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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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The following abbreviations are used to show a Member's party affiliation:

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
Lab Co-op	Labour and Co-operative Party
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.

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House of Lords

Wednesday 30 September 2020

The House met in a hybrid proceeding.

12 pm

Prayers—read by the Lord Bishop of Gloucester.

Arrangement of Business

Announcement

12.06 pm

The Lord Speaker (Lord Fowler): My Lords, the hybrid sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. Oral Questions will now commence. Please can those asking supplementary questions keep them short and confined to two points? I ask that Ministers' answers are also brief.

Holidays: Cancellations

Question

12.06 pm

Asked by ***Lord Young of Cookham***

To ask Her Majesty's Government what assessment they have made of the arrangements in place to compensate customers whose holidays are cancelled.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Government recognise the challenge consumers and businesses are experiencing regarding refunds for cancelled holidays and flights. We are clear that where a flight or holiday has been cancelled, consumers have a legal right to a refund, which must be paid. The Civil Aviation Authority launched a review into this issue, and as a consequence most airlines are now paying refunds effectively.

Lord Young of Cookham (Con): I am grateful to my noble friend for that reply. She will be aware that tens of thousands of passengers have complained to the CAA about inexcusable delays in getting compensation for cancelled flights, and that the Consumers' Association has criticised the CAA, saying:

"It is obvious that the CAA does not have the right tools to take effective action against airlines that show disregard towards passengers and the law".

Will my noble friend therefore bring in much-needed reforms to enable the regulator to take swift and effective action to protect consumers when the law is broken?

Baroness Vere of Norbiton (Con): The CAA has a range of powers available to it to take a proportional and pragmatic approach to enforcement. Indeed, a number of conversations have taken place, in particular bilateral engagement between the CAA and individual airlines to encourage them to refund more quickly. The pandemic has highlighted a number of challenges and my department is keen to work with the regulator, industry and consumer groups to learn lessons and make changes in the future.

Lord Pickles (Con): My Lords, has my noble friend observed that two holiday companies, loveholidays and On the Beach, have resigned from ABTA to avoid paying full refunds on cancellations due to Covid-19? Will she look carefully at the regulations and in particular at the alleged loophole that suggests that if the Foreign Office advises against travel and yet the company itself keeps a flight and the accommodation open, a full refund is not payable?

Baroness Vere of Norbiton (Con): We keep under review the issue of Foreign Office advice and the implications for cancellation and subsequent refund. Travel is no longer the almost risk-free experience that it used to be, and I encourage all consumers when they book travel to look very carefully at whether the travel business is a member of ABTA or ATOL, and what would happen in each circumstance were their journey to be curtailed.

Lord Singh of Wimbledon (CB) [V]: My Lords, while every effort should be made to compensate those whose holidays are cancelled because of the Covid pandemic, does the Minister agree that the main focus of the Government and the country should be on defeating this killer disease? With that in mind, will the Minister consider restricting all but necessary travel abroad until the virus is under control?

Baroness Vere of Norbiton (Con): The Government have very solid arrangements for international travel, which is why we introduced international travel corridors to enable some travellers to go abroad, whether for business or social reasons, without needing to quarantine on the way home. Travel advice and the exemptions list can change at very short notice, and consumers must be aware of that.

Lord Browne of Ladyton (Lab) [V]: My Lords, on 28 July, at col. 114 of *Hansard*, the Minister advised those travelling that they could mitigate their risks with travel insurance and that they should check it out, and that the Government were in ongoing discussions with the insurance industry about pandemic-related insurance cover. Today, the Which? website identifies only one travel insurance option offering cover for the cancellation of a holiday because of Covid-19 restrictions, and then only in very limited circumstances. What progress have the Government made with the insurance industry, so that the Minister's advice in that regard is of any value?

Baroness Vere of Norbiton (Con): As the noble Lord will be well aware, the insurance industry is a commercial enterprise and will offer travel insurance to consumers where it is able to do so at a reasonable cost and undertaking a reasonable amount of risk. Of course, conversations with the travel industry and the travel insurance industry are ongoing.

Baroness Randerson (LD): My Lords, some airlines have taken a very short-sighted approach by seeking to avoid repayments, but it is a sign that they are under severe financial pressure. I do not excuse their actions at all, but it is a symptom of a problem. The Government have provided tailored financial support to help the hospitality industry. When will they provide a package suitable for the travel and transport industries?

Baroness Vere of Norbiton (Con): All travel companies are facing operational, resource and liquidity issues at the moment, and this is creating the backlog of refunds. The pandemic has created a very difficult situation for the travel industry and beyond, but the Government have already provided support to aviation and beyond. The Bank of England's Covid Corporate Financing Facility has been used by airlines, which have drawn down £1.8 billion.

