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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Tuesday 26 April 2016

2.30 pm

Prayers—read by the Lord Bishop of Leeds.

Intellectual Property

Question

2.36 pm

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what measures they are undertaking to ensure that small businesses can protect their intellectual property and reduce the legal costs of enforcing it, in the light of World Intellectual Property Day.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, this Government are committed to ensuring that all intellectual property rights are respected and appropriately enforced. This requires the right legal framework at home and abroad, effective enforcement action when needed and education for all as to the importance of respecting IP rights. We are undertaking a range of measures under all three of these headings, with mediation, IP insurance and fee reductions all targeted at reducing costs for SMEs.

Lord Clement-Jones (LD): My Lords, I thank the Minister for that very supportive Answer. However, in particular, SMEs are concerned about the recent Trunki judgment, which means that registered design rights have even less protection than was previously thought. Also, they are very concerned about the small claims track, which limits them to £10,000 of damages when, in fact, many small businesses suffer much more than that and wish to have an effective cost of enforcement. What kind of assurance can the Minister give small businesses today, on World Intellectual Property Day?

Baroness Neville-Rolfe: On World Intellectual Property Day, I can say how important we consider design rights and other rights for small businesses. On Trunki, officials are reviewing the guidance available and we are reducing the fees. Instead of paying £1,620 for 40 designs, you will have to pay only £130 for electronic filing. This will help those who have been hit by the Trunki judgment. On the issue of the court, I am discussing with the Chancellor of the High Court whether we can give it extra resource because it is so valuable and so admired internationally.

Lord West of Spithead (Lab): My Lords, the greatest theft of and threat to IP is cyberattack. The people who do this on an industrial scale are the Chinese. Have any actions been taken to stop that mass theft of IP across all our business areas?

Baroness Neville-Rolfe: The noble Lord raises a very good question. I went to China about 18 months ago and we did talk to the Chinese in quite a straight way about this point. I am off there again in August and I will try again. The main reason they are changing is that they can see that going up the value chain is important for the Chinese economy—so that gives us some common ground on intellectual property rights. But of course the cyber issue remains a very worrying one.

Lord Razzall (LD): My Lords, perhaps I could widen the question a little. Does the Minister agree that the cost of applying for patent application and the delay in being granted a patent is a significant limitation for small businesses? Does she not also agree that there are things that the Government could do in due course? First, they could introduce enforced mediation in disputes with larger organisations, and, secondly, they could look at whether the unfair competition law could be extended on these issues.

Baroness Neville-Rolfe: That is a lot of questions. When the Unified Patent Court comes in, it will be better for small businesses. We have looked carefully at the charges for them. But I am not convinced about bringing in statutory mediation. There is a government mediation service run by the Intellectual Property Office—which I value—which offers a low-cost way of resolving disputes. I am not convinced that there is a case to go further, although I am always happy to discuss it.

Lord Tebbit (Con): My Lords, can the Minister say anything to encourage authors, musicians and owners of such intellectual property rights who have those rights stolen from them every day, not least through the so-called social media, which seems to behave in a very unsocial manner?

Baroness Neville-Rolfe: My noble friend is right to support our creative industries—our musicians, our writers—and this is at the heart of our policy on intellectual property. One of the reasons we set up PIPCU was to put more focus into this area. Crime has moved online and we have to change the way in which we help our writers. But our attitude in Britain is right and strong.

Lord Stevenson of Balmacara (Lab): My Lords, the problem is more complex, is it not? Noble Lords will be aware that the IP crime statistics are deficient in the sense that they do not collect separately details of cybercrime. We therefore have no real baseline against which we might operate. The ONS piloted a new scheme last year which revealed that there were about 5.1 million instances of fraud and 2.5 million instances of computer misuse per year. So there is a gap here and I wonder whether the Minister could respond on that. Secondly, could she say a little more on penalties, where the City of London Police have also identified a gap? IP offences attract a maximum 10-year prison sentence but online copyright infringement—one of the points just made by the noble Lord—attracts a maximum of only two years. That seems a bit of a discrepancy.

Baroness Neville-Rolfe: The noble Lord is right about online crime. Last week we announced that we will be raising the penalty from two years to 10 years when legislative time can be made available. On figures, we have an IP crime group which brings together all the different people involved, from the top of the police to local trading standards. Getting better data is one of the frustrations. We are trying but it is not perfect.

Viscount Ridley (Con): My Lords, on World Intellectual Property Day, does my noble friend agree that, while it is important to protect intellectual property, sometimes the defence of intellectual property goes too far and stifles innovation, particularly in parts of the United States system? Speaking as an author, I am not entirely sure why my grandchildren should get royalties from my books just to satisfy the Walt Disney Corporation.

Baroness Neville-Rolfe: I have no wish to adopt the US system here. We are working hard to improve the arrangements on a worldwide basis. Copyright is 70 years —that has been agreed internationally. People have different views as to whether that is right or wrong but it helps our creative sector enormously.

Lord Foulkes of Cumnock (Lab): My Lords, with no disrespect to small businesses which suffer from losing intellectual property rights, does the Minister agree that it is even more worrying and tragic when employees lose their pension rights because of the actions of a magnate—an entrepreneur—with no concern for the rights of their workers, such as Sir Philip Green?

Baroness Neville-Rolfe: Obviously, I share the noble Lord's concern about pension rights. There was a lively debate in the other place on this issue yesterday which merits reading.

Baroness Hooper (Con): My Lords, can my noble friend tell us what will happen to the European trademark and patent arrangements should the result of the referendum lead to Britain's exit from the European Union?

Baroness Neville-Rolfe: I do not think that I am going to speculate on that issue. We may well remain, but the point about intellectual property law is that, especially now that content is online, it knows no boundaries. That provides a huge dynamic for international action.

Schools: Parent Governors

Question

2.44 pm

Asked by ***Baroness Sharp of Guildford***

To ask Her Majesty's Government what considerations have led them to recommend the abolition of the statutory position of parent governors on school and academy governing boards.

Baroness Sharp of Guildford (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as having been for the past 40 years first a parent governor and subsequently a governor of state schools.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, we are not abolishing parent governors. I pay tribute to the many thousands of parents who play this vital role, and I expect that many parents will continue to do so. Boards must be free to appoint parents for their skills and expertise to govern in the interests of all pupils. For the first time, all academies will in future be required to engage meaningfully with and listen to all parents.

Baroness Sharp of Guildford: I thank the Minister for his reply. I recognise that the Government are anxious to establish skills-based governing boards, but does he not recognise how incongruous it is that as the Government are to some extent discouraging parents from sitting on the governing boards of ordinary schools, they are at the same time extolling the role of parents in setting up free schools? Does he not also recognise that many parents like myself started as parent governors and learned through that experience and training the skills of critical analysis and leadership, which allowed them to provide leadership within their communities, often going on later to stand as councillors and perhaps even Members of Parliament?

Lord Nash: I am grateful for the noble Baroness's support on parental engagement in free schools. I agree with the point she has made about people being able to develop their skills. We very much want parents to be involved, and school governing bodies provide an opportunity for them to acquire new skills. That is one of the reasons why many employers encourage their staff, particularly their younger staff, to sit on the governing bodies of schools and academies, and indeed we have an active programme with employers to develop this.

Lord Harries of Pentregarth (CB): My Lords, does the Minister agree that whatever skills parent governors may or may not have, they play a crucial role in keeping parental opinion feeding into the governing body and helping to gain parental support for the school?

Lord Nash: I agree entirely with that point. Parent governors play an important role in parental opinion, but we really want to engage with parents across a wider front so that we can have a much broader set of parental opinion. That is why we are bringing in these proposals that academies do that.

Baroness McIntosh of Hudnall (Lab): My Lords, building on the point made by the noble and right reverend Lord, Lord Harries, the implication of the way that the Government are framing this is that being a parent is somehow not enough to qualify to take part in the governance of a school at which one's child might be a student. Does the Minister agree that,

although many parents have many skills, the primary reason for having them on governing bodies is that they are parents? Would it not be better to allow that to stand as the main reason for having them there?

Lord Nash: I agree that we should encourage parents to stand for governing bodies, but we have been very clear over the past few years about focusing governance on skills. It is a skills-based function and that is why we have continually focused on skills. Anyone sitting on a governing body must have those skills, or certainly be able to develop them in relatively short order.

Lord Watson of Invergowrie (Lab): My Lords, the Government have announced that academies will be required to have parent councils. I think that this is a good idea, but if it is, why was it not included in the White Paper? The truth is that it was rushed out in response to a reaction to the White Paper about the marginalisation of parents from school governance. Is it not the case that the White Paper on the forced academisation of schools is actually the back-door privatisation of the education system, and that the Government are not willing to tolerate opposition from parents or anyone who opposes that ideology?

Lord Nash: Actually, it was made absolutely clear in the White Paper that we would create a new expectation that every academy would put in place meaningful arrangements for engagement with all parents. We do not want to be prescriptive about the precise nature of that engagement, but of course a parent council may well be a good way of doing that. So far as privatisation is concerned, it is interesting to note that anyone involved in an academy or in a governance relationship with an academy cannot profit from their arrangement in that, whereas of course that is possible in a local authority-maintained school.

Lord Storey (LD): My Lords, the Minister will be aware that I wrote to him on 12 February following a multi-academy trust abolishing a governing body. In his reply, he said, as he has said here, that academies should make and have in place meaningful and effective arrangements for engaging and listening to the views of parents. How will that happen, and will that be statutory? We do not want parents to think that government policy, in terms of parental involvement in their child's school, is that parents should be seen but not heard.

Lord Nash: I agree entirely. We want parents to be much more engaged in their child's education. That is absolutely essential, as I think we all agree. As I say, we will put in place a clear expectation on academies to do that.

Lord Cormack (Con): My Lords, is not the policy for compulsory academies nationalisation rather than privatisation?

Lord Nash: It is a consistent system. We feel that the academy system is the best way to give freedom to the front line and to enable heads to recruit, train, retain, develop and deploy staff. Many freedoms and other benefits come from being an academy and part of a family of schools in a multi-academy trust.

Lord Watts (Lab): My Lords, can the Minister tell us how many vacancies exist for school governors? It is my experience that many schools are having real difficulty in recruiting governors.

Lord Nash: I cannot give the noble Lord an exact figure but he is absolutely right that we are always looking for school governors. We have an active programme with a school governors' one-stop shop, and for inspiring and recruiting future governors. I have already referred to the active programme with employers on recruiting governors. We also have the very successful Academy Ambassadors programme, which has recruited 200 pro bono people from the professions, business and charities to sit on the boards of multi-academy trusts.

Healthwatch England

Question

2.51 pm

Asked by ***Lord Harris of Haringey***

To ask Her Majesty's Government why, when advertising the post of Chair of Healthwatch England, the Department of Health stipulated that the successful candidate would require private sector experience, and why the governance arrangements for Healthwatch England have been changed so that its Chief Executive is subordinate to the Chief Executive of the Care Quality Commission.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the chair appointment was open to applicants from all backgrounds. Public appointments benefit from a diverse mix of skills, experience and backgrounds. In some cases, private sector experience may be sought to bring a different perspective that adds real value to the work of the board or committee. The Healthwatch England CEO has always been a CQC employee and this will not change. They will also continue to be responsible for delivering the committee's priorities.

Lord Harris of Haringey (Lab): My Lords, I am grateful to the Minister for his Answer. However, it is a fact that when the post of the chair of Healthwatch England was advertised, it specifically—I think in the first line, virtually—said that the Government were particularly seeking somebody with private sector experience. Why was that given preference over and above somebody with, perhaps, a background in consumer representation? The CQC chief executive had a direct line of accountability to the Secretary of State. That has now changed. Perhaps the noble Lord can tell us why he thinks his right honourable friend the Secretary of State for Health has acquired a reputation for not wanting to hear contrary views about the state of the health service.

Lord Prior of Brampton: My Lords, I should make it clear that the advert said that someone with a private sector background was desirable, not essential. No one else on the committee of Healthwatch England has a private sector background, so to have that kind of mix would seem common sense to me. Maybe it is particularly the case in that role, following someone such as Anna Bradley, who is very much a champion of consumers. Having that sort of championship of consumers on the board of Healthwatch England is important. With regard to the line of responsibility of the chair of the CQC, she is still ultimately appointed by the Secretary of State for Health.

Baroness Walmsley (LD): My Lords, what precisely is it that somebody with a private sector background could bring to this organisation that somebody without a public or voluntary sector background would not bring? Should not the criteria be much more about understanding how best to undertake public engagement and an ability to shape services that reflect public priorities and concerns? Does this Question not raise a more general one about the politicisation of public appointments?

Lord Prior of Brampton: I disagree. I had a private sector background when I became chairman of the CQC, I might add, so perhaps I am slightly biased in this regard. Having a mix of people from all different backgrounds, whether private, public or voluntary sector, is a very good thing.

Lord Lansley (Con): My Lords, would my noble friend the Minister agree with me, as one who was responsible for the creation of Healthwatch, that there is a powerful rationale for its close working relationship with the CQC? The CQC needs to listen to the patient voice in the exercise of its responsibilities, and Healthwatch benefits significantly from being able to trigger action by the CQC where it finds that things are going wrong.

Lord Prior of Brampton: I agree with my noble friend. Healthwatch has two principal roles: first, to gather intelligence locally, which it can then feed into the CQC and its inspections; and secondly to be the strong voice of patients at a national level.

Baroness Wall of New Barnet (Lab): My Lords, is the Minister satisfied with the support that Healthwatch gets, both physically and financially? In many areas it is struggling, particularly now that it has had to stand off and be independent. With all the changes going on, is there a view on whether it is effective because of the way it is being dealt with?

Lord Prior of Brampton: My Lords, that is a good question. The truth is that Healthwatch is good in parts. Some local Healthwatches are extremely good and some are quite weak. Part of the rationale for the restructuring that the noble Lord, Lord Harris, raised in his Question is to save central overhead costs, which means that there will be more money available to Healthwatch England to do its core job locally.

Baroness Hayter of Kentish Town (Lab): My Lords, is this not just another attempt to bring the private sector into patient representation—just another example of the Government trying to place their business friends everywhere? The new guidelines on ministerial appointments give the Minister three bites of the cherry: to be able to suggest names; to meet some of the candidates before shortlisting to make recommendations to the panel; and then to have the final say. That is completely different from previous practice. If we really are to have an open process, should we not have the Minister involved only at the end, when the panel has made the decision?

Lord Prior of Brampton: I honestly do not think that the noble Baroness is correct. I really do not feel that this process has been politicised in the slightest. It is interesting that the chief executive of NHS England and the new chief operating officer were both previous special advisers to a Labour Government, so it is pretty hard to say that we are politicising appointments in the NHS.

Baroness Hussein-Ece (LD): My Lords, I do not think the Minister has sufficiently explained why the patients' voice, the chairman of Healthwatch, or, indeed, the chief executive should remain subordinate to the chief executive of the Care Quality Commission. Surely the patients' voice should be a strong, independent voice and not subordinate.

Lord Prior of Brampton: I had the privilege of working with Anna Bradley when she was chair of Healthwatch England. I put on public record that she was an outstanding chairman. I do not think any changes have happened that will mean that that role will be in any way diminished.

Lord Whitty (Lab): My Lords, is the Minister confident that the lines of responsibility of the chief executive of Healthwatch are compatible with the very clear assurances that his noble friend, the noble Earl, Lord Howe, gave to this House about the independence of Healthwatch during the passage of the Health and Social Care Act 2012? The House was very anxious about it and I feel that this is against the spirit of those assurances.

Lord Prior of Brampton: My Lords, the critical question is whether the CQC is independent. It is most important that the regulator is independent. So long as Healthwatch can help the CQC carry out its role as an independent regulator, surely that is the really important question we should be asking.

Health: Treatment Rationing

Question

2.59 pm

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

To ask Her Majesty's Government what is their response to the Royal College of Surgeons report showing that Clinical Commissioning Groups are

rationing treatments by the use of restrictions on routine surgery for patients who smoke or who are overweight or clinically obese.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, we would not support CCGs imposing arbitrary restrictions on patients. However, there are often sound clinical reasons for encouraging patients to lose weight or stop smoking—for example, to get the best clinical benefit from joint replacement surgery. CCGs should support patients to reduce their tobacco usage or reduce their weight and signpost them to the appropriate services. It is for CCGs to ensure that their local commissioning priorities use resources in the best interests of their patients.

Lord Hunt of Kings Heath (Lab): My Lords, I am very grateful to the noble Lord for that Answer because it is clear that these blanket bans are nothing more than crude rationing and cause great distress to patients. Will he issue instructions to CCGs that they are not to embark on these kinds of blanket bans? Does he agree that the programmes to support weight management and smoking cessation should be part of the treatment programme rather than be used as a barrier to treatment?

Lord Prior of Brampton: Yes, my Lords. The noble Lord has quoted almost verbatim from the recommendations of the Royal College of Surgeons report, which I have in front of me. I agree with him completely.

Lord Patel (CB): My Lords, does the Minister agree that CCGs should be obliged to publish their evidence base for their policies? If he does not, will he say why not? Further, what recourse does a patient have to challenge their CCG when they do not receive surgical treatment because of the latter's policies?

Lord Prior of Brampton: My Lords, the noble Lord will be aware of the *Atlas of Variation*, which encompasses a new programme, Right Care; it looks at variations in medical and surgical practice across different populations and tries to spot unwarranted variation. That is the best way to identify where different CCGs are not delivering the kind of care that we would expect. In view of what we have just said, I am tempted to say that where an individual does not get the treatment he expects, he should complain to his local Healthwatch. That would be one way to do it but every hospital has a PALS and he could always write to his MP. There are lots of ways in which individuals can raise concerns if they wish to do so.

Lord Ribeiro (Con): As a surgeon, I had cause to cancel or delay operations on patients who were obese or were smokers, but those decisions were based on clinical grounds from the knowledge I had of the individual patient. Clinical commissioning groups can give guidance but they should not provide diktats. What assurance will the Minister give that clinical decisions will be left to those who have the best interests of the patient at heart and who know their patients?

Lord Prior of Brampton: The noble Lord has encapsulated well the recommendation of the report of the Royal College of Surgeons, which is that all decisions about individual patients should be taken on clinical grounds as they affect the particular patient.

Lord Rennard (LD): My Lords, does the Minister accept that the reduction in expenditure on public health of £200 million a year may make it harder to reduce the prevalence of tobacco smoking and obesity, and that in these circumstances patients referred to smoking cessation courses or weight management courses may find it more difficult to get the support they need? In those circumstances, they may need more guidance and support on how to challenge the decisions of CCGs, if they are being discriminated against unfairly and in breach of national guidelines.

Lord Prior of Brampton: My Lords, the success that this country has had on smoking reduction has been pretty exceptional. The strategy on obesity that the Government will announce soon will mark a new priority in addressing the problems of obesity. I do not think there is any evidence to suggest that the reductions to which the noble Lord referred are having any discernible impact on the number of people receiving support on smoking cessation and obesity reduction before surgery.

Lord McFall of Alcluith (Lab): My Lords, selective dorsal rhizotomy, the spinal injuries operation for young people with cerebral palsy, has been not only restricted but withdrawn in both England and Scotland. Numerous paediatric neurosurgeons have given testimony to the near-miraculous benefits of such surgery, which transforms the lives of young people who were previously thought to be wheelchair-bound for their lifetime to one of mobility and independent walking. Therefore, will the Government reconsider this decision, write to me and put a copy in the Library so that this issue is transparent and young people who need this surgery, and whose families are desperate for it, can have the same chance as everybody else in the National Health Service?

