whether you do not in this situation. I prefer the right reverend Prelate's logic.

On family sponsorship, where the more distant family of a refugee is here, it seems illogical in many ways not to allow aunts, uncles and so on to sponsor people to come here because it must lead to much faster integration, address the numbers to an extent—given the numbers, we should use what opportunities there are—and be obviously the right thing to do. There would be fewer safeguarding issues in that, although I would not claim that there are none.

Finally, I should not ask a question at this stage unless I know the answer, but I understand that family reunion is a matter of international law—despite my pile of papers I do not have all the detail with me. If the Minister can assist the House on that I would be grateful.

8.15 pm

The Minister of State, Home Office (Lord Bates) (Con): My Lords, I thank the noble Lords for enabling this debate. We have had another passionate debate about refugee family reunion, as we had in Committee and, of course, as we had on the previous group of amendments. It is a central part of the UK's asylum policy and of our approach to the collective effort needed across Europe and beyond to manage the consequences of the conflict in Syria and elsewhere as well as we can. We recognise that families may be separated due to conflict and persecution and the speed and manner in which asylum seekers often flee their country. Of course, we understand the motivation of those in the UK who want to be reunited with their extended family members.

We already have several ways in which a family can be reunited in the UK, including existing resettlement schemes, so we are not persuaded of the need for another resettlement scheme. First, our refugee family reunion policy allows immediate family members of those granted protection here, who were part of the family before the sponsor fled their country, to reunite in the UK. This reflects our obligations, to which the noble Baroness referred, under the refugee convention. We also work closely with the UNHCR to resettle families together under the Syrian resettlement scheme, which will benefit 20,000 of the most vulnerable people. Under this scheme, family reunification is one of several vulnerability criteria used by the UNHCR, meaning that those with family links to the UK are among those prioritised for resettlement. On 28 January, the Government announced that we will work with the UNHCR on a new scheme to resettle unaccompanied children from around Syria and conflict areas where it is in the children's best interests to do so.

In addition, British citizens and refugees in the UK can sponsor family members who themselves are recognised refugees under our mandate resettlement scheme. Under our refugee family reunion policy, we have reunited many refugees with their immediate family and will continue to do so. We have granted more than 21,000 family reunion visas in the last five years, from 2011 to 2015. That is not a small number and it is likely to increase in line with the numbers of recognised refugees in the UK. That is an essential but also a responsible and sustainable part of our overall asylum policy and our contribution to supporting those affected by the conflict in Syria and elsewhere.

Alongside these provisions, the Immigration Rules enable British citizens and persons settled in the UK to sponsor their spouse or partner and children under 18 to join them here, where they make the appropriate entry clearance application and meet the relevant criteria. This reflects our obligations under Article 8 of the European Convention on Human Rights. The family rules also cover those with refugee leave or humanitarian protection status to sponsor a spouse or partner with whom they formed a relationship after they fled their country of origin. Where an application fails to meet the requirements of the rules, our policy requires consideration of exceptional circumstances or compassionate factors for granting a visa outside the rules. This can include reasons why extended family members should join a refugee here. This is an important addition and I give a commitment today that we will review the policy guidance rigorously to make sure that it is clear for caseworkers that this includes some of the exceptional cases that have been highlighted here.

The noble Lord, Lord Alton, mentioned that he has had some case studies from the British Red Cross. We would be very interested to receive those and to look at them. This policy is already more generous, as has been mentioned, than our international obligations require and than many other countries provide. Some EU countries require up to two years' lawful residence before an individual becomes eligible to sponsor family members, and impose time limits on how soon family members must apply. There are indications that some EU countries are moving towards more, not less, stringent requirements in this regard, because they understand the impact this is likely to have on where someone chooses to claim asylum.

The noble Lord, Lord Hylton, and others made a powerful case based on compassion. It is right that such arguments should weigh heavily in this debate, but the Government are charged with the responsibility of maintaining the viability and effectiveness of the UK's asylum system as a whole. We must consider the interests of genuine claimants relying on us to decide their protection claim in a correct and timely fashion. It is because of that principle that the Dublin regulations make specific provision to unite children who claim asylum in another member state with their parents or other relatives, where they can take care of the child and it is in the child's best interests to bring them together. It is clearly in the best interests of asylum seekers, children or adults, to claim asylum in the first safe country they reach so that they can be provided with assistance there and do not seek to travel further across Europe.

Our policy prevents children with refugee status sponsoring their parents to join them. It does so for very good reasons. We simply cannot create perverse incentives for children to be encouraged or even forced by their families or others to risk hazardous journeys to the UK. As Save the Children points out, many children are feared to have fallen victim to human traffickers and people smugglers. These criminals will seek to exploit the very compassion that lies behind the proposed amendment, and allowing child refugees to sponsor relatives would play right into the hands of the criminal gangs and undermine the safeguarding responsibilities that we seek to uphold. We must not create a situation that encourages children to risk hazardous journeys to and across Europe, which have already, tragically, cost so many lives.

Turning to some of the questions I was asked during the debate, the noble Lords, Lord Hylton, and Lord Alton, asked whether the current process for applying for family reunion is too complex. We are currently reviewing the process for dealing with family reunion applications, in consultation with the Ministry of Justice and the Foreign and Commonwealth Office. We have already accepted recommendations made by the British Red Cross in its report, published on 9 July 2015, *Not So Straightforward: The Need for Qualified Legal Support in Refugee Family Reunion*, on simplifying the application form and providing consistent, accessible guidance. We are improving our guidance to caseworkers and redesigning the application form to ensure that applicants better understand the process behind it.

Questions were asked whether the Dublin arrangements were working. The UK has fully implemented the Dublin III regulation and we think that the arrangements are the right way to provide consistency of approach across the whole EU in dealing with asylum applications. The European countries in which they arrive have a duty to provide adequate protection to those in their territory. If they claim asylum in another EU country and have close family already in the UK, the family reunion provisions of the EU Dublin regulation provide a route for asylum seekers to join them.

We recognise that some European countries face particular pressures on their asylum and border systems, which is why the UK has been active in providing practical operational support, bilaterally and via the EU and its agencies, to countries such as Greece, Italy and Bulgaria. This support includes more than 1,000 days of asylum experts deployed as part of the European Asylum Support Office.

The noble Lord, Lord Alton, asked why British citizens cannot sponsor a family member under the family reunion criteria. Only those with refugee or humanitarian protection status are entitled to sponsor immediate family members under family reunion provisions, which means that they do not need to meet the same financial or language requirements as those applying under the family rules. This policy recognises that refugees may need more time to integrate into society following the grant of refugee status. Family members of British citizens can apply for entry clearance to come to the UK under the family Immigration Rules. Where an entry clearance application does not meet the requirements of the Immigration Rules, the entry clearance officer must consider whether there are exceptional circumstances or compassionate reasons, such as I have previously referred to, to justify granting entry clearance outside the rules.

The right reverend Prelate the Bishop of Norwich talked about family reunion. We are certainly of one mind in saying that families are crucial and that, except in exceptional circumstances, the children's best interest is always to remain with the family. That is one of the reasons why the UNHCR, which very much concurs with that view, proposed that family members would do better to seek refuge in the region within their family rather than one member of that family coming to another country. Therefore, the policy that we have developed for the Syrian vulnerable person resettlement programme is that of bringing families together. I would have thought that would be widely welcomed, because we do not just look after one person but bring the whole family together. Of course, that very much helps them to integrate into the local community and gives them that support network. Equally valuable is encouraging children to be reunited with their families in the region, if that is practical. We work with the UNHCR in seeking to do that.

In answer to a specific question about why we treat children differently from adults, effectively the policy is determined on the basis of dependency. A child is obviously dependent on their parents, so that drives the policy that says that they ought to be reunited. Of course, the parents are not necessarily dependent on the child in the same way. That is the reason for the difference in approach. The amendment proposes to draw that boundary even wider than parents being able to bring in their children. It could allow a child

[LORD BATES]
who arrives in the UK to bring in probably not grandchildren but certainly parents, a spouse, civil or non-marital partners and siblings, which is a significant widening of the scheme.

We discussed what other assistance the UK has offered to Syria in previous debates, and I will not go through it at length. Suffice to say that we have on record the very significant financial contribution that we have made and the comparative effectiveness of our resettlement programme in having brought 1,000 people to this country, whereas the European resettlement programme has managed to resettle only half that number among 27 countries in the European Union.

The noble Lord, Lord Rosser, asked whether there was a managed resettlement system for refugees. An avenue is already available under the existing resettlement programmes mandate and the Syrian resettlement scheme. Allowing child refugees to sponsor relatives would play right into the hands of the criminal gangs and undermine the safeguarding responsibilities that we are seeking to uphold. We must not create a situation that encourages children to risk hazardous journeys to and across Europe. Equally, we already have resettlement schemes providing a route to the UK for the most vulnerable of those affected by conflict. These are, by design, focused on offering resettlement from regions in conflict instead of from the safety of other European countries, and that has to be the right approach. We do not, alas, have infinite resources and public services, so we must strike the right balance, and we have done so, with the particular proviso in relation to the Red Cross that we have considered very carefully the points raised about the operation of the scheme and whether there is a need for a better application process and clearer understanding. We are working with the Ministry of Justice, the Foreign and Commonwealth Office, the British Red Cross and others to develop that. In the light of those changes and the reasons I have given, I ask noble Lords to consider withdrawing the amendment.

8.30 pm

Baroness Hamwee: I may have missed it, but the noble Lord, Lord Hylton, asked the Minister whether he had an update on the figures for grants outside the rules on the basis of exceptional, compelling, compassionate circumstances. The year before last it was 12. Can the Minister tell us the updated figure?

Lord Bates: I do not have those updated numbers, but I will be happy to write to the noble Baroness. I mentioned a figure of 21,000, but that referred to the whole group of family reunion cases that came to the UK between 2011 and 2015.

Lord Hylton: My Lords, I am grateful to the Minister. He gave me one more small crumb of comfort when he spoke about a government review of cases and the discretion that is available to entry clearance officers. On the review, I ask Members of your Lordships' House, and of the other place, to send into the Home Office the maximum number of difficult, hard and compassionate cases. I hope that the organisations outside this House that have supported this amendment, and that tabled by my noble friend, will do the same. I hope that entry clearance officers will get clear instructions to consider the best interests of any children they may come across who are applying through them.

I beg leave to withdraw Amendment 120.

Amendment 120 withdrawn.

Amendment 121

Moved by ***Lord Alton of Liverpool***

121: After Clause 63, insert the following new Clause—

"Conditions for grant of asylum: cases of genocide

(1) A person seeking asylum in the United Kingdom who belongs to a national, ethnical, racial or religious group which is, in the place from which that person originates, subject to the conditions detailed in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, shall be presumed to meet the conditions for asylum in the United Kingdom.

(2) The adjudication of whether the group to which the person seeking asylum belongs meets the description specified in subsection (1) shall be determined by a referral to the High Court after consideration of the available facts.

(3) Applicants for asylum in the United Kingdom from groups designated under this section may submit their applications and have them assessed at British missions overseas."

Lord Alton of Liverpool: My Lords, serendipity, or the way the dice fall, means that the House is having to hear rather more from me than I—or, no doubt, the House—would wish at this time. I thank my noble friend Lady Cox, the noble Baroness, Lady Kennedy of The Shaws, the noble Lord, Lord Forsyth of Drumlean, and the noble Baroness, Lady Nicholson, for their support on this amendment, either today or when we discussed it in Committee on 3 February.

Before setting out the case for the amendment, I draw the attention of the House to one important change in the wording since Committee, following the helpful advice of the noble and learned Lords, Lord Judge and Lord Hope of Craighead. They suggested that the consideration of evidence of genocide and the declaration that genocide has been committed should be made by the High Court, rather than the Supreme Court. We have therefore incorporated that change into the text. I also thank the Minister for meeting me to discuss the amendment.

During the debate on 3 February, I cited the decision of the Parliamentary Assembly of the Council of Europe to declare the atrocities which had been committed by ISIS—Daesh—against Christians and Yazidis in Iraq and Syria to be a genocide. The very next week, the European Parliament decisively passed a similar resolution, recognising the killing of minorities in the region as genocide. Since our Committee debate, on 9 March Congress and the State Department received a 300-page report detailing more than 1,000 instances of ISIS deliberately massacring, killing, torturing, enslaving, kidnapping or raping Christians. It had similar evidence about the plight of Yazidis, along with the findings of the International Association of Genocide Scholars.

Last week, the American House of Representatives, by 393 votes to zero, declared that grotesque and targeted beheadings, enslavement, mass rape and other

atrocities against Christians and other minorities indeed constitute a genocide. I will not read the entire resolution of the House of Representatives but the last phrase says that,

"the atrocities committed against Christians and other ethnic and religious minorities targeted specifically for religious reasons are, and are hereby declared to be, 'crimes against humanity', and 'genocide'".

Later in the week, on behalf of the White House, Secretary of State John Kerry, said:

"Naming these crimes is important",

and that Daesh, in targeting these minorities with the purpose of their annihilation, is,

"genocidal by self-proclamation, by ideology and by actions"—

in what it says, what it believes and, indeed, what it does. He called for criminal charges to be brought against those responsible.

On Friday last, in a leading article, the *Daily Telegraph* urged the British Government to recognise the reality of what is under way, saying that the West has a "moral duty" to name this genocide for what it is. It said:

"Sadly, the British government still refuses to do this, insisting that it is up to judges to define genocide. Next week a group of peers will table an amendment to the immigration Bill triggering just such a judicial decision. Government opposition to this amendment would seem odd following Mr Kerry's intervention".

For many months, much of the same evidence that Congress and the European Parliament have seen and acted upon has been available to the United Kingdom Government and this Parliament. It has been catalogued in Early Day Motions tabled in another place, during evidence-taking sessions here, and in letters to the Prime Minister from distinguished and eminent Members of both Houses, including the former Lord Chancellor. Anyone who has heard first-hand accounts from Yazidi women of enslavement and rape or read the reports of mass graves, abductions, crucifixions, killings and torture cannot fail to be moved, and I know we will hear more on that from the noble Baronesses, Lady Nicholson and Lady Kennedy of The Shaws, who have both met Yazidi women.

Last week, Antoine Audo, the Chaldean Bishop of Aleppo, said that two-thirds of Syrian Christians had either been killed or driven away from his country. Zainab Bangura, the United Nations special representative on sexual violence in conflict, has authenticated reports of Christian and Yazidi females—girls aged one to seven—being sold, with the youngest carrying the highest price tag. Last May, one 80-year-old Christian woman who stayed in Nineveh was reportedly burned alive. In another Christian family, the mother and 12 year-old daughter were raped by ISIS militants, leading the father, who was forced to watch, to commit suicide. One refugee described how she witnessed ISIS crucify her husband on the door of their home.

Nearly two years ago, on 23 July 2014, I warned in an opinion piece in the *Times*:

"The last Christian has been expelled from Mosul … The light of religious freedom, along with the entire Christian presence, has been extinguished in the Bible's 'great city of Nineveh' … This follows the uncompromising ultimatum by the jihadists of Isis to convert or die".

I said that,

"the world must wake up urgently to the plight of the ancient churches throughout the region who are faced with the threat of mass murder and mass displacement".

But the world did not wake up and for those caught up in these barbaric events, the stakes are utterly existential.

Genocide is never a word to be used lightly and is not determined by the number of people killed but by specific genocidal intent. The position of the British Government has been to insist that declarations of genocide are not made by the Government but by the international judicial system, yet there has been no referral of any evidence by the Government to any court in Britain or elsewhere. This has become a circular argument which can be ended only by Parliament.

The Government's position was reiterated in another place last week, when the Minister of State for International Development, Mr Desmond Swayne, was on the verge of misleading the House with a Parliamentary Answer that only states could commit genocide. He said:

"I believe that the decision as to what constitutes genocide is properly a judicial one. The International Criminal Court correspondent, Fatou Bensouda, has decided that, as Daesh is not a state party, this does not yet constitute genocide".—[*Official Report*, Commons, 16/3/16; col. 937.]

I hope the Minister will correct this today, or say whether it really is the position of the Government that no non-state party is capable of committing genocide under the 1948 genocide convention.

My understanding of what Fatou Bensouda actually said is that the ICC does not have territorial jurisdiction under the Rome statute over crimes committed on Iraqi or Syrian soil. This means that, in order to investigate, the ICC would need a referral from the UN Security Council. In fact, the prosecutor's statement in April last year appeared to lament the absence of a referral of the situation from the Security Council, and concluded with the assurance:

"I stand ready to play my part".

Surely, as a permanent member of the Security Council, we can trigger that by proposing a resolution. We should be leading the process, yet on 16 December last, in answer to a Parliamentary Question I tabled, the noble Baroness, Lady Anelay of St Johns, told me:

"We are not submitting any evidence of possible genocide against Yezidis and Christians to international courts, nor have we been asked to".

As for referring the matter to the International Criminal Court, she told me in the Chamber on the same day:

"I understand that, as the matter stands, Fatou Bensouda, the chief prosecutor, has determined not to take these matters forward".—[*Official Report*, 16/12/15; col. 2146.]

In these circumstances, the genocide convention becomes nothing more than window dressing, which is an insult to the original drafters and ratifiers, as "never again" becomes a hollow slogan devoid of meaning.

This brings me to the heart of the amendment. The United Nations General Assembly unanimously adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, in the wake of some of the worst atrocities in history. It was the culmination of years of campaigning by the Jewish lawyer, Raphael Lemkin, and recognised that "international co-operation" was needed,

"to liberate mankind from such an odious scourge".

[Lord Alton of Liverpool]

When we added our signature in 1970, it laid upon us the moral and legal duty to,

"undertake to prevent and to punish",

genocide—surely the crime above all crimes.

The minorities in the Middle East, whose very existence is under direct and immediate threat, deserve more than a promise that the international judicial system will investigate without any action to enlarge the said system. If the amendment passes, a judge from the High Court will be able to examine the available evidence and determine whether ISIS's actions should be recognised as genocide. That in turn would require the Government to take concrete steps to protect the victims of ISIS and seek to bring the perpetrators to justice. Our cross-party amendment seeks to establish a mechanism for the United Kingdom to determine whether acts of genocide are being perpetrated and would then afford those subject to genocidal acts appropriate consideration when it comes to application for asylum.

The provision would not oblige the Government to take in any more refugees than the number to which they have already committed themselves but, within that number, it would prioritise those who have been the victims of this crime above all crimes. It would enable declared victims of genocide to make their applications from overseas, and if the UNHCR is unable to facilitate this, we would expect British overseas missions to assist those affected. In light of the situation unfolding in the Middle East, where minorities are being annihilated before our very eyes, this is of vast importance.

I visited the genocide sites in Rwanda—a salutary and chilling experience. I am always struck that President Clinton and British Ministers of the day say that their failure to identify and take action to prevent that genocide, which led to the loss of 1 million Tutsi lives, was their worst foreign affairs mistake. In the past two years, two serving Foreign Secretaries have similarly lamented the failure of the international community to decry the genocides in both Rwanda and Bosnia quickly enough, despite the overwhelming and compelling evidence that existed. The noble Lord, Lord Hague, speaking as Foreign Secretary on the 20th anniversary of the Rwandan genocide, said:

"The truth is that our ability to prevent conflict is still hampered by a gap between the commitments states have made and the reality of their actions".

His successor, Mr Hammond, said last year that the horror of Srebrenica,

"demands that we all try to understand why those who placed their hope in the international community on the eve of genocide found that those hopes were dashed".

The reality has been that once it is recognised that genocide is being committed, serious legal obligations follow, and states have proved reluctant to engage with their responsibilities. There are really only two options here. If there is no genocide, our obligations under the genocide convention have not been triggered, but if there is, how could we sleep at night having disregarded the chilling lessons of past genocides and endless equivocating? Instead of doing everything in our power to bring this unmitigated suffering to an end, are we content simply to let these matters pass?

By passing the amendment today, we have an opportunity to prevent history from repeating itself, to close the gap between the commitment we made in ratifying the 1948 genocide convention and the reality of our actions, not to once again dash the hopes of beleaguered and abandoned people exposed to the crime above all crimes. We also have the opportunity to make a step change by moving beyond aerial bombardment to a consideration of justice, to demand that, under our commitment to the rule of law, however long it takes, we will bring those responsible for abhorrent mass executions, sexual slavery, rape and other forms of gender-based violence, torture, mutilation and the enlistment and forced recruitment of children to justice. I beg to move.