Lord Moynihan (Con) [V]: My Lords, I declare an interest, having had a holiday cancelled and not refunded. Does my noble friend agree that all customers across the sector should have been refunded by now and that it should not be they who are effectively making loans to solvent travel companies, many of which are simultaneously benefiting from the government support measures she has just outlined?

Baroness Vere of Norbiton (Con): My Lords, I declare an interest, having had two holidays cancelled, both of which were refunded. The situation is incredibly difficult and we need to look closely at how we are going to get refunds back to consumers, but most businesses in the travel industry are doing their very best to refund.

Lord Rosser (Lab): I understand that the last time an airline operating in the UK faced a fine for breaking consumer law on refunds, delays or cancellations was 17 years ago. In the same period, as I understand it, the Civil Aviation Authority has applied for an enforcement order only once. In the light of that, is the Minister confident that all airlines have done everything they could to comply with statutory consumer rights this year, and does she think that they feel under sufficient pressure to ensure that they comply with statutory consumer rights?

Baroness Vere of Norbiton (Con): I believe that airlines are feeling under great pressure from all sides at this moment. Of course, the CAA works very closely with the airline industry. Its review, which it launched at the end of July, looked in great detail at the refund policies and practices of each airline. There has been a significant improvement since that review. The CAA is taking a balanced and proportionate approach to enforcement for the time being.

Viscount Waverley (CB) [V]: My Lords, passenger compensation is an important area for consideration. So, equally, is the UK not becoming marooned. Given suggestions that easyJet is being challenged, what concern is there that the UK's targeted commercial markets globally might not be well served, which, of course, could also impact socially? What plans do the Government have to ensure that that will not happen?

Baroness Vere of Norbiton (Con): My Lords, my department is incredibly concerned about domestic air connectivity and international air travel. Of course, we want people to be able to travel, but it must be safe. That is why the international travel corridors exist and why, over the longer term, we will be looking at an aviation recovery programme that will address our connectivity more broadly.

Lord Bhatia (Non-Afl) [V]: My Lords, is there any estimate of how many people have been compensated by the insurance companies?

Baroness Vere of Norbiton (Con): I do not have an estimate of how many people have been compensated by insurance companies, but I can tell noble Lords that the Competition and Markets Authority is another way that consumers can report businesses which are acting unfairly, and it has received tens of thousands of complaints. For example, action arising from those complaints resulted in TUI agreeing to refund all customers who were owed a refund by the end of September.

The Earl of Caithness (Con) [V]: My Lords, I declare an interest, having had a holiday cancelled. Does my noble friend agree that while the ATOL scheme is excellent, waiting 90 days to receive repayment is far too long, and will she join me in condemning British Airways for its appalling, obstructive attitude towards making repayments?

Baroness Vere of Norbiton (Con): The ATOL scheme is very valuable and exists as a safety net to enable people to get their money back if they cannot do so from other sources. While it may take 90 days, consumers can feel reassured that they will get their money back eventually.

Lord Roberts of Llandudno (LD) [V]: I, too, have had a holiday cancelled, and I have been from one organisation to another. The credit card was supposed to cover it; it did not, and nor did the travel insurance. ATOL has not replied, nor ABTA. Cannot we have simple, clear guidance to all those claiming so that they know exactly where to go and can save an awful lot of trouble and harassment?

Baroness Vere of Norbiton (Con): The issue for consumers is that different bookings using different travel agents will be supported by different mechanisms, so there cannot be a one-size-fits-all solution. However, there are a number of places that consumers can go to for advice. For example, back in April, the Competition and Markets Authority put out guidance on cancellations and refunds. It was also clear that the airlines had to state clearly in what timeframes those refunds would be provided.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked and we now move to the next Question.

Covid-19: Tracking

Question

12.18 pm

Asked by ***Lord Scriven***

To ask Her Majesty's Government what assessment they have made of the use of Exposure Notifications Express in mobile telephone operating systems for the tracking of COVID-19.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, engineers at the Department for Health and Social Care are undertaking an initial assessment of the Exposure Notifications Express capability in consultation with Apple. At this stage, the assessment is paper-based, as software is not available outside the United States. We anticipate ENS becoming available in European countries in one or two months. We continue to assess this capability as information becomes available.

Lord Scriven (LD): My Lords, it is welcome that the Government have finally decided to move to a decentralised system. Apart from the number of downloads, what success criteria that can be attributable to the Covid-19 app have the Government set, how will these be measured and where will the public be able to see progress against those criteria?

Lord Bethell (Con): My Lords, the ultimate aim of the app is to break the chain of transmission. That is done through a number of ways. One is to provide a proximity alert for those who spend time with people who have tested positive. It also has a check-in capability to help our track and trace efforts, and we are building more applications on it all the time. One encouraging statistic is that until 10 o'clock yesterday, there were 6.5 million check-ins through the app. This is an astonishing number and it shows that those who are socialising are using the app.