Lord Prior of Brampton: My Lords, I cannot answer the noble Lord's question now, but I agree to his request to write to him and will place a copy of my letter in the Library.

Lord Robathan (Con): Does the Minister not agree that everybody in this country must know that smoking and being overweight are bad for them? Does he not think that individuals should be encouraged to take greater personal responsibility for their health, rather than less?

Lord Prior of Brampton: There is clearly a balance between the obligations of individuals to take responsibility for themselves and the obligation of society to help people to do so. Getting that balance right has characterised the success we have had in reducing smoking in this country and which I hope we will have in reducing obesity as well.

Viscount Ridley (Con): My Lords, in relation to the reduction in smoking, last week the Government published an impact assessment of the European Union tobacco products directive, which comes into force on 20 May. Does the Minister agree with the estimate by London Economics that aspects of that directive, including the ban on vaping liquids of 20 milligrams per millilitre or more, could increase deaths across Europe by 105,000 people?

Lord Prior of Brampton: My Lords, I am not able to answer that question, as I do not have the facts at my fingertips. However, I will investigate it and write to the noble Viscount.

Lord Hunt of Kings Heath: My Lords, the Minister said that the obesity strategy would be coming out soon. What is his interpretation of "soon"?

Lord Prior of Brampton: Before long, my Lords.

Baroness Finlay of Llandaff (CB): What action does the Minister intend to take against clinical commissioning groups which are commissioning services based on arbitrary, discriminatory decisions rather than on evidence?

Lord Prior of Brampton: My Lords, the whole purpose of local commissioning groups was that they would be guided and directed by local clinicians. They must be allowed to set their own local priorities. It would not be right for me to direct local commissioning groups how to behave.

Driving Instructors (Registration) Bill

Order of Commitment Discharged

3.07 pm

Moved by ***Earl Attlee***

That the order of commitment be discharged.

Earl Attlee (Con): My Lords, I understand that no amendments have been set down for this Bill and no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Therefore, unless any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Energy Bill [HL]

Commons Reason

3.07 pm

Motion A

Moved by ***Lord Bourne of Aberystwyth***

That this House do not insist on its Amendment 7T to Commons Amendment 7, to which the Commons have disagreed for their Reason 7TA.

Commons Reason

The Commons agree with the Lords in their Amendments 7A to 7S and 7U to 7W, and disagree to Lords Amendment 7T for the following reason—

7TA: Because it is not appropriate for renewables obligation certificates to be issued in respect of electricity generated after the date on which the Energy Bill is passed by onshore wind generating stations for which planning permission was granted in the circumstances described in the Lords Amendment.

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the elected Members in the other place have sent a very clear message regarding the amendment made in this House on 12 April. The continued toing and froing on this issue is preventing the Bill proceeding to Royal Assent in a timely manner. Until that happens, we are unable to implement the much-needed measures relating to the Oil and Gas Authority. In the other place, there was much discussion of the importance of ensuring that the Bill now comes to a swift conclusion. The honourable Member for Aberdeen South, Callum McCaig, said, in relation to the Oil and Gas Authority functions:

"I urge the Government to put their eyes back on the ball and allow the Energy Bill to proceed. If we go back and forth with ping-pong we risk delaying that further".—[*Official Report*, Commons, 20/4/16; col. 945.]

Indeed, previous representations from industry bodies such as Energy UK, RenewableUK and Scottish Power have also recognised the need for the,

"swift passage of the Energy Bill, with clear, fair and consistent RO grace period provisions",

as those bodies have jointly said. We must move forward with the Bill to provide certainty in this sector and to allow projects to benefit from the investment freezing condition, which has been broadly welcomed by the industry.

Once again I find myself reminding your Lordships why the onshore wind measures were introduced in the Bill. The Government have a mandate to deliver on their manifesto commitment to end new subsidies for onshore wind. The Government remain intent on delivering this commitment and bringing forward the closure of the renewables obligation to new onshore wind in Great Britain. Noble Lords will recognise that the manifesto proposals were put before the country at the general election last year, which resulted in the present Government taking power. The Government have a mandate to act on this manifesto commitment, which was based on plans signalled well before the election. I know that the noble Lord, Lord Grantchester, was surprised by the result of the election but noble Lords should not be surprised that this action is being taken. It was very clearly stated in the manifesto and well signalled. Nobody should have been taken by surprise.

Back in March 2015, the right honourable Member for West Suffolk, Matthew Hancock, then Minister for Energy and Climate Change, stated in the other place:

"We have made it absolutely clear that we will remove onshore wind subsidies in the future".—[*Official Report*, Commons, 6/3/15; cols. 1227-28.]

Prior to that, in December 2014, the Prime Minister said of wind farms in a House of Commons Liaison Committee:

"We don't need to have more of these subsidised onshore, so let's get rid of the subsidy".

The Government, the Prime Minister and Members of the elected Chamber have continued to make their position clear.

Members in the other place have removed Amendment 7T, inserted after our previous debate on the Bill. Amendment 7T would have allowed certain projects, which did not have planning permission as of 18 June last year, into the renewables obligation beyond the early closure date. I say again: these projects did not have planning permission as of 18 June last year and therefore do not meet the grace period criteria proposed by the Government. Amendments such as the one removed in the other place would lead to an increase in deployment under the renewables obligation, which would come at a cost to consumers. As my honourable friend the Minister of State for Energy and Climate Change, Andrea Leadsom, noted in the other place:

"Opposition Members suggest that just because there is local agreement, it is fine to add to the bills of all consumers across Great Britain, but that is simply not the case. It is our duty as consumer champions—at least on the Government Benches—to keep down the cost to consumers, and this is what we will do".—[*Official Report*, Commons, 20/4/16; col. 952.]

The policy set out by the Government strikes a fair balance between protecting consumers and addressing the concerns of industry. Noble Lords should take careful note of what Members in the other place have said and should not seek to undo the position by amending the Bill again. I beg to move.

Lord Foulkes of Cumnock (Lab): My Lords—

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Wallace of Tankerness***

Leave out from "House" to end and insert "do insist on its Amendment 7T".

Lord Wallace of Tankerness (LD): My Lords, we have gone over this ground many times. I therefore do not intend to delay the House very much. I just want to pick up on one or two of the Minister's remarks.

It does not really become the Government to pray in aid time. This Bill left your Lordships' House well before Christmas last year and it was some weeks into the new year before it was brought to the House of Commons for Second Reading. Any delay in the Bill is entirely it the hands of the Government because of the exceptional delay between the Bill completing its passage through your Lordships' House and being introduced into the House of Commons. These kinds of arguments at this late stage really do not cut any ice.

The Minister will also be aware that some doubt has been expressed as to how clear the manifesto commitment was. While for some the election result may have been a surprise, what really was a surprise was that no one in the industry interpreted the manifesto pledge as being one which would ensure that the ending of the subsidy for onshore renewables, already due in March 2017, would be accelerated by a year. People I have spoken to throughout the industry say that that came as a great surprise to them. But that is the position we are in. The Government are going to get their policy, but we are trying to ensure that there is some justice attached to the way in which they get it. That is the whole point of having grace periods, and these are the specific points that are raised in the amendments.

When the noble Lord's ministerial colleague Andrea Leadsom appeared before the Select Committee on Energy and Climate Change in the other place, my right honourable friend the Member of Parliament for Orkney and Shetland asked her:

"So what is the purpose of the grace period then?".

The Minister replied:

"As I say, to ensure fairness. To ensure that those who have spent money—significant investment—and achieved everything technically to meet the cut-off date but, through reasons beyond their control, haven't actually made it, are not penalised for reasons beyond their control".

That is a very fair submission and definition of what fairness should be in such circumstances. With these amendments, we are trying to ensure that the definition of fairness which the Minister expressed in the other place is given some reality and substance.

3.15 pm

The amendment which we are insisting on would specifically look at those cases where there was a decision by a council committee based on an application to which the committee was minded to consent, where notice had been issued and where there were conditions attached to it. These conditions were known to be deliverable because any other practice would be a waste of everyone's time. These kind of conditions, which are Section 75 conditions in Scotland and Section 106 conditions in England and Wales, have been in place and sought after or imposed as planning conditions for 15 years. The process has now matured and is well understood. The illustration put to me by people within the industry, which I think I have given before, is that the Government are trying to say, "You've passed your exams but we're not allowing you to graduate". That is what it feels like to those who find themselves in this position.

I shall not go into the details again of the Twentyshilling Hill wind farm in the south of Scotland—but, clearly, everything had been done to get that development to the stage where the council had indicated that it was minded to consent. There then just had to be to-ing and fro-ing between lawyers to get an agreement but the agreement just fell on the wrong side of 18 June—something for which the lawyers cannot really be held responsible. They had in fact spent a substantial amount of money.

The other amendment in my name, in Motion A3, would try to ensure some fairness between Scotland and England. The difference in the levels at which developers have to apply to local authorities in Scotland and England means that where a local authority makes an objection in Scotland, the matter goes to the Scottish Ministers under Section 36 of the Electricity Act, whereas a similar development in England would trigger a public inquiry. In the particular case I have in mind at Aikengall, on the border between East Lothian and the Scottish Borders, the two councils expressed objections. If they had been local authorities in England, the

[LORD WALLACE OF TANKERNESS]
matter would have gone to the Secretary of State and a public inquiry would have been held. Even though that inquiry reported after 18 June, the developers would have been able to go ahead in the event of a successful outcome. As it happened, both councils objected, but because in Scotland it had to go to Scottish Ministers without the councils making a determination, that did not count as a determination. Although a similar procedure of a local public hearing was in place, under the law as it stands—or as it is proposed by the Government—they would not be entitled to go forward with their project, should the development consent be granted.

Since we debated this at the first iteration of ping-pong, the developers, Community Windpower, have been in touch with me further. They note that they have worked closely with Wind Towers (Scotland) Ltd—now the Korean-owned CS Wind—to ensure that all the towers for their projects are delivered from the manufacturing plant at Machrihanish, Campbeltown, and, more specifically, that they have entered into an agreement to ensure that Liberty Steel will provide the steel for them. So when the Government are telling us that they are trying to do all they can to help our native steel industry and a company that wants to build these turbines and access a source of British steel, it seems perverse that it might not be able to do so because the Government are taking such a intransigent position.

As I say, what we are seeking is simple justice. I will leave the closing words to the Minister himself, when he was dealing with the amendment moved by my noble friend Lady Featherstone in relation to solar energy.

Viscount Ridley (Con): I apologise for interrupting and am grateful to the noble and learned Lord for allowing me to do so. Given that he is not moved by the arguments made by the Front Bench on our side, perhaps I could try an argument on him that might appeal particularly to a Scottish Liberal Democrat. News came in recently, in the last month or so, of a study that has found that the density of breeding golden plover goes down by 80% when a wind farm is built on a particular piece of moorland.

Lord Wallace of Tankerness: The noble Viscount is rehearsing Second Reading arguments. We are dealing with some very small—but very important to the developers—changes to try to ensure justice. As I indicated, the Government will get their policy and will be able to close down the onshore wind industry subsidies, as they wish to do. What we are trying to do is to ensure that this very small and limited number of cases where substantial amounts of money have already been laid out by developers in trying to take the development to planning consent—and where in some cases the council had indicated that it was minded to consent after much local discussion and engagement—should be allowed to proceed.

To us it is a question of simple justice. I read somewhere the other day that the Scottish author William McIlvanney had said that Scotland's motto was not,

"Wha daur meddle wi' me?",

but was really, "It's no' fair". In this case, it isnae fair. The Minister himself said, when dealing with the end of the renewables obligation for solar of 5 megawatts and below, that,

"we have aimed to strike the right balance between protecting bill payers and protecting developers who have made significant investments, while being conscious of the need to decarbonise our energy infrastructure. That is why the order makes provision for a number of grace periods, which mirror those offered last year as part of the large-scale closure. Stakeholders have welcomed this consistency".

Well, they do not welcome the inconsistency in dealing with onshore wind. He went on to say:

"One of the grace periods was designed to protect developers who could show that a significant financial commitment had been made on or before the date on which the proposals were announced. This required evidence that a planning application had been made, among other things, as a proxy for the financial commitment".—[*Official Report*, 16/3/16; col. 1915.]

It seems to me that that is entirely in line with what we are proposing in these amendments. It is a question of simple justice, and even at this late stage I ask the Minister to think hard and seriously about these matters and to respond favourably. I beg to move.

The Lord Speaker (Baroness D'Souza): My Lords, I should inform the House that if this amendment is agreed, I cannot call Amendments A2 to A4 by reason of pre-emption.

Lord Foulkes of Cumnock: My Lords, I am grateful for that explanation. My Amendment A2 is dealt with in this grouping, so it would be appropriate for me to speak to it now, as I understand it. One of my noble friends said to me earlier, "This issue is hellishly complicated"—I am not sure whether that is an unparliamentary phrase or not—and then added, "I do not think all these three amendments make it any simpler". I apologise if that is the case.

All three amendments are very similar to each other, but perhaps rather immodestly, I think mine makes the issue a bit clearer than the others, particularly in relation to one case that the Minister knows I have a particular interest in—I know this sounds like special pleading, and I will come to that in a moment—which is the Sorbie project near Ardrossan in North Ayrshire. I know representations have been made to him about it, and I tried to intervene—I should perhaps have got up a bit earlier—to try to get some clarification in relation to Sorbie. Government legislation can be interpreted in different ways, and if the Minister had been able to say then that Sorbie is covered by his amendments and that they will be interpreted as allowing it, it would have saved me having to speak at all. That would have been merciful, but I will speak and then see if he can say in his reply whether or not it is included.

The key difference is that my amendment expressly covers the situation where the planning authority's decision to grant planning permission was subject to a planning agreement being entered into. I do not think that the wording of the amendment of the noble and learned Lord, Lord Wallace, covers that scenario.

The lawyers who have been advising me say that my wording removes any uncertainty over whether a planning authority decision which was subject to a planning

agreement being entered into can actually meet the criterion, "a grant of planning permission was resolved". With my wording, Ofgem would not be able to say that if the planning authority made the decision subject to the planning agreement being entered into, it would not qualify.

Ultimately, the difference between the amendments is very slight and—this is the point—Ofgem might take the view that "resolved to grant" would include where this was subject to a planning agreement being entered into, because the most likely reason for a delay between a planning authority decision and planning permission, or a decision notice, being granted is that a planning agreement was required. So the principle behind both amendments is the same: that a planning agreement delayed the grant of the permission. My wording is slightly clearer on that point.

My noble friend Lord Grantchester's excellent amendment in Motion A4 is the same as that of the noble and learned Lord, Lord Wallace, subject to one difference. As I understand it, my noble friend's new amendment requires the planning permission to have been granted within three months of 18 June 2015, that is, by 18 September 2015. This amendment would not work for Sorbie or for Crookedstane, as the decision notices were not issued until December 2015 and January 2016 respectively. I am arguing that they should be included.

Subsection (f) of my amendment is specific to Sorbie, as it clarifies the different legislation which applied to this project as it was dealt with under delegated authority in Scotland. The existing legislation does not deal in any way with a planning application which was processed under delegated authority under the Planning etc. (Scotland) Act 2006.

I want those included. It may be a bit of special pleading, but I think that noble Lords who heard me last time will agree that it is a very good case, and I want to mention it briefly again. Sorbie Farm is a dairy farm in North Ayrshire. The price of milk was going down, and it was in financial difficulties. It was advised to diversify, and one of the obvious ways of diversifying in that area was to plan a wind farm, and it decided to go ahead in that way. A great deal of effort was put into it, and a lot of investment; the farm had already invested a great deal.

If the amendment were to be carried, it would in no way challenge government policy or the whole principle. Whether or not we agree with the points made by the Minister in his introduction, that would not be contested. The position in relation to Sorbie was that North Ayrshire Council approved it in June 2014. However—my noble friend Lady Liddell will understand this very well—it was called in by the Scottish Government due to an aviation objection which was subsequently withdrawn. The application was then granted on appeal in November 2015. Although the grace period wording would, on the face of it, allow the project to proceed, it is threatened by what those advising me consider to be inadequate drafting in the Bill, which my amendment is intended to clarify. It is not clear whether the approval date would be November 2015 or the original date when it was approved.

If the Minister can consider the matter and let me know at some point during the debate that Sorbie would be included, I would certainly be happier—no, I will not say that; I am never happy about government legislation, but I would be less distressed by it as it goes through.

Notwithstanding all that, and the special pleading for Sorbie, I support the amendment proposed by my noble friend on the Front Bench. It does not challenge the Government's policy; it does not undermine the manifesto on which they were elected; it does not threaten any of the basic policy, but it brings justice to developers who were encouraged to develop renewable energy projects and who, in some cases, have invested up to £1 million each in getting them off the ground—or on the ground. They did it in very good faith, and then the ground was taken from beneath their feet by this Bill, which they were not expecting. The specifics of it were not included in the manifesto.

I hope the Minister will give serious consideration to accepting the amendment put forward by my noble friend Lord Grantchester, and even more serious consideration to accepting that Sorbie should not be excluded on the basis of this legislation as currently drafted.

3.30 pm

Baroness Worthington (Lab): My Lords, I rise to speak briefly to the amendment tabled by my noble friend Lord Grantchester. In his opening remarks, the Minister referred to saving bill payers money. We are discussing the early closure of a support mechanism for renewable energy which was replaced by contracts for difference under the Energy Act 2013.

Essentially, control over subsidies for renewable energy was repatriated to the Secretary of State in the UK from the hands of the Scottish Parliament and Scottish Government, where it used to reside. Until 2013, energy policy and renewables subsidies were devolved issues. They now sit solely in the hands of these Houses and the Secretary of State. Were we to repatriate decisions about how we allocate CFDs and give subsidies out to renewables—and let us be clear that we are not yet meeting our legal obligations on renewable energy, so there is a need to continue subsidies and we need to continue to deploy least-cost technologies so that bill payers get the best value for the money they pay in—and if Scotland had the decision over how projects were allocated subsidies and it chose to allocate future CFDs to onshore wind, all bill payers would be paying less because at the moment CFDs are not going to onshore wind, which is substantially cheaper than many projects that are continuing to receive subsidies.

The Government's policy states that they want to allow local people to have the final decision over projects and that they want to encourage least-cost deployment of renewables. This refusal to accept this very sensible amendment goes completely against those two objectives. If this went through, we would all be saving money and local people would be getting what they want, which is wind power in Scotland where it is supported and where it is sustaining jobs and delivering economic growth.

Baroness Liddell of Coatdyke (Lab): My Lords, I shall speak briefly in support of the amendment in the name of my noble friend Lord Foulkes of Cumnock and also, in a sense, in favour of the amendment so powerfully moved by the noble and learned Lord, Lord Wallace of Tankerness. He mentioned the phrase oft-used by Scottish schoolboys, "It's no' fair". The response is usually, "A big boy did it and ran away". In essence, what the Minister has been saying about the passage of the Bill through the House of Commons is, "A big boy did it and ran away".