8.45 pm

Baroness Cox (CB): My Lords, in Committee, I gave my reasons for supporting the amendment and why I have no doubt that what is under way in Syria and Iraq is, in the strict technical sense of that word, genocide.

As my noble friend Lord Alton has reminded us, the Council of Europe, the European Parliament, the House of Representatives and US Secretary of State John Kerry have all come to the same conclusions. British public opinion agrees. A ComRes poll published this weekend indicated that 68% of British people agreed that Britain should use its international influence to ensure that these horrific events are classed as genocide. About two-thirds said that the current widespread killing is Britain's concern, that Britain should recognise it as genocide, raise it at the UN and conduct a formal inquiry into the claims of genocide. Only 7% disagree but, sadly, our British Government seem to side with this small minority.

That is why we have had to bring this all-party amendment to the House again today. It gives the Government an opportunity to be in accord with the majority of the British public, who have a long and respected record for standing up for victims of persecution. It would also prioritise help for those minorities who have been targeted for eradication by Daesh, which incessantly boasts of its determination to annihilate diversity.

As my noble friend said, the prosecutor of the International Criminal Court, Fatou Bensouda, has said that she stood ready to begin a genocide inquiry, but could not do so legally without orders from the UN Security Council, as Iraq and Syria are not signatories to the ICC's founding charter. I understand that the French Government are now considering tabling such a resolution. Perhaps the Minister will tell us whether that is so and, if they do, whether we may support them. As a permanent member of the Security Council, Britain could have tabled such a resolution, but has not, claiming that it is unable to declare genocide without a decision of the courts. However, as my noble friend emphasised, the Government have not asked the courts to make such a decision. That is why our amendment creates a route for the evidence to be considered by the High Court, so that we never again get into such a circular argument, which, if the circumstances were not so horrific and the human suffering so appalling, could almost be farcical.

Your Lordships may be aware that several of us, including a former head of our intelligence service and a former head of our Armed Forces, recently wrote to the Prime Minister. In his reply, David Cameron reiterated his belief that a declaration of genocide must be a matter for the judicial system, although the House of Representatives, the Council of Europe and the European Parliament appear to have been able to do so. He said:

"Not only are the courts best placed to judge criminal matters but their impartiality also ensures the protection of the UK Government from the politicisation and controversies that so often attach themselves to the question of genocide".

He added:

"It is essential these decisions are based on credible judicial processes.

The Foreign and Commonwealth Office have recently reviewed this long-standing position and I agree with their conclusion that there is no need to reconsider it at this time".

He also said that he could not,

"make specific promises about UK action through the Security Council or the International Criminal Court at this time".

Having heard first-hand, detailed testimonies, as my noble friend Lord Alton has described in great detail, of mass executions, mass graves, sexual slavery, rape and other forms of sexual and gender-based violence, torture, mutilation, forced recruitment of children, and confiscation of homes and land, I personally cannot understand the Prime Minister's position, so fundamentally incompatible with that of our American and European allies, who are convinced by the compelling, widely available and well-documented evidence. Our Government's position also leaves victimised Christians, Yazidis and those of other faiths bewildered by the UK's perceived lack of concern and support. John Pontifex of the charity Aid to the Church in Need, who was in Syria last month, says:

"Christians feel that they have been abandoned by the West as a whole, why they have been left to face the worst that extremism can throw at them ... It is a disgrace that it has taken so long but we are very grateful to John Kerry for having the guts and the stature to name it for what it is".

He argues that recognition of genocide,

"would throw a lifeline of hope and show that there are people who care about what has happened and are determined to bring these people to justice, sending a signal very clearly that the world will not tolerate this butchery".

It must be a priority to make it clear to those responsible for these barbarities that they will be brought to justice. Also, in accordance with the genocide convention, our amendment seeks to give refugees escaping from genocidal atrocities the ability to make an asylum application to the United Kingdom from overseas missions, as well as the existing opportunity to do so via the UNHCR. It is important to emphasise, as my noble friend already has, that of course the Government have the right and the power to impose a ceiling of total numbers. We are arguing that, within that number, genocide victims should be prioritised in accordance with the Prime Minister's commitment to accept 20,000 of the most vulnerable minority groups who have been singled out by Daesh because of their religion or race. We also know that those who have been targeted do not represent a security threat to the United Kingdom and that, unlike other categories of asylum seekers, there are no countries in the region where they will be secure in the long term. They have nowhere to go.

A hearing, chaired by my noble friend and myself, poignantly held on Holocaust Memorial Day, was told by Major General Tim Cross:

"Crucially, the various minorities in the region are suffering terribly. There can be no doubt that genocide is being carried out on Yazidi and Christian communities—and the West/international community's failure to recognise what is happening will be to our collective shame in years to come".

How will our silence be perceived by subsequent generations? Dietrich Bonhoeffer, the Protestant theologian executed by the Nazis, said:

"Silence in the face of evil is itself evil: God will not hold us guiltless. Not to speak is to speak. Not to act is to act".

I conclude by quoting a testimony given here at Westminster, one that could be multiplied many times over, the true story of a Christian pastor in Aleppo about a villager who was told to convert or he would die; he was forced to watch his 12 year-old son tortured before his eyes. Neither he nor his son renounced their faith, and both were executed. Perhaps, in this Holy Week, we who enjoy so many freedoms and privileges should use the liberties we cherish to demand justice and protection for those who are denied the same freedoms and who are being barbarically targeted for extinction. Not to do so, not to speak and not to act, would bring great shame upon us all. I hope, passionately, that this amendment will be accepted.

Lord Forsyth of Drumlean (Con): My Lords, I spoke in support of this amendment in Committee, although as the noble Lord, Lord Alton, said, it has been changed in the light of representations made by the noble and learned Lord, Lord Hope of Craighead. I invited my noble friend Lord Bates to throw away his brief, tear it up and go back to his department—and I see that he has thrown his brief to the noble and learned Lord, Lord Keen. Nothing that has happened since has done anything other than to underline the appalling atrocities that are occurring against Christians in Syria and Iraq.

As I came into the Chamber this evening, the noble Lord, Lord Alton, gave me this document, which is the report submitted to John Kerry by the Knights of Columbus. There are pages and pages of testimony of the most barbaric atrocities, of kidnappings, violations and extortions. Anyone who just glances at this document, which is incredibly harrowing, cannot but conclude that something must be done to stop this.

No doubt in reply my noble and learned friend may make some legal arguments about why the amendment may not be exactly right. I have followed the noble Baroness, Lady Cox, whom I admire immensely, as does everyone in all parts of the House, for her courage and perseverance in seeking out examples of injustice. Having listened to her speech, I say to my noble and learned friend that he would be wise also to abandon his brief and to go back to the Foreign Office and ask it how the European Parliament—not an organisation that I spend a lot of time praising—and Congress are able to take a firm view but this Government seem incapable of doing so and hide behind legalistic arguments which prevent us offering sanctuary to people who are

[Lord Forsyth of Drumlean]

facing real persecution. They are fleeing not just war but religious persecution, and they find themselves with nowhere to go.

The importance of recognising this for what it is—an appalling genocide—is that it enables us to stretch out a hand to these people, offer them sanctuary and get beyond the political correctness that says that we as a Christian country cannot offer sanctuary to Christians who are in real terror and despair. Many of these people use the language of Christ. If the parable of the Good Samaritan was about anything, it was about not passing by on the other side. I cannot share the expertise or the knowledge of the noble Baroness, Lady Cox, or the noble Lord, Lord Alton, but I urge all Members of the House and those outside the House to look at this document and the evidence and ask ourselves how much longer we are prepared to stand by and not acknowledge what is going on, which is a systematic attempt to destroy Christianity throughout the Middle East by people using barbaric medieval methods. It is essential that we find a way in which we can offer sanctuary to people who are victims. This amendment suggests a way in which that could be done, not just in terms of offering sanctuary but in bringing to justice those who have been responsible for these barbarous crimes. I hope that the House will feel able to pass the amendment or that my noble and learned friend will offer us a way forward which enables the Government to act and to not pass by on the other side.

Baroness Kennedy of The Shaws (Lab): My Lords, none of us who is pressing this amendment invokes the word "genocide" too readily. For most of us, this term will be forever associated with the atrocities of the Nazi concentration camps and the deliberate effort to exterminate the Jews during the Second World War. It is a word that carries incredible weight, and its importance cannot be diluted. We are taking about something of great seriousness when we talk about genocide.

"Genocide" has a specific legal meaning and the alarming truth is that, while genocidal violence has been perpetrated around the world since the Second Word War on a number of occasions, we find that very often there is resistance to using the terminology and a refusal to recognise genocide as genocide because it carries legal responsibilities with it. Noble Lords have heard a number of times that we have now heard the United States Secretary of State John Kerry, the United States Congress and the European Parliament all being of one voice about what is happening in the Middle East.

I remind the House that the 1948 genocide convention defines genocide as,

"acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group".

That is what is currently happening towards the Yazidi people, Christians and Shi'ites—anyone who refuses to convert. For the Yazidis it goes even further: because theirs is a pre-Abrahamic religious grouping, they are considered to be of lesser value, and in fact as less than human, in ISIL's interpretation of Islam. The testimonies we have been hearing are absolutely barbaric. A week yesterday, I met for the second time the Yazidi Member of Parliament Vian Dakhil. She has been trying to draw the world's attention to the plight of her people. I heard her account of spending time with families that are now in refugee camps and of the descriptions of what they have seen. Hundreds of men and boys have been slaughtered. Women and girls have been kidnapped from their families, some of them really very young children, and raped and raped again, continuously over months, their vaginas torn, then passed on and sold between men. She finds it hard to find words for what is happening. She says that these are girls who will never be able to have a proper family life when they grow into adulthood.

9 pm

So we are talking about genocide. We are talking about the destruction of a people and their ability to procreate. That is at the heart of some of the things that are currently happening. Some of the girls, as I say, are as young as seven, eight or nine. A few who have escaped are suffering from the most severe trauma. Doctors are visiting the refugee camps to try to work with some of the girls, but they do not have the facilities so cannot help them with the terrible traumatic effects—not just physical but mental, as I am sure noble Lords can imagine. Some feel that they can never be intimate with anyone ever again in their lives. Mrs Vian describes the mass graves that she has visited, the beheadings of children and the crucifixions that we have heard referred to by other noble Lords, and she cannot understand why western Governments are not being more vociferous about these horrors and naming them as genocidal atrocities.

Genocide requires a very high evidential burden. All of us lawyers working in the field know that no one doubts that these acts have to reach a very high legal threshold. However, these acts do just that. The constitutive acts of killing, causing bodily or mental harm, raping, preventing birth, and the forced transferring of people from their land all meet the legal requirements of genocide, so we should not be in any doubt that we are dealing with genocide here. We have to break the cycle of inertia that we have heard described.

It is for that reason that those of us who have put our names to this amendment are coming before this House to say, "Something has to be done". There are two purposes in the amendment. The first is to have a legal authority hear the evidence and make a declaration that what is happening against minorities in Syria and Iraq is genocide. The second is to establish under our immigration processes a scheme that would particularly prioritise those who face genocide. We are suggesting not that this should be a collecting together of every Yazidi person who exists in the world, but that within the cap that has already been set by the Government, who have spoken about giving places to 20,000 people, priority should be given to those who are as vulnerable as these victims are.

The Government have spoken about wanting to protect the most vulnerable. Who could be more vulnerable than the women, girls and children and the families we are hearing about, who have suffered in this way?

This is therefore a simple and humane amendment, which gives the UK a solid legal basis to push for the recognition of genocide at an international level so

that we can then go to the Security Council and say that we have the judicial authority from our judicial system, and press the Security Council to put into action the investigations that are needed. You need to take testimonies from these young women and girls now. That work has to be done, and as we have heard, the chief prosecutor of the International Criminal Court has indicated her willingness to do this once she is given the authority. However, that also means that we can give the kind of help that is needed by providing places, under a recognised scheme, to those who are most in need of the kind of medical help that these girls need. If noble Lords were to listen to the account given by this Yazidi Member of the Iraqi Parliament—the only one—no one in this House could feel anything other than a sense of shame, horror and moral repugnance. We have to say, "It's not good enough—we have to act now".

Baroness Nicholson of Winterbourne (LD): My Lords, I speak this evening in the name of those who would undoubtedly qualify under this extremely modest amendment, were your Lordships' House see fit to pass it.

I have in front of me some evidence in *Reports, Resolutions, and Documents in Favor of a Declaration of Genocide by So-Called Isis, Isil, or Da'esh*. It is a fairly hefty chunk of material, and I have to ask myself why we, the British people—and we in the House of Lords, who in some ways represent the British population—who have harboured so many victims of genocide over the centuries, are the last to come forward.

Here we have five major reports, from the Office of the United Nations High Commissioner for Human Rights, the United Nations Assistance Mission for Iraq, the United States Commission on International Religious Freedom, the Simon-Skjodt Center for the Prevention of Genocide, and the Knights of Columbus. These are remarkable, full, dense dossiers, which offer evidence. In consequence, we have seven resolutions, which are magnificent in their breadth and human understanding, from the United States Commission on International Religious Freedom, the United States Senate, House of Representatives and Department of State, the European Parliament, the Republic of Lithuania and the Council of Europe Parliamentary Assembly. I am sure that the Minister will notice that those resolutions reflect two great blocs of democracy, although they miss out India; I have nothing from there, as it has its own problems with regard to this. We have the USA and the entirety of Europe—not just the European Parliament or the European Union but the 47-state Council of Europe. That is no mean set of resolutions, and we have 30 appendices with major support.

I offer this dossier to the Minister. It is carefully researched, utterly accurate—and where is the United Kingdom? It is nowhere. Those 30 appendices are all statements to the United Kingdom, to Her Majesty's Government—they are all requests. One of mine is in there, way back in October 2014. I urged the Ministers in Her Majesty's Government to look at different ways, given the difficulties of classifying genocide and of using it, which we all know so well. There are many different ways around this that creative lawyers can work out. This modest amendment tonight is yet another effort to try to achieve that same goal, to define genocide against at least one of the religious minorities of Iraq, the Yazidis, and, if at all possible, some of the others. I speak as a Christian, a communicant member of the Church of England.

My request in October 2014 was rather late, because this genocide started much earlier than that. It started in 2003 and went on in 2004 and 2006; it rose to a height in 2007. The minorities in Mosul were forced to leave their homes, and Yazidis were also attacked around the Sinjar area. They were pushed to the Nineveh plain. We knew; we had our military there. We knew absolutely everything, but we did not even talk about it then. By October 2014—some seven, eight, nine and 10 years later—the caliphate's design to wipe out the Yazidis and attack the other religious minorities was in full swing. It was characterised in just the way that the genocide convention instructs us to look out for and act upon, anywhere and everywhere that we find it. Even if there is only one case for genocide—one individual—we are tasked to act by the convention that we assisted in drafting.

What do I mean by that? Mass kidnap, mass assault, mass design for extinction of a named race, which is distinguished by its race, faith, dress, culture and rituals from others of the same nationality—all of those things make qualifications of genocide. Under all those headings, the Yazidis in particular qualify. They are a distinctive, separate people within the universe of modern Iraq. For example, they have just one religious day a week, Wednesday. They have only one temple; they do not, like the Abrahamic faiths, have many opportunities to worship at different places. They have different dress: yes, the Mandaeans also wear white, but on a Saturday rather than a Wednesday, for example. They have a different social structure entirely from the remainder of their fellow national Iraqis. There are a number of different ways, in their prayer life and their religious rituals, which differ them uniquely; there is no way of denying that.

The mass kidnap and religious persecution that the Yazidis have endured is falsely justified by some peculiar, perverted distortion of Islam, which is shown by the letter from its leader, Mr al-Baghdadi himself, when he quotes verses, pulls them out and distorts or repositions them, so that Islam is said to justify mass rape and mass extinction. There are mass executions, to destroy the bloodline. For a society that is not allowed to marry out or marry in, it is very easy indeed to wipe them out: if you kill the males, the females have no one left to work with. There is also forced marriage and the destroying of infants. I hope that the Minister has never seen or tried to touch an infant of 18 months that has been repeatedly raped; it is a devastating experience. That is what is happening. They are destroying infants, impregnating young girls and forcing conversion. If you destroy the religion, the bloodline and the family structure, you actually extinguish the race. If that is not genocide, nothing qualifies at all.

Because nobody was listening, my colleagues and I brought three young ladies here to talk about it, in June 2015. One of them, Noor, aged 22, said, "They took the men away in cars. In the distance we could see them being killed. The windows in the room we were

[Baroness Nicholson of Winterbourne]

held in were painted black. Sixty-three Daesh fighters came in and picked girls and started to rape them. I said to the man who picked me, 'Why are you doing this?'. He said we were kafirs and he would kill us Yazidis as long as he lived. He would rape our women and kill our children". That is genocide. On her first escape attempt, this poor girl of 22 was caught, brought back and locked in a room with 12 guards, who raped her continuously for 12 hours.

9.15 pm

I speak in a personal capacity this evening. However, this evidence is on the web. The evidence to the Select Committee on Sexual Violence in Conflict, which I have had the honour to chair, is on the internet. Our report is in the final stages of completion and I cannot comment at all on the committee's findings.

Munira is 15 years old. She was taken by a 60 year-old Daesh. He said to her that their religion instructs them to rape Yazidi girls. Bushira, who is 20, was raped five times a day. Because she struggled, she was tied up permanently by her hands and feet. "Whenever I close my eyes", she said, "I see children, old men and women killed in front of me on the street".

Nihad Alawsi, who came through the week before, is 16. She said, "They killed the men and the older women. They kidnapped us girls, raped us and took our babies". She asked, "What more needs to happen before the world does something about it?". Her Majesty's Government cannot claim ignorance. In the last 10 days, Nihad's testimony has gone all over the globe and, again, is on the web.

I support my Government and do not like saying this, but I am deeply concerned as to where the British values are that we cherish and highlight. Where is the British action? Do we need to turn again to our US allies and friends, since we have failed so vastly? We have kept these youngsters waiting.

During that waiting time, other terrible things have happened. Trafficking has arisen. In August 2014, when I first met some of these young ladies in Iraq, the price of gaining the release of one of your family members was between $200 and $450. Now, because of the waiting time, it is between $7,500 and $35,000 per person. That is what has happened during that waiting time—not just the destruction of individuals. The level of trafficking has risen, the price has gone up and the impossibility of retrieving family members by any normal means, save by traffickers, has receded out of sight.

I chair the AMAR Foundation, although, again, I speak in a personal capacity. We have about a quarter of a million patients who are Yazidis, Christians, Mandaeans, and Shia and Sunni Muslims, members of whom are all being killed. We provide help, safety and support for them. One hundred and fifty thousand Yazidis are in the care of the AMAR Foundation, and about another 150 of them are employed. I am not just relying on the stories of four sad young girls who came here; I have the knowledge that has been given to me since August 2014—I was late in visiting and I am ashamed of that. This information pours in every single moment.

In October 2014, I made a very strong request to Her Majesty's Government to actively pursue all possibilities of prosecution, setting up political and judicial processes. I gave many opportunities in the short statement that I made. If Her Majesty's Government still find difficulties with the definition of genocide, I refer them to the International Association of Genocide Scholars, who said recently:

"ISIS's mass murders of Chaldean, Assyrian, Melkite Greek, and Coptic Christians, Yazidis, Shia Muslims, Sunni Kurds"—

they left out other Sunnis who are also being slaughtered—

"meet even the strictest definition of genocide".

Again, since Her Majesty's Government seem somehow unwilling to act, I draw the attention of the House to the first words of a statement made at the beginning of this month by two superb professors at Princeton University, where I will be next week, Cornel West and Robert P George. The first few words of their statement on genocide against Christians in Iraq and Syria are:

"In the name of decency, humanity and truth".

I support the amendment.

The Lord Bishop of Chelmsford: My Lords, I have two concerns in relation to this issue, to which I will speak briefly. First, in our prayers in this House and in homes across the country, we cry out to God that this terrible violence will cease and we look for any small contribution we can make to hasten its end. Secondly, we are determined that those inflicting such terrible suffering will be brought to justice before the International Criminal Court, where such atrocities are properly dealt with. There is, as we have heard, a growing consensus that the systematic violence of people operating in the name of Daesh is rightly described as genocidal. This is what people outside this House call it, whether they know or understand the legal definitions or not, and we need to be very mindful of what would be heard were we not to pass this amendment.