Baroness Altmann (Con): My Lords, I congratulate the Government on introducing this system of track and trace using apps. I encourage my noble friend to look carefully at introducing as soon as possible the express system available in the US and having it integrated into the telephones. He may not be aware that a number of people with whom I am in contact have downloaded the current app, found that it drains their batteries too quickly, and have therefore deleted it. Does he agree that if the express system were integrated into the app, it would do less damage to the battery and it would be more likely that people would stay with it?

Lord Bethell (Con): My Lords, we are looking carefully at the Apple express system. It does not contain the substantial investment in the algorithm from the Alan Turing Institute that gives our own app the sensitivity and protection that phone users are seeking from such a device. We have looked carefully and worked extremely intensely with Apple on the battery and our understanding is that the app does not have a large impact on battery use.

Baroness Finlay of Llandaff (CB) [V]: When will the equality impact assessment be published for the trial in Newham of the test and trace app that uses the Google-Apple technology?

Lord Bethell (Con): The results of the Newham trial are analytical rather than about the privacy assessment, which has already been published. What we learned from Newham was that security concerns among that community were profound and, therefore, we shaped our marketing in order to address those concerns.

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, is not this new system available only on newer smartphones, which older people and poorer people are less likely to possess? They are the most vulnerable. Is there not a danger of this becoming yet another expensive and useless gimmick?

Lord Bethell (Con): Perhaps I may reassure the noble Lord that the NHS app is usable by nine out of 10 smartphones. On average, 87% of Apple and Android phones can download the NHS app. The Apple express service uses a smaller segment of the population because it requires more modern software in the phones.

Baroness Walmsley (LD) [V]: My Lords, what have the Government done to ensure that the new NHS app can read only official QR codes at venues and not scams that have the potential to corrupt a person's phone or grab their data and cause privacy issues? How can users recognise whether a QR code is genuine and is any guidance available to help them to be cautious?

Lord Bethell (Con): I reassure the noble Baroness that the use of non-official QR codes is rejected by the app. I have had personal experience of this. We have had downloaded 600,000 of the official QR codes—an astonishing figure. The use of those codes seems to have been embraced and adopted. I have one at my office and it works extremely well.

Baroness Thornton (Lab): I confess that I am very confused by the answer given by the Minister to my noble friend Lord Foulkes about older phones. I have a friend who was excited about being able to download the app; her phone is only two or three years old but it was too old to download the app. I have to say that I am sceptical of the figures that the noble Lord has given us. Certainly, some who may or may not be in the lower income bracket, may be older, or may just be careful and have phones bought in 2015, seem unable to download the app at all. Did the noble Lord say there were two apps? This is confusing and I am not sure that it will help.

Lord Bethell (Con): My Lords, I completely understand the concerns of those who may be struggling to download the app but I reassure the noble Baroness that the current app is supported by iOS versions 13.5 and higher, and by Android Marshmallow version 6.0. That covers by far the vast majority of phones. As I said, 89% of phones should support the app. They include, for instance, Apple iPhone 6S and above—a huge proportion of phones. We are debating a new initiative by Apple to bring in their own protocol that is particularly directed at developing countries which may not be able to support their own app. That initiative is not targeted at the UK. We believe that it may have some relevance in supporting downloads of the NHS app because the alerts created can perhaps be directed to the download site on the iPhone store to encourage those in the UK who have not yet downloaded the NHS app. The Apple initiative is a positive development that will be particularly well used in developing countries.

Baroness Kennedy of Cradley (Non-Afl) [V]: Have the Government set a target for the number of people who need to download the NHS Covid app for it to be an effective solution for suppressing the virus? If so, what is the target and what are they doing to reach it, should it exist? More generally, what are they doing to increase the number of people using the app?

Lord Bethell (Con): My Lords, there is no particular target where the app becomes relevant or non-relevant. Some 14 million downloads to date is a remarkable number and the app is already proving effective, with a substantial number of people having received notifications from the proximity device and who are now abiding by isolation measures. We have a massive marketing campaign that has been seen by 97% of the population and ongoing activity, particularly among hard-to-reach communities and the young, to support the downloading and use of the app.

Lord Hain (Lab) [V]: What is the point of the new Covid app if testing takes seven days to produce a result and, by the time the person is notified that they were in contact with someone infected, they are likely to be displaying symptoms already and will know for themselves?

Lord Bethell (Con): My Lords, the point of the app is to support our tracing efforts and provide security among those who are in areas that are not socially distanced in order to alert them when they have been near someone who has recently had a test. The test results are not, as the noble Lord described, typically available after seven days. The figure is much lower and we have already found enormous support for the use of the app.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked and we now come to the third Oral Question.