There is a problem caused by circumstances that relates particularly to Sorbie. Sorbie is a distressing case which could lead to bankruptcy for people who did everything they thought was right to save their business. It is unfortunate that they have been caught in this, but it is in the hands of the Minister to correct it. No one on this side of the House seeks to delay the Bill. There is a lot in it that we do not like, and there are some things in it that we like—I cannot think of any offhand—but this is a question of basic fairness and also about being pro-business and pro-communities. This is an anti-business move. If we are encouraging small firms, particularly small firms in rural communities, to take the initiative to change the nature of the economy and of their own outlook, we should have a situation where people are prepared to respond to the difficulties they face. Other wind farms have been caught in broadly similar ways, not least one from my own area, but the Sorbie case is a very dramatic one. Quite apart from requiring common sense, it also requires compassion, and I ask the Minister to consider that.

The Duke of Wellington (Con): My Lords, I immediately declare an interest in land in South Ayrshire, as detailed in the register of interests.

I support the Minister. Recently, I read very interesting figures showing that, in Scotland, there is now 16 gigawatts of installed or consented capacity of onshore wind farms, against a peak demand of 6.5 gigawatts. The shocking figure has emerged that, in 2015, £90 million was paid in constraint payments—that is, to pay wind farm owners not to allow their turbines to turn. Surely this is mad economics. There is no justification whatever for allowing any extension of the deadline for subsidies to wind farms that are consented, and I therefore urge noble Lords opposite to support—

Lord Foulkes of Cumnock: Will the noble Duke not admit that we are not looking to extend the deadline at all? The Government are proposing to bring it back, so it is not an extension but a reduction in the deadline. Since I used to represent his interests, if not get his vote, I hope he will consider that.

The Duke of Wellington: My Lords, my understanding is that the Conservative Party announced in its manifesto that it wished to terminate these subsidies earlier than originally anticipated. That is a manifesto commitment that we in this House are now asked to agree. My argument would be that, however deserving the case may be, there is no justification for extending beyond the deadline established in the Bill. That is why I urge noble Lords opposite to support the government amendment.

Lord Grantchester (Lab): My Lords, I shall speak to Motion A4, which contains my proposed Amendment 7TD.

Today, once again, your Lordships' House returns to the Energy Bill. How deeply damaging the actions of the Government have been is evidenced again, at this late stage of the Bill between the two Houses, by the booklet produced with four amendments relating to the Government's refusal to accept the considered amendment in your Lordships' House a fortnight ago. All four amendments are targeted once again on the original two clauses relating to onshore wind that the Government inserted into the Bill following the success of the Conservative Party at the general election.

Let us not forget what was said a fortnight ago. Yes, the Conservative Party won the election. Yes, the party had an ambiguous passage in its manifesto regarding the end of subsidies to onshore wind. Whatever may be contended from the passage, the renewables obligation for onshore wind was drawing to a close in any case by 31 March 2017. By aggressively—some may say vindictively—bringing this forward to 18 June 2015, the Conservative Government were, at the stroke of an announcement, creating their own mess. Government must be an orderly process, not dogma followed by diktat.

Lord Cormack (Con): My Lords, could the noble Lord not just reflect that the Conservative Government were doing no such thing? They were responding to demands and requests from all over the country.

Lord Grantchester: I well understand the words of the noble Lord, but my contention is that the Conservative Party was responding to the voice of UKIP.

Government must be an orderly process, not dogma followed by diktat. Under their own endeavours, following due process and local planning procedures, investors knew where they were and had to complete by 31 March 2017. By drawing the line somewhere with their grace periods, as we were ready to concede last week, the Government have arbitrarily cut a swathe across the many excellent schemes that were drawn up in good faith, with money invested and local backing, all to do their bit to decarbonise the UK's energy sector.

Of course, any scheme falling on the wrong side of the line will be hurt. The amendments before your Lordships' House contend that fairness and decency are still not in evidence within the Government's concessions. The noble and learned Lord, Lord Wallace of Tankerness, may well be right in his assertions under Amendment 7TC to allow Section 36 projects. Certainly, they are very similar to cases won on appeal after 18 June 2015 but refused planning permission prior to 18 June 2015, a situation allowable under the Government's concessions. I pay tribute to him for the dedication he has committed to getting this situation resolved and I thank him for his introductory remarks today.

My noble friend Lord Foulkes of Cumnock also makes a compelling case for specific projects in Scotland. When noble Lords have received industry briefings covering a wide range of seemingly genuine cases, it underlines the huge damage the Conservative Government have created and unleashed in the renewables sector, especially in Scotland, with many jobs and livelihoods of hard-working farmers and others at stake.

My noble friend Lord Foulkes mentions the case of Sorbie, which, although called in by the Scottish Government, who subsequently withdrew any objection, was granted on appeal in November 2015. Can the Minister say why this is not covered by the concession to allow projects to proceed that were won on appeal? Has the Minister consulted with the Scottish Government on this case? I press the Minister to agree when he comes to reply that this case taken up by my noble friend is allowable.

On Amendment A1, in the name of the noble and learned Lord, Lord Wallace, Amendment 7T is the one in my name which was accepted by your Lordships' House a fortnight ago. I argued then that this was logically compatible with the concessions already accepted by the Government. The local planning authority had—I stress—indicated relevant planning consents, although written notice was delayed, due to a Section 75 or Section 106 agreement being needed, until after 18 June 2015. This cannot be said to be against Conservative Party policy. It is widely considered that the decision made by a democratically elected local planning committee embodies the principle of giving local people the final say. To deny these cases where written consent was made after 18 June 2015 is to deny and prevent local people having the final say on onshore wind applications due to a pedantic technicality, as the final say had effectively been made prior to that date. The projects have, arguably, a stronger case than those originally refused local consent before 18 June but subsequently won on appeal after that date. I am grateful that these arguments won the backing of your Lordships' House a fortnight ago.

This amendment was judged to include all the cases—a total of seven—that could be argued to be a minimum of unfair treatments needing to be rectified. They amounted to 90 megawatts. The wider onshore industry has come to a consensus to support this single, narrow extension to the Government's proposed grace period criteria. It is hugely frustrating to find your Lordships' fair compromise rejected by the Government in the Commons.

Labour wants to stand up for Scotland. Six of these seven schemes affected by this extension are based in Scotland. The Government have gone against the general consensus to devolve to the Scottish people the power to resolve their own issues by claiming back to the Westminster Parliament the issuing of renewable obligation certificates, which are to be solely under the jurisdiction of the UK Parliament. I thank my noble friend Lady Worthington for her wider remarks regarding the same situation under CFDs.

Labour is standing up for jobs in Scotland. The Minister in the other place, Andrea Leadsom, accused Labour of adding costs to consumer bills through the £10 million extra these schemes, totalling 90 megawatts, would add to consumer bills. However, analysis by the Independent Renewable Energy Generators Group shows that, had the Government accepted this amendment, it would have actually saved consumers over £10 million a year, as renewable technologies other than onshore wind could cost £20 million a year—being more expensive than onshore wind—given the necessity to reform the UK's electricity system and decarbonise the economy. Instead, these schemes will be mothballed in Scotland and could cost jobs there.

3.45 pm

My amendment in lieu of Amendment 7T, which I will press, will save investments and extend grace periods to the majority of the schemes under the original amendment. My amendment recognises that the Government do not wish to accept the full seven schemes and have rejected the original amendment. Instead, my amendment presses the case for schemes whose Section 75 or Section 106 agreements came through very close to the arbitrary cut-off date of 18 June 2015, such that written notice was issued within a three-month period—in other words, before 18 September 2015. This three-month period recognises the variability in dates of planning committee meetings and is proportional to the fair consideration of justice in these cases, and the Government's stance.

Four of the seven schemes would qualify under this redefinition, all of them in Scotland, and would total 66.3 megawatts. With regret, the remaining three are unfortunately now excluded, as their dates of written notice were not until January 2016—a further three months after 18 September, and therefore over six months after the arbitrary cut-off date of 18 June.

We on this side of the House want to be as inclusive as we can insist on being to the Government, in being reasonable to all justifiable cases against arbitrary disruptive proposals. I call on your Lordships' House to support this amendment and ask the Government and the Commons to think again.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords for participating in this debate and making their points as fluently and forcefully as they have in the past. I shall deal with the points in the order they were made during the debate, and will therefore refer first to the noble and learned Lord, Lord Wallace, who spoke about the grace periods and the timeliness of what we are doing, saying that this is the Government's fault. The point I was seeking to make was not so much about the delay as the constant ping-pong, given that the other place has given a very clear view. This measure was passed there by a substantial majority—far larger than the Government's overall majority; it was not just Conservative Members who voted for it.

So these points are relevant, and I hope that the noble and learned Lord will accept that the Liberal Democrats have no monopoly in determining what justice is. We have sought to be just in setting grace periods and allowing for an investment freeze, so although we differ on where we think justice lies, I will take no lessons from the Liberal Democrats—that this is the definition of justice that has been handed down from on high.

The difference between us is this. We feel—

Lord Wallace of Tankerness: I was not seeking to give the Minister a Liberal Democrat definition of fairness and justice: I quoted his honourable friend Andrea Leadsom on what fairness was, and himself when he defended the Government's ending the renewables

[LORD WALLACE OF TANKERNESS]
obligation for photovoltaics. It was a Conservative Minister's definition of fairness, which the Government are not rising to in this case.

Lord Bourne of Aberystwyth: We Conservatives have put forward our own definition of justice, rather than seeking to put a gloss on it in a way that is helpful to the noble and learned Lord's argument.

The essential difference is one of deployment. Every proposal put forward by the noble and learned Lord would increase deployment. We feel that we are doing the right thing in balancing the interests of investors with the wider interest, what was in the manifesto and votes in the other place.

The noble and learned Lord raised the issue of steel, suggesting that this measure would make a massive difference and therefore we have to adopt it. As is widely recognised, the Government are committed to doing everything they can on steel, and indeed are delivering—on procurement, on relief on energy costs, on action against dumping. I hope that we will have his support in those matters.

I turn to the noble Lord, Lord Foulkes, who, with his customary passion and fervour, put forward arguments in relation to an area that he knows well. I respect where he is coming from—of course, I understand that—but I do not think that there is any ambiguity in relation to Sorbie. I have checked this and do not want to give a running commentary on planning issues—I should not seek to do that and it would be unwise to do so—but it seems to us that it is very clear that Sorbie falls the other side of the line. I do not think that there is any ambiguity there but, as I said, I cannot really give a running commentary on it.

Lord Foulkes of Cumnock: I do not seek a running commentary; I just seek a specific answer to a specific question. Sorbie was approved well in advance. It was delayed because of the aviation objection, which was subsequently withdrawn. Therefore, it is reasonable to assume that it was approved prior to the relevant date, and that is an interpretation that could be put on it by the department or by Ofgem. I am seeking an indication that at the very least the Minister will have this examined to see whether that is a possible interpretation of the current position.

Lord Bourne of Aberystwyth: The noble Lord is being very creative. I do not think that there was any legal doubt about it. He has referred to it previously as a technicality in a broader sense. I will write to him if I am wrong on that. We will double check but I do not think that there is any uncertainty in relation to that matter.

I move on to what was said by the noble Baroness, Lady Worthington, in relation to CFDs. That of course goes wider than the current debate, which is focused on wind deployment, but I take on board what she said. We have made statements about new technologies within CFDs. The CFD system is designed with this in mind. As I think the noble Baroness knows, CFD auctions for less-established technologies will be taking place later this year in relation to pot 2, and further details will be issued in relation to that.

Baroness Worthington: Would the Minister care to comment on the fact that, because we have not yet met our deployment targets under our legally binding European targets, any onshore wind project that goes through that is cheaper than projects less close to CFD auctions that we are about to grant saves the bill payer money rather than costing the bill payer more?

Lord Bourne of Aberystwyth: To me, unnecessary subsidies—and I think we are entering into that area—are undesirable. Solar, for example, is being deployed without subsidy, as we know, and that will no doubt happen with onshore wind. All the evidence I see is that those technologies where we do not need a subsidy, we should not be subsidising, and that is the international message that is coming across. Al Gore and others who are not necessarily supportive of the Conservative view say that we should not be subsidising unnecessarily, and we are very much of that view.

I turn to the noble Baroness, Lady Liddell, who sought to characterise the House of Commons as a big boy with a stick or a bully. That may happen on occasion but it is perhaps an incomplete picture of what, after all, is the elected Chamber, and this measure was passed by a significant majority in the House of Commons.

Baroness Liddell of Coatdyke: Given that I spent 11 years in the Chamber of the House of Commons, I think that I have a passing knowledge of what it is like. "A big boy did it and ran away" means somebody dreaming up an excuse for something that they did but do not want to admit to.

Lord Bourne of Aberystwyth: The noble Baroness did indeed give exemplary service there. Of course, she has experience of the other place and she will therefore know that it is the elected Chamber and that we should not ignore what is said there. However, I come back to the principle of this issue. We have to draw a line somewhere. It is said that that line is arbitrary, but it is arbitrary only in the sense that that was the date—

Baroness Quin (Lab): I am grateful to the Minister for giving way. As he knows, I have a lot of sympathy with government policy because I have seen very heavily subsidised schemes inflicted on communities in Northumberland where over 90% of the people have opposed them. At the same time, it seems to me that the Government should look at all possible ways of having flexibility in the cases quoted by my noble friends Lord Foulkes and Lady Liddell. If there is some flexibility in schemes that undoubtedly have the support of local people and, at the same time, through no fault of their own they seem to have fallen foul of the grace periods, I think that the Government ought to be prepared to look at that.

Lord Bourne of Aberystwyth: My Lords, I understand the point that the noble Baroness is making, and I thank her for her general support for what the Government are doing. Clearly, we need legal certainty. We feel that we have delivered on a grace period to take account of some of the difficulties that there are and the investment

freeze position. We have made movement on grid delays and radar delays as well. I say to the noble Baroness that the line has to be drawn somewhere; as soon as you start to unpick it and make exceptions for one or two categories then one or two others come into play. I understand that there is great difficulty in drawing the line anywhere, but unless you draw that line, every case could be an exception. That is the point I am making.

I thank my noble friend the Duke of Wellington for some interesting insight on the situation. As for the noble Lord, Lord Foulkes, who said that my noble friend would not get his vote, I do not think any of us got his vote, so that was probably fair to all of us.

I turn to the points made by the noble Lord, Lord Grantchester. He talked rather uncharacteristically—I am not sure whether he really meant it—about vindictive and aggressive attitudes and the adoption of a UKIP stance. I hope he has evidence that that is what we have been doing because it does not cut the mustard with us. As the noble Lord well knows, we do not listen to UKIP on anything, thank goodness. There can be no suggestion that this is vindictive or aggressive. It was in the manifesto, which people voted for; it has been debated in the other place numerous times; and we were responding to views heard up and down the country. He might not like the policy but I do not think that he can characterise it as vindictive or aggressive.

We have the date of 18 June and I repeat to the noble Lord that that is not arbitrary: it is the date that the announcement was made. We believe that this is an unnecessary subsidy and that we have got justice by balancing issues such as the investment freeze and the grace period with the cut-off point. There is a very clear policy, which has been endorsed several times by the other place. I urge noble Lords to oppose any amendments and vote for the main Motion.

Lord Wallace of Tankerness: My Lords, the Minister has given us a fairly predictable but disappointing reply. He will be aware that when we first dealt with grace periods, back in October, there was a considerable number of possible areas in which justice could be done—and I am talking about justice as defined by his ministerial colleagues and himself. We have whittled those down. Indeed, I am prepared to indicate that the "insist" Motion, which is whittled down even further by the Motion in the name of the noble Lord, Lord Grantchester, is one that we would be prepared to support. However, we are getting absolutely no response.

Scottish colleagues present will understand the phrase, "It is like arguing with Ailsa Craig". I am afraid that that is the position we are in. I do not think that this is good governance. What we are doing is freezing potential developers in other areas, not just in onshore wind, who no longer can have the certainty that the developments they make and investments they put in will not one day be swept aside at the whim of government. However, I beg leave to withdraw Motion A1.

Motion A1 withdrawn.

Motion A2 not moved.

Motion A3 not moved.

Motion A4 (as an amendment to Motion A)

Moved by ***Lord Grantchester***

At end insert ", and do propose Amendment 7TD in lieu—

7TD: Line 179, at end insert ", or

(e) evidence that—

(i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or for additional capacity,

(ii) a grant of planning permission was resolved by the relevant planning authority on or before 18 June 2015,

(iii) planning permission was granted no later than three months after 18 June 2015, and

(iv) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached.""

3.59 pm

Division on Motion A4

Contents 270; Not-Contents 220.

Motion A4 agreed.

Division No. 1

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Immigration Bill

Commons Reasons and Amendments

4.14 pm

Motion A

Moved by ***Earl Howe***

That this House do not insist on its Amendment 59, to which the Commons have disagreed for their Reason 59A.

Commons Reason

59A: Because appropriate measures which govern asylum seekers' ability to work are already in place.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, it may be helpful if I first remind the House of the current arrangements for asylum seekers wishing to work, as that will put the comments of the noble Lord, Lord Alton, into context. We allow asylum seekers to work if their claim has not been decided after 12 months through no fault of their own. Those allowed to work are restricted to jobs on the shortage occupation list, introduced in the previous Parliament.

The Government believe that this is a fair and reasonable policy, and the main reason for that is the need to protect the resident labour market—that is, the need to ensure that access to jobs is prioritised for British citizens and those with leave to remain here, including refugees. I firmly believe that the current policy strikes the right balance. It is fair and reasonable towards genuine asylum seekers, it is consistent with our international obligations and it takes into account the rights and needs of our society as a whole. I therefore urge noble Lords to accept the view of the other place, and not to insist on their amendment. I beg to move.

Motion A1 (as an amendment to Motion A)

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

At end insert ", and do propose Amendment 59B in lieu—

59B: Insert the following new Clause—

"Asylum seekers: permission to work after nine months

(1) The Immigration Act 1971 is amended as follows.

(2) After section 3(9) (general provisions for regulation and control) insert—

"(10) In making rules under subsection (2), the Secretary of State must provide for persons seeking asylum, within the meaning of the rules, to apply to the Secretary of State for permission to take up employment, including self-employment and voluntary work.

(11) Permission to work for persons seeking asylum must be granted if—

(a) a decision has not been taken on the applicant's asylum application within nine months of the date on which it was recorded, or

(b) an individual makes further submissions which raise asylum grounds and a decision on that new claim or to refuse to treat such further submissions as a new claim has not been taken within nine months of the date on which the submissions were recorded.

(12) Permission for a person seeking asylum to take up employment shall be on terms no less favourable than those upon which permission is granted to a person recognised as a refugee to take up employment.""

Lord Alton of Liverpool (CB): My Lords, the noble Earl just told the House that he believes the Government's position strikes the right balance. I hope that, in some fairly brief remarks, I can convince the House that that really is not so.

Unfortunately, because of the procedural timetable used in another place yesterday, it is impossible to find in *Hansard* any reference whatever to the extensive Committee and Report stage debates we had in your Lordships' House, and the arguments made in favour of the six-month provision incorporated in the amendment passed by your Lordships' House. It is therefore very

[Lord Alton of Liverpool]
difficult to know on what basis the Government have rejected both the six-month amendment and the amendment tabled today, which is an attempt to move a little further in the Government's direction.

I am, therefore, disappointed that that truncated debate in another place led to the rejection of this proposal. To ask the other place to give further consideration, I have modified the amendment by inserting nine months instead of six. Before turning to its rationale, I declare my non-financial interest as a patron of Asylum Link Merseyside.