Legally, the matter turns on whether we are confronted by,

"acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group".

I understand the caution of the Government and other experts about applying the word "genocide". There are risks. Some worry that the strength and clarity of the legal definition of genocide could be somehow devalued if it is applied to such a complex set of conflicts as prevails in the countries involved. Some worry that the genocide label could encourage false understanding of the situation as conflict between different ethnic or religious groups. There is also the risk of removing Christians and members of other minorities from the area to a point where those minorities, with a long history and characteristic identity in that place, could become unviable. I smile at that—if not I would weep—because this is, of course, precisely what is happening at the moment. However, it is obviously something that we wish to avoid. Only last week, the right reverend Prelates the Bishops of Coventry, Southwark and Leeds visited these places and this was their primary concern.

However, we can live with those risks while trying to mitigate them. Our urgent prayer is for Christians, Yazidis and a variety of other identifiable groups against which the hatred of Daesh is directed, and,

supremely, for each individual—each of them precious to God. Therefore, can the category of "genocidal acts" help to stop the killing and help to bring the perpetrators sooner to account for their crimes? Yes, I believe it can.

The role of the Supreme Court is a matter for those with expertise in legal and constitutional matters. However, I note the support of a number of distinguished jurists for applying the label of genocide. The ability of people in this category to submit asylum applications at British missions overseas offers a reasonable additional route, alongside the work of the UNHCR, in identifying and bringing for resettlement those at greatest risk.

The General Synod of the Church of England has declared that it wants the Government to work with the UNHCR to ensure that vulnerability to religiously motivated persecution is taken into account when determining who is received into Britain. It calls on the Government to work with international partners to help establish safe and legal routes for people to come to this country who are so at risk.

The force of this amendment, whatever the issues of detail, is simply that the word genocidal is not too strong for what is happening. The seriousness of the national and international response needs to take that into account.

Perhaps I may briefly quote a passage from scripture—not an obvious one on this occasion for this situation. I have always been very moved by what Jesus said after the miracle of the feeding of the 5,000. After they had all been fed, he said to the disciples: "Gather up the fragments. Let nothing be lost". I believe that this amendment can help in a small way to address this situation, so that those who are most in danger of being lost could—maybe a few of them—be found.

Lord Pannick (CB): My Lords, the noble Lord, Lord Alton, and other noble Lords who have spoken have made an overwhelming case that acts of genocide are being carried out by Daesh, and they have made an overwhelming case that it is shameful that Her Majesty's Government are not prepared to say so. I cannot understand the basis on which Her Majesty's Government assert that a judicial determination is required before they are able to say that genocide is occurring. I would be particularly grateful if the Minister, the noble and learned Lord, Lord Keen, were to explain why a judicial determination is required. Any such approach seems quite inconsistent with Article 8 of the 1948 genocide convention, which states:

> "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide".

It is implicit in that that any contracting state is going to form a view that acts of genocide are taking place and in the light of that to make a request. I can see no basis whatever for the Government's policy.

I have much more difficulty with the substance of this amendment because it proceeds on what seems to be the incorrect premise that a judicial determination is required in relation to genocide. I agree with the noble Lord, Lord Alton, and others that a judicial determination is not required before Her Majesty's Government can state what their position is.

In any event, I am concerned that the substance of the amendment confuses the law relating to genocide with the different subject of refugee status. The genocide convention is concerned with the bringing to justice of the perpetrators of genocide in criminal courts, either the local court or the International Criminal Court. It is not concerned with refugee status; it makes no mention of the subject. This is not a technicality. What the substance of the amendment seeks to do is impose some obligations—we heard that they may not be very extensive—on the diplomatic mission of the United Kingdom abroad to accept applications for refugee status. It is a fundamental principle of refugee law, for sensible and practical reasons, that an asylum claim cannot be made at a consulate or an embassy of the United Kingdom in another country.

So I am not myself keen on the substance of this amendment, but I repeat that I share the concerns about the position being adopted by Her Majesty's Government and their refusal to state publicly and importantly that acts of genocide are being carried out. If the noble Lord, Lord Alton, decides to divide the House, he will have my support precisely because I oppose the Government's general policy in this area.

9.30 pm

Viscount Hailsham: My Lords, I find myself in great sympathy with what the noble Lord, Lord Pannick, has just said. If this were a general debate about genocide, I would find myself in total agreement with what has been said by all noble Lords who have contributed; there have been some very remarkable speeches. But it is not. We are actually talking about legislation and we have to ask ourselves the serious question: does what this House is contemplating by way of legislation make legal sense? It is there that I part from those who are advocating this amendment.

I want to concentrate briefly on subsection (1) of the proposed new clause because there are three points that I would like to make about it. First, we are not in the business of talking about groups, although the noble Baroness, Lady Nicholson, did talk about groups. The question is whether an individual belongs to a group, and that involves adjudication, a decision. It is made in the context where there is an enormous amount of scope, and motive too, for misrepresentation. It is sometimes very difficult to tell the difference between a Tajik and an Uzbek or, for that matter, between an Alawite, a Sunni and a Shia. They may all have reason for misrepresenting their status. To put the test in the way that it is expressed in subsection (1) will open up an enormous amount of judicial argument.

The second point is slightly different. In the second line of the subsection is the phrase "in the place"—not in the country, but in the place. The truth is that in a country like Iraq, a Shia may be unsafe in a particular area but can move to another area where he or she is safe. Simply to have the test of whether the conditions exist in the place where a person for a moment in time happens to be resident is, I think, to distort what one really seeks to do.

The last point I want to make is that subsection (1) creates presumptions of entitlement. I believe that presumption should depend on individual adjudication,

[VISCOUNT HAILSHAM]
not on class presumption. This amendment would create a class presumption with which I am bound to say I am extremely uneasy. Therefore while I have enormous sympathy with the points that have been made, and I do not wish in any way to undermine the fervour with which people have spoken, we are in the business of asking ourselves whether particular pieces of legislation which we are being asked to authorise make sense.

Lord Carlile of Berriew (LD): My Lords, it gives me great pleasure to applaud the noble Lord, Lord Alton, for bringing this amendment back to your Lordships' House in an improved form. I do not want this to turn into a lawyers' fest or to give your Lordships too much pleasure in knowing that the lawyers may disagree about the matters that have just been referred to, but I would remind the House that the noble Lord, Lord Alton, told us earlier that the amendment followed interventions at an earlier stage in the passage of this Bill by the noble and learned Lords, Lord Hope of Craighead and Lord Judge. Both are former Supreme Court judges, one the former Lord Chief Justice and the other the former Deputy President of the Supreme Court.

I do not disagree in principle with what has just been said by the noble Lord, Lord Pannick, and the noble Viscount. However, we must remember that the power to pass law rests upon Parliament. This is not a court where we act upon precedent. If Parliament wishes to include a judge's decision in the determination of a matter of law, it is open to Parliament to do so. Let us not pretend that the Government—particularly this Government—do not send for the judges when they are in an awkward position in any event. We know that that is all too common and currently being done with the most controversial Bill before these Houses: the Investigatory Powers Bill.

I therefore suggest to your Lordships that while we of course listened with enormous respect to the two noble Lords who just spoke, nevertheless what they say does not negate the merits of the debate that we have been hearing. Indeed, we have heard some very eloquent speeches dealing with those merits: for example, the speeches of the noble Lord, Lord Forsyth, and of the noble Baroness, Lady Kennedy of The Shaws, who had an excellent article in the *Guardian* this morning, setting out in principle what everybody on my side of the debate might say.

I do not want to give a catalogue of the events that give rise to this debate; we heard from my noble friend Lady Nicholson in some detail. I applaud, as I am sure we all do, the extraordinary work that she has done with the charity AMAR, of which she is the chairman and founder, which has helped so many, particularly young women, affected by genocide, especially in the Middle East. She deserves great praise for that. Indeed, she and the noble Baroness, Lady Cox, are responsible for bringing these very important and painful issues to the attention not just of the House, but of the country much more widely than the political class represented here and in another place.

I simply say this to your Lordships: there is no more arrogant crime than the crime of genocide. Genocide defies all decent religious standards, albeit sometimes in the heretical pretence of religion. Genocide offends all decent secular standards. I know of no secular state that would allow any of the horrendous practices described in the debate. Genocide rejects the proposition that there should be even any limits to the actions and cruelties committed in war. Genocide diminishes the dignity of the human race, quite simply. Surely Parliaments such as this should recognise the suffering of victims of genocide, and not merely by wringing our hands with rhetoric about those victims. Where else have they to turn to if not to Parliaments and to Governments in countries such as ours? Why are we not making the sorts of declarations that have been made, as I understand it, by the French Government and very clearly by the American Secretary of State?

The designation of crimes as "genocide" sends out a clear message, and it is not an unimportant one: it is a deterrent. Designation of genocide sends out the message that those who commit the act and are identified will one day be brought before international courts and punished for their crimes against the rest of the human race. Designation of genocide by Governments such as ours also sends out a warning to those who might be inclined to commit genocide that they will be pursued to the end of the days—to the end of their lives if necessary, when they are old and hiding from their responsibilities, as happened, for example, with the Nazi genocide.

I heard earlier in the evening—I hope that I am wrong—that Her Majesty's Official Opposition's position was to sit on its hands in this debate. I hope that that shameful proposition is not correct. I hope that we will not have a situation in which the party that introduced the Human Rights Act 1998 into our law will chicken out of an official vote on this amendment.

We carry out a great responsibility this evening. I hope that we will do so in a spirit that recognises the challenge that genocide presents to humankind.

Baroness Berridge (Con): My Lords, the issues that the tablers of this amendment have raised are so important and urgent that I am prompted to speak for the first time on the Bill. Everyone's hearts this evening are on the same page in your Lordships' House. Our hearts are weary of seeing the suffering on our news bulletins and we want solutions urgently. I hold the noble Lord, Lord Alton, and the noble Baroness, Lady Cox, in the highest regard, not only for their lobbying on behalf of vulnerable people, but for often placing themselves in harm's way as they do so. They are entirely right that certain groups of people that we should have been focused on more clearly have been lost from view. However, the mechanism proposed this evening will, sadly, not ensure that the most vulnerable people are helped and with huge regret I cannot support the amendment.

First, the amendment runs the risk of taking too long to help these people, as setting up a judicial process with rules of court, et cetera, will take months. Help for these people is needed now, help that can be provided, as I will outline, through the Syrian vulnerable people scheme. As I understand the amendment, this would not just be declaring acts of genocide; what the High Court would be declaring would be a policy of

genocide in a particular situation. Since the Second World War, only two situations have merited that declaration: Rwanda and the Srebrenica incident within the Balkans conflict. This is recognised as the crime above all crimes, to be kept special, to be kept unique and with a particular connotation.

Although we can prosecute genocide anywhere in the world, the case of Eichmann, which many noble Lords will remember, remains of its era and we have seen the development of international tribunals to try this particular crime. This amendment draws the declaration of a policy of genocide, which it took the Rwanda tribunal four years to come to, into a domestic court. That opens the way for other domestic courts to do the same and to disagree with us. It risks diluting this crime and we could end up with one domestic courts saying, "We think this is genocide", and another saying, "This is not genocide". The risk of politicising and putting into foreign affairs terms a policy such as genocide is grave.

I watched with care the full announcement by Secretary of State Kerry, most of which asserts the supremacy of the judicial process. I was disappointed that such a campaign in America has led, in fact, to so little. They have promised a bit more aid and that they will do some investigation of the evidence. I would like Her Majesty's Government to deliver more than that.

Perhaps the most important reason for not supporting this amendment is that it will not only apply only to Iraq and Syria. It is, perhaps, most likely to apply, first and foremost, in Sudan, where al-Bashir stands ready to be tried at the International Criminal Court—if they could get him there—for crimes against humanity, war crimes and the crime of genocide. This amendment would apply to people in other countries; people might learn through social media that the UK has said that they are victims of genocide and can get asylum here and they might leave to come here. As I say, Sudan might be the first case and a determination of that nature by our courts could cause vast numbers of people to flee, not knowing whether they are number four of the 5,000 we have said we are taking or number 4,555. They will not know that; they will leave. This would be particularly dangerous today because their route is through Libya, through IS-controlled territory where they risk being killed and a much more perilous sea journey across the Mediterranean from Libya to Italy.

I have sat before British diaspora who are desperate for their adult sons to remain in those countries and not to travel. Often, they listen to IS footage in Libya on the internet and see what could happen to their relatives if there was any incentive for them to move. Turkey is closing down as a route and the criminal gangs are looking for a different market, or several different markets.

The movers of the amendment are right in principle. I want to return to that. I hope that I can offer a way forward. Will my noble friend the Minister please look urgently to review the criteria of the Syrian vulnerable people scheme, as Iraqi people are the victims of probably the worst postcode lottery? A century ago, Britain was involved in setting the border between Iraq and Syria, which IS just wiped out. So if you can satisfy the vulnerable persons criteria and are a refugee but happen to live on the wrong side of the border—if you are an Iraqi—you are not eligible for the scheme. If you live hundreds of miles away or hundreds of yards away but you happen to be Syrian, you can get safe passage to the UK. As a matter of utmost urgency will my noble friend the Minister look to expand the eligibility for the scheme so that we can offer protection virtually immediately to the Iraqis who so desperately need it? Will he also please ensure that the relevant numbers are raised to accommodate the extra people?

9.45 pm

Will Her Majesty's Government look at the criteria of vulnerability within the scheme? The criteria for vulnerability include women and girls at risk, refugees with disabilities, children and adolescents at risk and persons at risk due to their sexual orientation or gender identity but do not include one's religion or lack of religion. I want to be clear that I am not asking for discrimination on the ground of faith. That would be wrong and inconsistent with being a Christian country. However, in the 1970s, the UK took in Ugandan Asians and did not thereby discriminate on the ground of race. But Idi Amin persecuted on the ground of race and so created vulnerability. IS is most definitely persecuting on the ground of faith and creating vulnerability. The scheme should be urgently amended to recognise this.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I support this amendment but think it right to note that it would involve two radical changes in the existing legal framework. First, it would involve a High Court judge deciding—no doubt subject to appeal—whether a particular group is subject to genocide. Secondly, it would enable any member of such a group to claim asylum from abroad. I have no real objection to the first of those changes. I do not share the concerns of the noble Baroness, Lady Berridge. In fact, it seems to me hardly necessary in the present case for a judge to be involved at all, but it might be in some future case. On all the evidence we have heard, it is pretty clear that Daesh is indeed committing genocide. If the UK Government will not say so and will not refer the matter to the United Nations, then by all means let us legislate to allow a judge to do so, if that would serve a valuable purpose. It is not necessary to go as far as establishing a case of genocide to establish a right to asylum under the 1951 refugee convention. But, of course, a ruling that an asylum seeker is indeed a member of a group subject to genocide would certainly qualify them in spades for refugee status.

I suggest that the real challenge in this proposal is the second change it would involve—namely, that under it for the very first time asylum would be able to be claimed from abroad rather than, as at present, only if the asylum seeker has somehow managed by hook or by crook to reach the shores of this country. Plainly, this change would substantially increase the numbers able to claim asylum here, and who we would then be obliged to take in. One fears and suspects that many thousands are subject to the risk of genocide. Assuming they could get to a British mission overseas—indeed, it is probably sufficient to get their application

[LORD BROWN OF EATON-UNDER-HEYWOOD]

for asylum lodged there—that would have to be assessed, and the critical question would presumably be whether they are members of the group at risk; that addresses the point of the noble Viscount, Lord Hailsham. If the claim succeeds, they, as refugees, would still need to get to the United Kingdom to claim sanctuary. One wonders who would arrange and achieve that. The UNHCR has been suggested, but that might involve certain logistical difficulties.

Is the sheer increase in the number of prospective asylum seekers a fatal objection to the proposal? That is the crucial question here. I am puzzled about the suggestion that those who succeed under this provision would fall within the cap of 20,000 who we are already committed to relocate over this Parliament. I cannot see how, or why, that should be required. However, the proposal is confined to those who are genuinely subject to the risk of genocide. That is, of itself, a manifestly limiting factor. Accordingly, this objection should not be regarded as fatal: we should pass this amendment.

Lord Shinkwin (Con): My Lords, I support this amendment and the excellent speeches made by other noble Lords, particularly my noble friend Lord Forsyth. As we have heard, the Christians in Daesh-held territory are suffering indescribable persecution and slaughter on account of their belief in Jesus Christ. They are sacrificing their lives and suffering genocide for Christ's sake. Yet we are not being called to make any sacrifice at all on their behalf. All your Lordships' House is being asked to do today is bear witness to the truth than genocide is happening and to keep faith with these victims of genocide by empowering a High Court judge to determine whether a genocide is under way, and by requiring the Government to accelerate the resettlement requests of those fleeing such a genocide.

It may be almost impossible for us, as we sit in the splendour of this beautiful Chamber, to conceive of the enormity of the genocidal crimes being perpetrated thousands of miles away. It is possible that the only thing that we have in common with their situation right now is the colour of the luxurious red Benches on which we sit. It is also the colour of their blood. The amendment would help to ensure that it is not spilt in vain, that the extent of the genocide they are suffering is recognised for what it is, that refuge is given on account of it, and that the perpetrators, as we have already heard, will be punished specifically for genocide.

For Christians around the world, yesterday marked the start of Holy Week, the worst and yet the best week of Jesus's life. By the end of it, he would be dead, yet he went to his death in full knowledge of the excruciating pain involved, because he chose to bear witness to the truth. We debate this amendment in full knowledge of the truth that genocide is being suffered, as I speak, in his holy name. We cannot stop it, but like him we can choose to bear witness to the truth.

So I say with sincere respect to my noble friend the Minister that that is why I support this amendment. I hope that many noble Lords will do likewise, united in proud defence of the freedom of conscience that surely we all cherish. Surely that is the very least we can do in the face of genocide.

Lord Green of Deddington: My Lords, the hour is very late. I shall be very brief. I find myself on this occasion in broad agreement with the interventions in this debate. The abuses in Iraq and Syria are repulsive and surely can only amount to genocide. I therefore welcome effective action in respect of Christians and Yazidis in Iraq and Syria.

I will just make two practical observations. The first refers to proposed new subsection (1), which is very widely drawn. We could at some future date find that literally millions of people qualified for the presumption that they met the qualifications for asylum in the UK. In the past five years alone, the office of the UN special adviser on the prevention of genocide has named five countries as being at risk: Syria, Sudan, South Sudan, Libya and Ivory Coast. Any of these situations could descend into genocide in the coming years, so it follows that a blanket clause in our immigration law could prove to be a serious hostage to fortune. I am not sure how that can be dealt with. A limit of numbers is a possibility. That was touched on by the noble Lord, Lord Alton, and the noble Baroness, Lady Cox, and might be a way forward on that point. But above all, it is surely essential to avoid a situation where a thoroughly well-intentioned statement sets off a wave of humanity that has reached the limits of its endurance. I leave it to the proposers to consider that point.

My other observation refers to proposed new subsection (3), which envisages British missions overseas assessing applications. I agree with the noble Lord, Lord Pannick, that that is a difficult road to go down; I think the noble and learned Lord, Lord Brown, had similar doubts. It is not hard to imagine a ghastly event in Sudan or somewhere leading to hundreds of claimants camping outside some of our missions. It might be possible to engage the UNHCR in the process. If it does not have that capacity, we might be able to consider, for example, sending a team of British officials deployed for this purpose in situ. They might be established somewhere appropriate, perhaps in a refugee camp near the border with the country concerned, but certainly not in a mission, which would very soon be swamped.

The practicalities clearly need some further thought and we should not overlook the point that to move away from the fundamental principle of claiming asylum in the UK is a major departure. That said, I think we must find a way to tackle this ghastly situation—to break, as the noble Baroness, Lady Kennedy, put it, the cycle of inertia.

Lord Farmer (Con): My Lords, I, too, will be brief. There can be no doubt that the noble Lords, Lord Alton and Lord Forsyth, and the noble Baronesses, Lady Cox and Lady Kennedy, have brought an issue of the most profound gravity to our attention, and they have done so with characteristic eloquence and passion. It is essential that Parliament takes the time to consider the appalling treatment meted out to Yazidis and Christians, the threat of extinction that faces these ancient communities, and what our considered response should be to this genocide claim. What is being proposed today is that we amend primary legislation in far-reaching ways with minimal consideration and

debate. Surely a better way forward would be to establish a specific review that does justice to the enormity of the issue that is before us today, which would then be the subject of a sufficiently lengthy debate in both Houses.