Lightweight Polyethylene Chest Plates

Question

12.28 pm

Asked by ***Baroness Donaghy***

To ask Her Majesty's Government what assessment they have made of (1) whether current safety testing standards for lightweight polyethylene chest plates are fit for purpose, and (2) concerns expressed by experts about the safety of such chest plates.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, body armour certified by the Ministry of Defence and Home Office is rigorously assessed using internationally recognised test standards for the relevant roles and threat levels. The Defence Science and Technology Laboratory is aware of no scientific evidence that body armour is unsafe when used as advised. Recent claims based on unscientific tests cannot be corroborated by government scientific advisers.

Baroness Donaghy (Lab) [V]: One serving SAS soldier said:

"I'd sooner go into battle wearing no ballistic protection than using this plate. It shouldn't have been brought into service".

Ballistics experts, defence manufacturers, an NHS trauma consultant, the Police Federation and Police Firearms Officers Association have called for an urgent investigation into safety standards that might have applied in the 1980s but need updating. When will the Minister commission such an urgent investigation?

Baroness Williams of Trafford (Con): My Lords, the current deformation in clay standard for police equipment is 25 millimetres, which is far more stringent than international standards. The deformation in clay standard for MoD equipment is 44 millimetres. The testing meets those criteria.

Lord Harris of Haringey (Lab): My Lords, lighter-weight armour is welcome, but a report in the *Mail on Sunday* last month—I am sure that the Minister saw it—said that this type of body armour is not fit for purpose because of the risk of behind armour blunt trauma. Although the bullet itself is stopped, the force causes the plate to bulge into the body, causing serious damage. Is the Minister saying that the *Mail on Sunday* got it completely wrong and made up the tests that it carried out? An NHS trauma consultant described the resulting injuries as "unsurvivable". This is all very disturbing and suggests that the standards used are inadequate. Has the Home Office discussed the *Mail on Sunday* findings with the Police Federation? If so, were its representatives satisfied as a result of those discussions?

Baroness Williams of Trafford (Con): The Home Office view is that the recent testing reported in the media was unscientific. On the tests, Home Office officials contacted the DSTL for its views: it does not believe that the *Mail on Sunday* tests demonstrate a weakness in the equipment that it has approved.

Lord McColl of Dulwich (Con) [V]: My Lords, the effectiveness of these lightweight polyethylene chest plates has been questioned. Has the Home Office considered using aluminium ceramic or, as the United States army uses, boron carbide, which also have the advantage of being much lighter? The only problem is that these materials are rather fragile when dropped and in extreme heat or cold. Can the Minister advise us?

Baroness Williams of Trafford (Con): I can advise that, clearly, the durability and usefulness of light materials are incredibly important, as my noble friend points out. Polyethylene plates have been shown to meet the rigorous testing that we demand.

Lord German (LD): My Lords, those who wear this body armour and protect us will want some comfort from the government following the reports referred to by noble Lords. Currently, the Government have three bodies that accredit this work; two of them are in the United States of America and one is in Germany. They are supposed to check this body armour every

two years. To provide the comfort needed, can the Minister tell the House when these materials were last sent back to those three checking agencies to be tested?

Baroness Williams of Trafford (Con): I cannot give the noble Lord a date for when it was last tested, but I can certainly go back and get that information. I hope that that will provide the comfort he seeks.

Lord Bourne of Aberystwyth (Con) [V]: My Lords, further to that, obviously there is concern about when official testing was last done. Given the seriousness of the position and the concern of the Police Federation, police firearms officers and others, surely it is appropriate to have further testing now to reassure those who are on the front line—indeed, to reassure all of us.

Baroness Williams of Trafford (Con): As I said to the noble Lord, Lord German, I will go back and establish when the tests were last done. That should comfort noble Lords.

Lord Loomba (CB): My Lords, with reports that the new chest plate is potentially lethal for wearers, clearly it needs to be improved. Once that is achieved and the problems are corrected, can the Minister tell us, in the light of the tragic incident in Croydon last week, whether there are any plans to allow more police officers to wear such protection?

Baroness Williams of Trafford (Con): The noble Lord suggests that there is a problem. I am saying that the testing has not raised any problems with the new lighter equipment. As I have said—I will do this—I will go back and ask when the testing was last done.

Lord Kennedy of Southwark (Lab Co-op): My Lords, this equipment is vital to protect officers in dangerous situations in the line of duty. How can both the testing and procurement processes run their course and then serious concerns be raised as to the effectiveness of the equipment by the officers who wear these protective plates? Does the Minister not agree that this is potentially an appalling failure of process and procedure, and that an urgent investigation must take place? I do not want that to satisfy myself; I want the officers who wear this equipment to be satisfied that when they go out and put their lives on the line, they have the best possible equipment helping them.