The amendment would grant asylum seekers permission to work if their claim has not been determined within the Home Office's target time of nine months. I will briefly address the arguments made by the Government against the amendment. They have said that the policy will lead to an increase in unfounded applications. In Committee, the noble Lord, Lord Ashton, who is in his place, in responding for the Government repeated their long-held position:

"Earlier access to employment risks making asylum more attractive for those who are otherwise not eligible to work in the UK".—[*Official Report*, 20/1/16; col. 851.]

However, the Government themselves have conceded that it "may be broadly true" that,

"there is little hard evidence that the change you propose (to allow asylum seekers to work after six months) would result in more asylum applications".

So nine months would have even less impact on applications, if that is so. In fact, all the available evidence suggests that permission to work does not act as a pull factor for asylum seekers. That is reflected in the Home Office's own research, and was confirmed by a review of the 19 main recipient countries for asylum applications in the OECD in 2011, which concluded that policies which relate the welfare of asylum seekers—for example, permission to work, support levels and access to healthcare—did not have any significant impact on the number of applications made in destination countries.

A total of 24 European Union countries allow asylum seekers to work after nine months or less if a decision has not been made on their asylum application, so what I am proposing is hardly revolutionary or without precedent. Twelve of these countries allow asylum seekers access to the labour market after six months or less of waiting for a decision on their claims. Those countries are Austria, Belgium, Cyprus, Finland, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Spain and Sweden. The vast majority of these countries have had these policies in place for many years and none of them has had to change the policy because of any abuse of the asylum route by economic migrants.

In reality, those motivated to come to the United Kingdom for economic reasons are unlikely to make an asylum application and bring themselves to the attention of the authorities on the basis that they might be able to apply for permission to work after nine months. It does not make any sense, if you think about it. Even if this were the case, they would never have an opportunity to do so as the Home Office decides all straightforward claims within six months. Anyone making an unfounded claim for asylum would probably have this dealt with in a matter of weeks rather than months. It should be stressed that applicants cannot manufacture delays by—

Lord Lansley (Con): I am very grateful to the noble Lord for giving way. In response to a Written Question that I tabled in March, I was told that in 2015 of a total of 10,199 asylum claims concluded after six months, fewer than half were well founded. Therefore, the majority of those who are seeking asylum and would therefore be eligible for work after six months on the original amendment would not have made well-founded claims, and so would not have had a reason legitimately to be in this country in the first place.

Lord Alton of Liverpool: My Lords, if they do not have legitimate reasons to be here, they will be deported in the normal course of events, so that argument does not stack up against the amendment, which encourages people to work rather than rely on state benefits. In other words, it encourages them to do what the noble Lord and Members on his Benches urge people to do—namely, to use their own efforts and resources to pull themselves up by their bootstraps to play their part in society. The figures that the Government gave me in reply to the earlier debates was that at the end of 2015 more than 3,600 asylum seekers were still waiting for more than six months for an initial decision on their claim, and that was despite the assurance that the noble Lord, Lord Ashton, gave that delays that have happened before have been brought under control.

Returning to my remarks before the intervention, it should be stressed that applicants cannot manufacture delays by not engaging with the process, as they will have their claims refused for non-compliance.

The Government have defended their current policy, which effectively prohibits asylum seekers from working on the basis that asylum seekers are,

"provided with support and accommodation while we determine whether they need our protection and until they have exhausted the right of appeal".—[*Official Report*, 20/1/16; col. 843.]

Those words, used by the noble Earl, Lord Attlee, in 2014, were quoted in the Chamber on 20 January. While it is true that asylum seekers are supported, it is highly questionable whether the level of support provided is adequate, as asylum seekers receive just over £5 a day to meet their essential living needs for food, clothing, toiletries and transport to pursue their asylum application. Of course, housing and utility bills are paid for separately for those who need it. An asylum seeker spends an average of around 18 months on Section 95 support. Many asylum seekers who have to survive solely on this level of support for extended periods will suffer a negative impact on their mental and physical health. At the end of 2015, more than 3,500 asylum seekers were still waiting for adjudication and settlement of their cases. In its most recent report on the work of the immigration directorates, the Home Affairs Committee stated that it was,

"concerned that the department may not be able to maintain the service levels that it set itself on initial decisions for new asylum claims within six months. To do so may require further funding and resources".

Perhaps the noble Earl will comment on that finding in his response.

I have tried to move in the direction of noble Lords who have expressed concern and this is a compromise amendment. It means that the Government would have to significantly miss their target timeframe of six months for making an initial decision on an application before an asylum seeker would be given permission to work. For the small number of people affected, this would be a route out of poverty and an opportunity to restore their dignity by providing for themselves rather than leaving them dependent on handouts from the Government.

Is the current policy fair and proportionate? Is it balanced, in the way that the noble Earl suggested in his preliminary remarks? In Committee, the noble Lord, Lord Ashton, said:

"The Government believe that the current policy strikes the right balance. If a claim remains undecided after 12 months for reasons outside their control, the person can apply for permission to work. That is fair and reasonable policy and is consistent with our obligations under EU law. It also assists genuine refugees".—[*Official Report*, 20/1/16; col. 851.]

The question is: does the Government's current policy strike the right balance? As matters stand, the UK Government effectively prohibit asylum seekers from ever working, because after 12 months they can apply only for jobs on the shortage occupation list, which are the skilled jobs where there is an identified national shortage. Even if an asylum seeker had the requisite skills for such a job, it is unlikely that they would be able to secure it, as they would have to have their existing qualifications recognised and they may well have become deskilled in the year or more that they have been unemployed. An extended period of exclusion from the labour market can have a long-term impact on a refugee's ability to find employment. It is no wonder that a cross-party parliamentary inquiry into asylum support for children and young people noted, in January 2013:

"Asylum-seeking parents are prevented from working, leaving families dependent on state support. This means parents are left powerless and lose their skills while children are left without positive role models. The Government's own research has highlighted that this can lead to high levels of unemployment and under-employment once a family gains refugee status".

I agree with that.

Early access to employment increases the chances of smooth economic and social integration by allowing refugees to improve their English, to acquire new skills and make new friends and social contacts in the wider community. All of this helps to promote community cohesion. The vast majority of asylum seekers want to work and contribute to society. They are frustrated at being forced to remain idle and dependent on benefits. Pulling yourself up by your own bootstraps, reducing reliance on the state and reinforcing the principle that we have a duty to work and contribute to society should appeal to all noble Lords, on whatever Benches they sit. The potential financial savings from allowing asylum seekers to work include reduced asylum support costs and increased tax revenue. In addition, asylum seekers will have increased disposable income which they can then spend in the wider economy. There will also be a number of indirect financial savings for statutory and voluntary agencies, including the avoidance of increased physical and mental health problems and the consequential financial cost to the National Health Service.

In conclusion, granting permission to work to asylum seekers who have been waiting for an initial decision for more than nine months will help to avoid the negative impact on asylum seekers of prolonged, forced inactivity and impoverishment and allow them to contribute to the economy. This will deliver financial savings to the Government and taxpayer, as asylum seekers who are working will not need to be supported. Allowing asylum seekers who have been waiting nine months for a decision on their cases to work has all of the benefits that I have been describing. The original amendment, on six months, was supported in your Lordships' House. In the absence of a debate in another place on that amendment, it is right for this House to press on with this principle today, to give the other place the chance to consider the merits of the argument properly and come to a considered conclusion. I hope those arguments will commend Amendment 59B to the House. I beg to move.

4.30 pm

Baroness Lister of Burtersett (Lab): My Lords, briefly, I support Motion A1. I have participated in a number of debates in this House on this issue and I have yet to hear a convincing argument against providing this most basic civil right to asylum seekers.

As the noble Lord, Lord Alton of Liverpool, made clear when he moved the Motion so ably, we are yet to see any serious evidence in support of the current policy. But there is plenty of evidence of the demoralising impact it has on asylum seekers. For example, a woman quoted in the most thorough research that I have seen into the reasons people choose to seek asylum in this country said:

"Sometimes I just cry. It's like I am worthless, like I am just this piece of junk".

No human being should be made to feel like that, and that is why I support the Motion.

Lord Green of Deddington (CB): My Lords, I am rather puzzled. If conditions for asylum seekers are so difficult in this country, why are there literally thousands of people camped around Calais who appear to want to get into this country in order to claim asylum? And why is it that, of those who claim asylum, 60% have already been working before they make their claim?

Baroness Hamwee (LD): My Lords, today is a day for pithy comments rather than rehearsing arguments that I have already made on this subject, which are on the record. Amendment 59B is different from the previous amendment in that an olive branch has been offered in the shape of nine months rather than six months. We have been told that the delays in the system are historic and that the system is now under control, so it seems that there should not be a problem with six months —but there we are.

I support in particular the noble Lord's comments about the shortage occupation list. It would be inappropriate to go through all the jobs on that list but without wanting to be too frivolous, I noticed that, for

[Baroness Hamwee]
instance, string players are on the list but there is no mention of players of wind or brass instruments. That is the sort of detail and the sort of thing that really makes you wonder about the policy.

The nine months proposal would be in line with almost all other countries in the EU, so there would be no pull factor. Having spoken up and given my support to the noble Lord, I will sit down.

Lord Rosser (Lab): The amendment your Lordships sent to the Commons on allowing asylum seekers the right to work after six months, like the other amendments carried in this House against the Government's wishes, did not find favour with the Government or indeed receive any indication of movement by them on the issue.

As has been said, at present in most cases asylum seekers are not allowed to work in the UK unless they have waited over 12 months for an initial or subsequent decision, and are not considered responsible for any delay. Those who do qualify for the right to work under these restrictions are then able to apply only for jobs on the shortage occupation list. However, we are currently reviewing this issue as part of a wider policy review and consequently we will not be supporting the Motion sending the matter back again to the Commons—albeit now saying nine months rather than six months.

Earl Howe: My Lords, Amendment 59B, proposed in lieu of Amendment 59, while slightly less radical than the earlier amendment, would still mean fundamental changes to the government policy of restricting permission to work to those who have been awaiting a decision, through no fault of their own, for 12 months. As the noble Lord reminded us, those allowed to work are restricted to jobs on the shortage occupation list introduced in the last Parliament. As I indicated earlier, the Government believe that this is a fair and reasonable policy, and we believe that because of the need to ensure that access to jobs is prioritised for British citizens and those with leave to remain here—including, importantly, refugees.

The new amendment would not only allow asylum seekers to work after only nine months; it would also remove the important caveat that any delay must not be of the asylum seeker's own making. This would benefit those who are responsible for delaying a decision on their claim and purposely frustrate the asylum process simply to gain permission to work or to avoid removal. It would also benefit individuals whose cases were complex for perfectly good reasons, such as those accused of serious criminal acts, including war crimes, where there is an inescapable imperative to investigate the facts before reaching a decision. It would also allow unrestricted access to the labour market—that is to say, not just to jobs on the shortage occupation list—regardless of the interests of British jobseekers. It is a recipe for a free pass into the UK employment pool and that really is not fair to British people competing for the same jobs. In making policy in this area, we have a duty to consider how such policy impacts on society as a whole, not just on asylum seekers.

The noble Lord, Lord Alton, rather dismissed the arguments rehearsed by my noble friends Lord Ashton and Lord Bates in earlier stages of the Bill. But there is a danger that the noble Lord's amendment would serve to encourage unfounded claims from those who do not need protection at all but are simply seeking employment opportunities, knowing that if they play their cards right they can achieve that objective within nine months. These are opportunities for which they would not otherwise be eligible. That cannot be right or acceptable. The shorter the period allowed for in this context, the more we encourage spurious asylum claims of this kind.

Currently, the Immigration Rules allow non-EEA nationals to work here if there is no suitable resident worker available. This gives priority to those filling roles on the shortage occupation list and is subject to numerical limits. If non-EEA nationals could bypass these restrictions by lodging an unfounded asylum claim, this approach would be completely undermined. It could encourage illegal migrants to come here and make an unfounded asylum claim, which would prejudice the position of British people and recognised refugees in our labour market. I say that because if we were to experience an increase in unfounded claims, the knock-on effect would be to delay claims from genuine refugees and undermine our progress towards a fair and efficient asylum system.

There has been much debate about delays in decision-making in the Home Office, but this is no longer an issue. Delays have been brought under control and, in the great majority of cases, asylum seekers receive a decision within six months. Many of those who do not are the complex cases that I referred to earlier. The noble Lord's amendment carries an increased risk that we will be obliged to give a free pass to people with a criminal record—or, shall I say, with a criminal past. The majority of refugees are granted asylum within six months and once that happens, they have unrestricted access to the labour market.

The noble Lord, Lord Alton, suggested that his amendment was a route out of poverty but this suggests that asylum seekers are penniless. While awaiting a decision, they receive free accommodation and a cash allowance to cover essential living needs if they would otherwise be destitute. While their claim is outstanding they can undertake volunteering activities that can benefit a community, giving them a sense of purpose, and we are exploring ways to support this.

The amendment proposed is unnecessary and I really do not think that the noble Lord has made his case. Asylum seekers do not need to work and what he proposes carries the risk of serious abuse. I firmly believe that the current policy strikes the right balance. As I said earlier, it is fair and reasonable towards genuine asylum seekers; it is consistent with our international obligations; and it takes into account the rights and needs of our society as a whole. On that basis, I ask noble Lords to resist Amendment 59B in lieu.

Lord Alton of Liverpool: My Lords, I am grateful to the noble Earl for his reply. However, I would beg the House to consider whether these are convincing arguments. If there were gangs of marauding criminals—or war

criminals—seeking jobs in the 24 countries that use either a six-month or a nine-month limit, I think we would have heard about it by now. It is a slightly bizarre argument. If the Government were really concerned that this might be misused, then surely the answer is to engage with the amendment and for the Government to come forward and include exemptions, so that if someone is being prosecuted, they would not qualify for this entitlement. There are ways of dealing with this, if the noble Earl really is serious about it, rather than saying out of hand, "We are not prepared to do what 24 other countries are doing".

The noble Earl also said that this will deprive British people of jobs. We are talking about a tiny number of people in reality: the 3,600 people I mentioned in my earlier remarks. If the Government are right and are able to deal with these matters in a six-month period, presumably those numbers will continue to reduce.

What is the view of the British public? A survey conducted by the IPPR found that 51% of people in the UK thought that asylum seekers should be allowed to work, with 29% saying they should not. It is not right for the Government to imply that there is hostility in the country. If you were to ask people whether it is right to leave people to survive on £5 a day, I have a pretty shrewd idea of how public opinion would react to that question. If you were to ask them whether it is better for people to scrape along in destitution on £5 a day or to be given support through their own efforts and labours, again I know where public opinion would stand. Of course people believe it is better for people to provide for themselves rather than the state making that provision for them. This is not about free passes; this is about human dignity. It really disturbs me that we are adopting a morality that seems closer to the Victorian approach to the workhouse than to one based on the humane and civilised needs of the 21st century.

I am disappointed that the noble Lord, Lord Rosser, feels unable today to come into the Lobby with us. After all, he was a signatory to this very same amendment, when it provided for six months, when it was before your Lordships' House on a previous occasion. However, I am extremely grateful to the noble Baronesses, Lady Lister and Lady Hamwee, and others of your Lordships who encouraged me to retable an amendment today. Having done that, I would like to see the opinion of the House. I hope the House will agree that this amendment should find favour here and go back to another place so that they can have a discussion about its merits, or otherwise, which it was unable to do yesterday. That is a reason, surely, for returning it back down the corridor.

4.43 pm

Division on Motion A1

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4.57 pm

Motion A agreed.

Motion B

Moved by ***Earl Howe***

That this House do not insist on its Amendment 60, to which the Commons have disagreed for their Reason 60A.

Commons Reason

60A: Because appropriate measures to ensure the protection of overseas domestic workers can be put in place using existing legislative powers.

Earl Howe: My Lords, we come now to the issue of overseas domestic workers. I very much hope that the House will be content to accept the arrangements that I am about to outline, which represent a considerable change from those we were proposing when this matter was first debated. It is clear that both the Government and the noble Lords who have supported this House's Amendment 60 have a common purpose, which is to prevent the abuse of this group of vulnerable workers. In his independent review, James Ewins emphasised the need to provide overseas domestic workers who arrive here in an abusive relationship with an escape route from that abuse. The Government have accepted that. The debate is about how the right to escape an abusive relationship is made effective.

The Government have considered carefully the arguments that have been put forward, including by the Immigration Law Practitioners' Association in its detailed commentary on the debate on Report in this House. What I am sure we also agree upon is the need

to ensure that, where abuse occurs, the perpetrators are identified. If that is to happen, victims of abuse need to be encouraged to consent to their cases being referred into the national referral mechanism, and they are more likely to do so if they are confident that doing so will not prejudice their ability to work.

We have set out a comprehensive package of measures to address these very objectives. We have already amended the Immigration Rules so that overseas domestic workers are admitted on conditions of stay that permit them, during the six-month period for which they are admitted, to change employer. They do not need to apply to the Home Office to do so. Paragraph 159B of the Immigration Rules already sets that out.

This will be a genuine and effective right to change employers, not an illusory one. The Minister for Immigration has stated that we will take further action to ensure that, where an overseas domestic worker has been referred into the national referral mechanism within that six-month period, their permission to work will continue while their case is being considered—again, without having to apply to the Home Office. This change can be made through secondary legislation, using the powers in Section 4(1) of the Immigration Act 1971. We will do this as soon as possible. We have also already amended the Immigration Rules—in paragraphs 159I to 159K—so that overseas domestic workers who obtain a positive conclusive grounds decision can obtain a two-year extension of stay.

5 pm

Taken together, these measures ensure that, where a worker arrives in an abusive employment relationship, they can leave it with certainty that they will be able to continue working, while also ensuring that they are encouraged to report that abuse early on. At the same time, this approach minimises the risk, to which the Independent Anti-slavery Commissioner has drawn attention, of creating a market for criminals in which an overseas domestic worker could leave the abusive relationship that they arrived in only to find themselves in another one.

It is of course essential that overseas domestic workers properly understand how these new protections work and are provided with safe space in which concerns about workers' employment conditions can be raised at an early stage. The Government have already committed to implementing Mr Ewins's recommendations concerning information, advice and support meetings. This is something that the amendment provides for, but it is not necessary to use primary legislation to implement it. Our view is that we should preserve the flexibility to decide whether the requirement to attend should be at 42 days, as the House's amendment prescribes, or sooner, as the Independent Anti-slavery Commissioner has suggested.

Furthermore, as the Minister for Immigration has set out, the Government wish to place greater emphasis on enforcing the obligations we should properly expect of these workers' employers. We will therefore ensure that these meetings form part of a wider scheme in which it will be a condition of employers' registration with the Home Office that they comply with a number of obligations, including ensuring that their employees are able to attend such meetings and that they comply with workplace checks. Where registered employers do not comply with these actions we will be better able to ensure that they do not bring other domestic workers to the UK. These further changes to the Immigration Rules will be laid before Parliament in due course and in the usual way.

As Mr Ewins's review emphasised, these are complex issues. However, the Independent Anti-slavery Commissioner has stated his view that the Government's approach is the right one. I hope noble Lords are persuaded likewise and can agree that the House's Amendment 60 is unnecessary. I beg to move.

Lord Hylton (CB): My Lords, it is a pleasure to see the noble Baroness, Lady Hamwee, in her place today. She understands these issues from her experience in central London and has spoken about them on previous occasions.