10 pm

In Committee, the noble Baroness, Lady Cox, cited an Early Day Motion tabled in the other place at the end of January this year, which drew attention to the atrocities perpetrated by Daesh and stated that these fell within the definition of genocide. Like the vast majority of EDMs, it received no parliamentary time at all and attracted only one more signature than a Motion on the Royal Mail's recognition of Scotland's history—an important issue no doubt, but thankfully not a matter of life or death in the here and now. I know some MPs never sign EDMs because they do not consider them to be an effective way of achieving change. This tells me that although awareness of the severity of this issue might be very high in present company and there are many dedicated parliamentarians working tirelessly to raise that awareness in the media and more widely, it is perhaps not yet sufficiently on the radar of Members of this or another place. Most importantly, we are a long way from establishing the settled view of Parliament on this matter.

However, regardless of whether or not our Government declare these dreadful crimes to be genocide, decisive action is required sooner rather than later. In this regard I find my noble friend Lady Berridge's arguments about the arbitrariness of the Iraqi-Syrian border compelling, especially now that it has been trampled down by Daesh. I agree that this could give the Government clear grounds to broaden the remit of the Syrian resettlement scheme to accommodate some of these persecuted minorities who originated in Iraq. I also agree with her that such a broadening should require us to revisit the current cap of 20,000 individuals. As we have been constantly reminded throughout this short debate, we cannot play a numbers game: this is about human lives.

Lord Elton (Con): My Lords, whether this amendment is carried or not, it must be clear to a Government who refer so often to our Judeo-Christian heritage that they cannot simply stay where they are thereafter. There must be an acknowledgement of what is going on. The truth must be recognised and must be brought to the attention of the world by this country and the many others that are already committed to it.

Baroness Hamwee: My Lords, I have a couple of sentences on behalf of these Benches. This may be the first time that my thought processes have followed exactly those of the noble Lord, Lord Forsyth, but I had concerns about the format, if you like, of this amendment. I would much prefer to be addressing the matter on an international basis through the UN, but then I, too, found Article 8 of the convention, which provides for contracting parties to call on the UN to take action. In the light of the growing call around the world for the recognition of what is going on as genocide, it seems to me that it is absolutely right that we should take this opportunity, whatever the technicalities of the amendment.

Lord Rosser: My Lords, no one can fail to be concerned about and moved by the appalling position of those to whom this amendment relates. There is a need to see what more can be done to help those fleeing violence and persecution and to increase safe and legal routes for refugees. We all have sympathy with what lies behind this amendment, particularly with regard to the appalling actions of ISIS—Daesh—against Yazidi women. The amendment as it stands is in our view unworkable, but we would be willing to work with the Government and others in the House to develop a scheme to present at Third Reading for these women and others persecuted on grounds of religion.

Anyone coming under the conditions referred to in proposed new subsection (1) who is already in the United Kingdom should already be able to claim asylum under the existing law and definition of a refugee. However, the amendment appears problematic in a couple of areas. It places responsibility for declaring that a genocide is taking place—and, with it, a presumption that the conditions for asylum in the UK have been met—with the High Court rather than with an international body, which is a departure from existing practice. We are not convinced that this power should rest with domestic courts.

The amendment also allows people to apply for asylum outside the UK, which is again a significant departure from existing law and would allow unknown numbers to apply as, as the amendment sets out, there should be no discrimination in dealing with such applications based on,

"national, ethnical, racial or religious group".

As a lesser point, there also needs to be more clarity about how the process set out in the amendment would work in practice, how applications would be processed, by whom and where.

While we all want to do more for vulnerable people fleeing persecution and genocide—

Lord Carlile of Berriew: The noble Lord is telling us that the Labour Party agrees in principle with the feelings behind the amendment of the noble Lord, Lord Alton. Is it not a bit supine for the Labour Party to say that but not put forward an improved amendment of its own if it really seeks to say what we have just heard with full integrity?

Lord Rosser: I do not share the noble Lord's view; I am setting out our view of the amendment and have referred to two specific issues, which do not seem to me unimportant. I can only note that he holds a different view.

While we all want to do more for vulnerable people fleeing persecution and genocide—such a debate needs to take place—we are unconvinced that the amendment as drafted represents the best way to do that. It entails a significant change in practice and procedure, and there needs to be much greater consideration than, inevitably, there has been of the practicalities and impact of what is being proposed. For these reasons, if the mover, having heard the Government's response, decides to test the opinion of the House, we will not be able to lend our support.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, no one could but be moved by the strength of feeling and concern that has been expressed in this House with regard to events in the Middle East. Several of your Lordships have eloquently articulated the terrible threats that Daesh or ISIS poses to the populations of the Middle East. Who could gainsay the ghastly evidence of some of the events that have been reported?

All of us want to do everything that we can to support the victims of such terrible violence. All of us want to alleviate the suffering experienced in Syria and Iraq at present. But to do that, our primary priority must be to secure an end to the conflict in Syria and Iraq, in order that people can return to their communities and their lives. That is what this Government have been committed to achieving, and I shall not repeat the points made earlier about the steps taken in that regard.

I urge your Lordships to read the amendment to see what, on the face of it, it is intended to do. The noble Lord, Lord Alton, finished by saying that the intention was to bring those individuals responsible to justice. That, with respect, is not the objective of the amendment. Indirectly, it might achieve that, but let us remember to emphasise individuals. We cannot bring Daesh to justice; we must identify the individuals within ISIS and Daesh who have been responsible for these terrible crimes. That is not the objective of this amendment at all.

The amendment deals with three matters. Essentially, proposed new subsection (1) is a presumption that if a person is a member of a certain grouping they have been a victim of genocide. Secondly, there is an adjudication and, thirdly, there is an application process by which an individual who is a member of a group that has been subject to genocide can secure asylum in the United Kingdom but, more importantly, can secure that by means of an application form outside the United Kingdom—a unique and quite unprecedented step in the context of refugee law. Indeed, I would respectfully adopt the observation of the noble Lord, Lord Pannick, when he said that he had much more difficulty with the substance of the amendment. With respect, so have we, because if we look at the substance of the amendment, we have to consider the background to what is being addressed.

There are two entirely distinct conventions here. There is what is shortly termed the genocide convention, which is concerned with the identification and prosecution of those guilty of the terrible crime of genocide. Then there is the refugee convention, which is concerned with the circumstances in which a country such as the United Kingdom has an obligation to those who are defined—

Lord Carlile of Berriew: My Lords—

Lord Keen of Elie: I shall finish the sentence, if I may—to those who are defined as refugees. The two are entirely distinct. Under—

Lord Carlile of Berriew: The noble and learned Lord said that he was going to give way at the end of the sentence. I detected a full stop. With all his legal experience, he surely knows that numerous applications relating to residence in the United Kingdom are made from outside the United Kingdom. For example, visas are applied for outside the United Kingdom. What is so unique about extending that process?

Lord Keen of Elie: I am obliged to the noble Lord. I was aware of that—and, of course, the distinction lies in international law. Our obligation towards asylum seekers arises under the refugee convention, and it is in accordance with that that we deal with these applications. I shall elaborate on why that poses such severe problems in the context of the amendment.

Under our own Immigration Rules we have provision for those who enjoy refugee status, which includes those who are the victims or potential victims of genocide. But of course it also extends beyond that category to those who are the victims or potential victims of persecution—for example, political persecution, which would not be covered by this provision. If we look at the provisions of the refugee convention, we find it explicitly stated at Article 3 that in dealing with applications for asylum there will be no discrimination on grounds such as nationality, ethnicity or religion. Indeed, that is reinforced by Article 14 of the European Convention on Human Rights.

While I understand the desire of the noble Lord, Lord Forsyth of Drumlean, to see some help extended to the Christians in Syria, and the Yazidis as well, the reality is that if we had this provision in law we would have no right to discriminate between Christians and Yazidis. We know that in fact the activities of ISIS and Daesh in Syria and Iraq are directed not just at the Christian or Yazidi communities but at the Shia Muslim communities within these countries, at the Kurds and even at the Alawites. All those would also be in a position of complaining that they belonged to a group that was potentially the subject of genocidal acts, torture or violence.

10.15 pm

Baroness Kennedy of The Shaws: The Yazidi are in a different position, which is why I raised them particularly. They are perceived by ISIL as not being one of the Abrahamic religions. Their religion predates even Judaism. As a result, ISIL sees it as something totally inimical to being human and as something other. That is why it feels quite at liberty to diminish this people to nothing. That is why it thinks that that is permissible, and that is why it is genocide.

Lord Keen of Elie: I am obliged to the noble Baroness, but the reality is that under the refugee convention and the European convention we could not in legislation discriminate between particular communities, such as the Yazidis, the Christians or the Shia Muslims. It goes further than that because we know that at present there are something like 4.8 million Syrians displaced in the Middle East, in Turkey, Lebanon and Jordan. It goes even further than that because, as the noble Lord, Lord Judd, observed much earlier in the debate on this Bill, according to the United Nations there are something like 19.5 million refugees in the world at present, whether they be in Darfur, Burma, the Middle East or elsewhere. The figure I had was 20 million, but in the

context of such a catastrophe, perhaps 500,000 does not make an enormous difference. The reality is that this amendment would, on the face of it, open the United Kingdom to immigration by all 19.5 million people who could claim to be in that position. Noble Lords may scoff, but that is why it is so important that we examine the implications of the legislation proposed. Indeed, I have only to cite the example of Germany to point out the consequences of unintended action.

Lord Alton of Liverpool: Will the noble and learned Lord point out where in the amendment it specifies anything about Yazidis or Christians? The amendment says that if there is evidence of genocide, that evidence can be laid before a High Court justice for the justice to determine whether there is genocide. Will he also say what is non-discriminatory about the Syrian vulnerable persons scheme in which we single out a group of people and say that we will give them special protection and support, quite rightly in my view, but impose a cap, as we do, by saying there will be only 20,000? Is this not scaremongering of the worst order?

Lord Keen of Elie: With respect to the noble Lord, it is nothing of the sort. On the last point, the Syrian vulnerable persons scheme does not discriminate on the grounds of nationality, ethnicity or religion and therefore does not contravene either Article 3 of the refugee convention or Article 4 of the European Convention on Human Rights. That is where the distinction lies.

Lord Ashdown of Norton-sub-Hamdon (LD): I know the Minister is trying to make progress, but he said that the Syrian vulnerable persons scheme does not discriminate against nationalities, but it does. The key is in the name. They are Syrian. It does not apply to Iraqis.

Lord Keen of Elie: The noble Lord makes the point, and I accept that the scheme applies only to Syrians in the context of Syria being the area that is subject to the scheme, but it does not distinguish on the grounds of ethnicity or religion in that way.

I mentioned numbers a moment ago. No country in the world has an open-door immigration policy of the kind proposed by this amendment. More particularly, no country in the world has an open-door immigration policy that would involve persons who were not strictly refugees under the convention being able to apply in the place of their residence for asylum in the UK. It has always been the practice that an asylum seeker is a person who presents themselves in a safe country and seeks to establish refugee status. What is suggested in this amendment, as I read it, is that a person from within Syria, Lebanon, Jordan, Turkey or elsewhere would be entitled to approach a British consulate or embassy and make an application for asylum in the UK from that point. That would not be limited to the Middle East, either; it would apply across the world because, again, you could not distinguish between one set of refugees and another. That would not be possible.

The noble Lord, Lord Alton, introduced the idea that somehow this amendment was subject to a cap. As the noble and learned Lord, Lord Brown, observed, though, that is simply not the case, and it is difficult to conceive of how it could be. Still, let us suppose that it was going to be subject to a cap of, say, 5,000 applications. How would that be dealt with? Are we to send 5,000 visas to the consulate in Baghdad? Are we then to say that first come are first served—that those who arrive and apply can have one while those who arrive too late cannot? With great respect to your Lordships, that is not an immigration policy, it is a lottery, and that is not what we are about. We are trying to achieve an objective and fair result.

When we address this, we have to remember also that refugee status applies not only to those who may have been, or threatened with being, the victims of genocide but to those who have been the subject of, or threatened with, persecution. On what basis can we rationally and reasonably distinguish between those two groups when they all constitute refugees?

Lord Forsyth of Drumlean: My noble and learned friend is making quite heavy weather of the inadequacies of the amendment. Can he tell us—he has had quite a lot of time to think about this because a similar amendment was tabled in Committee—what exactly the Government are going to do for those Christians and other groups who are facing genocide?

Lord Keen of Elie: I believe that we are already doing all of that. This was addressed by my noble friend Lord Bates earlier when he spoke of the steps that we are taking regarding diplomatic efforts to try to secure peace in the Middle East. He spoke of the Government delivering a robust and comprehensive strategy to defeat Daesh in Syria and Iraq as a member of the global coalition of 66 countries. He spoke of the fact that there was effectively a cessation of hostilities on 27 February that we will build upon and hope to develop. He spoke of the fact that we have pledged over £2.3 billion, our largest ever response to a single humanitarian crisis, which is delivering vital assistance to refugees in neighbouring countries on the ground right now. We are also working through the United Nations High Commissioner for Refugees with three schemes—the Gateway Protection Programme, the Mandate Refugee Programme and the Syrian resettlement scheme—in order to reach out to the most vulnerable people at risk, such as women and children. All that is being done.

We have to be realistic about what we can and cannot achieve. What we cannot achieve is a policy whereby 4.8 million or more people are invited to make an application at a local level for a visa to bring them to the UK. We know that we could not cope with the consequences of such a policy, and we know the potential disaster that could follow from attempting to impose one. We know that at the end of the day we would be expressing hope that could not be delivered. We would be expressing hope that these people might be helped when in reality we knew that their prospects would actually be dashed to pieces on the rocks of reality. We could never cope with such an immigration policy. I say to your Lordships in conclusion—

Lord Elton: My Lords, before my noble and learned friend sits down, he has heard considerable argument in favour of the Government using the opportunity

[LORD ELTON]
pointed out by the noble Lord, Lord Pannick, to bring before the Security Council a proposal that this be recognised as genocide. Can he tell us what he is proposing to do about that?

Lord Keen of Elie: I am obliged to the noble Lord. Respectfully, it appears to me that the proper course of action in those circumstances, where we are putting to one side an amendment that even my noble friend Lord Forsyth would appear impliedly to accept is not workable, the appropriate way forward would be to consider a Motion of this House, directed to Her Majesty's Government as to how they should address or not address the issues that pertain here with regard to whether there has been genocide. Noble Lords have heard already what the present government policy is. The Government believe that recognition of genocide should be a matter for international courts and that it should be a legal rather than a political determination. That remains the position.

Lord Lea of Crondall (Lab): Is the Minister saying that such a—

Lord Keen of Elie: I have not given way.

In conclusion, this amendment does not even address the objective set out by the noble Lord, Lord Alton. Although I fully understand his concerns about what is going on, the amendment creates a mirage of false hope. It might salve our conscience, but it will not solve the problem. I urge the noble Lord to withdraw it.

Lord Lea of Crondall: Before the Minister sits down, if such a Motion was put forward, would it have the Government's support?

Lord Alton of Liverpool: My Lords, the noble and learned Lord, Lord Keen, ended on an interesting note, which the noble Lord just questioned him about: if a Motion were placed before your Lordships' House, which presumably would have to be done by the Government, because such procedures are not open to—

Lord Keen of Elie: If I may, with respect, correct the noble Lord, the Motion would not be required to be from the Government but could be laid by any Member of this House.

Lord Alton of Liverpool: Would the noble and learned Lord like to remind me of the last time a Motion of that kind was tabled on the Order Paper and selected for debate in your Lordships' House without the support of the usual channels and the Front Bench?

Lord Keen of Elie: I am not aware of the date when that was last done, but, as the noble Lord observed, it would be a matter of securing the support of the usual channels.

Lord Alton of Liverpool: My Lords, it seems that we are back into the circular arguments that we have been having. The last time I put the question to the Government and asked whether they had any intention of submitting evidence of genocide in Iraq and Syria to the Security Council and through it to the International Criminal Court, they said:

> "We are not submitting any evidence of possible genocide against Yazidis and Christians to international courts, nor have we been asked to".

This argument just goes on and on. That is why, in February, I and other noble Lords from across the House tabled the Motion in Committee. Normally when a Motion is tabled in Committee, the Government respond by saying, "We will discuss with the movers of the Motion ways in which we can take it forward". Although I had a meeting with the noble Lord, Lord Bates, it was interesting that the first comment of one of the officials who was present was, "We have never done this before", as though that was an argument for never doing it in the future. I am disappointed that this evening neither the noble and learned Lord, Lord Keen, nor the Front Bench opposite have offered an opportunity to discuss how an amendment might be framed that could find favour with the Government. It seemed to me from what the noble and learned Lord said that under no circumstances would any such move be countenanced.

I was shocked when the noble and learned Lord started to express numbers that were in the realms of fantasy—the idea that 19 million people in the world might take the opportunity. It would be impossible to do that. First, a genocide would have to have been declared by the High Court. It would then have to go before the Government, who would have to decide how they wanted to treat it, and they could then impose exactly the kind of cap that they have imposed in the case of the numbers of people being admitted to this country under the Syrian vulnerable persons scheme. Therefore there is no question that this amendment would open those kinds of floodgates. As the Minister said, that was not the intention of the movers and it would not be the effect of the Motion. Surely, therefore, we now have an opportunity to do something about this. If the Government had said, "We will take this away and look at it between now and Third Reading", I certainly would have responded positively to that; or we can pass this amendment, and between now and Third Reading the Government can either amend it or send it to those in another place and let them decide how they want to deal with the issue.

Under the 1948 genocide convention, we have three duties. We have a duty to prevent, a duty to punish and a duty to protect. There are two strands in the amendment. The first is to bring about the punishment of the offenders, and the second is to help some of those people. We cannot help everyone; I recognise that. But no one is more vulnerable than someone who is the subject of genocide. We have heard the speeches of the noble Baronesses, Lady Kennedy, Lady Nicholson and Lady Cox, and we have heard from the noble Lord, Lord Forsyth, and many other noble Lords who have set forward the case that genocide is indeed under way and we should therefore do something about it.

I do not claim that the amendment is perfect. I do claim that we cannot keep on going round and round in these circles. Although I recognise that I may well be in a minority this evening, it is better to be in a minority, say what one believes to be right and seek

the opinion of the House. I will do that in a moment, because I agreed with the right reverend Prelate the Bishop of Chelmsford when he said that it is our duty to gather up the fragments. I agreed with my noble friend Lady Cox when she said that we should not be silent in the face of evil; with the noble Baroness, Lady Kennedy, when she said that we should break the cycle of inertia; and with the noble Baroness, Lady Nicholson, when she asked why we are last in coming forward. We have the opportunity to break the cycle of inertia this evening, and I would like to test the opinion of the House.

10.31 pm

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10.43 pm

Amendment 122

Moved by ***Lord Dubs***

122: After Clause 63, insert the following new Clause—

"Protection of locally engaged staff

(1) This section applies to staff who formerly worked for Her Majesty's Government in Iraq or Afghanistan—

(a) as direct employees of the United Kingdom armed forces or the Ministry of Defence;

(b) on letters of appointment from a British Embassy;

(c) as direct employees of the Department for International Development or the British Council; or

(d) as contracted staff who worked as part of Her Majesty's Government's programmes, projects and operations.

(2) Persons falling into the categories in subsection (1) and who satisfy the United Nations High Commissioner for Refugees that they meet the criteria of the 1951 Refugee Convention are eligible for resettlement in the United Kingdom under the United Kingdom's Gateway Protection Programme.

(3) Persons falling into the categories in subsection (1) may apply for a visa to come to the United Kingdom for the purpose of the United Kingdom determining their claim for asylum.

(4) Such persons may be accompanied by—

(a) their spouse or civil partner;

(b) any of their children under the age of 18 who are not leading independent lives; and

(c) any of their parents and grandparents who are over 65 and their respective spouses and civil partners."

Lord Dubs (Lab): My Lords, Amendment 122 is concerned with individuals who helped the British Army and general British interests either in Iraq or Afghanistan, and who are now refugees or, as it were, want to be categorised as refugees. I am indebted to a small NGO called Help Refugees for the advice and information it has given me.