Baroness Williams of Trafford (Con): My Lords, I do not think that anyone could disagree with the noble Lord's point. I have said that these things are routinely tested. I will find the exact date when they were last tested. The DSTL does not believe that the *Mail on Sunday* tests demonstrate a weakness in the equipment that it has approved.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked.

Nagorno-Karabakh

Question

12.36 pm

Asked by ***Lord Collins of Highbury***

To ask Her Majesty's Government what assessment they have made of violence in the Nagorno-Karabakh region; and what representations they have made to the governments of Armenia and Azerbaijan about that violence.

The Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office (Baroness Sugg) (Con): My Lords, the UK is deeply concerned by the conflict along the line of contact in the Nagorno-Karabakh region, especially by the reports of civilians being targeted. The Minister for European Neighbourhood spoke to the Azerbaijani Foreign Minister, Mr Bayramov, and the Armenian Foreign Minister, Mr Mnatsakanyan, on 28 September. Our message has been clear: we are calling for a ceasefire, an end to the hostilities and a return to the negotiation table.

Lord Collins of Highbury (Lab): My Lords, since the 1994 ceasefire, we have had the OSCE Minsk Group—headed by France, Russia and the US—and a framework agreement was established. Yesterday, I spoke to Matthew Bryza, the US ambassador who led the framework talks. He felt that the United States had pulled back from mediation efforts. What has the UK done to encourage the US Administration to renew their efforts as part of the Minsk Group, and what have we done within NATO to seek the de-escalation of tensions in the region?

Baroness Sugg (Con): As the noble Lord says, the US co-chairs the Minsk Group. It continues to engage directly with Armenia and Azerbaijan as part of that role. It also issued a joint statement on 27 September, condemning the use of force and calling for a return to negotiations. From the UK perspective, we will continue to work with the US, including through the OSCE and at the UN Security Council. On NATO, both Armenia and Azerbaijan play an important role in the Partnership for Peace, which works to create trust and peace.

Baroness Ramsay of Cartvale (Lab) [V]: My Lords, does the Minister agree that this long-expected war in the Caucasus is a danger for a wider conflagration that is complicated by Russia and Turkey supporting different sides and the attentions of the US elsewhere just now? Will the Government do more than make their usual statements and calling in ambassadors, and work actively as a high priority with like-minded countries to achieve an immediate ceasefire to avert a widening conflict?

Baroness Sugg (Con): My Lords, we continue to urge all parties to avoid external interference and rhetoric, which may of course exacerbate the situation in the wider region. We continue to work with our allies in the Security Council, where yesterday a meeting was held at which members voiced support for the call by the Secretary-General to stop the fighting immediately and expressed their full support for the central role of the Minsk Group.

Baroness Northover (LD): Are the Government aware of reports that a Turkish security company has been recruiting Syrian fighters from Idlib to fight in Azerbaijan? Does the Minister see this as a very dangerous development?

Baroness Sugg (Con): My Lords, we are not able to confirm the media reporting of the recruitment of Syrian troops. We remain concerned about the recent ceasefire violations and of course deeply regret the loss of life. We will continue to monitor the situation closely.

Baroness Anelay of St Johns (Con) [V]: My Lords, do the Government consider that Russia's co-chairmanship of the Minsk Group peace process conflicts with its geopolitical interests in Armenia, including its basing of armed forces there and its supply of hydrocarbons to the country?

Baroness Sugg (Con): My Lords, Russia of course has long historical links with both Armenia and Azerbaijan. We do not consider that the co-chairmanship of the Minsk Group conflicts with its political interests. A peaceful settlement to the conflict should be in Russia's interest and we continue to support the Russians in their role as co-chairs.

Lord Crisp (CB) [V]: My Lords, I know from Armenian friends how tragic this is and I understand the potential for this conflict to increase regional instability, and I am therefore pleased with the steps that the Government are taking. However, what discussions have Her Majesty's Government had with the Turkish Government and what pressure do they believe that our Government and the international community can bring to bear to prevent Turkey's further intervention in this conflict?

Baroness Sugg (Con): The noble Lord rightly highlights the situation in which many civilians find themselves in this conflict, which is why we are keen to do everything we can to de-escalate it. On relations with Turkey, on 28 September, the Prime Minister spoke to President Erdoğan. They agreed on the importance of a return to dialogue. As I have said, we will do all that we can to urge the parties to avoid any external interference.

Baroness Goudie (Lab) [V]: My Lords, war crimes do not justify further war crimes. The talks have been going on since the early 1990s, so is it not time that we had a new round of peace talks with the parties? I call on the British Government to be one of those leading parties at a round table with NATO and with women from the locality who are on the ground. There can be no peace without women. It is really important that we start the talks afresh.