I am grateful to the noble and learned Lord, Lord Keen, for seeing me yesterday to discuss domestic workers and the tied visa. I also thank the noble Earl for what he said in his introduction to this response, and I am grateful to the Immigration Minister for saying that,

"when an overseas domestic worker has been referred into the national referral mechanism during their initial six-month stay, their permission to take employment will continue while their case is assessed".

That is helpful, and will prevent destitution. However, the Minister went on to say that,

"the measures will ensure that, when a worker arrives"—

I emphasise that word—

"in an abusive employment relationship, they can leave it with the certainty that they will be able to continue working".—[*Official Report*, Commons, 25/4/16; col. 1190.]

I must therefore ask: does that cover cases where the abuse or exploitation starts only after arrival here? I trust that the answer is yes and that the need to enter the NRM to get protection will be made widely known at information meetings before and after arrival, and to the relevant statutory and voluntary people here.

If the NRM application fails and the worker has to leave this country, can she know in advance that she will be able to return home if she wishes and not be left stranded somewhere in the Middle East?

Those two points are important. I have given notice of them and I look forward to positive replies.

Baroness Hamwee: My Lords, the noble Lord, Lord Hylton, has done a sterling job on this issue, as have others on previous such Bills. Of course, I acknowledge that the Government have made some important changes, but I have to say that I remain persuaded by the report of James Ewins—a report commissioned by the Government themselves.

The Government's amended policy depends in particular on the national referral mechanism functioning well and there being easy access to it. I summed up in my own mind that the Government's approach reflects prosecution trumping protection—and I do not say that lightly. The Government are concerned that if overseas domestic workers could change employers and significantly prolong their stay, they would be less

[Baroness Hamwee]
likely to report abuse, and enable an employer to abuse others. I do not accept that premise in the context of what we know about this situation. The workers will remain effectively tied to their employers. They will be deterred from escaping because of the quite complex and conditional rights under the new regime, or indeed they may go underground. They need to be informed of clear, concrete rights which are readily understood, and they need to be confident about employing those rights.

I, too, have questions for the Minister. First, can he give any news of the improved functioning of the national referral mechanism, which we know has been the subject of considerable attention and new ways of working? Secondly, I understand that Mr Ewins is to be asked to make a further report. I am not sure whether, in the light of the acceptance or otherwise of his first report, he has accepted that job. But if it is to happen, when will it happen, and will it cover the use of the national referral mechanism by overseas domestic workers?

Lord Green of Deddington: My Lords, I do not doubt for a moment the good intentions of those who have put forward this amendment. The Government have moved a very long way to make sure, as much as they can, that overseas domestic workers are not exploited. Everyone is bound to concur with that.

The difficulty I have is that this amendment is not confined to domestic workers who are actually subject to abuse: all would be entitled to leave their employer, for any reason. Well, that is a considerable concession. However, if I have read the amendment correctly, they can stay here for not less than two and a half years. That creates a gaping hole in the immigration system. We are talking here about 17,000 people a year. Of course, word will spread very quickly that you can get to the UK on a domestic workers visa, walk out on your employer, stay here for two and a half years and then almost certainly go into the black economy and not go home. That will lead to a huge gap in our system, and I have to say that I think it is very unwise.

Lord Rosser: We continue to support the Ewins recommendations on overseas domestic workers, as well as the amendment that your Lordships sent to the Commons, which it has not accepted. We note that there has been some movement on this issue by the Government, to which the noble Lord, Lord Hylton, referred. I hope that in his response the Minister will be able to reply in detail to the questions that have been raised in this short debate, and I hope that the answers will be found satisfactory by those who asked the questions.

The Earl of Sandwich (CB): My noble friend Lord Green said that the Government have moved a very long way but I cannot agree with him. The Government have moved a short way. We heard previously, at earlier stages of the Bill, about the national referral mechanism being the fulcrum of the Government's argument. I acknowledge that they have moved, but anyone who has sat and listened to 50 domestic workers, as I did with my noble friend Lord Hylton, will know that there is an atmosphere of fear, which is very hard to convey, but the noble Baroness, Lady Hamwee, has already pointed that out. Even applying to the national referral mechanism, reporting very dangerous circumstances and forms of abuse, carries its risks for these people. Therefore, I urge noble Lords to think very hard about this amendment and I support my noble friend.

Earl Howe: My Lords, I have listened carefully to the questions and comments that noble Lords have made. I re-emphasise that we share a common objective here—that is, to ensure that there are effective arrangements for overseas domestic workers to escape abuse, and that must be at the centre of our thinking.

Perhaps initially I may respond to the questions put by the noble Lord, Lord Hylton. I am grateful to him for giving me advance notice of them. I confirm that the protection measures which the Government are extending to overseas domestic workers will apply in cases where the abuse or exploitation starts only after arrival in the UK. This includes the ability of overseas domestic workers who were referred to the national referral mechanism to continue working while their case is considered. We will ensure that this possibility is publicised via the planned information meetings and that statutory and voluntary personnel who work with overseas domestic workers are also made aware of it.

If the outcome of the referral is that the person is found not to be a victim of slavery and trafficking and therefore needs to return home, I also confirm that it will be for the individual to choose whether they return to their country of origin or to their country of previous residence. The Government's information leaflet for victims of trafficking already makes it clear that they will be assisted to return to their home country if it is safe to do so. I hope that that reassures the noble Lord.

I am sorry that the noble Baroness, Lady Hamwee, is not convinced by the measures that we have taken to address the concerns raised at previous stages. I am genuinely sorry as we have tried our best. Perhaps I may address one point that she made. She indicated that James Ewins had been asked to produce a further report on overseas domestic workers. In fact, he has not been asked to complete a report, although I need hardly say that the Government will keep the situation under close review. The noble Baroness may be thinking of a different issue. We have asked Stephen Shaw to review the system of detention, and my noble and learned friend Lord Keen will come to that issue later.

5.15 pm

The noble Baroness also asked about the national referral mechanism. A review of the NRM was undertaken by a senior civil servant, Jeremy Oppenheim, in November 2014, as I am sure she is aware. The key recommendations from the review are aimed at improving the operation of the NRM and are being tested through a 12-month pilot. The Government will consider what further action is needed once the pilot concludes in August this year. To remind the noble Baroness and the House, the key recommendations of the report included extending the NRM to cover all adult victims of modern slavery, strengthening the first-responder role, streamlining the referral process by removing the reasonable grounds

decision once successful implementation of accredited anti-slavery safeguarding leads has occurred, and various other measures.

The noble Baroness and the noble Lord, Lord Rosser, regretted the fact that we have not been able to implement the Ewins recommendations in full. I would simply say that we have sought to strike the right balance. We have acknowledged that overseas domestic workers should be provided with the opportunity to escape abuse. Again, I was sorry that the noble Baroness referred to conditional rights: the right to change employer is now unconditional by virtue of the visa tie having been removed. However, we are concerned that allowing overseas domestic workers to extend their stay for longer than six months in order to work might make it less likely that they would report abuse. The key point is that where abuse happens, we need to know about it, and in order to know about it, it has to be referred to the national referral mechanism. The Independent Anti-slavery Commissioner issued a public statement on 1 April setting out his support for the Government's approach. He is concerned that allowing overseas domestic workers to stay for a further two years without needing to report abuse could inadvertently create a market for traffickers. You have only to imagine a situation where an abusive employer finds that their domestic worker has disappeared to another employer, and then brings in somebody else from overseas only to subject them to exactly the same abusive treatment. We are very mindful that abuse existed before the terms for overseas domestic workers were changed in 2012. Therefore, on its own, removing the visa tie is, in our submission, not a panacea.

I hope that the House will be persuaded by what I have said. We have moved a very long way since the matter was first debated in the House.

Lord Alton of Liverpool: The noble Earl may remember, or may have been briefed on it, that a meeting was convened by his noble friend Lord Bates when he held ministerial responsibility. We were told during that meeting that to deal with the problem of an employer who might repeat the offence of bringing other people into the country in order to engage in the same level of abuse against them that they did with an earlier employee, some kind of register would be drawn up and there would be a licensing system to prevent that taking place in the future. Can the noble Earl say whether any further thought has been given to that? He is quite right that none of us would want to see the repetition of these offences, but surely a licensing system and register would be the way to prevent that occurring.

Earl Howe: My Lords, as I said in my earlier remarks, we have accepted in principle the need to bring employers into the net, if I can put it that way. They have to register when they arrive so that we know who they are and who they are employing. I think we have addressed that point. It is necessary, I agree with the noble Lord, to know who is bringing overseas domestic workers into the country. We will be working through the detail of the registration requirement over the coming weeks and will announce more details in due course. The key purpose will be to allow us to monitor those who bring overseas domestic workers into the UK in the first place.

Motion B agreed.

Motion C

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

That this House do not insist on its Amendment 84 and do agree with the Commons in their Amendment 84A in lieu.

Commons Amendment in lieu

84A: Page 108, line 7, at end insert—

"Duty to arrange consideration of bail

(1) Subject as follows, the Secretary of State must arrange a reference to the First-tier Tribunal for the Tribunal to decide whether to grant bail to a person if—

(a) the person is being detained under a provision mentioned in paragraph 1(1)(a) or (c), and

(b) the period of six months beginning with the relevant date has elapsed.

(2) In sub-paragraph (1)(b) "the relevant date" means—

(a) the date on which the person's detention began, or

(b) if a relevant event has occurred in relation to the person since that date, the last date on which such an event has occurred in relation to the person.

(3) The following are relevant events in relation to a person for the purposes of sub-paragraph (2)(b)—

(a) consideration by the First-tier Tribunal of whether to grant immigration bail to the person;

(b) withdrawal by the person of an application for immigration bail treated as made by the person as the result of a reference under this paragraph;

(c) withdrawal by the person of a notice given under sub-paragraph (6)(b).

(4) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person—

(a) includes such consideration regardless of whether there is a hearing or the First-tier Tribunal makes a determination in the case in question;

(b) includes the dismissal of an application by virtue of provision made under paragraph 9(2).

(5) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person does not include such consideration in a case where—

(a) the person has made an application for bail, other than one treated as made by the person as the result of a reference under this paragraph, and

(b) the First-tier Tribunal is prevented from granting bail to the person by paragraph 3(4) (requirement for Secretary of State's consent to bail).

(6) The duty in sub-paragraph (1) to arrange a reference does not apply if— (a) section 3(2) of the Special Immigration Appeals Commission Act 1997 (persons detained in interests of national security etc) applies to the person, or

(b) the person has given to the Secretary of State, and has not withdrawn, written notice that the person does not wish the person's case to be referred to the First-tier Tribunal under this paragraph.

(7) A reference to the First-tier Tribunal under this paragraph in relation to a person is to be treated for all purposes as an application by that person for the grant of bail under paragraph 1(3)."

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I shall also speak to my Motion D.

It is clear that both the Government and noble Lords who supported this House's amendment in respect of a time limit on immigration detention have a common purpose—to prevent the detention of

[LORD KEEN OF ELIE]
individuals for any longer than is absolutely necessary. As the Government have stated previously during the passage of this Bill, I can reassure the House that individuals who are removed will be detained only for that purpose and only where there is a realistic prospect of removal within a reasonable time.

We all also agree on the need to ensure that any decision to deprive someone of their liberty must be subject to careful consideration and scrutiny, taking into account an individual's circumstances. Work on a wide package of reform, which was announced in the response to the review by Stephen Shaw of the welfare of vulnerable people in detention, is already under way. This reflects the seriousness with which the Government regard these issues.

The Government have made clear previously their rationale for opposing general time limits on immigration detention—that they would be arbitrary, that they would not take account of individual circumstances, and that they would encourage individuals to seek to frustrate the removals process until the time limit is reached. I fully respect the views of those noble Lords who voted in favour of a time limit but the Government's strong view remains that a time limit would have a negative impact on their ability to enforce immigration control and, consequently, to maintain public safety.

However, the Government have considered the views expressed by many noble Lords that there should be a greater level of judicial oversight over detention. That is why the Government tabled a Motion in the other place, the effect of which would be that individuals would be automatically referred to the tribunal for a bail hearing six months after their detention began or, if the tribunal has already considered whether to release them within the first six months, six months after that consideration. The individual would then receive further referrals at six-monthly intervals calculated from the point of the last consideration. This referral requirement will ensure that individuals who do not make an application themselves, for whatever reason, will have independent judicial oversight of their ongoing detention.

Individuals will still be able to make an application themselves at any time. They will be made aware of and have access to legal advice to support them in making challenges to immigration detention and in making applications for bail. This will be another important safeguard which will complement the wider reforms that the Government are putting in place in response to Stephen Shaw's report.

The adults at risk policy will strengthen the existing presumption against detention of those particularly vulnerable to harm in detention. A new gatekeeper function will provide additional oversight and scrutiny to ensure that detention is the appropriate option for those entering the detention estate. Furthermore, a new approach to case management with a clear focus on removal plans and panel reviews on at least a quarterly basis will ensure that only those who should be detained remain detained. As the Government have already made clear, they fully expect these reforms to result in fewer people being detained and for a shorter period.

Six months is a proportionate approach. It will ensure that an adequate safeguard is in place to protect individuals who have been detained for an extended period and have not made their own application for bail, while not imposing unreasonable burdens on the tribunal and on the Home Office. Earlier referrals might result in mandatory work for the tribunal and the Home Office whereby individuals would be referred for bail hearings at the very time when their removal from the country is planned and imminent. This is not a good use of taxpayers' money or of the tribunal's time. Together with other reforms—the gatekeeper role, the adults at risk policy and the new casework management system with frequent internal reviews—this amendment will provide adequate oversight of detention.

Amendment 85A requires the Government to issue guidance to those making decisions on the detention of individuals for the purpose of immigration control where issues of vulnerability are raised. This relates directly to the adults at risk policy announced in a Written Ministerial Statement on 14 January as part of the Government's response to Stephen Shaw's report. The amendment reinstates the clauses as agreed in this House on Report. The reinstatement removes the amendment agreed to by this House at Third Reading, the effect of which would be to place an absolute exclusion on the detention of pregnant women.

The Government have been considering this matter since they received Stephen Shaw's review and have also listened carefully to the views of the noble Baroness, Lady Lister, who tabled the amendment, and those of Peers who voted in favour of it. As the House will be aware, the Home Secretary announced just last week that the Government plan to end the routine detention of pregnant women. This would be similar to the arrangements put in place as part of the ending of routine detention for families with children in 2014, a reform which demonstrates the Government's commitment to balancing proportionate immigration controls with safeguarding vulnerable people. The Government have listened carefully to the concerns expressed on this issue in both this House and the other place.

The Motion agreed in the other place yesterday would put in place a statutory time limit on the detention of pregnant women for the purposes of removal. The effect would be that pregnant women could be detained only for up to 72 hours, for example, immediately prior to a managed return or to prevent illegal entry at the border where a return can be arranged quickly. This could be extended up to a maximum of seven days in total, but only with ministerial approval. That could be appropriate where, for example, a removal has failed due to a cancelled flight and where arrangements can be made for a new flight within the seven-day period. Finally, as a further demonstration of how seriously the Government take these matters, we plan to invite Stephen Shaw to carry out a further short review to assess progress in relation to key actions identified in his original review in the context of these new measures. I am sure that we are all in agreement that our focus should be on striking the right balance between protecting pregnant women and maintaining effective immigration control, and we believe that this amendment achieves that.

Motion D1 seeks to place a statutory requirement that detention powers should be used only in the most exceptional circumstances. Current policy is that pregnant women may be detained in very limited circumstances where there is a clear prospect of early removal or otherwise in very exceptional circumstances. Motions D1 and D2 would restrict that even further to only the most exceptional circumstances, which would almost certainly prevent detention to support removal, including immediately following arrival at the border and foreign criminals facing deportation. This would also require the Home Office to set out what the most exceptional circumstances are. This would be overly prescriptive and would not allow officers to respond to the individual circumstances presented by a varied group of people. Placing such a prescription in statute would provide no further safeguards. Courts can and do hold the Home Office to account based on published policy and guidelines, as well as the facts of individual cases.

The amendment also seeks to set the clock on the time limit running from the point of detention rather than the point at which the Secretary of State is satisfied that a woman is pregnant. The amendment is unworkable for a number of reasons. While there are circumstances where it is obvious that a woman is pregnant, there may be many instances where it is not immediately apparent, and the woman may not inform immigration officers of her condition. This is of particular concern where women are detained at borders without the facilities to conduct pregnancy tests, unlike at immigration removal centres. That could lead to instances where the Home Office becomes liable for unlawful detention because it was not aware that the woman in question was pregnant and the time limit has already expired. It could also prevent removal of pregnant women, as the Home Office would have to release a woman if she was found to be pregnant and had already been detained for 72 hours. This, in turn, could disrupt travel and removal plans.

5.30 pm

With respect to the noble Baroness, proposed new subsection (6) in Motion D1 is unclear. It may mean that women may only be held in a short-term holding facility or pre-departure accommodation where her needs can be met and provision made for her medical care, or it may be taken to mean that women may be held only in short-term holding facilities or pre-departure accommodation and not in immigration removal centres. Both interpretations of this amendment are unworkable.

First, the Immigration Act 2014 specifies that pre-departure accommodation can be used only to accommodate families with children. Immigration removal centres have extensive healthcare facilities available to pregnant women, whereas short-term holding facilities only have access to healthcare professionals on call. There is no reason why short-term holdings facilities would be better suited for a pregnant woman and there seems no reason why pregnant women should not be able to travel, provided that due regard is paid to their individual circumstances beforehand. If there was an outright exclusion from transporting women for over an hour, there would be no option but to release women who had no right to enter into the country at more remote borders where facilities were not immediately available. This Motion could encourage an industry of fake evidence at the border and in-country to prevent detention and removal.

Proposed new Section 78B is the restriction on the removal of pregnant women in-country, providing the individual 28 days once they have exhausted their appeal rights in which they cannot be removed. This is an amendment that goes far beyond the debate so far—even beyond the reforms suggested by Shaw. The removal of pregnant women is considered on a case-by-case basis and is subject to medical scrutiny to ensure that it is appropriate. The question is, therefore: why should the Government be prevented from removing a pregnant woman who can safely and lawfully be removed? It is not appropriate that the Government would be obliged to stay the removal of a pregnant woman for a month where she either lost an appeal or has not appealed a decision of the Secretary of State.

Proposed new Section 54B is a duty to consult the independent family returns panel on how to remove or detain a pregnant woman. This would be unworkable and a disproportionate response. The family returns panel comprises experts in the field of children, not pregnant adults. The family returns process takes upwards of four weeks, and usually longer, and the panel itself would usually be involved about half or three-quarters of the way through the process. Pregnant women will be detained even in extreme cases in which ministerial authorisation is sought for a maximum of one week. The family returns process clearly could not operate properly in that timescale.

In addition, the majority of detained pregnant women are likely to be border cases in which there is a very quick turnaround. It would plainly be disproportionate to need to involve a formal independent panel whose members are, of course, not available on call at all hours. I add that even families returned quickly at the border are not subject to consideration by the panel. If they are not, it is difficult to see why pregnant women should be. Families are a distinct group who have more complex removal needs, so it is appropriate that they have additional oversight. This is not required for pregnant women, especially considering the short timescales and exceptional circumstances in which pregnant women can be detained.