The amendment refers to individuals who are now in refugee camps—they may be as far away as the Middle East or they may be in Calais, where some have been identified. These are persons who worked with Her Majesty's Government in Iraq and Afghanistan. They may have worked on the Kandahar air base, as translators and interpreters, or as radio operators. These are people who have sufficient evidence to indicate that they worked in that capacity, helping the British Army and other British interests.

These individuals have now suffered from quite serious threats, and I have got some information from a couple of them. One individual who acted as a logistics officer and was involved in liaison contact between British forces and local interests, and who helped train the Afghan military and other companies, said: "I had phone calls saying that I had to stop working with them and, 'If you don't stop working with them, you will be killed'". Another individual, working at the Kandahar base in Afghanistan, said, "As you know, the situation is very bad for those who have worked with the foreign forces—the Americans, the British—and those who are interpreters or translators. Their life is in danger in Afghanistan. Everywhere the Taliban are present in each province, so if they know that you have worked with them they will elect to kill you. Everybody knows this. This is the truth. Nobody can ignore it". "Have you personally had any threats?", he was asked. "Yes, when I was there, I was getting calls saying, 'Leave this job or I will kill your family. I will kill you if I find you'. It was very hard for me". "Were you getting many of these phone calls in a week?" "Two or three times, yes". These are individuals who worked with us and to whom we surely have some responsibility. My argument is that we should give effect to that responsibility through this amendment.

There is a difficulty in that two different schemes are in existence which do not quite fit the bill: there is an Iraq policy and an Afghan policy. It is clear that the Iraq policy is a better one and the Afghan policy has helped only one particular individual. What I am suggesting in this amendment is that we should have a more far-reaching policy which helps all the individuals who I have described. The idea is that if they can be identified—and this is a departure from the present policy—as coming under the various categories as set out in proposed subsection (1) they would be entitled to come to Britain and then claim refugee status here. So we meet some of the difficulties that the Minister referred to in responding to the previous amendment.

This is a modest amendment which would meet a certain obligation that we have. If the Government feel that they cannot accept the amendment, there are things they can do to meet the need. I would like an assurance from the Government either that they will accept the amendment or that they are prepared to say that they will do what they can, and describe it, to help the individuals concerned and make accommodation for them outside the statute. I would be happy about that, but we have to do something for these people. Some of them are in the camps in Calais. They have been neglected and forgotten by the world, and they worked for us. They helped us at a critical time in Afghanistan and Iraq. I beg to move.

Baroness Hamwee: My Lords, I have added my name to the amendment. The whole of this Bill raises moral issues, and it was the simple rightness of this proposition that led me to sign the amendment.

The *Daily Mail* has been campaigning on this issue and recently highlighted the case of one interpreter who was injured by a bomb and accused by the Taliban of being a spy. He was at that time waiting for the UK Government's support unit to consider his application to be relocated to the UK. He said, "They told me that after five days they would interview me but after five days I was still waiting and they said the programme has not started yet. Then they said maybe 2014, maybe 2015, but I could not wait that long, it was my life at risk". We know that hard cases make bad law, but do they invariably make bad law? Do they not sometimes point us to what should be good with the law? The dangers to these staff and their families at home are now obvious, as they were obvious when they provided assistance.

The Minister for the Armed Forces in a Statement last August spoke of the UK team,

"which investigates thoroughly all claims of intimidation. When necessary we will put in place appropriate measures to mitigate any risks. These range from providing specific security advice, assistance to relocate the staff member and their family to a safe place in Afghanistan, or, in the most extreme cases, relocation to the UK".

There are others in the Chamber who can speak with much more authority than I can about whether giving advice and relocation elsewhere within the country is realistic or effective.

I will finish by saying simply that it took a long campaign to recognise the contribution of the Gurkhas to this country, which was supported by David Cameron before he was Prime Minister. I think that we should put right the position for the individuals who are the subject of this amendment now.

Lord Ashdown of Norton-sub-Hamdon: My Lords, the hour is late and no doubt the House does not want to sit for too long. This is an issue on which I have campaigned for the best part of 18 months. My instinct is to speak at some length to outline the individual problems that affect Afghan interpreters, but I do not think that this is the moment to do so. I shall try to be fairly brief in supporting the noble Lord, Lord Dubs, in his amendment.

The amendment cannot be seen except in the context of the United Kingdom's policy towards Afghan interpreters. As the noble Lord, Lord Dubs, has said, a significantly more disadvantageous set of regulations applies to Afghan interpreters than existed in relation to Iraqi interpreters after the Iraq war. That is an injustice by itself, but let us leave it to one side. As my noble friend Lady Hamwee has said, this is an issue on which the *Daily Mail* has campaigned—no weeping liberals they, as we know. The newspaper has described the Government's policies in respect of those to whom we owe a duty of recognition and honour as dishonourable and shameful. I do not often agree with the *Daily Mail*, but I certainly agree to the use of those adjectives.

I suspect that I am probably the only person in Parliament who not only has been an interpreter—not, I hasten to say, in operational conditions—but has used interpreters, in that case in operational conditions and sometimes moderately dangerous ones. Many of those who served with the front-line units were the bravest of the brave. If there is a front line, they are on it because they have to be; British soldiers cannot do their job unless they are. If there is action, they had to be there too, otherwise we could not do the task that Her Majesty sent us to Afghanistan to fulfil. When the patrol returns the soldiers go into a protected base, but not the Afghan interpreters. They have to spend the night with their families in their communities. Their families are not 10,000 miles away in safety. They too live in the community and are subject to the threat of the Taliban. They came almost by the month for every one of those 13 years and now they come virtually by the day to individual Afghan interpreters, who are beaten up and their families threatened. I have heard so many stories of this that I can barely remember the individual details.

The Afghan interpreters who served day in and day out in active service in the most hostile and dangerous positions, sometimes even with the Special Forces, do not go back after six months. They have stayed in the country for every single one of the 13 years of the Afghan conflict. Now—I have to say it bluntly—we have abandoned them. I do not think that there is a single squaddie or serviceman who served in Afghanistan alongside these interpreters who did not love them, who did not admire them, and who did not think that every single one of them on front-line duties bore a burden of risk greater even than many of our own soldiers because they had borne it for longer. And yet we have abandoned them. It is a shameful policy that shames the Government and, in my view, the nation as well.

The Government's refuge in this, and we may well hear it from the Minister, is that they have set up their package. There are obligations of duty, honour and service here. Our soldiers could not have operated without the service of these men. They simply would have been useless. The next time our servicemen are asked to go into battle on behalf of our nation and we seek a local interpreter, given the way that we have abandoned them and in the light of the way we have treated them, what kind of response do noble Lords imagine they will get?

The Government believe that all their obligations to these brave men can be fulfilled by the Afghan intimidation scheme. When I understood that the scheme would be put into operation in the next Government, I expressed my opposition to it. I thought that it was the wrong scheme. But if it had been applied with good will, so that the burden of presumption was that the Afghan interpreter would, in the face of intimidation and threat, be allowed to return to Britain, maybe this would have been a reasonable policy—inadequate, flawed, but maybe just about acceptable. But it is not. Almost none of those who have suffered from mortal intimidation from the Taliban have been housed and not a single one has been allowed to return to Britain in the years since this Government have been in power. This policy is already flawed. It is very difficult to understand why it has been enacted with such little generosity and duty of honour, except that those interpreters, along with the honour of our country, have been sacrificed in this Government's obsession to do not what is right but what is necessary to outflank the revolting prejudices of the right wing of the Conservative Party and UKIP.

This is a shameful policy, the price of which will be paid in the standing not only of our nation but of our own troops, when they seek to draw in the services of interpreters in the future. If we vote for the amendment we can at least make amends in this Bill for three or four years of complete failure to live up to the role that these men have played on behalf of Her Majesty and of our nation in a conflict of our choosing, and who have placed their lives at risk in doing so.

Viscount Hailsham: My Lords, if the amendment was simply in the terms expressed by the noble Lord, I would support it. But it is not: once again, one comes back to look at the terms of the amendment. It is extremely broadly drawn. It is not confined to interpreters.

[VISCOUNT HAILSHAM]
I agree with what the noble Lord, Lord Ashdown, said about the interpreters, but then I look and see who is covered. It includes,

"direct employees of the Department for International Development or the British Council",

and people who are,

"contracted staff who worked as part of Her Majesty's Government's programmes, projects and operations".

It goes far beyond what the noble Lord said. As I understood the introduction given by the noble Lord, Lord Dubs, which was very clear—the House is grateful to him—all the people who come within those categories should be entitled to come to the United Kingdom and there make applications. We need to focus on legislation. It is quite right to draw attention to the broad principles, which was done very eloquently indeed, but when we are at this stage of a Bill the business of the House is to try to pass legislation that makes sense.

Lord Ashdown of Norton-sub-Hamdon: The amendment does not apply to all those people. It applies to all those people who have served Her Majesty if they are subject to intimidation and threat. The noble Viscount questions the drafting. That is fine, but does he agree with the Government's policy and the way it is presently enacted with Afghan interpreters? It would appear not. If not, will he put a statement down to the Government today, seeking to use the amendment to get them to adopt a more honourable policy?

Viscount Hailsham: The noble Lord asked whether I support the Government's policy regarding interpreters. I happen to think that we have not been sufficiently generous to interpreters. I take the point entirely. I would like to see the Government be much more generous to interpreters from Afghanistan, and indeed from Iraq, but that is not the sole purpose of the amendment. I come back to the point I constantly make—I am sorry to repeat it. It is right to look at broad principles, of course it is, but we are also looking at legislation. What the House passes into legislation must make sense. This amendment goes far beyond the point so eloquently made by the noble Lord.

11 pm

Baroness Nicholson of Winterbourne: In support of this amendment, I remind the House that Britain has been deficient in its treatment of our interpreters. I recall very well that, when the British forces withdrew from Basra in the mid-2000s and we closed, or partially closed, the British consulate—it is completely closed now—three men contacted me in despair and desperation. They were under huge threat; they had worked as interpreters and senior officials in the British consulate and their lives were undoubtedly, in their view, under threat. The evidence they gave me was compelling. I did everything I could; I had no locus, no money, no budget, but by some miracle I was able to persuade a near-neighbouring country to take two of them, temporarily, for what turned into a two-year period before the UNHCR managed to take them out into third countries that were completely safe. The third man, when I said how difficult this was—it was impossible, frankly—said, "Don't worry about me. I think I'm safer than the other two. I can manage a couple more months before I think they'd find me". Three weeks later, he was found tortured to death in a shallow grave. I believe that other nations are far more imaginative and constructive in the treatment of interpreters, who are right upfront, known to everybody and, for our services, put their lives at the gravest possible risk and all too frequently lose them. For this reason, I support the amendment.

Lord Ashton of Hyde (Con): My Lords, there are some things that I think we can all agree on. I agree with the noble Lord, Lord Ashdown, on this. We all acknowledge that the locally employed people in Afghanistan and Iraq did tremendous work—the interpreters in particular, because they tended to be on the front line. They put their lives at risk and sometimes put their families at risk, and I completely agree that we owe them a duty to look after them and to be honourable towards them. Where I differ from the noble Lord, Lord Ashdown, in particular, is that we have not had a policy which is shameful; we have tried and we have succeeded in doing quite a lot to support those people.

We do distinguish, it is true, between those who were employed doing more and less dangerous things and we particularly support those who were on the front line in places such as Helmand in Afghanistan, but I assure noble Lords that we are aware of our legal and our moral responsibility to assist those who suffer as a result of conflict generally. Over and above that, we have a comprehensive approach to assisting those in need who are outside the UK, whom the UNHCR considers in need of resettlement and whom we accept under one of our programmes, particularly the Gateway programme and, more recently, as we heard in the previous debate, the Syrian vulnerable persons relocation programme.

We also accept that we have an additional responsibility to those who have worked for the UK Government in conflict zones. Perhaps it would help if I explain briefly what those arrangements are, because I think there has been some misunderstanding. The numbers that the noble Lord, Lord Ashdown, quoted are not correct. In Afghanistan, we engaged around 7,000 staff during our operations, around half of whom were English-speaking interpreters. There are two schemes designed to assist these former interpreters and other locally engaged staff who are in Afghanistan. First, there is the redundancy scheme, introduced in 2013 in response to the military draw-down. For those who qualify, there is a range of in-country packages of assistance, but also, for those who meet certain criteria, relocation to the UK along with their immediate dependants. Under this scheme, up to the end of February 2016 more than 600 Afghan civilians have been relocated to the UK. This is completely distinct from our refugee resettlement programmes.

The second scheme is the scheme that was mentioned by the noble Lord, Lord Ashdown, which is the intimidation policy—personally, I think it should have been the anti-intimidation policy. This is designed to provide advice and support to any serving or former staff member whose safety has been threatened. So

that applies to anyone, whether they resigned long before the draw-down or not—anyone can apply under this policy. That is regardless of the dates or duration of their employment or the role that they held working for us in Afghanistan. Anyone who was employed by the Government, or on associated programmes, can apply. Investigations take place and mitigation measures can be put in place. These can range from providing specific security advice to assistance to relocate the staff member within the country. In the most extreme cases, it could mean relocation to the UK. We have supported around 300 staff members through this intimidation policy, which is regularly reviewed. In the case of Iraq, the numbers are rather larger.

Lord Ashdown of Norton-sub-Hamdon: I said that, according to the figures I have, under the intimidation scheme the number of Afghan interpreters who have been relocated to the United Kingdom since the election of this Government is nil. Am I right?

Lord Ashton of Hyde: The noble Lord is right on that. The point is that 600 Afghan locally employed staff have been relocated to the UK and many others have been helped within the country. The important thing about the intimidation scheme is that, if the circumstances merit it, there is nothing to prevent those people being relocated to the UK.

The noble Baroness, Lady Nicholson, talked about Iraq. The Government have assisted staff through the Iraq locally engaged staff assistance scheme, which has been running since 2007. Six hundred places were made available for staff and dependants who met the criteria and have enabled nearly all that number to be resettled in the UK. The second arrangement in Iraq was also for locally employed staff who were still serving on 8 August 2007. They were granted entry clearance which, on arrival, if they met the criteria, conferred indefinite leave to enter the UK. This had to be referred by employing departments. Since 2007, under this arrangement, a total of 1,323 Iraqi civilians have been relocated to the UK up to the end of February this year.

These programmes are in addition to the UK's obligation under the refugee convention to consider all asylum claims made in the UK. But we have no legal obligation to extend the asylum process to those outside the UK. As the noble Lord, Lord Pannick, mentioned in the last debate, government policy is very clear that we consider only asylum claims that are lodged in the UK. We do not grant visas to enable asylum seekers to come to the UK. To accept that proposal would attract large numbers of claims requiring careful consideration and place very heavy burdens on UK posts abroad. Importantly, it would also draw resources away from those applying in the UK, and thus undermine our ability to process those claims in accordance with our legal obligations under the refugee convention.

The operation of the two global resettlement schemes already provides a route to the UK for refugees recognised by UNHCR. The existing ex gratia schemes for locally engaged staff in Iraq and Afghanistan have a different focus and provide a route to the UK to reward those who have made particularly significant contributions to the success of UK missions. For all locally engaged staff we have the intimidation policy that provides cover for those who may need support in the face of a local threat, which in extreme cases could lead to relocation to the UK, as I have said. We recognise the considerable contributions made by locally engaged staff and owe a debt of gratitude to them and an ongoing duty of care. That duty and that debt are already being discharged and those in need have been allowed to come to the UK.

In answer to the noble Lord, Lord Dubs, I cannot accept the amendment. However, I can go some way towards what he was asking for as his second alternative. If he can give me examples of where the existing schemes are not working, I am happy to take them to the MoD and explain why they are not working. However, I submit that the schemes which are operating do fulfil our moral and legal obligations. On that basis, I would be grateful if the noble Lord would withdraw the amendment.

Lord Dubs: My Lords, what the Minister has said is quite complicated. There are a number of different schemes and it is not easy to sort out all the implications of what he has said. I will pick him up on one point, though. The Minister said that people cannot travel here to claim asylum. I remember that the British Government brought in some 4,000 Bosnians from the Serb camps. These people were allowed into the country—

Lord Ashton of Hyde: They had to travel here to claim asylum. What they cannot do is claim asylum in foreign countries.

Lord Dubs: They had to be given visas or something with which to come here. The amendment says that they have to satisfy the UNHCR that they meet the 1951 convention criteria and they would then be eligible to apply for a visa for the purpose of claiming asylum here. That meets what the Minister says—yes?

Lord Ashton of Hyde: One of the reasons why we cannot accept the amendment—the red line, if you like—is that we do not give people visas to come to this country to claim asylum.

Lord Dubs: The hour is late but, as I remember it, the Bosnians were allowed to come here in order to be able to claim asylum. I do not think they were given asylum in Serbia when they left. But be that as it may.

If I understand the Minister correctly, he has said that, if we can produce evidence of individuals who have slipped through the net and who would be entitled to come here, under what he has said, if we can find them and give the Government the names, then the Minister will pass them on to the MoD to be dealt with under the scheme. That goes some way to meeting my concerns. I am worried that there are people who have simply slipped through the net. For example, I am told there are several in Calais. They would seem to meet the criteria that the Minister set. There may be others elsewhere. If the Minister is giving that clear assurance, I am prepared to withdraw my amendment.

Lord Ashton of Hyde: I can certainly assure the noble Lord that, if he can produce examples of people who would appear to have slipped through the net, I

[LORD ASHTON OF HYDE]
would be happy to take them to the MoD. Obviously, I cannot give a guarantee that they definitely have slipped through the net, but the MoD will certainly take a look.

Lord Dubs: I appreciate that. I know of at least two who have been identified in Calais by members of an NGO. If I let the Minister have their names, will he be prepared to act as he said and let the MoD have them? I understand he cannot give a complete assurance about what the MoD will do. We have some names and we can produce some more.

On the basis of the Minister's assurances, I am prepared to withdraw the amendment.

Some Lords objected to the request for leave to withdraw the amendment, so it was not granted.

11.13 pm

Division on Amendment 122

Contents 60; Not-Contents 136.

Amendment 122 disagreed.

Division No. 3

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Hamwee, B.
Humphreys, B. [Teller]
Jolly, B.
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11.24 pm

Amendment 122A

Moved by ***Lord Alton of Liverpool***

122A: After Clause 63, insert the following new Clause—

"Family reunion: refugee resettlement programme

(1) The Secretary of State shall make provision for a refugee resettlement programme to be established under section 59 of the Nationality, Immigration and Asylum Act 2002 (international projects), to provide for family members of persons resident in the United Kingdom to travel to the United Kingdom for resettlement.

(2) The Secretary of State must consult as appropriate before specifying the number of places to be offered under the programme.

(3) Under this section, family members that may be accepted for resettlement under the programme include—

(a) children,

(b) grandchildren,

(c) parents,

(d) spouses,

(e) civil or non-marital partners, or

(f) siblings

of British citizens, persons settled in the United Kingdom, or persons recognised as refugees or who have been granted humanitarian protection.

(4) Priority for family reunion resettlement under this section shall be given to family members not eligible for family reunification under existing rules.

(5) Persons resettled under this section must be in addition to any persons resettled under any commitment on refugee resettlement which exists on the date on which this Act is passed, and must include persons from within the rest of Europe."

Lord Alton of Liverpool: My Lords, we debated Amendment 122A some hours ago, when it was coupled with Amendment 122. It deals with family reunions, and I would like to test the opinion of the House.

11.25 pm

Division on Amendment 122A

Contents 91; Not-Contents 134. [The Tellers for the Not-Contents reported 134 votes; the Clerks recorded 133 names.]

Amendment 122A disagreed.