Baroness Sugg (Con): My Lords, I agree completely with the noble Baroness on the importance of including women in the peace talks. As she will know, when women are involved, we see longer-lasting peace. The international community is fully behind the Minsk process, which we think is the correct mechanism to bring the parties to the table and to see some progress on this.

Lord Campbell of Pittenweem (LD): My Lords, is the Minister aware of the allegations that an Armenian aircraft, an Su-25, has been shot down by a Turkish F16 aircraft? Will the Government undertake to investigate whether these allegations are well founded?

Baroness Sugg (Con): My Lords, we are aware of the media reporting and are urgently looking into the situation. I am afraid that I have no further information on that allegation at this time, but these are incredibly worrying reports which underline the desperate need for de-escalation.

The Lord Bishop of St Albans [V]: Does the Minister agree with the interventions made by Pope Francis and the most reverend Primate the Archbishop of Canterbury that call on all parties in the conflict to take concrete steps to resolve this latest clash? Specifically, have Her Majesty's Government offered to be part of that mediating process? I ask this because we need to find new partners who can offer that mediation if we are to find a way through after so many years of deadlock.

Baroness Sugg (Con): My Lords, we support calls from all the parties to help to de-escalate this process. We are working very closely within the OSCE to support the Minsk Group process and we will continue to do so.

Baroness Warsi (Con): My Lords, I welcome the Government's calls for de-escalation. As my noble friend is aware, Nagorno-Karabakh is a part of Azerbaijan as recognised by international law. What representations have been made by our ambassador at the United Nations in relation to UN meetings as well as bilateral meetings between our ambassador, the Azeri ambassador and the Armenian ambassador?

Baroness Sugg (Con): My Lords, the UK supports the sovereignty, territorial integrity and independence of Azerbaijan while underlining the importance of the UN and OSCE principles that govern relations between member states. We also support the OSCE Minsk Group process and the basic principle that sits beneath it, which includes a return of the occupied territories and the acceptance of a free expression of will on the status of Nagorno-Karabakh. A meeting was held yesterday of the Security Council, where our representative expressed concern about the reports of large-scale military actions and underlined our full support for the central role of the Minsk Group co-chairs. We continue to engage diplomatically in the UK with the Minister for the European Neighbourhood, and in both countries.

Lord Harries of Pentregarth (CB) [V]: Given the fact that it was Russia that brought about an end to the war in 1994 and brokered a truce in 2016, what representations have Her Majesty's Government made to the Russians, and in particular asking them to put pressure on Turkey to stop siphoning Syrian mercenaries into Nagorno-Karabakh?

Baroness Sugg (Con): My Lords, as the noble and right reverend Lord highlights, the Russians have a key part to play in bringing about peace in their role as co-chair of the Minsk Group and we continue to work with them at the OSCE.

Lord McConnell of Glenscorrodale (Lab): My Lords, the OSCE was created to help to ensure stability and peace across the European continent following the end of the Cold War, yet today we have frozen conflicts in Georgia and Moldova, the annexation of part of Ukraine, the continuing problems in Belarus and now a resurgence of violence between Armenia and Azerbaijan. What can be done to reform the OSCE to make it more relevant to the 21st century and ensure that it is much more effective in dealing with these situations?

Baroness Sugg (Con): As the noble Lord will know well, the conflicts and issues that he has raised are incredibly complex and very different in their nature and history; there is no easy answer to them. The UK fully supports efforts under the OSCE to find peaceful and lasting solutions to these issues and we will continue to work with the organisation to make sure that it becomes ever more effective.

The Lord Speaker (Lord Fowler): My Lords, all the supplementary questions have been asked.

Clerk of the Parliaments

Retirement of Edward Ollard

12.46 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, I wish to notify the House that I have received the following letter from the Clerk of the Parliaments:

"I write to inform you of my intention to retire from the office of Clerk of the Parliaments at Easter next year.

At that point I will have served as Clerk for four years and I think it will be a suitable point to hand over and to ensure an orderly transition to new leadership of the Administration.

It has been an immense privilege to work here in a fascinating variety of roles, since I joined in 1983. I have seen the House evolve and change massively during that time—but perhaps no more spectacularly than now, where the way in which we are currently working is not something most of us could previously have imagined. These last four years as a whole have contained more than their fair share of challenges for the House and the Administration, and I hope that we can continue to build on the positive changes we have collectively made to meet them.

I would be grateful if you could convey my deep appreciation to members in all parts of the House for their generous help and advice to me during my time here. Most of all, I would like to place on record my thanks to my colleagues, the staff of the House. I am indebted to them for their unstinting professionalism and dedication to the House, as well as their support and guidance to me personally."