I note that the amendment tabled by the noble Baroness would remove the facility to re-detain a pregnant woman. This provision is necessary, for example, to cater for circumstances in which a pregnant woman is detained for the purposes of removal but in which the removal is delayed. In these circumstances, it would be appropriate for the woman to be released until the flight can be rearranged, at which point she could be detained again for the shortest period possible to effect removal.

The intention of this provision is not to facilitate a rolling series of detentions. The noble Baroness's amendment is therefore unnecessary and would inhibit legitimate and safe removal. Taken together, these amendments to the Motions might seriously weaken the Government's ability to enforce immigration controls and make it difficult to detain any woman of childbearing age. On this basis, I beg to move.

Motion C1 (as an amendment to Motion C)

Moved by ***Lord Ramsbotham***

Leave out from "House" to end and insert "do insist on its Amendment 84".

Lord Ramsbotham (CB): My Lords, immediately before I sought to test the opinion of the House on Amendment 84 on Report, I said that any suggestion that administrative detention—that is, detention ordered not by a court of law but by Home Office officials—should not be subject to judicial oversight had to stop. Even at the late hour of 7.49 pm the House agreed with me. The Government's alternative, accepted last night in the Commons and proposed just now by the Minister, demonstrates acceptance of the principle of judicial oversight, but only after a person has been administratively detained for six months from their first entry into detention. That seems virtually no change. Such a long period without judicial oversight seems precious little different from the present situation, which, as was described on Report, is frankly an affront to the national reputation for claiming to be a civilised society.

I am interested that the Government thought it appropriate to introduce automatic bail hearings. They were introduced into the Immigration Act in 1999, allowing for automatic hearings after eight days of detention and then after 36, but this never came into force and was eventually repealed. So, having repealed automatic bail hearings, how on earth have they now suddenly reappeared?

My concern is that the Minister in the other place claimed that all detainees were told that they had a right to seek a bail hearing, a judicial review, or a writ of habeas corpus. In actual fact, many of them are suffering from mental health problems that prevent instruction of a solicitor, let alone making a bail application. Many are legally unrepresented and speak little or no English. They do not understand the system that locked them up and many are too confused or distressed to avail themselves of the right to apply for bail. You have only to speak to some of those who have been through it to realise the realities of the system. It is not the fairyland presented by officials as possible.

On the question of mental health, there is absolutely no doubt that being held in immigration detention increases stress and gives rise to increased mental health problems. The noble Lord, Lord Bates, told us that there was an inquiry into mental health in immigration removal centres being conducted by the Centre for Mental Health. I declare an interest as a vice-president of the Centre for Mental Health. I followed up what that inquiry meant. Far from being initiated by the Home Office, it was initiated by NHS England when it was given responsibility for commissioning mental health treatment in detention centres. The Home Office officials then delayed any start by the Centre for Mental Health. Then they appeared to panic and asked for the report to be put in by the end of March, but they limited the number of immigration removal centres that the Centre for Mental Health people could visit. This does not seem to me to be either a proper examination of the system as it is actually working, or taking advantage of the Centre for Mental Health's reputation for very detailed research, which it has established over many years. I would be very interested to know exactly why the Home Office officials behaved like that.

In his report, Stephen Shaw found substantial cause for alarm over detention policy, particularly as regards the treatment of those with mental illnesses, which he said,

"does not and cannot equate to good psychiatric practice".

He described the situation as being,

"an affront to civilised values".

My concern is that the keeping of people in administrative detention for six months before they allegedly have automatic bail hearings is too long. The House has already decided that the detention should be kept as short as possible, and voted for 28 days. That is why I suggest that we return to what we voted on at Report. I beg to move.

The Deputy Speaker (Lord Dear) (CB): I should inform the House that if this amendment is agreed to, I cannot call Amendment C2 by reason of pre-emption.

Baroness Lister of Burtersett: My Lords, I wish to speak to Amendment D1, but as a member of the all-party inquiry into detention I also want to make clear my support for Amendments C1 and C2.

I should first acknowledge that the Government's Motion D represents progress on the status quo ante. However, it does not reach Shaw's recommendation of an absolute exclusion of pregnant women embodied in Lords Amendment 85B. I can do no better than echo the Conservative MP, Richard Fuller, who said yesterday that for him it was a matter of principle that we should never detain a pregnant woman when we have the choice not to do so. That principle was also voiced recently by the Commissioner for Human Rights of the Council of Europe.

However, in a spirit of compromise—and with some regret—I will not insist that we stick to our principles today. Instead, my alternative to the Government's amendment does three main things, all of which are designed to meet the Government's own intentions and strengthen their amendment through the addition of safeguards. The first would write in,

"the over-riding principle that no pregnant woman shall be detained … save in the most exceptional circumstances".

This is exactly what the Government say happens now, but all the evidence suggests that this is not the case, as confirmed by Stephen Shaw and those who gave evidence to him. However, if, in the noble and learned Lord's view the inclusion of "most" makes this measure too restrictive, I would be open to the Government removing "most" and just saying "in exceptional circumstances". However, at Third Reading, the noble and learned Lord was unable to give me any assurances that "exceptional" will truly mean exceptional in future. When scepticism was raised about Home Office procedures yesterday, the only assurance given was that this was something Stephen Shaw could look at when he reviews the measures. Welcome as this commitment to this further review is, we cannot wait another 12 to 18 months, during which time pregnant women could continue to

be detained in other than exceptional circumstances. Therefore, it is crucial that we write this principle into the Bill.

Secondly, the amendment would change the meaning of "the relevant time" from which the 72-hour clock starts ticking from the later to "the earlier" of either,

"the time at which the Secretary of State is … satisfied that the woman is pregnant",

or,

"the time at which the detention begins".

Otherwise, 72 hours' detention could in practice very easily become, say, 144 hours or more, if it takes time to establish that a woman is pregnant. Yet all the Government have said is that the period will be only up to 72 hours. If there are technical problems with the way I have done it, I am happy for those to be considered. However, "up to 72 hours" should be up to 72 hours. It may be that the power to redetain addresses some of the problems which the noble and learned Lord raised. Although I certainly would not want the power to redetain to be used as a norm, my amendment does not omit it—that is part of the amendment tabled by the noble Baroness, Lady Hamwee, which is designed to see what the Government's intentions were. We do not want the kind of cat-and-mouse policy we had with the suffragettes where women are in and out, in and out. I am relieved that the Minister said that that was not the intention.

5.45 pm

Thirdly, and finally, I come to the more complicated bit. I hope noble Lords will forgive me if I do not go into it in detail. In effect, it introduces into the Bill similar safeguards to those that exist in the case of families with children, as set out in the Immigration Act 2014. I thank ILPA for its invaluable help with this. Specifically, it limits the places in which a pregnant woman can be detained and the transfers to which she can be made subject. It requires that pregnant women already in the country must have 28 days' notice of removal and detention, to ensure that they are not subject to dawn raids and long journeys in vans, which are detrimental to their health and well-being, and makes provision for the Independent Family Returns Panel, duly constituted with maternity experts, to be involved in cases where pregnant women are to be detained.

These provisions do no more than put into the Bill what the Government say they want to achieve. As the noble and learned Lord said, the Home Secretary stated, in a Written Statement of 18 April, that the government amendment would be:

"Similar to the arrangements put in place as part of ending routine detention for families with children in 2014".—[*Official Report*, Commons, 18/4/16; col. 12WS.]

Yesterday, the Minister explained that we are using "precisely" the model introduced to end the general detention of children.

The evidence from bodies such as the Royal College of Midwives and Medical Justice is that any detention can be harmful to this particularly vulnerable group of pregnant women with complex health and psychosocial problems. In a witness statement to the High Court, the director of midwifery at the Royal College of Midwives argued that what can be especially harmful is the process of detention which this amendment attempts to address. She notes that there appears to be little or no particular consideration given to the ways in which these women experience arrest, transfer and detention and that the experience of arrest and detention is psychologically damaging and physically stressful for a pregnant woman. She provides much more detail of the risks to health at various stages of pregnancy.

A number of noble Lords may have received from ILPA, with the kind consent of the women involved, some shocking details of the cases of three pregnant women who were the subject of an urgent application to the High Court last week. All three described lengthy, uncomfortable journeys when transferred to the reception centre, with no account taken of their pregnancy. In transit, they vomited on themselves and one was advised that, if she needed to urinate, she could do so in a bag, in the van, in front of her escorts, two of whom were male. In one case, a woman with a serious mental health condition was subject to a no-notice arrest, which this amendment would prevent. It meant that she did not have either her antenatal records or her antidepressants with her. In another case, the woman had a high-risk and complex pregnancy which required special monitoring. She too was subject to a no-notice arrest. She had to wait four hours at the immigration office, during which time she was visibly distressed. When she told them that she was pregnant, the escorts did collect her medication from her house, but they did not collect her antenatal documents. The journey to Yarl's Wood took three hours and she was offered no comfort breaks. She then had to wait a further two hours before being booked in. I could go on, but I will not.

This shows that no-notice arrests create too great a risk for pregnant women, regardless of the length of their detention. From a Written Answer just provided to Paul Blomfield MP, it would appear that there is no intention to provide notice in future. While it is welcome that the Minister in the Commons agreed to look at transportation, which this amendment addresses—I hope I have explained to the noble and learned Lord why there needs to be a limit on the length of the transfer journey—we need a review of the whole process of arrest and detention of pregnant women, including how their medical needs are taken into account.

Questions were raised in the Commons about where pregnant women will be detained. The Minister replied that the feedback from organisations is that Yarl's Wood remains "the most appropriate place". But the feedback I have received suggests that Yarl's Wood is not well placed to meet the needs of pregnant women and that is why we need to find an alternative. The Minister also said he would continue to reflect on how best to create greater transparency about procedures. I suggest that one way would be to commit now to making statistics on the detention of pregnant women available for public scrutiny on a regular basis. This has been called for by bodies such as Women for Refugee Women and the Royal College of Midwives.

There is much more I could say but in the interests of time I will conclude by emphasising again that Amendment 85C aims by means of legal safeguards to make a reality of what the Government say is their

[Baroness Lister of Burtersett]
intention. I had hoped, perhaps naively, that the Government might be able to accept it, given that, and I accept there may well be technical problems with it, but these can be smoothed out. What we are concerned about here are questions of principle and even if we have had to row back on the basic principle of no absolute exclusion, important principles are involved in ensuring safeguards where we can. I argue that it does not upset in any way the balance that the Home Secretary said the Government want to achieve between protecting vulnerable women and maintaining effective and proportionate immigration control, but it would provide some assurance that the Government are really serious about protecting this particularly vulnerable group of women. This is the very least we can do while we still have the opportunity.

Baroness Hamwee: My Lords, I very much support the noble Lord, Lord Ramsbotham, in his Motion and I hope noble Lords will accept that the fact that I do not repeat or expand on what he has said does not in any way reduce my enthusiasm for it.

A duty to consider bail is certainly welcome, compared with the current situation, but it is second best by some distance. But the automatic reference is to be only after six months. My Amendment 84B, proposed in Motion C2, has an awful lot of words but only two words that are different from the Government's amendment; that is, it changes "six months" to "56 days", which noble Lords will readily appreciate is twice 28 days—another of the olive branches coming from this part of the Chamber.

Rather than taking the time of the House to discuss the concerns about immigration detention that your Lordships have heard from me on previous occasions, I will quote a little from the report of the all-party group of which I, the noble Lord and the noble Baroness were members. The then Chief Inspector of Prisons, Nick Hardwick, was quoted with regard to his concerns about the way in which reviews were carried out. He said that,

"reviews that happen, if they do happen, are often cursory, and … the requirement that there should be a reasonable prospect of someone actually being removed if they're going to be detained isn't met. And an example of that is that at least a third, and getting on for half, of all detainees are released back into the community. And this poses the question: if they're suitable to be released back into the community at that point, why do they need to be detained in the first place?".

The report went on to say:

"This echoed a finding of the joint thematic review of immigration detention casework carried out by Nick Hardwick and John Vine, the then Chief Inspector of Borders and Immigration. In their report they say: 'There was inconsistent adherence by case owners to the Hardial Singh principles that removal of detained people must occur within a "reasonable period". Many monthly progress reports appeared to have been provided as a matter of bureaucratic procedure rather than as a genuine summary of progress, and some detainees found them difficult to understand'".

Judicial oversight is a different animal from internal progress reports and it is important. That is why I would want to see automatic judicial oversight at a much shorter point than six months, for the reasons that the noble Lord, Lord Ramsbotham, gave in moving his amendment.

Turning to the guidance with regard to vulnerable people, Stephen Shaw's report is very thorough and long. I continue to be concerned that if the guidance on the detention of vulnerable people, which we already have, did not work well last month or last year, will it work well next year?

Noble Lords may have received briefings from the organisation Freedom from Torture, which was then the Medical Foundation for the Care of Victims of Torture. I would like to put the questions which it has posed to the Minister. That organisation, along with the Helen Bamber Foundation and other organisations, have arrangements in place with the Home Office for the assessment of certain persons claiming asylum. Can the Minister confirm, first, whether the safeguard requiring the release from detained asylum processes of those accepted for assessment by those organisations for their medico-legal report services will be continued? Secondly, and quite obviously, can he confirm whether those two organisations and other relevant organisations will be consulted during the development of the adults at risk policy?

Lord Trefgarne (Con): The noble Baroness is quoting at length from documents which none of us has seen elsewhere. She and the noble Baroness, Lady Lister, have also been quoting at length arguments which have been repeated ad nauseam in this House and in the other place. May I express the hope that she will shortly bring her remarks to a conclusion?

Baroness Hamwee: My Lords, the questions that I asked were put to me this morning. The quotation that I read was about three-quarters of one column, on pages which are of two columns; the report continues for getting on for 70 pages. I accept that the House wishes to get on with a decision, but I do not believe that I am raising new points. I could have repeated old points at some considerable length.

I now come to the new amendment which we have, in the name of the noble Baroness, Lady Lister. She mentioned healthcare at Yarl's Wood. The Minister said in the Commons yesterday that,

"Yarl's Wood, and its links with the health service in Bedfordshire, provide an effective join-up",—[*Official Report*, Commons, 25/4/16; col. 1195.]

for the care of pregnant women. I have to query whether Yarl's Wood will ever become suitable for that care.

Amendment 85D, which I have tabled on the second set of issues, would delete subsection (4) of the proposed new clause in Amendment 85B. Again, the amendment as it is printed appears to be very long, but that would be the only change. That subsection in Amendment 85B provides that:

"A woman to whom this section applies who has been released following detention … may be detained again under such a power in accordance with this section".

My amendment is a probing amendment to seek to understand how this will be applied and how the time limit will operate. As the noble Baroness has described it, it looks like a cat and mouse provision, and in a democratic institution where we are reminded about suffrage every day we walk around, I hope that that is

not the case. I look forward to the Minister expanding on this if he can. Can he confirm that, when that paragraph talks about detention "under such a power"—which is a power to detain—"in accordance with this section", it means "subject to" this section? I cannot think that it means anything else, but it struck me as a slightly curious way of describing it.

6 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I will speak only to Motion C, which I support, along with Amendment 85A. On Report, when I abstained on the vote, I suggested that there was a problem with the existing scheme in that detainees have to take the initiative and prove their case for release. I suggested that it would be more proper that,

"the burden should shift to the Home Secretary to prove good reason to extend a period".—[*Official Report*, 15/3/16; col. 1792.]

However, I could not support 28 days and suggested an initial period of nine months.

I am satisfied, for my part, that that problem is now properly addressed. As the Minister has explained, the proposed automatic referral at six months operates as a safeguard, because the detainee can of course himself apply for bail at any point. I recognise the point made by the noble Lord, Lord Ramsbotham, that some detainees, because of their mental condition, may well not be in a position to do so, but this safeguard has now been introduced. I further recognise that the tribunals to which application for bail is made apply a presumption in favour of liberty, and that of course the well-known common law principles initially established in the Hardial Singh case continue to apply.

Apropos of that, I will just refer to the decision of the Supreme Court as recently as last week, 20 April, in a case called Nouazli v Secretary of State. The court, giving a single judgment, says at paragraph 67:

"The courts have recognised that there are sound policy reasons for a flexible and fact-sensitive approach. I find nothing in the judgments of the ECtHR which undermines the Hardial Singh approach to the duration of detention".

It then points that out an earlier Supreme Court decision, in another case referred to the court, observed that the Hardial Singh principles are,

"more favourable to detainees than Strasbourg requires".

With those various safeguards in place, I support this Motion. I could not support the original amendment, Amendment 84, and I cannot, with respect, support the 56 days now proposed by the noble Baroness, Lady Hamwee. As I said, I initially suggested nine months. The Government have done better at six months, and even that will now be the subject of further review in case it can in future be shortened.

Lord Alton of Liverpool: My Lords, although I support my noble friend's amendment, others have spoken to it and I do not wish to be repetitious. I supported the noble Baroness, Lady Lister, on Report: I was a signatory to her amendment then and I am very happy to support her again today, as I hope the House will.

I simply ask whether the noble and learned Lord, when he replies to the points the noble Baroness has set out, will say what his response is to the call by the Royal College of Midwives today for a review of the whole process, as the noble Baroness said. I remind the House of what Stephen Shaw found in his *Review into the Welfare in Detention of Vulnerable Persons*. He said that,

"detention has an incontrovertibly deleterious effect on the health of pregnant women and their unborn children".

The Royal College of Midwives states:

"Even if a pregnancy is completely healthy and uncomplicated; the dignity and care that should be afforded all pregnant women is compromised by detention".

I agree with what the noble Baroness, Lady Hamwee, said. My noble friend Lord Hylton and I visited Yarl's Wood during the Bill's passage. We raised the question of pregnant women and, although I personally believe that conditions at Yarl's Wood have been very significantly improved, it cannot be right to keep pregnant women in any detention centre, and there must be alternatives to that. That is why it is so important to support the noble Baroness's amendment today.

Lord Pannick (CB): My Lords, I find this much more difficult than some noble Lords. Motion C1 in the name of the noble Lord, Lord Ramsbotham, would limit immigration detention to 28 days, save in exceptional circumstances. I cannot support that.

Immigration detention is confined to cases where there is a realistic possibility of removing the person concerned from this country within a reasonable time. The fact is that that often takes more than 28 days, because of the need to liaise with the country to which the person is being removed and because, very often, the individual concerned does not co-operate with the process.

Furthermore, the law requires that immigration tribunals refuse bail only in circumstances where there is a risk of the person absconding or some other substantive reason for keeping them in detention, as the noble and learned Lord, Lord Brown of Eaton-under-Heywood, said a few moments ago. It is true, as the noble Lord, Lord Ramsbotham, pointed out, that many of the persons detained have mental problems and many of them do not speak English, but it is also true that many expert bodies provide much-needed advice and assistance—and properly so—to those who are detained. I cannot support a 28-day absolute limit, saving in exceptional circumstances, because the circumstances that I have outlined are far from exceptional; they are quite standard.

Motion C2 in the name of the noble Baroness, Lady Hamwee, would require a bail hearing every 56 days. This is more difficult. I think the Government's position, approved in the other place yesterday, of a bail hearing every six months, is adequate. The reason is that it is a default provision. It is additional to the right of the individual, advised by all those expert groups, to apply for bail at any time, and to argue at any time that there is now no reasonable possibility of being removed, or that there is no good reason—for example, a fear of absconding—for detention.