Division No. 4

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Stephen, L.
Stoneham of Droxford, L.
Strasburger, L.
Stunell, L.
Taverne, L.
Taylor of Goss Moor, L.
Teverson, L.
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Tunnicliffe, L. [Teller]
Tyler, L.
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Anelay of St Johns, B.
Ashton of Hyde, L.
Barker of Battle, L.
Bates, L.
Berridge, B.
Blencathra, L.
Borwick, L.
Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
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Brougham and Vaux, L.
Byford, B.
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Cathcart, E.
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Chadlington, L.
Chisholm of Owlpen, B.
Colwyn, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Crathorne, L.
De Mauley, L.
Deben, L.
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Dobbs, L.
Eaton, B.
Eccles, V.
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Evans of Bowes Park, B.
Fairfax of Cameron, L.
Faulks, L.
Feldman of Elstree, L.
Fink, L.
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Fowler, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Geddes, L.
Gilbert of Panteg, L.
Goodlad, L.
Green of Deddington, L.
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Hayward, L.
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Holmes of Richmond, L.
Home, E.
Horam, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
Inglewood, L.
Jenkin of Kennington, B.
Jopling, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Lamont of Lerwick, L.
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Leigh of Hurley, L.
Lexden, L.
Lingfield, L.
Liverpool, E.
Lupton, L.
Lyell, L.
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Stowell of Beeston, B.

Taylor of Holbeach, L. [Teller]
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Ullswater, V.
Verma, B.
Warsi, B.
Wasserman, L.
Wei, L.
Wilcox, B.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

11.36 pm

Amendment 122B had been retabled as Amendment 140B.

Schedule 11: Availability of local authority support

Amendment 123

Moved by ***Lord Bates***

123: Schedule 11, page 173, line 33, at end insert—

"( ) In that sub-paragraph, in paragraph (h) for "or 36" substitute ", 35A or 35B"."

Amendment 123 agreed.

Amendment 123A

Moved by ***The Earl of Listowel***

123A: Schedule 11, page 174, line 27, leave out "conditions A and B are" and insert "condition A is"

The Earl of Listowel (CB): My Lords, I shall speak also to Amendments 123B, 123C and 123D. I thank the noble Baronesses, Lady Lister of Burtersett and Lady Hamwee, and the right reverend Prelate the Bishop of Norwich for attaching their names to these amendments.

These amendments affect a subgroup of young people leaving care. I am very glad and grateful that at the last Conservative Party conference the Prime Minister chose to speak about his particular concern about young people in care. Edward Timpson MP's work in improving security for care leavers and introducing "staying put" to allow young people to stay with their foster carers until the age of 21 was a huge step forward in the coalition Government. There has been much welcome work in this area and recognition of the vulnerabilities of these young people. I am therefore not at all surprised that the Minister has paid great attention to these amendments. I appreciate our correspondence, the meeting that we and the noble Baroness, Lady Lister, had about this, and the Minister's consideration and the adjustments that he has made, particularly with regard to young people who were not offered the chance to make an application for their immigration status to be regularised while they were in care under the age of 18, and to young people who have been trafficked.

These amendments ensure that young people leaving care are able to continue to access leaving-care support from their local authorities in circumstances where their departure from the UK is not envisaged. This includes young people with pending applications to remain in the UK whose long-term future may be in the UK, and young people who cannot leave the UK because there is a genuine obstacle to their removal.

This Bill creates a two-tier system of support and discriminates against care leavers on the basis of their immigration status, with damaging consequences for young people who have sometimes been living in the UK for many years as unaccompanied children, including potential victims of child trafficking and those who have no family but their foster family and their corporate parent, the local authority. It is not clear to me why a separate system is needed when the Children Act 1989 and the provision for care leavers, in particular the entitlement to a personal adviser and pathway planning, provide the most appropriate mechanism for supporting young people leaving care whatever their long-term future in the UK.

Central and local government have a unique relationship with children in care and care leavers, as they are corporate parents. That means that they have a statutory responsibility to act for young people in the way that a good parent would. The Government have indicated that very similar types of support could be provided under new paragraph 10B in the Bill, including continued foster placement, the advice and support of a personal adviser and social care support. That is most welcome. However, the Bill is drafted so that the duties to meet the welfare needs of care leavers, in line with wider care-leaving legislation, have been replaced by a power to make regulation. It is therefore anticipated that these young people will generally be prevented from staying in foster placements, continuing education, having a personal adviser and pathway plan, being supported with their health and so on.

The Bill's provisions affecting migrant care leavers are inconsistent with government policy on care leavers generally, and fundamentally undermine the corporate parenting responsibility. Under these provisions, the Government estimate that 750 care leavers will be affected and therefore prevented from accessing the full range of leaving-care services that their peers receive. However, the Bill will also affect care leavers with pending immigration applications that are not their first application, and others whose long-term future may be in the UK. Young people caught by these provisions will include those who face genuine obstacles to removal, which may persist for lengthy periods of time, and those with non-asylum human rights claims based on having lived in the UK for significant periods of time, if this is not their first application.

I am very grateful to the Minister for the attention that he has given to the needs of these young people, and for the extent to which he has moved during the passage of the Bill. I would really appreciate it if he and the Government could go a bit further in ensuring that as many of these young people as possible have access at least to a personal adviser and a pathway plan. That is crucial for these young people at the age of 18 who have had troubled starts in life. It may also be to the benefit of the Government in their wish to create a robust immigration system. If these young people are engaging in a relationship with their personal adviser, it is easier for the authorities to have contact with them, so it should be easier for the Immigration Service to keep in touch with them and remove them when it is possible to do so.

I would appreciate it if the Minister could give a clear commitment to meeting the needs of these young people and, if he can, to move further forward than he has hitherto. If he could bring something to the House at Third Reading that would make the protections for these young people clear in the Bill, that would also be very welcome. I beg to move.

Baroness Lister of Burtersett: My Lords, I support this group of amendments, to which I have added my name, for the reasons outlined by the noble Earl, Lord Listowel, who has been resolute in his defence of the rights of care leavers. I want to raise some issues arising from the Government's rationale behind creating a separate system of support for care leavers who have no leave or who are appeal rights exhausted, particularly the removal of the duty to provide these care leavers with a pathway plan and personal advisers, and the dispersal of care leavers outside their local area. I am grateful to the Refugee Children's Consortium for its briefing.

As I understand it, the Government's view is that a separate system is needed for these young people who are appeal rights exhausted, because they believe that these young people's future does not lie in the UK, even though in practice many young people who are ARE remain because of the barriers to their removal. However, the Government accept that in some cases additional support, such as access to social care services and remaining in foster placements, will still be needed. In his letter following Committee, the Minister stated:

"I agree entirely that they"—

that is, care leavers—

"should receive support appropriate to their individual needs",

and that this could,

"include remaining in foster care placement".

That is welcome, but it is very difficult to see how it will be achieved if the young person's needs cannot be assessed because they will no longer be entitled to a pathway plan or personal adviser under the provision in new paragraph 10B, which is precisely the mechanism through which individualised assessments currently take place. Are the Government not just going to be reinventing the wheel by creating a whole separate system for this group of young people? Would it not be better to concentrate on ensuring that the current system for planning these young people's transition to adulthood worked better by using dual or triple planning approaches to plan for all eventual outcomes for the young person's immigration status, as set out in the guidance? Can the Minister explain whether the Government intend for young people's needs to be assessed by new and different professionals? If so, would this not simply break the existing links that young people have with their personal advisers?

11.45 pm

During the parliamentary event organised by the Refugee Children's Consortium last month, we heard from Dembo, a care leaver who spoke highly about his personal adviser and the importance of that role in his life in helping him to stay on the right path and supporting him in a range of different decisions in his life. These professionals understand the young person's history and their present circumstances. How do the Government envisage that they will be able to maintain the continuity of support for these young people under the new two-tier system?

On the issue of dispersal, it is unclear whether it is intended that care leavers will be dispersed outside their local area when they are redirected away from leaving care support to support under Home Office provisions, be it under the new Section 95A or paragraph 10B system. In his recent letter to the Alliance for Children in Care and Care Leavers, the Minister, James Brokenshire, suggests that care leavers may be able to stay in their local authorities in accommodation provided by the Home Office. Again, that is welcome, but it is not clear whether this will always be the case or just in certain limited circumstances. Could the Minister please clarify that?

Given the current dispersal policies on asylum support housing, the fear is that care leavers who fall outside leaving care support will generally be dispersed outside London and the south-east on a no-choice basis and that they may be moved around frequently, as many asylum seekers are. If so, that is very worrying, given the vulnerability of these young people. We know from the available research on separated young people that suitable accommodation and stability act as key protective factors. Many of these young people have grown up in the area and the limited support network they may have is there—for example, their former foster parents and siblings, their friends and teachers, their independent visitors and any NGOs that support them. To remove them would almost certainly be contrary to their welfare, whatever their circumstances. This concern has been raised by organisations in the Refugee Children's Consortium, the Alliance for Children in Care and Care Leavers and, I am told, by some local authorities.

There is also the fear that without proper safeguards and continued support from their corporate parents through their personal advisers and their support network, dispersal out of the area where care leavers have grown up could lead to many more vulnerable young people simply going missing, creating significant safeguarding risks. Can the Minister please clarify what decisions have been made with respect to the dispersal of care leavers in these circumstances, and will he consider including in the Bill a guarantee that no care leaver will be dispersed, no matter which system of support they end up on? It seems as if there are still too many unanswered questions that perhaps could be returned to at Third Reading, following further discussion with the Refugee Children's Consortium and the Alliance for Children in Care and Care Leavers.

Underlying the concerns I have raised is the point I made in Committee that these extremely vulnerable young people do not magically turn into independent adults without need of support when they turn 18. The Government have gone some way towards acknowledging that, which is very welcome. I hope that they might go a step further and address the concerns raised by the Refugee Children's Consortium and the amendments.

Finally, I will raise one other matter. I apologise for not doing so in Committee, but it was only raised with me since then by Baca, an organisation local to me in

[BARONESS LISTER OF BURTERSETT]

the East Midlands that works with unaccompanied young people. It is worried by Clause 64(10), which states that:

"The Secretary of State may by regulations make provision about the meaning of 'unaccompanied' for the purposes of subsection (9)".

It points out that both the UNCHR and the Home Office already have a clearly established definition of unaccompanied asylum-seeking children, which refers to separation from both parents and absence of care by an adult who in law or custom has responsibility to provide such care. Its worry is that the clause could be used to restrict the definition of "unaccompanied", so that those who arrive in the UK with, say, a trafficker or someone else seeking to exploit them—"accompanied" in a literal sense—might be denied the support offered to unaccompanied children, even though they lack the support and care of a parent or legal guardian. I am sure that that is not the intention, but I would welcome an assurance and an explanation about what the intention is—probably, given the lateness of the hour, in one of the Minister's famous letters.

The Lord Bishop of Norwich: My Lords, the situation of most young adults in this country reveals why this group of amendments is needed. I am glad to add my name to it and pay tribute to the noble Earl for his introduction. In 2015, half of all young people aged 21 in this country and 40% of all 24 year-olds were still living with their parents. As many Members of your Lordships' House will know from personal experience, even adult children who have left home often return when need arises. Indeed, my own personal experience of adult children is that territorial control of bedrooms continues even when they have got married or have their flats elsewhere—I am thinking of introducing a bedroom tax in Bishop's House in Norwich.

Children in care are not somehow exempt from the societal pressures of this age. In this regard, the Government recently changed legislation so that all care leavers can stay put in foster placements until they are 21, which is a recognition of a massive shift in our society and is good for their welfare. The current system of leaving care is designed to keep contact with young people, wherever they end up.

Care leavers who have exhausted their appeal rights and find themselves alone in this country face the same difficulties as other children leaving care but additional ones as well: isolation, loneliness and fear are common. They have often suffered abuse, violence and trauma earlier in their lives. Migrant care leavers need help from their corporate parents to gain access to legal advice and representation in relation to their immigration status.

Research for the Children's Commissioner, published 18 months ago, included interviews with care leavers who had become appeal rights exhausted. They had a pervasive sense of fear, anxiety and depression. Some said that they contemplated suicide. The experience of friends hardened their resolution to remain in the UK. One young person said of this friends that,

"one of them is currently in a detention centre, one was sent back years ago, and one was sent recently, sent back to Afghanistan … but he is in a big trouble. His father is telling him to join the Taliban".

This amendment is necessary because such young people undoubtedly continue to need support, whether it is to make sure that returning them to their country of origin is truly safe or to work with them in preparing them to return with assistance and proper support, without the need for enforcement. I hope that the Minister will look sympathetically on this group of amendments.

Baroness Hamwee: My Lords, I have added my name to these amendments and I was planning to say nothing more than that I agree with everything the three previous speakers have said. However, the point made by the noble Baroness on definition seems to need clarifying. When the Minister has considered that, if there seems to be any doubt that has to be resolved in correspondence, it should be resolved in the Bill at Third Reading. If there is a problem, that is where the resolution needs to be.

Lord Bates: My Lords, I thank the noble Earl, Lord Listowel, for moving the amendment. He is one of the Members of this House whom we all greatly admire. He focuses on a particular area that he cares passionately about—namely children, particularly children in care, and seeks to introduce their voice into all pieces of legislation that go through your Lordships' House. That is to his credit and we appreciate him in that spirit. My officials and I were grateful for the opportunity to meet with the noble Earl about his amendment, and I know that James Brokenshire, the Immigration Minister, was grateful to have the meeting with the Alliance for Children in Care and Care Leavers on 8 March.

The noble Baroness, Lady Lister, invited me to write another of my famous letters. I was particularly proud of the one that we wrote on 11 March following the meetings and the consultation. Not only did we listen to the concerns that were raised, but on page 4 we went into some detail about how we would respond to those concerns. We said that we would look at how provision should be geared to what the local authority is satisfied is needed to support a person through their assisted voluntary return or forced departure. Let us just be clear for those who may not have followed all the aspects of this issue. We are talking about people in local authority care who, after various appeals for leave to remain, are deemed to have no legal right to be here, and furthermore—this is very important from the perspective of the noble Baroness and the right reverend Prelate—there is no barrier preventing their return. These are important provisions to bear in mind in relation to the group that we are talking about.

I emphasise that the great majority of care leavers are not affected by the changes in Schedule 11, including those with refugee status, leave to remain or an outstanding asylum claim or appeal. They will all remain subject to the Children Act framework. Under new paragraph 7B of Schedule 3 to the Nationality, Immigration and Asylum Act 2002, this also includes those who have been refused asylum but have lodged further submissions on protection grounds that remain outstanding, or who have been granted permission to apply for a judicial review in relation to their asylum claim.

Under new paragraph 2A of Schedule 3, the Children Act framework will also continue to cover those awaiting

the outcome of their first application or appeal to regularise their immigration status where, for example, they are a victim of trafficking. This means that the young adults affected by the changes in Schedule 11 will be those who have applied for leave to remain here on asylum or other grounds but have been refused, and who the courts have agreed do not need our protection, have no lawful basis to be here and should now leave the UK.

I shall now deal with the points referred to by the noble Earl and the noble Baroness. It is possible for individual cases supported by local authorities under the new 2002 Act framework to continue in a foster placement or to be supported by a personal adviser where the local authority considers this to be appropriate. That is an important safeguard.

The noble Baronesses, Lady Lister and Lady Hamwee, asked about the meaning of "unaccompanied" in Clause 64(10), concerning the transfer of unaccompanied asylum-seeking children. We understand the concern to ensure that all relevant cases are properly safeguarded, including victims of trafficking. We will set out in writing how we intend "unaccompanied" to be defined and how it will operate. My notes do not say when that will be, but it will be done by Third Reading. That is an important point and I am grateful that it has been raised.

The noble Baroness, Lady Lister, asked about care leavers being dispersed across the country. These cases will qualify for Home Office support under new Section 95A only where they are failed asylum seekers facing a genuine obstacle to departure from the UK. It will be possible in these cases for the person to remain in local authority accommodation funded by the Home Office—for example, while they await a travel document from their embassy. We will develop appropriate guidance with the Department for Education on those cases. I am sure that the views of the organisations that the noble Baroness referred to will be valuable in formulating that guidance, and would be appreciated.

Midnight

The noble Baroness also asked about the need for individual assessments and plans. We will work closely with the Department for Education and key partners in the sector on new guidance for local authorities to make sure that there is the right approach to assessment by local authorities of cases under Schedule 3 to the 2002 Act.

Local authorities should not be obliged to provide Children Act care-leaver support simply because the person has sought a judicial review in these circumstances. Likewise, where the person has exhausted their appeal rights and should now be leaving the UK but there is a genuine obstacle which prevents this—for example, they have yet to receive a travel document—the combination of the new Section 95A of the 1999 Act and paragraph 10B of Schedule 3 to the 2002 Act will ensure the provision of appropriate support while this obstacle remains.

I conclude where I began by paying tribute to the work of the noble Earl, Lord Listowel, in this important area. I have listened extremely carefully to what he, the noble Baronesses, Lady Lister and Lady Hamwee, and the right reverend Prelate have said. I am also grateful to the Alliance for Children in Care and Care Leavers for its advice on these issues, and we hope that that will continue as the guidance is formulated. It will be essential that there continues to be close engagement with such partners as these new measures are taken forward. I regret, however, that we are not able to agree to the particular change that the noble Earl is seeking in relation to Schedule 11. I ask that he consider withdrawing his amendment at this stage based on the reassurances that I provided in my letter on 11 March and the ongoing engagement that we look forward to having with the noble Earl on these very important issues for this very vulnerable group.

The Earl of Listowel: My Lords, I am most grateful to the Minister for his encouraging reply. I should have acknowledged the meeting on 11 March with James Brokenshire. In particular, his offer for ongoing discussion with the Refugee Children's Consortium is very reassuring. There is just one matter that I would like to clarify with the Minister. He said that this would apply only where there are no barriers preventing the return of these young people. That would include those young people who are here and who one would wish to return to their country but, for various reasons, they cannot be returned. For children who cannot be returned to their home country, for whatever reason that may be, would that be considered a barrier?

Lord Bates: I am happy to come back on that. Where it is not safe for the person to be returned because there is a real fear of danger, persecution or irreversible harm—I think "real" is a legal term in this context—we would not be able to return them in those circumstances. Basically, these are circumstances where there is no barrier; where the courts have looked at the case, and at the country to which the person would be returned, and adjudicated that they do not believe the person would be at risk and there is no reason for them to continue to stay in the UK. That is the definition that applies there.

The Earl of Listowel: I thank the Minister for that reply. Casting back to past Immigration Bills, it is not necessarily about the issue of safety but the right kind of paperwork. Often, if there seems to be some obstacle to returning a person to their home country, it is bureaucratic in nature. However, it does mean that they have to remain for some time here. I need to check my facts, but I look forward to the ongoing discussion with the Minister on these issues. I am very grateful to him for the pains that he has taken over this matter. I am very reassured by his response and look forward to clarification of this definition at Third Reading. I beg leave to withdraw the amendment.

Amendment 123A withdrawn.

Amendments 123B to 123D not moved.

Amendments 124 and 125

Moved by ***Lord Bates***

124: Schedule 11, page 180, line 41, after "made" insert "by the Secretary of State"

125: Schedule 11, page 181, line 6, leave out "or 2A(3)(b)" and insert ", 2A(3)(b), 10A or 10B"

Amendments 124 and 125 agreed.

Clause 64: Transfer of responsibility for relevant children

Amendments 126 and 127

Moved by **Lord Bates**

126: Clause 64, page 57, line 3, leave out "or"

127: Clause 64, page 57, line 8, at end insert ", or

( ) a person under the age of 18 who is unaccompanied and who—

(i) has leave to enter or remain in the United Kingdom, and

(ii) is a person of a kind specified in regulations made by the Secretary of State."

Amendments 126 and 127 agreed.

Clause 67: Scheme for transfer of responsibility for relevant children

Amendments 128 to 135

Moved by **Lord Bates**

128: Clause 67, page 58, line 3, leave out "first" and insert "transferring"

129: Clause 67, page 58, line 4, leave out "another local authority" and insert "one or more other local authorities"

130: Clause 67, page 58, line 5, leave out ""the second" and insert "a "receiving"

131: Clause 67, page 58, line 7, leave out "The scheme" and insert "A scheme under this section"

132: Clause 67, page 58, line 10, leave out "that section" and insert "section 64"

133: Clause 67, page 58, line 10, leave out "those authorities" and insert "the transferring authority and each receiving authority"

134: Clause 67, page 58, line 13, leave out "first authority and the second authority" and insert "transferring authority and each receiving authority under a scheme under this section"

135: Clause 67, page 58, line 17, leave out "the second" and insert "each receiving"

Amendments 128 to 135 agreed.