In light of the ongoing external management review, I will consult the leaders of the other parties, the Convenor of the Cross Benches and the Lord Speaker, and ensure that a recommendation for Ed's successor as Clerk of the Parliaments is made to Her Majesty in good time, and of course, as is customary, I will put a Motion before the House nearer the time of his retirement to enable Members to pay a proper tribute to Ed's distinguished service.

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for reading out the letter and for saying that there will be time later in our calendar to thank the Clerk of the Parliaments for his service; there will be an opportunity for further comments then. I am grateful to the Clerk of the Parliaments—to Ed—for the timing of his announcement. That is clearly for the benefit of the House and not for his own benefit, because he will be working throughout the football season and will miss the opportunity to see quite as much of his beloved Charlton as he would like; and because he will be cycling to the House throughout the cold, wet winter, as I know having regularly seen him clad in Lycra. It is helpful that he has set out a timetable and we are grateful for that. We look forward to working with the noble Baroness to choose his successor and to pay appropriate tributes in due course.

Lord Newby (LD): My Lords, as other noble Lords have said, this is extremely sensible timing. Ed Ollard, unlike most of his predecessors, however distinguished, will be remembered for change and for that we are extremely grateful. The time will come for us to pay proper tributes, but the process that has been outlined is sensible. It will give us a chance to think about the options going forward. We hope that Ed will enjoy his remaining few months as much as I know he has enjoyed the previous few months.

Lord Judge (CB): My Lords, I agree and, for the time being, have nothing to add.

The Lord Speaker (Lord Fowler): My Lords, as the Leader of the House has just indicated, there will be an opportunity for tributes in due course. However, I am sure that the whole House will join me at this moment in thanking the Clerk of the Parliaments for his long and distinguished service. The constitutional and procedural advice that he provides for me is utterly invaluable and his leadership over the past three and a half years has been exemplary.

12.50 pm

Sitting suspended.

Arrangement of Business

Announcement

1.30 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, hybrid proceedings will now begin. Some Members are here in the Chamber respecting social distancing while others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

I will call Members to speak in the order listed in the annexe to today's list. Interventions during speeches or before the noble Lord sits down are not permitted, and uncalled speakers will not be heard. Other than the mover of an amendment or the Minister, Members may speak only once on each group. Short questions of elucidation after the Minister's response are permitted but discouraged. Any Member wishing to ask such a question, including Members in the Chamber, must email the clerk.

The groupings are binding and it will not be possible to degroup an amendment for separate debate. A Member intending to press an amendment already

[Lord Faulkner of Worcester]
debated to a Division should have given notice in the debate. Leave should be given to withdraw amendments, and in putting the question I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make that clear when speaking on the group.

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

Report (1st Day)

1.32 pm

Clause 1: Repeal of the main retained EU law relating to free movement etc.

Amendment 1

Moved by ***Baroness Neville-Rolfe***

1: Clause 1, page 1, line 9, at end insert—

"(2) Within six months of this section coming into force, the Secretary of State must lay a report before Parliament on how the provisions under Schedule 1 are to be enforced."

Baroness Neville-Rolfe (Con): My Lords, this amendment is in my name and those of the noble Lord, Lord Green of Deddington, and my noble friend Lord Hodgson of Astley Abbotts, and I express my warm appreciation for their support. I leave it to others to speak to other amendments in this group.

It is a great pleasure to open the Report stage of this important Bill. I start by thanking my noble friend the Minister for her recurrent courtesy and helpfulness and for the full answers that she gave in Committee to most of the technical questions that I posed.

I always believe that enforcement of the law is as important as the laws themselves, so the key question is why the enforcement of UK national Immigration Rules has been so spectacularly unsuccessful for many decades under Governments of all parties. Perhaps surprisingly, it is if anything becoming even less successful. Part of the story is well set out in the Public Accounts Committee report published since the noble Lord, Lord Green, referred to its work in Committee. The PAC is a respected cross-party collection of the brightest and most experienced MPs. It is a devastating report, published as recently as 14 September. I quote from paragraph 4:

"We heard that the Department does not know how many people are living or working in the UK without permission, and the Department admitted its frustration at not knowing this figure."

Put simply, many people come here for reasons that do not entitle them to enter the country and if they are formally found not to be entitled to be here, the authorities are unsuccessful in removing them in a large proportion of cases. I am referring to tens of thousands of people. Also very disturbing is the gradual increase in numbers coming across the channel in rickety boats and tiny inflatables, dodging the big ships, whenever the weather allows. In 2020 the recorded number is well over 5,000, which is more than double the 2019 figure. As I said in Committee at the beginning of this month, 416 migrants exploited fine weather to make the crossing in one day, arriving all along the south coast. Migrants are risking, and in some cases losing, their lives because the authorities are known to be useless at enforcing the law, and the biggest beneficiaries are the traffickers.