I also mention Motions D1 and D2. Motion D1, in the name of the noble Baroness, Lady Lister, would prevent the detention of a pregnant woman, save in the most exceptional circumstances. The problem with

[Lord Pannick]
that is that it would prevent the detention for removal of a woman who arrives at Heathrow Airport with no basis for entry and who can, if she is detained, be removed from this country, and rightly so, within a short period—for example if she is not making an asylum claim. That is not "the most exceptional circumstances"; it is a fairly standard case. Motion D1 would also, as I understand it, prevent in any circumstances the detention of a pregnant woman who is the subject of a deportation order but who refuses to go voluntarily, who can be removed within a very short period. I cannot support that.

Motion D2, in the name of the noble Baroness, Lady Hamwee, is again more difficult, but I am satisfied on balance that government Motion D is a very substantial change which will protect pregnant women, made in response to the amendment approved by this House.

We ought to bear in mind that what the Government have agreed under subsection (2) of the new provision is that a pregnant woman may not be detained under a relevant deportation power for more than 72 hours or for more than seven days where, and only where, such detention is authorised personally by a Minister of the Crown. The Minister in the other place, Mr James Brokenshire, has responded to the concerns expressed by this House and I am persuaded by the noble and learned Lord, Lord Keen, that this amendment, which was approved in the other place, should be approved.

Lord Rosser: While it is welcome that the Government now acknowledge that long-term detention without judicial oversight is unacceptable in relation to considering bail, the amendment moved by the noble Lord, Lord Ramsbotham, relates to required judicial oversight of whether a person should continue to be detained at all beyond 28 days, related to whether the exceptional circumstances of the case require extended detention.

We have a commitment to end indefinite detention in the immigration system. The independent Shaw review into the welfare of vulnerable persons in detention also called for action to end excessive detention. This amendment provides for a presumptive limit on immigration detention of 28 days and requires the Secretary of State to gain judicial approval for any extension beyond that period, which would be permitted only if exceptional circumstances had been shown. I certainly do not wish to reiterate all the arguments that have been made, and I take on board the points made in earlier interventions about keeping it brief, so I shall just say that we shall be voting for the amendment moved by the noble Lord, Lord Ramsbotham.

On Motion D1, as the Minister said, last week the Government announced plans to introduce a 72-hour limit on the detention of pregnant women, extendable to one week with ministerial approval, and a government amendment to provide for this was agreed in the Commons yesterday. That amendment was not in line with the findings of the Government's independent review by Stephen Shaw into the welfare in detention of vulnerable persons, which found that the presumptive exclusion of pregnant women from detention should be replaced with absolute exclusion. Shaw concluded that immigration detention poses clear health risks to pregnant women and their unborn children and that it is being used more widely than in the "exceptional circumstances" outlined in Home Office guidance.

The amendment moved by my noble friend in the light of the Government's resistance to an absolute ban has the support of various interested groups on the basis that it is the best that might currently be achievable. However, an absolute ban on the detention of pregnant women remains our objective, and we will seek to deliver it at the first available opportunity, a stance that has the full backing and support of my noble friend Lady Lister of Burtersett.

Lord Lester of Herne Hill (LD): My Lords, will the Minister clarify for my benefit a matter which concerns me? Does he agree that the writ of habeas corpus referred to by the noble Lord, Lord Ramsbotham, would not be of any use in the circumstances that we are discussing because the return to the writ would simply show that there was lawful authority for the detention? If that is right, does he agree that the right to liberty could be relied upon only by reference to the Human Rights Act and Article 5 of the European Convention on Human Rights, which would mean that any statutory provision that we approve would have to be read and given effect in accordance with the convention right to liberty?

Lord Keen of Elie: My Lords, on the last point, in respect of any answer to a writ of habeas corpus it would be possible to rely upon lawful detention, but the relevant lawful provision would have to be in compliance with the convention.

I turn to notice, a point that was made by the noble Lord, Lord Pannick, when he was referring to the matter of bail. He spoke of the default position. That is very important. It is a matter that was pointedly not addressed by the noble Lord, Lord Ramsbotham, who said repeatedly that it was only after six months that there would be any judicial oversight of detention in the context of immigration. That is not the case. Once a person is detained, it is open to them to make an application for bail. That application is made to a judicial tribunal and will therefore be the subject of judicial determination. The onus will rest very firmly, as the noble and learned Lord, Lord Brown of Eaton-under-Heywood, made clear, upon the Home Secretary to justify the detention or continued detention in those circumstances. So it is not a question of judicial oversight arising only after six months: it is available from the outset. What we are providing for is the exceptional case in which an application is not made or is refused and, after a delay of time, should be reviewed.

6.15 pm

The noble Lord, Lord Ramsbotham, also spoke of persons who were confused, could not speak English and had no legal advice, but, with great respect, those who are detained in these circumstances have access to interpreters and to legal advice. Indeed, it might be noted that in the last year for which there are statistics, 2013, there were over 13,000 applications for bail, so it appears that the system for applying for bail

is and was working. I said over 13,000; I should have said 12,373. I apologise to your Lordships' House. The point is that there are very many applications for bail.

That brings me to an observation that the noble Lord, Lord Ramsbotham, made about the earlier legislation from 1999, which was brought in by a previous Government, and the provision that was then repealed. The reason why it was repealed was that it was clearly, patently and assuredly unworkable. Neither the tribunal system nor the Home Office could cope with such reviews as periods of eight or 36 days. That is why, having regard to the existence of bail and the availability of legal advice and translators, it is proportionate to propose that there should be a review at the six-month point. That is to ensure that even where an individual fails to take the opportunity to apply for bail, the matter will be brought before a judicial tribunal. So far as the workings of that system are concerned, it will be subject to further review by Stephen Shaw in due course.

I turn to the points raised by the noble Baroness, Lady Lister. She asked three questions in particular. First, she spoke about language and the question of "most exceptional circumstances", and the suggestion that it is not unusual for pregnant women to be detained in the immigration system. Perhaps I can cut across that to this extent: as of today, there is one pregnant woman in the immigration detention system. That gives some idea of the scale of the real and true problem. There is one pregnant woman in immigration detention today. It is an exceptional move, and indeed the further guidance that is being prepared—it will be produced in May and laid before Parliament—will fully address the question of vulnerable persons, including pregnant women, in order that that position can be maintained.

The second question that she asked was about the relevant time from which to take the period of detention. It is important that that should relate to the time at which the Home Office becomes aware of the pregnancy. A person arriving in this country at border control may not be visibly pregnant and may not disclose the fact of their pregnancy, and indeed there may be no facilities available for pregnancy testing. Although such tests are available once they arrive at an immigration centre, they are not compulsory; a person cannot be bound to undertake a pregnancy test against their will. One therefore has to take the relevant point from which the period of detention is determined as being the point at which pregnancy can reasonably be determined.

Thirdly, the noble Baroness spoke about the need for safeguards in the context of the 28-day notice period and cited a particular case—quite an awful one, as she described it—of certain persons being moved without notice in circumstances where they were pregnant. I cannot comment on individual cases. However, I can say that, as a matter of fact and practice, all persons who are subject to removal are given notice of liability for removal, and vulnerable women, including pregnant women, receive a further notice via removal directions. I therefore cannot accept the outline of the case that was given by the noble Baroness. Equally, I cannot comment upon an individual case.

Reference was also made to the facilities at Yarl's Wood, which have been referred to in another place. Let us make clear that there are specific arrangements in place for the care and management of pregnant detainees at Yarl's Wood. Midwives from Bedford Hospital NHS Trust visit Yarl's Wood immigration removal centre once a week, and the centre's GP and nurses can be accessed seven days a week and can refer any specific concerns to the antenatal clinic early pregnancy unit in the hospital or to other appropriate services. In addition, the centre also has a pregnancy liaison officer, who provides a range of support and welfare services to pregnant detainees, and there is a new care suite which offers enhanced care to vulnerable and pregnant women and is staffed by a dedicated female member of staff. So I do not accept the criticisms that have been levelled at Yarl's Wood. I am not in a position to comment on historic views as to its sufficiency.

On the question of automatic bail references after six months or 56 days, I would simply acknowledge the observations made by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, and the noble Lord, Lord Pannick, in this regard. We have arrived at a proportionate response to this issue. However, the way in which that works will be the subject of the guidance to be published in May, and will be the subject of further review by Lord Shaw—I am sorry, by Stephen Shaw—in due course.

Noble Lords: Oh!

Lord Keen of Elie: How prescient I have been, it would appear.

In those circumstances, I respectfully suggest to this House that the Government have responded in a reasoned, reasonable and proportionate way to the issues that have been raised, and I invite the noble Lord to withdraw the amendment.

Lord Ramsbotham: My Lords, I am very grateful to the noble and learned Lord for his response and to all noble Lords who have taken part in this short debate.

Referring first to the Minister's comments I would say yes, of course it is open to a person to ask for bail. What I sought to illustrate was that although that may be so in theory, in practice many of them simply do not know what to do. I accept that there have been many applications for bail. However, just out of interest, I would like to know at what period in their detention those people made the bail application and how long they had been there. In report after report of inspections of immigration detention centres, both the Chief Inspector of Prisons and the chief inspector of immigration have pointed out the absence of interpreters and legal advice and the fact that they were approached by many detainees asking how they could get help. We will not resolve this situation in this House tonight, but it is clearly unsatisfactory as seen through the eyes of the people on the ground, who are making the applications. I absolutely accept that the 1999 automatic bail provision was repealed because it was unworkable, but I am just interested that automatic bail should be substituted for it.

If I might refer to the comments of my noble and learned friend Lord Brown of Eaton-under-Heywood and the noble Lord, Lord Pannick, I never said that

[LORD RAMSBOTHAM]
immigration detention should be limited to 28 days. What I said was that nobody should be submitted to administrative detention—that is, detention ordered by civil servants—without judicial oversight of that detention within the shortest time possible. A period of 28 days is entirely reasonable. It was the decision taken by the commission which the noble Baronesses, Lady Hamwee and Lady Lister, and I, were on, and which was agreed to by the other place in a debate last September. Bringing in judicial oversight of immigration detention as quickly as possible must be the aim of any system. Yes, it is said the expert advice is available, but it is not in fact, as I have tried to illustrate.

My contention is that a principle is at stake here. If we wish to remain a civilised country, we cannot go on with a system in which civil servants are allowed to put people in immigration detention for unspecified periods which, as we all know, have stretched to months and even years. Anything longer than a month, in circumstances which I inspected for a long time—I think I know a little bit about them—is not successful. Therefore, without more ado, I wish to test the opinion of the House.

6.26 pm

Division on Motion C1

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Motion C1 agreed.

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6.40 pm

Motion D

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

That this House do not insist on its Amendment 85 and do agree with the Commons in their Amendments 85A and 85B in lieu.

Commons Amendments in lieu

85A: Page 38, line 7, at end insert the following new Clause—

"Guidance on detention of vulnerable persons

(1) The Secretary of State must issue guidance specifying matters to be taken into account by a person to whom the guidance is addressed in determining—

(a) whether a person ("P") would be particularly vulnerable to harm if P were to be detained or to remain in detention, and

(b) if P is identified as being particularly vulnerable to harm in those circumstances, whether P should be detained or remain in detention.

(2) In subsection (1) "detained" means detained under—

(a) the Immigration Act 1971,

(b) section 62 of the Nationality, Immigration and Asylum Act 2002, or

(c) section 36 of the UK Borders Act 2007, and "detention" is to be construed accordingly.

(3) A person to whom guidance under this section is addressed must take the guidance into account.

(4) Before issuing guidance under this section the Secretary of State must lay a draft of the guidance before Parliament.

(5) Guidance under this section comes into force in accordance with regulations made by the Secretary of State.

(6) The Secretary of State may from time to time review guidance under this section and may revise and re-issue it.

(7) References in this section to guidance under this section include revised guidance."

85B: Page 38, line 7, at end insert the following new Clause—

"Limitation on detention of pregnant women

(1) This section applies to a woman if the Secretary of State is satisfied that the woman is pregnant.

(2) A woman to whom this section applies may not be detained under a relevant detention power for a period of—

(a) more than 72 hours from the relevant time, or

(b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).

(3) In subsection (2) "the relevant time" means the later of—

(a) the time at which the Secretary of State is first satisfied that the woman is pregnant, and

(b) the time at which the detention begins.

(4) A woman to whom this section applies who has been released following detention under a relevant detention power may be detained again under such a power in accordance with this section.

(5) This section does not apply to the detention under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 of an unaccompanied child to whom paragraph 18B of that Schedule applies.

(6) In this section—

"relevant detention power" means a power to detain under—

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

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

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

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

"woman" means a female of any age.

(7) The Immigration Act 1971 is amended in accordance with subsections (8) and (9).

(8) In paragraph 16 of Schedule 2 (detention of persons liable to examination or removal) after sub-paragraph (2A) insert—

"(2B) The detention under sub-paragraph (2) of a person to whom section (Limitation on detention of pregnant women) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section."

(9) In paragraph 2 of Schedule 3 (detention or control pending deportation) after sub-paragraph (4) insert—

"(4ZA) The detention under sub-paragraph (1), (2) or (3) of a person to whom section (Limitation on detention of pregnant women) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section."

(10) In section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) after subsection (7) insert—

"(7A) The detention under this section of a person to whom section (Limitation on detention of pregnant women) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section."

(11) In section 36 of the UK Borders Act 2007 (detention) after subsection (2) insert—

"(2A) The detention under subsection (1) of a person to whom section (Limitation on detention of pregnant women) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.""

Motion D1 (as an amendment to Motion D)

Moved by ***Baroness Lister of Burtersett***

Leave out from "their" to end and insert "Amendment 85A, do disagree with the Commons in their Amendment 85B, and do propose Amendment 85C in lieu of Commons Amendment 85B—

85C: Page 38, line 7, at end insert the following new Clause—

"Limitation on detention of pregnant women

(1) This section applies subject to the over-riding principle that no pregnant woman shall be detained under a relevant detention power save in the most exceptional circumstances.

(2) This section applies to a woman if the Secretary of State is satisfied that the woman is pregnant.

(3) A woman to whom this section applies may not be detained under a relevant detention power for a period of—

(a) more than 72 hours from the relevant time, or

(b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).

(4) In subsection (3) "the relevant time" means the earlier of—

(a) the time at which the Secretary of State is first satisfied that the woman is pregnant, and

(b) the time at which the detention begins.

(5) A woman to whom this section applies who has been released following detention under a relevant detention power may be detained again under such a power in accordance with this section.

(6) A pregnant woman may only be held under a relevant detention power in a short-term holding facility within the meaning of Part 8 of the Immigration and Asylum Act 1999, or pre-departure accommodation within the meaning of section 147 of that Act, where her needs can be met and provision made for her medical care, except where the woman is being transferred to or from a short-term holding facility or pre-departure accommodation in a manner which makes provision for her care and where the journey does not exceed one hour.

(7) This section does not apply to the detention under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 of an unaccompanied child to whom paragraph 18B of that Schedule applies.

(8) In this section—

"relevant detention power" means a power to detain under—

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

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

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

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

"woman" means a female of any age.

(9) The Immigration Act 1971 is amended in accordance with subsections (10) and (11).

(10) In paragraph 16 of Schedule 2 (detention of persons liable to examination or removal) after sub-paragraph (2A) insert—

"(2B) The detention under sub-paragraph (2) of a person to whom section (Limitation on detention of pregnant women) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section."

(11) In paragraph 2 of Schedule 3 (detention or control pending deportation) after sub-paragraph (4) insert—

"(4ZA) The detention under sub-paragraph (1), (2) or (3) of a person to whom section (Limitation on detention of pregnant women) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section."

(12) In section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) after subsection (7) insert—

"(7A) The detention under this section of a person to whom section (Limitation on detention of pregnant women) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section."

(13) After section 78A of the Nationality, Immigration and Asylum Act 2002 insert—

"78B Restriction on removal of pregnant women etc

(1) This section applies in a case where a woman who is pregnant is to be removed from or required to leave the United Kingdom other than in cases where a woman has arrived in the United Kingdom but has not yet entered the United Kingdom within the meaning of section 11(1) of the Immigration Act 1971.

(2) During the period of 28 days beginning with the day on which the relevant appeal rights are exhausted the pregnant woman may not be removed from or required to leave the United Kingdom.

(3) The relevant appeal rights are exhausted at the time when the pregnant woman could not bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission).

(4) Nothing in this section prevents any of the following during the period of 28 days mentioned in subsection (2)—

(a) the giving of a direction for the removal of a person from the United Kingdom,

(b) the making of a deportation order in respect of a person, or

(c) the taking of any other interim or preparatory action other than detention under Immigration Act powers.

(5) In this section references to a person being removed from or required to leave the United Kingdom are to the person being removed or required to leave in accordance with a provision of the Immigration Acts."

"(2A) The detention under subsection (1) of a person to whom section (Limitation on detention of pregnant women) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.""

(15) After section 54A of the Borders, Citizenship and Immigration Act 2009 insert—

"54B Cases of pregnant women

(1) The Secretary of State must consult the Independent Family

Returns Panel in each case where—

(a) a woman who is pregnant is to be removed on how best to safeguard and promote the welfare of the pregnant woman, and

(b) the Secretary of State proposes to detain a pregnant woman in pre-departure accommodation or in a short-term holding facility about the suitability of doing so, having particular regard to the need to safeguard and promote her welfare.

(2) The Secretary of State may by regulations make provision about the constitution of the Independent Family Returns Panel in cases involving pregnant women, and such regulations must provide for the panel considering such cases to include persons with expertise in the care of pregnant women and in maternity care.

(3) Regulations under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) In this section—

(a) "pre-departure accommodation" and "short-term holding facility" have the same meaning as in Part 8 of the Immigration and Asylum Act 1999; and

(b) references to a person "being removed from or required to leave the United Kingdom" are to the person being removed or required to leave in accordance with a provision of the Immigration Acts.""

6.41 pm

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Motion D1 agreed.

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6.53 pm

Motion D2 not moved.

Motion E

Moved by ***Earl Howe***

That this House do not insist on its Amendment 87, to which the Commons have disagreed for their Reason 87A.

Commons Reason

87A: Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Earl Howe: My Lords, let me begin by saying to the House that I entirely recognise the need for the Government to do more to respond to the ongoing migration crisis and alleviate the suffering it is causing to some of the most vulnerable people. There is no argument about that. This is a highly emotive issue and we have a moral duty to help those in need.

However, let me be equally clear: the Government are fulfilling that duty and I shall demonstrate how. By opposing Lords Amendment 87, the Government are not denying their obligation to help those in need—quite the contrary. Our commitment to help those in need stands comparison with that of any other country. We are simply saying that physically transporting unaccompanied children from one part of the EU to another is not the best or most effective way to fulfil our duty. The Government have always been clear that to make the biggest difference and to help the greatest number of those in need, it is best to support the majority of refugees to stay safely in their home region, and for families to be kept together. To the extent that children have been separated from their families, we believe that our efforts should be directed towards reuniting them with their families rather than simply bringing them to the UK and placing them in the care of social services.

That is exactly why we recently doubled our aid for the Syrian crisis to £2.3 billion. This support has reached hundreds of thousands of families in Syria, Jordan, Lebanon, Turkey, Iraq and Egypt. In addition, we co-hosted the recent London-Syria conference, securing pledges of more than $11 billion, the largest amount ever raised in one day for a humanitarian crisis. The Government wholeheartedly share the intention of the noble Lord, Lord Dubs, to protect and support vulnerable unaccompanied refugee children. Our efforts to date have been designed to do just that, but our starting principle is that we must put the best interests of children first and avoid any policy that places children at additional risk or encourages them to place their lives in the hands of the people traffickers and criminal gangs.