Clause 68: Extension to Wales, Scotland and Northern Ireland

Amendments 136 to 139

Moved by **Lord Bates**

136: Clause 68, page 59, line 1, after "to" insert "—(i)"

137: Clause 68, page 59, line 1, at end insert "or

(ii) provision which may be made under section 64(6) or (10),"

138: Clause 68, page 59, line 4, leave out "or (2)"

139: Clause 68, page 59, line 7, leave out paragraph (b)

Amendments 136 to 139 agreed.

Amendments 140 and 140A not moved.

Amendment 140B

Moved by **Lord Teverson**

140B: After Clause 68, insert the following new Clause—

"Spouses and civil partners of British citizens

(1) The spouse or civil partner of a citizen of the United Kingdom shall be entitled to enter and remain in the United Kingdom in order to live with that citizen.

(2) The provisions of subsection (1) shall not apply in the case of a sham marriage or sham civil partnership within the meaning of section 24 of the Immigration and Asylum Act 1999 (duty to report suspicious marriages).

(3) The Secretary of State shall make rules for the purposes of this section."

Lord Teverson (LD): My Lords, I shall not keep the House for a great deal of time. This is an issue which I believe to be fundamental, which is why I have brought it back on Report. I thank my noble friend Lady Hamwee for having simplified it down to its basic elements so that we get to the crux of the matter.

When we talked earlier this evening about bringing together families who were asylum seekers, it was interesting how the Minister agreed, as he obviously would do, that it is much better that asylum families are able to live together. I think that what is not recognised or realised by the vast majority of the population is that we do not in many circumstances allow British citizens to live together with their spouse or civil partner. There are many instances where British citizens who have married are not able to bring their spouse or civil partner to this country to live with them, or if they are abroad and wish to do that, they are effectively exiled. If they have children, who are then usually entitled to British citizenship, those younger citizens are also effectively exiled from their country of citizenship.

The reason for that is the requirement of a certain income per annum for the British citizen over a period of time to enable them to live with their chosen civil partner or spouse. It seems fundamentally wrong that we as British citizens are constrained about who we are able to marry or enter a civil partnership with and are unable to live in our home state. Not only is that fundamentally wrong; it is discriminatory in terms of income levels, with those in certain professions or work or those in certain regions less likely to be able to live with their spouse or civil partner in the United Kingdom, with their family, than are those in other trades and professions and other regions.

For a party and a Government who believe that family is of fundamental importance and for a party with many libertarians among it who believe in the freedom to marry and live with who you wish as long as it is not a sham marriage—clearly those exist, and the amendment takes that into account—I have brought this amendment forward again. I believe that there is a fundamental discrimination and a fundamental injustice in terms of what British citizenship should mean and the liberties that this country should offer to its citizens. On that basis, I beg to move.

Baroness Hamwee: My Lords, at the previous stage my noble friend and I tabled an amendment that sought to change the financial thresholds that currently apply to spousal visas. The Minister gave as one

argument for the threshold the need to protect families, saying that the Government want to see family migrants thriving here, not struggling to get by. But separation does not help people to thrive. The Minister thanked my noble friend for raising our sights at that point by talking about love. So instead of another amendment on financial thresholds, my noble friend and I have decided to say what we mean, which is this: do not set a financial threshold on love.

Lord Green of Deddington: My Lords, the amendment simply deletes a key requirement in a spousal visa. Noble Lords will remember that the Migration Advisory Committee was invited to make recommendations on what should be a threshold. I take the point that the noble Baroness would not like a threshold at all, but the recommendation was £18,600 as the level at which no income-based benefits were paid. The level at which the overall costs to the Exchequer would be zero was £40,000. That gives an indication of the cost to the taxpayer of abolishing this income requirement. It is surely not right that the taxpayer should be obliged to subsidise at such a considerable level the arrangements of other people. This amendment would drive a coach and horses through that requirement, and I hope that it will be opposed.

Lord Ashton of Hyde: My Lords, I thank all noble Lords who have spoken on this amendment and I appreciate the knowledge and the strength of feeling of the noble Lord, Lord Teverson. He has put this as a matter of fundamental principle. I respect that, but I am afraid that we disagree on it, and I shall try to explain why the Government feel like that.

The amendment concerns the family Immigration Rules for British citizens which also apply to those who are settled in the UK and those here with refugee leave or humanitarian protection to sponsor a spouse or partner to come and remain in the UK. Of course, we welcome those who wish to make a life in the UK with their family, to work hard and to make a contribution. However, we believe that family life must not be established here at the taxpayer's expense and that family migrants must be in a position to integrate into British society. That is fair to the applicants and to the public and it is the basis on which the family Immigration Rules were reformed in July 2014 by the coalition Government.

The amendment would reverse those reforms by removing all requirements except the requirement that the marriage or civil partnership is not a sham. So the effect of the amendment would be to remove the minimum income threshold and accommodation requirements; to remove the requirement for basic English language speaking and listening skills; to remove the suitability requirements which prevent a foreign criminal from qualifying for leave; to remove the minimum age requirement; to remove the requirements which prevent the formation of polygamous households and prevent those with a prohibited degree of relationship from qualifying; and it would run counter to Parliament's view of what the public interest requires in immigration cases engaging the qualified right to respect for family life under Article 8 of the European Convention on Human Rights as set out in the Immigration Act 2014. This would undermine our system for family migration. Understanding basic English and being financially independent, for example, help to ensure that the migrant spouse or partner can integrate and play a full part in British society.

12.15 am

The noble Lord, Lord Teverson, said that these rules, which Parliament passed, are discriminatory, but we feel that if British citizens wish to establish their family life together in the UK, it is right that their foreign spouse or partner should have to meet the requirements of the family Immigration Rules, which are geared to preventing burdens on the taxpayer and to promoting integration. The right to respect for family life under Article 8 of the European Convention on Human Rights does not provide couples with an unqualified right to live in whichever country they choose. States are entitled to set requirements for family immigration that properly reflect the public interest. Indeed, the courts have upheld the lawfulness of the English language and financial requirements under the Immigration Rules, finding that they strike a fair balance between the interests of those wishing to sponsor a spouse to settle in the UK and of the community in general.

Those and the other requirements of the family Immigration Rules for spouses and partners provide the right basis, in our view, for sustainable family migration and integration. The amendment would undermine that. The rules that the coalition Government reformed in the last Parliament are having the right impact and are helping to restore public confidence in the immigration system. I hope, despite our difference in views on this, that the noble Lord will agree to withdraw the amendment.

Lord Teverson: My Lords, I thank the Minister for going through all of that. It is a difference of opinion on principle. That is what it is. To me, British citizenship means that you have that freedom. That is something that should be sacred to us as British citizens. We do not have that. I regret that. It makes the case slightly too strongly in certain areas, but clearly the Government are not going to move on this. That is a great shame, because a number of families are seriously exiled from this country and from being able to live with their wider family where they grew up because of these restrictions. Many of those would be no burden on the British taxpayer whatever. But I take the point and I beg leave to withdraw the amendment.

Amendment 140B withdrawn.

Schedule 12: Penalties relating to airport control areas

Amendment 141

Moved by ***Lord Bates***

141: Schedule 12, page 186, line 15, at end insert—

"(1A) A statutory instrument containing (whether alone or with other provision) regulations under paragraph 28(6) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Lord Bates: My Lords, I can be brief. These are three relatively small amendments, responding to the report from the Delegated Powers and Regulatory

[LORD BATES]
Reform Committee, for which we are grateful. I am satisfied that Amendments 141 to 143, which stand in my name, fully respond to the concerns of the committee, which recommended that the affirmative procedure should apply to the power conferred by new paragraph 28(6) of Schedule 2 to the Immigration Act 1971, inserted by paragraph 1 of Schedule 12 to the Bill.

I am also satisfied that the amended provisions will still achieve the policy objective of enabling the Secretary of State to impose financial penalties on owners and agents of aircraft where they fail to take reasonable steps to secure that passengers are embarked or disembarked only within designated control areas at airports. This accords with the committee's long-standing approach that instruments that specify a fine or other penalty—or a maximum fine or penalty—that is not itself subject to an upper limit set out in the enabling Act should require the affirmative procedure.

I will also move Amendments 146, 149 and 150 in this group, which make it clearer that regulations under a provision that attracts the affirmative procedure may be combined with other regulations, but that, if this happens, the affirmative procedure applies. I beg to move.

Amendment 141 agreed.

Amendments 142 and 143

Moved by ***Lord Bates***

142: Schedule 12, page 186, line 16, after "containing" insert "any other"

143: Schedule 12, page 186, line 17, after "Schedule" insert "and to which sub-paragraph (1A) does not apply"

Amendments 142 and 143 agreed.

Amendment 144 not moved.

Clause 72: English language requirements for public sector workers

Amendment 144A not moved.

Clause 80: Immigration skills charge

Amendment 144B

Moved by ***Lord Wallace of Saltaire***

144B: Clause 80, page 65, line 7, at end insert—

"(3A) Regulations under this section must provide for exemption from a charge under subsection (1) in the case of an application for entry clearance or leave to remain made—

(a) to fill a skills gap directly concerned with the provision of education;

(b) by an institution whose primary function is the provision of education or skills training;

(c) to fill a skills gap directly concerned with the provision of health services; or

(d) by an institution whose primary function is the provision of health services."

Lord Wallace of Saltaire (LD): My Lords, the immigration skills charge is a major innovation in UK immigration policy and very difficult to debate this late in the evening. Since Committee, however, I have had representations from the British Medical Association, Oxford and Cambridge universities, Universities UK, the Russell group and a very large number of other research institutes which regard this as a very important issue. I hope that the Minister will be able to provide at least some information, because we have not had any communication from him since we raised questions in Committee, nor have we had any letters. There is a real problem here of how we address a major innovation which the Royal Society, on behalf of the national academies, says will cost universities £25 million a year merely to deal with short-term secondees from foreign universities working on two-year post-doctoral fellowships in British universities. This is a serious issue to have to discuss late at night.

The idea was first floated by the Prime Minister in a speech last June. He stated that he would ask the Migration Advisory Committee to report on the subject. The Migration Advisory Committee reported on 20 January this year, after the Commons considered the Bill and had spent five minutes at the end of its Committee stage discussing this clause. In other words, it was not considered properly at all in the Commons. The Government have not yet had time to respond to the MAC report. The chairman of the MAC will be giving a briefing to parliamentarians on this issue tomorrow, the day after we have completed our Committee and Report stages. We raised a number of questions in our short Committee stage to which Ministers, as I have just said, have not responded.

The Minister, in responding in Committee, could assure us only that,

"details about the rate and scope of the immigration skills charge will be set out in regulations to be laid before the introduction of the charge. At that point there will be an opportunity for an informed debate on the details ... There are likely to be legal implications of introducing exemptions".

I understand that to mean that the Government do not think they necessarily can introduce exemptions from the charge for some sectors. He went on:

"the Government need time fully to consider the evidence about the likely impact … and whether any exemptions should be applied".—[*Official Report*, 9/2/16; col. GC 174.]

I am told there are discussions under way with representatives of the universities and the medical profession and that various suggestions of ways forward have been hinted at but nothing has been made available to Parliament to guide any scrutiny of the proposals. Those consulted are not yet happy with the Government's responses. Yet Clause 88(4) sets out that:

"Section 80 comes into force at the end of the period of two months beginning with the day on which this Act is passed".

That is far earlier than most other provisions of the Bill. So much for the Prime Minister's proposal last June that:

"As we improve the training of British workers, we should—over time—be able to lower the number of skilled workers we have to bring in from elsewhere".

So much for the Minister's comment in Committee that,

"the Government need time fully to consider the evidence".

The immigration skills charge is to be rushed into effect before the beginning of the next school and university year—I assume deliberately—to catch recruitment from outside the EU of teachers and academics for the 2016-17 year. I cannot see how either House of Parliament will have time or opportunity to consider the necessary detailed regulations that will be required between May and July this year, or how the Home Office, BIS, the Department for Education and the Department of Health will be able to agree by then what those regulations should spell out.

Amendment 151A seeks to delete subsection (4) of Clause 88. If the Minister cannot provide a justification for this rush to implementation, we may wish to return to this question at Third Reading.

I stand shoulder to shoulder with the noble Lord, Lord Green of Deddington, in accepting that the failure to train sufficient British citizens in skills in demand is one of the most powerful pull factors in UK immigration. When hospital trusts announce that they need to recruit 15,000 nurses from outside the EU, when head teachers are searching Australia, west Africa and Asia for maths teachers, and when IT companies are forced by shortage of skills within Britain to look for recruits in India, large numbers of additional migrants are pulled into the UK. That represents a long-term failure of labour market policy stretching back over several Governments. Net migration, as we all recognise, will not fall until vital parts of both the private and the public sector are able to train enough skilled workers from within the UK workforce.

The promise of 3 million apprenticeships by 2020 should do much to close that gap, if the Government are successful in hitting the target. But we do not yet know enough about the apprenticeship scheme either. I read the Grayling public affairs comment on last Thursday's Budget, which warned that,

"a current lack of policy clarity and consistency … may undermine the government's target of 3m apprenticeships … With so little information available, employers will rightly be concerned about how the … system will work".

Last June, the Prime Minister stated that improvement in training would come first, and then reduction in skilled immigration, but here we are presented with charges to reduce skilled immigration before the training scheme has been set up. We are promised an institute for apprenticeships from April 2017, the details of which also remain unclear. The skills charge is supposed to flow towards funding a scheme which will not be in operation for 12 to 18 months after it is imposed.

Of course, many skilled jobs are not subject to apprenticeships within the UK. Nurses are not apprentices and teachers are not apprentices. University researchers and teachers come with advanced degrees, not apprenticeship qualifications. Logically, therefore, such professions should be exempt from the levy. However, the Minister suggested in Committee that there may be legal problems with this. Can he confirm whether the Government see this as a universal charge on all entrants under tier 2 visas or whether exemptions for health and education, for example, are envisaged? The idea of charging Health Education England for visas for overseas doctors coming here for advanced training, or hospital trusts for recruiting nurses, seems absurd—funding them with one hand and fining them with another.

There is a large air of unjoined-up government about all this. We have just had announcements from other Ministers about extending maths teaching in schools, and the whole apprenticeship scheme depends on finding additional teachers in specialist subjects and skills. But there has been no announcement about a crash scheme for training extra teachers in maths or IT within Britain, no more than there has been any announcement on an emergency scheme to train more British citizens as nurses. Are we going to search for extra teachers from around the world and then penalise the schools and FE colleges that take them on?

Imposition of the charge on universities would be even more damaging, as many of those who have been in touch with me have argued. I am sure that they have sent similar briefings to other Peers. The global standing of British universities depends on the global circulation of academic researchers and teachers, with British citizens studying for advanced degrees abroad and experts from other countries researching and teaching here. Do the Government really want to discourage our universities from international exchange? Would they be happy if other advanced countries outside Europe followed this example and imposed penalties on British researchers whom they invited to join their research teams? None of us yet knows enough about the implications of what the Government are proposing in this highly permissive clause, and I see no sign that the Government understand the implications either. We cannot leave such important issues to regulations that have clearly not yet been drafted. I beg to move.

Lord Renfrew of Kaimsthorn (Con): My Lords, I support this amendment in so far as it applies to the university sector and, indeed, to university research. It is the role of universities to employ the best people internationally and it is very important that they should be free to do so without the imposition of a charge which might, one gathers, amount to about £1,000 per researcher. That would have an unfortunate effect on many universities. It would cost several of our greatest universities several hundred thousand pounds a year and could be very detrimental, so I hope that the Minister will say a word or two to indicate that it would not fall directly on the university sector in so far as international research goes.

12.30 am

Baroness Warwick of Undercliffe (Lab): My Lords, I will speak in favour of the amendment in the name of the noble Lord, Lord Wallace, to require the Home Secretary to make exemptions from the immigration skills charge for certain cases. I declare an interest as a member of the councils of UCL and of Nottingham Trent University.

The problem which the Government claim the charge is intended to fix is the underinvestment in the skills of our young people, particularly by employers. I do not think many in this Chamber would disagree with that. Action is certainly necessary on this; employers should be incentivised to invest in skills. However, like the noble Lord, Lord Wallace, I wonder how this charge

[BARONESS WARWICK OF UNDERCLIFFE]
will interact with the apprenticeship levy, and whether it might be more sensible to proceed with that vehicle as the primary means of increasing investment in apprenticeships and perhaps other forms of education and training. It would be useful if the Minister would comment on that.

The Government have suggested that the charge seeks to disincentive employers who perhaps too readily recruit from overseas in preference to training the domestic workforce. However, the Government have, on many occasions in debates in this House, commented on the impact of immigration on our higher education and research communities and made clear that they do not oppose the UK attracting the brightest and best from around the world to study, teach and research, and to help us to develop an innovative and growing economy. It is difficult to square this commitment with a charge that punishes employers for doing precisely that, particularly if this were applied in blanket fashion without appropriate exemptions.

The amendment also seeks to exempt the appointment of health professionals from the scope of the charge. It is worth pointing out that in many cases in the health sector the supply of suitably qualified candidates in the domestic workforce is at least in part dictated by government policy. To levy a charge on NHS trusts recruiting from overseas, when the number of qualified doctors, for instance, is entirely determined by government quotas, does not seem a sensible approach. It seems particularly perverse that these two sectors will surely be among the most heavily hit by the proposed charge if no exemptions are allowed for.

I accept that the Government have not yet set out their precise plans on this matter, and I understand that they will shortly set out their response to the Migration Advisory Committee's report on tier 2 migration. I urge the Minister to give some reassurance to the House—and to the health, education and research sectors—about what provision will be made for these sectors.

Baroness Hamwee: My Lords, my noble friend filleted his remarks rather skilfully. I have been trying to do the same, but I think they are going to come out a little disjointed. I am sure we will be told that we will have the opportunity to scrutinise the proposals when regulations are laid. However, I think we know that we can debate but not scrutinise effectively when we have unamendable regulations.

In the public sector generally, particularly the health and education sectors that are publicly funded, I wonder whether there is a risk that the charge will in effect be recycled back into the sector—less all the administrative costs that are lost along the way—if the sector can actually train via apprenticeships. That is not, of course, the case for doctors and many other front-line healthcare professionals. Yesterday, when I was preparing a very much longer speech than this, I wondered about the logic of a charge whose effect may well be to reduce the contribution of skilled workers because employers will simply not be able to afford them. We may be left in a worse position than we are in now. Undoubtedly, we should have enough information to be able to debate these very significant proposals, at the stage of primary legislation, in an effective, possibly even constructive, fashion. It is very disappointing that we are left without that possibility.

Lord Green of Deddington: My Lords, I very much agree with the thrust of the contribution of the noble Lord, Lord Wallace of Saltaire. I think he was absolutely right.

Lord Bates: My Lords, I thank the noble Lord, Lord Wallace, for moving the amendment. We have to remember that what we are seeking to do here is to introduce a levy in order to bring about some behavioural change in the way that people think about recruitment. For far too long it has been an automatic thought to recruit people from outside the European Economic Area without giving proper attention to whether those skills are there in the resident labour market. The immigration skills charge is seeking to provide some funding, first, to see if it causes the organisation to stop and think about whether there are alternatives from the resident labour market and, secondly, to provide some additional support through the funds raised by the levy.

Given the hour—and of course the noble Lord is familiar with the points I made in Committee—I am happy to put further thoughts in writing to him if that would be helpful. I will just deal with some of the particular points that he and other noble Lords raised.

There are exemptions to the charge. An exemption will be applied to migrants undertaking occupations skilled to PhD level. I would have thought that the noble Lord, Lord Renfrew, in terms of academia—

Lord Wallace of Saltaire: My Lords, I am very interested to hear that. It was suggested to me in an email I had the other day from one of the groups that the department has been consulting that this had been floated but had not yet in any sense been agreed. Can the Minister guide me to where I could discover the status of such a proposal?

Lord Bates: In that case, I will return to my speech and go through it in context. This is something additional. The Government have considered advice from the Migration Advisory Committee and additional views from employers. Following careful consideration, I am able to announce that the immigration skills charge of £1,000 per migrant per year will be paid by employers who sponsor tier 2 migrants. The charge will be collected by the Home Office.

A reduced rate of £364 per annum will apply to small businesses and charities as defined in the Immigration Rules. This is consistent with other lower fees applied to these organisations. In addition, an exemption will be applied to migrants undertaking occupations skilled to PhD level. A list of these occupations is included in the Immigration and Nationality (Fees) Regulations. They are primarily science and research roles. There will also be an exemption for graduates who switch from tier 4 to tier 2 in order to take up a position in the UK. These two exemptions build on the Government's strong post-study work offer for international students and are intended to protect the UK's position as a centre of excellence for education and research.

The Department for Business, Innovation and Skills has confirmed that it will continue to consult with stakeholders. Indeed, when the Migration Advisory Committee was asked to look at this measure, it consulted with a wide range of groups, including the Russell Group of universities, of which of course Cambridge is an eminent member. The Department for Business, Innovation and Skills is continuing to engage with stakeholders, including devolved Administrations and other government departments, on how best to introduce these skills.

On the proposition that the legislation mandates an independent review one year from the date that the implementing regulations come into force, the Government believe in consulting those affected by proposed changes, and we have done that. As is good practice with any new measure, the Government will review the operation and impact of the immigration skills charge after a suitable period of operation. In addition, the Migration Advisory Committee will continue to provide independent advice to the Government on the UK's migration policy.

The skills charge will help address issues that I know are of concern to many of us here: net migration and skills shortages. However, I hope that a commitment to a reduced rate and the exemptions I have described, together with a commitment to publish the draft regulations setting out the detail of the charge, will assure the noble Baroness and the noble Lord of the Government's commitment to implement the charge in a balanced way.

The noble Lord, who has a distinguished academic background himself, rightly talks about the impact of this on universities. We are very conscious of our leading role in this area and will of course continue to engage. But it has to be remembered that, in the international competitive marketplace, other countries such as the United States, Australia and Singapore, all of which have both highly sophisticated labour markets and distinguished academic institutions, operate a similar levy. Of course, when the Migration Advisory Committee looked at this, it looked at international examples before agreeing to set the rate.

I hope the noble Lord will accept this in a spirit of generosity. In his Amendment 151A, he raises a point about the timing and when Clause 80 will come into effect, which the noble Baroness, Lady Hamwee, also mentioned. I hear the points that the noble Lord makes and I give him an undertaking that we will reflect on this and come back at Third Reading with, I hope, something which addresses the concerns that he expressed. I hope, in the light of that commitment, that the noble Lord may feel able to withdraw his amendment at this stage.

Lord Wallace of Saltaire: My Lords, the Minister has been able to provide some reassurance, but not yet very much, and I would like to ask for a great deal more information. I have been able to discover a little about the levy in some other countries—I was not aware that the United States had a levy on skilled workers, let alone teachers at that level—and I would welcome, as I think would all noble Lords interested in this area, some more comparative information on this.

We have touched on the university question, which, given the strength of the academic lobby in this Chamber, is something which a large number of noble Lords are likely to be concerned about—although not just them. As I think I said to the noble Lord on an earlier occasion, I have talked to several head teachers in the last three months who have said to me that they are scouring the world for maths and computer science teachers. They cannot find them in Britain. The Government's response to that has to be either to say that for the next two years they will exempt from any immigration skills charge people who are going to help build up the skills within the younger workforce in this country in those key areas or to provide a crash course for training people and encouraging them into those professions—or possibly both. The same is true of nursing. We need a joined-up government approach and to expand rapidly the numbers of nurses in training in this country. Otherwise, we will go on importing large numbers of people from the Philippines, South Africa and elsewhere.

I am only half persuaded that the Government yet know what they are doing. An active labour market policy and signals to the private sector seem to me to be very important. But I look forward to hearing further from the noble Lord—perhaps he would like to arrange an all-Peers meeting before we get to Third Reading so that we can discuss some of these things in detail with those around the Chamber who are interested in it. We need a lot more information before we can be confident of what the Government are saying. On that basis—

Lord Bates: The picture I am trying to paint for the noble Lord is that we have listened very carefully, including to the advice from the Migration Advisory Committee. BIS continues to consult and engage with stakeholders on this. On the particular point he raises about teachers of mathematics, schools do not just have to scour Britain but can seek maths teachers from the whole European Economic Area market. They can also recruit them from among people who have graduated from tier 4, and we have a PhD level which, to give a little more information, covers chemical scientists, biological scientists, biochemists, physical scientists, social and humanity scientists and natural and social science professionals not elsewhere classified, including researchers in research organisations other than universities.

My point is that we have done quite a bit. We have listened to the Migration Advisory Committee, we have consulted and I have said that I will give further consideration as to when they are introduced. On the other points which the noble Lord raises, if he really feels strongly about them, our position is that we have made our case strongly and that he should test the opinion of the House.

12.45 am

Lord Wallace of Saltaire: My Lords, it might help the House if the Government could tell us when their response to the Migration Advisory Committee will be published. The committee made the strong statement that the impact of this immigration skills charge on the public sector was such that it should be carefully phased in, perhaps over a number of years. Will that be one of the issues that the Government will address in their response to the MAC report?

Lord Bates: With the leave of the House, I will just say that I have recounted our response to the Migration Advisory Committee. We have listened to what it recommended on this. I said that we were looking at phasing it, which is in the noble Lord's Amendment 151A. On the other amendments, we believe that the policy is very important. We will not change our position between now and Third Reading and, if the noble Lord wishes to test the opinion of the House, he should.

Lord Wallace of Saltaire: My Lords, a quarter to one in the morning is not the ideal time to test the opinion of the House. The Labour Benches appear to be almost entirely empty—they have abandoned their position. On that basis, I will not test the opinion of the House at this stage.

Lord Bates: I should just say for the benefit of the record that I notice on the government Benches a significant number of colleagues here present and very interested to listen to this debate and the Government's position. The fact that the noble Lord's Benches and the opposition Benches may be a bit thin at this hour of the morning is not the point; a lot of people are here who are interested in this debate.

Lord Wallace of Saltaire: There is a strong argument that the way to make legislation on important issues is not in the early hours of the morning. However, on the basis that will have extensive further information and further consultation from the Government between now and Third Reading, I will withdraw my amendment.

Lord Trefgarne: No.

Some Lords objected to the request for leave to withdraw the amendment, so it was not granted.

The Lord Speaker decided on a show of voices that Amendment 144B was disagreed.

Amendments 144C to 144F not moved.

Amendment 145

Moved by ***Lord Bates***

145: After Clause 84, insert the following new Clause—

"Duty regarding the welfare of children

For the avoidance of doubt, this Act does not limit any duty imposed on the Secretary of State or any person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding welfare of children)."

Amendment 145 agreed.

Amendment 145A

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

145A: After Clause 84, insert the following new Clause—

"Fees for applications made by children to register as British citizens

(1) Section 68 of the Immigration Act 2014 (fees) is amended as follows.

(2) After subsection (13) insert—

"(14) Notwithstanding subsection (9), in setting the amount of any fee in respect of an application for registration as a British citizen made by a person who is a child, the only consideration to which the Secretary of State may have regard is the cost of exercising the function.

(15) Fees regulations shall provide for the waiver of the fee for an application for registration as a British citizen made by a person who is a child and is being provided with assistance by a local authority.

(16) Fees regulations shall provide for discretion to waive the fee for an application for registration as a British citizen made by a person who is a child on grounds relating to the means of the child and anyone exercising parental responsibility for him or her.""

Baroness Lister of Burtersett: The amendment would: limit the fee that the Secretary of State may charge for the making of an application to register a child as a British citizen to the cost incurred in dealing with such an application; provide that, where the child applicant is being assisted by a local authority, there shall be no fee; and, where the child and/or her parent or guardian has insufficient means, provide a power to waive that fee, because no such power exists at present.

The aim is to remove the barrier to children registering their entitlement to British citizenship and to other children applying to register at the Home Secretary's discretion that is all too often created by the Home Office fee. The amendment follows on from that moved by the noble Lord, Lord Alton of Liverpool, in Committee, and I am pleased to see that he is very patiently still in his place. Like him, I am grateful to Amnesty International UK and the Project for the Registration of Children as British Citizens—or the project, for short—for drawing this issue to my attention and for their help with their amendment.

The noble Lord drew attention to the problems faced by an estimated 120,000 children in the UK without citizenship or immigration leave, despite the fact that many of them are entitled to British citizenship and many others could and would be likely to be registered at the discretion of the Home Secretary, if they were to apply. More than half of these children were born in this country. Unlike the amendment proposed by the noble Lord, Lord Alton, this one is not limited to children in care; it is concerned with all children entitled under the provisions of the British Nationality Act 1981 to be registered as British citizens, and those others who may be registered if they apply. Given the various provisions in this Bill and its predecessor concerning such matters as the right to rent, access to employment and access to higher education, the importance of registration for these children is clear.

The project has much experience of the considerable barrier to children registering as British created by the fee, which rose last Friday to a staggering £936. When I tell people about this, they look at me open-mouthed and say that they had absolutely no idea. Nor, to be honest, had I until I was made aware of this issue. Not surprisingly, many children, and their parents and carers, cannot afford it, many local authorities are unwilling to pay the fee for children in their care, and it is unclear why local rather than central government should bear the cost of these children's registration. The overall result is that children who could and would be British miss out and in many instances later face the prospect of being removed from the country in which they have lived for all or most of their lives.

The project provided some examples, including that of Danny, who was three years old when he was brought to the UK and was in receipt of assistance

from social services. He had been offered a place at drama school but had no leave to remain. He was referred to the project as he was approaching his 18th birthday, and he was able to apply to register as a British citizen. However, he could not afford the fee and the local authority refused to pay it. Had one of the project's volunteers—and it is totally volunteer-run—not paid his fee, Danny would have lost the opportunity to be registered on turning 18. Surely it is not right that a basic right such as this should be subject to the vagaries of a kind volunteer meeting the cost of accessing it.

It is especially shocking that by far the greater part of the fee is simply profit to the Home Office, as the noble Lord, Lord Alton, pointed out in Committee. The cost to the Home Office in registering a child was calculated to be £223 in the previous financial year. The relevant impact assessment states that this cost will rise by more than 20% in 2016 to £272, although it is unclear why. The impact on children is not considered in that assessment, and their best interests, and the Government's statutory duty to promote their welfare, are not considered. The assessment and other government statements failed to acknowledge the fact that in many of these cases what is being charged for is a pre-existing entitlement under the British Nationality Act 1981, and that the Home Office has not been asked to grant but is merely being required to register the child's citizenship. In any case, making any profit, let alone one of £664, as is now the case, from a child's entitlement to be registered as British is surely unconscionable, especially when it leads time and again to preventing children from registering at all.

A recent Written Answer to the noble Lord, Lord Alton, explained:

"The power to set fees that are higher than the cost of processing applications is contained within The Immigration Act 2014, which provides that the Home Office may take into account not just the cost of processing an application, but also the benefits and entitlements available to an individual if their application is successful and the cost of exercising any other function in connection with immigration or nationality. The Home Office does not provide exceptions … because the Home Office considers that citizenship is not a necessary pre-requisite to enable a person to exercise his or her rights in the UK in line with the European Convention on Human Rights. British nationality applications are not mandatory and many individuals with Indefinite Leave to Remain decide not to apply. A person who has Indefinite Leave to Remain may continue to live in the UK and travel abroad using",

existing documentation. Again, the Home Office is failing to distinguish the registration of a pre-existing entitlement from other citizenship applications, particularly naturalisation applications. It is comparing apples with oranges. Those children who are entitled to register are not requesting some benefit from the Home Office but are requiring it to record what Parliament as long ago as 1981 determined to be their right. It is true that those who may apply to be naturalised are not in the same position, and it is correct that many of those with indefinite leave to remain—a prerequisite for applying to naturalise—do not necessarily want or need to be naturalised. Those entitled to register are entitled in the same way as those born in the UK to a British or settled parent are entitled to British citizenship.

The Written Answer seems to imply that the registration of British citizenship is of no real importance to these children, yet in his post-Committee letter the Minister acknowledged the importance of local authorities enabling and encouraging children in their care who need to do so to make a timely application to regularise their immigration status or to register as British citizens. It can be critical for some of these children, because they risk losing their entitlement if they do not register before turning 18. Moreover, the guidance on the MN1 form on which children register as British states:

"Becoming a British citizen is a significant life event. Apart from allowing a child to apply for a British citizen passport, British citizenship gives them the opportunity to participate more fully in the life of their local community as they grow up".

The project and Amnesty believe this amendment to be crucial to ensuring that children are not denied their right to citizenship because of their inability to pay. They are right to call our attention to what they dub profiteering on the part of the Home Office at the expense of children.

I imagine that the Minister is planning a response on the lines of the recent Written Answer from which I quoted. I hope I have shown why that Answer does not invalidate the case for this amendment. I would be grateful if he could take on board in particular what I said about this being a pre-existing entitlement. There is a real issue here. It may well be that we cannot resolve it today—today now being tomorrow—but I would be grateful if the Minister and his officials could look into it, ideally in discussion with the project and Amnesty, and consider coming back at Third Reading with a considered response. I beg to move.

Lord Alton of Liverpool: My Lords, I support what the noble Baroness, Lady Lister, has just said to the House. As she indicated, this is an issue I raised in Committee. It has been the subject of correspondence between the noble Lord, Lord Bates, and me and of Parliamentary Questions which I have tabled.

If Amendment 145A is accepted, it would mean that in setting a fee in respect of an application for the registration of a child as a British citizen, the only matter to which the Secretary of State could have regard is the cost of processing that application. The amendment provides that fees regulations must provide for the fee to be waived where the child is in care or otherwise assisted by a local authority. It provides for discretion to waive the fee in other cases on the grounds of the means of the child, his or her parents or his or her carers.

In many cases where children have a claim to be registered as British citizens, no application for such registration has been made. Under a number of provisions of the British Nationality Act 1981, to which the noble Baroness referred, the power to register the child exists only while the child is a minor. After I raised these cases in Committee, the Minister wrote in reply on 3 February and described what he called—the noble Baroness referred to this—the importance of local authorities enabling and encouraging children in their care who need to do so to make a timely application to regularise their immigration status or to register as British citizens. So there is nothing between us in that sense. We both agree about the desirability of that.

[LORD ALTON OF LIVERPOOL]

However, I have had drawn to my attention, as has the noble Baroness, that in many cases the reason why no registration has taken place is precisely the size of the fee. As of 18 March 2016, the fee is £936. In these cases, where the child and/or the parents cannot afford to pay or the local authority will not pay, this money is simply beyond their means. The fee is set above the cost of registering the child, which the Home Office calculates to be £272, while in 2015-16 it was just £223. There is a massive discrepancy between that figure of £272 and the £936 that would be charged to the child in order to be able to register in these circumstances. How on earth can we justify that phenomenal difference? It seems to me like profiteering on children. It is quite indefensible and it is hardly a good advertisement for one-nation Britain.

1 am

Currently, in contrast to immigration applications, no provision is made for a waiver of the fee. While it can be argued that a fee cannot be charged where to do so would entail a breach of human rights, the Home Office has yet to accept that such breaches could arise in applications for British citizenship. I think that it should do so. I hope that it responds positively to the noble Baroness, Lady Lister, and will not use the sort of procedure that was used a few minutes ago to prevent an amendment that is perfectly reasonable, and one that should be brought back at Third Reading if at this late hour a proper response cannot be given. If such a procedure were used to try to prevent a Third Reading amendment, that would be a discourtesy to the noble Baroness and to the House, and it would not bring any credit on the this Government either.

Lord Bates: My Lords, I thank the noble Baroness, Lady Lister, for her Amendment 145A. It is important that the Home Office is able to run a sustainable immigration and nationality system in a way that minimises the burden on the taxpayer. When the figures are spoken about in terms of the amount of money that it costs, that has to be seen in the context of our commitment to achieve a self-funded border, immigration and citizenship system by 2019-20. That raises the question: when people are using our border service, our immigration system or our citizenship, why should the resident taxpayer population be the ones who have to pay for the benefit that is falling to the individuals making the applications?

The first part of the amendment would restrict our ability in setting a fee to take account of any factor other than cost. That would cost the Home Office at least £29 million per annum over the next spending review period, mainly from lost income on current plans. Such a reduction in fee funding would have a serious detrimental effect on the department's ability to operate an effective border and immigration system.

We recognise that families normally bear the cost for applications made on behalf of children. As a result, the Home Office already sets a fee for a child to register as a British citizen at a rate £300 lower than the overall cost of adult citizenship applications.

The second part of the amendment relates to those children receiving local authority assistance. Unaccompanied children in the UK generally seek leave to remain on protection grounds, for which no fee is charged. For a child in the care of the local authority, the Home Office waives the application fee for leave to remain on the grounds for settlement. This preserves the person's ability to reside in the UK until they can afford to apply for citizenship.

The final part of the amendment, which would introduce a very broad provision to waive application fees, taking into account the means of applicants or parents, would be very difficult to implement in practice. It would be highly likely to lead to claims from applicants simply seeking to avoid paying, rather than those who were genuinely destitute, for whom there are already alternative and appropriate remedies that ensure that convention rights are protected. For children in family groups applying for leave to remain on human rights grounds, the fee is waived where the applicant is destitute or otherwise meets the published fee-waiver policy. Taken as a whole, this policy ensures that a person's convention rights are protected, that the value of British citizenship is recognised and that the border and immigration system is adequately sustained and funded.

Citizenship can never be an absolute right, nor is it necessary in order for a person to reside in the UK and access our public services. A person who is settled in the UK is not required to become a citizen by a certain date: they can remain here until they can meet the criteria for doing so, including payment of the required fee. Overall, on balance, we feel that the existing arrangement strikes the right balance between fairness to individuals and fairness to all applicants, as well as to the resident taxpayer population. I ask the noble Baroness to consider withdrawing her amendment.

Baroness Lister of Burtersett: My Lords, I am grateful to the noble Lord, Lord Alton, for persevering and staying up at this late hour to give me such strong support on this amendment.

I suppose I am grateful to the Minister—he did not have any option but to stay and respond—but I am very disappointed by his response. He seems to be saying that the immigration system depends on children paying this exorbitant fee to be able to carry on; that, bluntly, seems to be what he is saying. These children will become taxpayers; I find the idea that they are somehow a burden on the taxpayer terribly depressing. They have a right—I do not see why they should have to pay such fees.

I can quite see that there might be somewhere between what the amendment is calling for, which is that there cannot be anything above the cost to the Home Office, and the Government's position, but we are talking about a difference of over £600 for a child between the cost to the Home Office and the fee. That seems to be a very large surcharge on these children to keep the wheels of the immigration system turning. It is well past my bedtime so I am not thinking very straight, but I am slightly flabbergasted by that argument. At least it is now in the open—what this has been about has been said very clearly.

I am disappointed that the Minister has not been willing to give an inch, because there is scope there for some kind of compromise between the amendment and the situation as it stands. I am also disappointed that the Government are not prepared to think about it and talk to Amnesty and the project just to see whether there might be some way of coming to some kind of agreement to make this policy slightly less harsh than it is at present. The Minister may want to say something.

Lord Bates: I will say only that, with the existing arrangements for waivers for those who are in particular need, the policy is absolutely right and we stand by it.

Baroness Lister of Burtersett: According to Amnesty, the waiver is limited, but I will have to look into that. The Minister talked about the right balance, but personally I do not think there is no balance there at all. However, I beg leave to withdraw the amendment.

Amendment 145A withdrawn.

Clause 87: Regulations

Amendments 146 to 150

Moved by ***Lord Bates***

146: Clause 87, page 68, line 35, after "containing" insert "(whether alone or with other provision)"

147: Clause 87, page 68, line 38, at end insert—

"( ) regulations under section (Information gateways),"

148: Clause 87, page 68, line 42, leave out paragraph (e)

149: Clause 87, page 69, line 17, after "instrument" insert "—(a)"

150: Clause 87, page 69, line 18, after "Act" insert ", and

(b) to which subsection (2) does not apply,"

Amendments 146 to 150 agreed.

Clause 88: Commencement

Amendments 151 and 151A not moved.

Clause 89: Extent

Amendments 152 and 153

Moved by ***Lord Bates***

152: Clause 89, page 70, line 2, at end insert—

"( ) But subsection (3) does not apply to the amendments made to the Modern Slavery Act 2015 by paragraphs 26A and 27A of Schedule 2 (for the extent of which, see the amendments to section 60 of that Act made by paragraph 26D of that Schedule)."

153: Clause 89, page 70, line 20, at end insert ", and

( ) section 60(6) of the Modern Slavery Act 2015."

Amendments 152 and 153 agreed.

Clause 90: Short title

Amendment 154 not moved.

House adjourned at 1.08 am.

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