At the heart of this approach are the child's best interests. That is why, on 21 April, we announced a new resettlement scheme for children at risk. We worked closely with the UNHCR to design a scheme that will protect the most vulnerable children. We have committed to resettling several hundred individuals in the first year, with a view to resettling up to 3,000 individuals over the lifetime of this Parliament, the majority of whom will be children, where the UNHCR deems it to be in their best interests. Family reunification will be at the heart of this. We want to make the Dublin agreement work. Children who are identified as being at risk will be resettled with their family members or carers where appropriate.

This unique initiative will be the largest resettlement effort to focus on at-risk children from the MENA region. It will be in addition to the 20,000 Syrian refugees we have already promised to resettle here. This new resettlement scheme will focus solely on the "children at risk" criteria and will be open to all vulnerable children deemed in need of resettlement by the UNHCR within the MENA region. It will not be limited to any particular nationality or group, allowing us to assist the most vulnerable children, whoever they are.

Our new scheme will complement existing resettlement programmes, which are already helping children at risk in conflict zones. Some 1,085 vulnerable Syrians were resettled to the UK before the end of 2015 as part of our commitment to resettle 20,000 Syrian refugees here over the course of this Parliament. Most of those Syrians—51%—were children. We can expect that several thousand of those who will come here over the next few years under this programme will also be children. If anyone thinks we are neglecting the needs of vulnerable children, I hope that the facts and commitments that I have outlined will reassure them.

[Earl Howe]

The amendment is clearly well meant—how could it not be? It shares our objective of identifying and protecting vulnerable children, but its focus is wrong. Let me address the situation of children in Europe, who are already able to access support from European countries that have similar legal obligations to our own. We need a comprehensive plan that stretches outside our own shores to tackle the issues. That is exactly what we are delivering.

In this context, the thoughts of many noble Lords will understandably be resting on the situation in Italy and Greece. We need to shut down the illegal migration routes to Europe, which are exploited by human traffickers who encourage people to risk their lives to make perilous journeys. We are committed to providing safe and legal routes for the most vulnerable refugees to resettle in the UK. That is why we have seconded substantial additional resource into the European Asylum Support Office in Italy and Greece to implement and streamline the process under the Dublin regulations, including to quickly identify children who qualify for family reunion.

7 pm

The EU-Turkey migration agreement is a vital opportunity to end the misery and lethal risk that smugglers and organised criminals are causing on a daily basis. We have made an offer of UK support to help implement the EU-Turkey migration agreement. Following intensive engagement with European partners, we are offering 75 expert personnel to help with processing and administration of migrants in Greek reception centres, act as interpreters and provide medical support. We will also provide vital equipment and medical supplies. The teams we send to Greece will include experts in supporting vulnerable groups, such as unaccompanied asylum-seeking children and those trained to tackle people trafficking. That will help to ensure that vulnerable people, including children, are identified and can access asylum and support procedures as quickly as possible.

That is not all. On top of our significant support to front-line member states, the Department for International Development has created a £10 million refugee children fund specifically to support the needs of vulnerable refugee and migrant children in Europe. This will be used to support the UNHCR, Save the Children and the International Rescue Committee to work with host authorities to care for and assist unaccompanied or separated children in Europe and the Balkans. This includes identifying vulnerable children, providing for their immediate support, referring them to specialist care where needed, and helping to find lasting solutions such as family reunification.

I believe the UK can be proud of the contribution we are making. It stands comparison with any other. We are doing everything we said we would to provide aid and resettle vulnerable refugees. We are already making a real difference to countless lives. The announcement last week was yet another step in our determination to fulfil our moral obligation to those in need.

I recognise the sincere feelings of those who supported the amendment of the noble Lord, Lord Dubs. We share the objective to identify and protect children at risk. However, I ask the House to accept that we are tackling the task in a different way from that which the noble Lord is proposing. I firmly believe that the approach that was set out last week by the Immigration Minister provides the best way to support our European partners, help vulnerable refugee children and provide the biggest impact for the significant sums of money that we will spend. I beg to move.

Motion E1 (as an amendment to Motion E)

Moved by ***Lord Dubs***

At end insert ", and do propose Amendment 87B in lieu—

87B: After Clause 37, 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 a specified number of unaccompanied refugee children from other countries in Europe.

(2) The number of children to be resettled under subsection (1) shall be determined by the Government in consultation with local authorities.

(3) 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, I should say at the outset that the Home Secretary has been kind enough to suggest that I have a couple of meetings with her to discuss this issue. I also discussed it with the noble Lord, Lord Bates, on a number of occasions. Indeed, at the Home Secretary's suggestion, I have also had discussions on the phone with Home Office staff, so the Government have gone out of their way to explain to me what they seek to do. If one ignores the purpose of my amendment, which concerns unaccompanied child refugees in Europe, then what the Government are doing is commendable. The amount of money being spent in the region is good. As regards the policy of taking 20,000 vulnerable people, it is a small number in relation to the scale of the problem but it goes in the right direction. In addition, we are a very generous donor. All that is on the plus side, and nobody would disagree with the comments in relation to families staying together, the best interests of children and children in Europe.

I sat in the Commons for quite a lot of the debate that took place there yesterday. I wish to quote the words of one of the noble Earl's colleagues—Stephen Phillips, a Conservative Member of Parliament—who supported the Lords amendment and talked about children left in Europe:

"That is no comfort to the children who are already in Europe, who have fled from war and conflict that have torn apart their lives, and who need our help now".

He refers to children in various parts of the continent and then says:

"Tonight they will sleep in fear, and tomorrow they will wake to the hopelessness to which their position exposes them. Today, in this House, we can do something. We cannot solve all their problems, remove all their troubles, or take from their consciousness the memory of the horrors that they have witnessed and endured, but we can do something".—[*Official Report*, Commons, 25/4/16; col. 1212.]

That sums up what this is about.

The case for the original amendment—and the new one—is that it has immense cross-party support. The original amendment had figures put to it: 3,000 children out of what we then thought were 26,000 child refugees in Europe. We now learn that the figure is much higher and 95,000 has been quoted. All we are talking about is the British Government's share. Britain should do something as a share of the total responsibility that has to be exercised. We have heard of the dangers: at least 10,000 of these children have disappeared. They are vulnerable and open to exploitation.

Since this House last discussed this amendment, I have been astonished at the amount of popular support there has been for it. I would not normally think that an issue to do with refugees and migrants would command such support. I cannot cope with the emails coming in from people I have never met or heard of who are saying that we should continue with this because it is the right policy. The British people are rising to the need for a humanitarian response. It is fine that we are doing good things in the region, but British people see that there is a problem for children exposed and vulnerable in various parts of Europe. They are not all safe. They may be in an EU country, but many of them are in dangerous circumstances. The fact that many have disappeared altogether is an indication of how alarming the position is.

I will not disguise the fact that last night's outcome was disappointing. I felt very upset watching the result of the vote being announced in the Commons. The Government's main argument seems to be that if we do anything for the children in Europe it will be a magnet for further ones to come. That was the thrust of the noble Earl's comments just now. Yesterday afternoon, on the green outside, I was talking to a young 16 year-old Syrian man who had come here. We asked him about his family. He said they were all dead. He is not being lured by the attraction of an amendment passed here. He does not see it as a magnet. He came to save his life and get out of the most dreadful situation. He spent many months travelling to Calais before he got to Britain. He has a relative in Britain, so he should have been dealt with a long time ago. He had been in a desperate situation. I could not give any advice except to say "Learn English" and "I am glad you are here". That refutes the magnet argument, as did Stephen Phillips MP and other Conservative MPs in what they said yesterday.

I do not want this debate to degenerate into an argument about financial privilege. There will be another day for that. However, the Government's only argument, according to the Marshalled List, is:

> "Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient".

That is, frankly, parliamentary baloney. I am glad that, in the Commons, Mr Speaker said that he was not happy about the use of financial privilege in this way and has referred the matter for more consideration. I do not want this to be about financial privilege. We are talking about vulnerable young people in Europe.

As a result of the debate in the Commons, the amendment before us today is different. Some of my critics might say that it was a bit softer. The wording is new and I hope it will be easier for the Government to think about and accept it. It drops the specific number, because the Government were resistant to that. It now says that the UK should,

> "support a specified number of unaccompanied refugee children from other countries in Europe",

and that:

> "The number of children to be resettled … shall be determined by the Government in consultation with local authorities".

In other words, I see a process where the Government will discuss with local authorities what resettlement of unaccompanied child refugees is manageable in their own areas. There will be a process of consultation, which should make it easier to move forward. I see a rolling programme and I see the Home Secretary having the power to determine the numbers and how fast the process can go. I do not think anything can be more reasonable than that. I have bent over backwards in the wording of this, with the help of a lot of other organisations, to find a form of words that surely the Government can accept.

Whatever the Government have said about doing stuff in the region, which is good, basically this will leave unaccompanied child refugees in a vulnerable position. They are liable to be lured into trafficking, possibly into prostitution. They are liable to come to all sorts of harm. None of us would want our own children to be subject to that sort of environment, with no hope of moving forward. It is an appalling situation. As a country with strong humanitarian traditions, we can do better. I beg to move.

Baroness Butler-Sloss (CB): My Lords, I add my congratulations to the government contribution to dealing with children, albeit beyond Europe. They have put great resources towards it and I agree with much of what the Government are proposing. The Minister urged me to listen with very great care to what he had to say. He spoke about tackling the task in the way in which the Government choose to tackle it, but it seems to me that it can be tackled in several ways and there is nothing incompatible with dealing with the children from Syria—from across that water—and doing something about the children in Europe.

The "pull factor" has been a very popular phrase among government supporters. We are now told that there is a reduction of some 80% in the number of those coming across from Turkey to Greece. Thank goodness for that. That pull factor must have some less importance now. But what is of the utmost importance is that it says in the Children Act, as it has been said by government—it is said everywhere—that the welfare of children is of paramount concern. We know that across Europe but we also know that there are thousands and thousands of children in Europe who are not being properly cared for.

It is great that the UNHCR is doing what it is doing but Save the Children is concerned. It is now saying that a great many children are at risk. As the noble Lord, Lord Dubs, pointed out—and it was pointed out earlier—10,000 children have gone missing. Knowing what I do about human trafficking and modern slavery, I am sure some of those children are already being sexually exploited or exploited for forced labour. The longer we wait, the more children will be in danger of sexual and labour exploitation—and some will die.

[Baroness Butler-Sloss]

Other European countries should play a part and pull their weight. That does not mean that we should not. As the noble Lord, Lord Dubs, said, this country, with our humanitarian background, should be showing the way, and the fact that the Government are doing this wonderful work elsewhere does not mean they should take their eye off the ball and away from children in great danger in different parts of Europe. They may be homeless, sleeping rough or without enough food or accommodation; we hear the stories. Even if the pull factor is applying, even if there is a concern that children should be with their parents—of course—there is no shortage of children who are unaccompanied and alone and need help. My goodness me, should we not be doing something for some of them?

7.15 pm

The Lord Bishop of Leeds: My Lords, I was recently in northern Iraq, visiting internally displaced people and Syrian refugees. In a meeting with the United Nations office for the co-ordination of humanitarian aid, we were told that despite the generosity promised by many international donors, only 9% of the money had actually got through. That was not specifically applied to the UK. I do not know how much of the UK's promised aid has gone but it was 9% overall. So when we hear about the amount of money that has been promised, it does not tell us how much has been delivered.

The second background point I would make is that in meeting refugees and internally displaced people, it became clear that there is a divide by generation. The older people still dream of going back home; the younger people and their children do not believe that they have a home to go back to. In the areas where ISIS has been, in many cases it has simply destroyed everything. There is no infrastructure. There are no homes or schools. What has been left has often been booby-trapped. So what does it mean to say that we want to help all these people go home, when home may no longer exist? The communities where for generations they lived together have now been destroyed because of the violence and what has gone on.

My fear in this is that we are going to have tens of thousands of children whose experience of not being welcomed when they are genuine refugees, who have shown extraordinary resilience to leave and get to where they have, will not forget how they were treated. If we want to see resentment or violence among the next two generations in that part of the world, the seeds are being sown now. I feel that the humanitarian demand outweighs some of the more technical stuff that we have heard. I applaud the Government for what they are doing, particularly in relation to the camps out in the Middle East, but they are not addressing the question on our doorstep. I support the amendment.

Baroness Hamwee: My Lords, like others I recognise the contribution that the Government are making in money and personnel, so far as those are being sent. But I regard the dangers of which we have heard—the situation in which unimaginable numbers of children have been caught up—and our moral responsibility as outweighing everything. The dangers include the risks of trafficking and exploitation. Was that not precisely what the previous Government set out to counter in their flagship legislation? Prevention is the best response so relocating, supporting and welcoming children would contribute to that objective. The Minister says that this amendment is not the best or the most effective way but it is not an either/or. Whatever other countries do or do not do, the UK must not do just what is better than others but what it knows is right. This amendment is in the best interests of the children who are the subject of it.

Lord Rosser: I will be brief, since the arguments for this amendment have already been powerfully made. I also endorse the comments made by my noble friend Lord Dubs and other noble Lords about the measures that the Government have already taken. But while on the one hand the Government say, rightly, that we need to play a role at the heart of Europe, on the other they decline to assist over taking in unaccompanied refugee children in Europe who have fled from war, conflict and persecution and are already alone and at risk, simply because they are already in Europe.

Europol estimates that 10,000 unaccompanied refugee children went missing in Europe last year and we know that children are being exploited. The Government maintain that taking in any unaccompanied refugee children from among those already in Europe would increase the so-called pull factor—an argument for which there is no firm, hard evidence one way or the other. But at the heart of the unproven pull factor claim is a policy stance that we should leave all unaccompanied refugee children already in Europe to their fate. That is an unacceptable stance and if my noble friend decides to put his amendment to a vote, we will support him in the Division Lobby.

Earl Howe: My Lords, I am very sorry that the noble Lord, Lord Dubs, appeared to be so dismissive of the many measures that I set out in my opening remarks. I emphasise that those measures include both children in conflict zones and those who have reached the shores of Europe. We want to ensure that those children already in Europe are able to access the help and protection that they need; we simply disagree on the method outlined in the amendment in lieu.

I will emphasise something that I should have highlighted earlier: our position is firmly based on the evidence and advice of the expert organisation in this field, namely the UNHCR. Our approach focuses on family reunification and the wider risk categories of children at risk, rather than just unaccompanied children. The UNHCR has commended this approach, and I ask noble Lords not to dismiss that point. As the world expert in this field, it has cautioned against creating additional routes and benefits that target unaccompanied children, because of the risk of encouraging families to send children ahead alone—in other words, causing children to become unaccompanied, with all the risks that go with it. That would be a terrible thing to do or to encourage. We surely must do nothing that puts more children's lives at risk. Our new children at risk scheme, which I referred to earlier, is designed specifically to avoid creating perverse incentives like that.

We agree that we have a duty to help vulnerable children across the globe, whether in conflict regions, in European member states or in the UK, to access the help and protection they need. But it is our belief that simply physically transporting some unaccompanied children from one part of the EU to another is not the best or most effective way to fulfil our duty. That is why we are providing the significant support I have already outlined to build capacity in European asylum systems and ensure children are able to access that support.

We also believe it is best to support family reunification —bringing families together—rather than creating perverse incentives for children to be separated from their family, which I fear is what the noble Lord's amendment would do. We already have several routes for families to be reunited safely. Our refugee family reunion policy allows immediate family members of a person in the UK with refugee leave or humanitarian protection—that is to say, a spouse or partner and children under the age of 18, who formed part of the family unit before the sponsor fled their country of origin—to reunite with them in the UK.

That is the answer to my Commons colleague Stephen Phillips: under that policy, we have reunited many refugees with their immediate family and continue to do so. We have granted more than 21,000 family reunion visas over the past five years. Even where an application fails under the Immigration Rules, our policy requires us to consider exceptional or compassionate reasons for granting a visa outside the rules.

Lord Kerr of Kinlochard (CB): Does the noble Earl not agree that the noble Baroness, Lady Hamwee, is right to say that it is not a question of either/or? Of course all these good things that are being done should be done, but the children we are talking about are there, scattered across Europe and at risk.

Earl Howe: I do not agree with the noble Baroness, because of the risks that I have already outlined. If we were to go down the path that she advocates, we would put children at additional risk. We cannot possibly do that. We are currently reviewing our family reunion guidance to make clear the sorts of cases that might benefit from a visa outside the rules and will publish that in May.

We have all seen squalid conditions in Calais. That is precisely why we are working closely with the French authorities to see to it that vulnerable children are protected. We are working with the relevant NGOs to ensure that the message that children receive is that it is possible to be transferred to the UK under the Dublin arrangement both from Calais and from social care. I would just say that that can happen in a matter of weeks; it is not a slow process.

Effective communication is of course key. We agree that more can be done to ensure that children are able to access the support they need. The UNHCR already has access to the camps and accommodation centres to inform migrants on the different options of applying for asylum in France and family reunification for those who may have family members in the European Union. That is in addition to the joint UK-France communication campaign in the camps, which informs migrants of their rights to claim asylum in France and gives them information on family reunification.

However, the best way to communicate that is to demonstrate that the system works, and that is what we are already doing. How? One example is our recent secondment of a senior asylum expert to the French Interior Ministry to improve the process for family cases. That has already resulted in a significant increase in the number of children being reunited with family in the UK. In the past six weeks, 50 cases have been formally referred to the UK under Dublin family unity provisions, of which 30 have been accepted for transfer to the UK from France, the majority of whom have already arrived in the UK. Once an asylum claim has been lodged in another member state, we have shown that transfers can take place within weeks.

I think that these results are encouraging, and we are determined to replicate the work of the senior asylum expert in Calais in both Greece and Italy. We are committed to ensuring that the Dublin process works, so that will be in addition to the secondments that we have already agreed and have taken place in both Greece and Italy. We expect to second a further individual to both the Greek and the Italian Dublin units in May.

I have spoken at some length to demonstrate that the Government are committed to making a full contribution to the global refugee crisis—in particular, helping children at risk. The significant aid package within Europe and our practical assistance to front-line member states to ensure that vulnerable children are properly protected where they are in Europe is the correct approach. It is about the children's best interests. I strongly believe that our drive to resettle children at risk and their families directly from the region will have most impact to safeguard vulnerable children. That is why I am asking the House not to agree to proposed Amendment 87B in lieu.

Lord Dubs: My Lords, of course I welcome what the Government are doing in the region. It is good, and no one has criticised it—except possibly for the small numbers, but that is for another day. However, when all is said and done, the Government will still leave thousands of children in Europe: children who are vulnerable, children who are in an unhappy situation, children who are in danger possibly even to their lives and certainly to their well-being. That will not alter, or only at the margin, if the Government have their way. What the original amendment said, and what I hope the spirit of the new one says, is that we will take our share of the responsibility for unaccompanied child refugees—no more, no less. We will play our part along with other countries. That is the way we should move forward. I beg to test the opinion of the House.

7.28 pm

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Motion E1 agreed.

Division No. 5

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Report

7.39 pm

Report received.

House adjourned at 7.40 pm.

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