Late legal challenges are also undermining efforts to remove migrants who have no right to remain, with flights that are cancelled and then bad headlines that encourage yet more attempts to enter the UK illegally. The public are bemused. Why cannot we, like the vast majority of countries in the world, implement our own rules effectively? It is a major scandal, though a reader of the parliamentary reports of discussions in this House would need to be very alert to detect it.

My proposal is quite simple. Since the Government—indeed, as I explained, many Governments of different persuasions for a very long time—have not managed to fulfil their obligations satisfactorily in this respect, I suggest that they be put on report, literally. Given the unsatisfactory record, we should not allow matters to dip below the radar. We need to have the facts before us and have a light shone upon them, giving the Government every opportunity to explain regularly how they are making the progress that most of the country wants.

Of course, we all have individual cases where we want to see generous Immigration Rules and enforcement—staff for our businesses or domestic workers, attracting lower wages than we might pay to British equivalents; reliable-looking tenants; or daughters-in-law awaiting visas—but the aggregate is very damaging to the public trust, as we have seen in the north of England. The fact that it is easy to travel across the world very cheaply nowadays attracts many people who want to live and work in the UK. They come because we make people from everywhere welcome in our society; have strong, well-enforced laws on equality and modern slavery; and provide generous education, healthcare and housing for migrants as well as to natives. The pull factor is huge, putting pressure on enforcement and compliance with the law.

We heard in Committee about the work of the Migration Advisory Committee. It produces reports but its prime focus is on the appropriate level of migration from an employer point of view and to improve our labour market. It does not have, and does not see itself as having, a brief to advise on the scale of illegal immigration; nor are its members experts on the level of compliance with Immigration Rules, the effectiveness across the agencies involved, value for money or overall expenditure and resourcing in this important area. I believe that a report could fill that gap. Indeed, the Minister might want to consider the point made by the noble Lord, Lord Adonis, in Committee and ask the MAC, from its expert perspective, to recommend improvements to the policing of the immigration system.

Given the awkward history of enforcement, which I have to say goes back to my own time in home affairs at Downing Street in the 1990s, I can well believe that our proposal for a report six months after the passage of the Bill might seem unpalatable to Ministers and

their civil servants, who are all trying to do their best. However, I urge them to consider our proposal afresh. The Government publish many reports every year; I agreed to a number of reports in Bills over the years as a Minister, and they are currently being suggested in this House in respect of both trade and agriculture. The requirement need not necessarily be provided in this Bill but a legislative requirement would provide a useful element of parliamentary scrutiny. It would make effective action more likely and help the Secretary of State to do a better job. The report could be repeated subsequently to see how successful measures had been. We would certainly revisit a report of that kind in the private sector, where I have spent many years. I very much look forward to hearing from my noble friend the Minister. I beg to move.

Lord Green of Deddington (CB) [V]: My Lords, I am glad to support this useful and well-timed amendment proposed by the noble Baroness, Lady Neville-Rolfe. As she has so clearly described, enforcement has long been one of the weakest points in our immigration system. Despite that, it has faced an 11% real-terms reduction in its budget since 2015-16. The Home Office says that it

"continually looks for ways to reduce costs, so as to improve efficiency and deliver better value … for taxpayers."

However, as the noble Baroness mentioned, since our Committee stage the Public Accounts Committee has published its report on immigration enforcement. It pointed out that the returns of those who have no right to be in the UK are "plummeting". The report also criticises the Home Office for having provided the public with no information at all about the scale of illegal immigration for 15 years and points out that the Home Office

"failed to complete 62% of the returns it planned from immigration detention in 2019, compared to 56% in 2018."

This may of course reflect the ever more strident behaviour of the legal arm of the immigration lobby, some of whom use late and sometimes spurious asylum claims to frustrate removals. Nevertheless, the performance of the Home Office can hardly be described as "better value for money". Recent official statistics reveal that the number of failed asylum seekers who are subject to removal has doubled from 20,000 in 2014 to over 40,000 now. Clearly, more resources must be diverted to the task of removal, and those resources must be more efficiently targeted and implemented with determination.

Let me also make this point: it is important that the officials themselves should feel supported by the public, as indeed they are. We should avoid constant negative criticism—I hope that I have not done too much of it—as these officials are carrying out an important and difficult task. They need and deserve to be affirmed. After all, they are following due process and enforcing the rule of law, thus making an important contribution to the order that we cherish as part of our civil society. A report to Parliament on enforcement following up on the PAC report, as proposed in this amendment, would be a valuable next step.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have put my name to Amendment 1, which represents an important piece in the jigsaw of our new immigration system. We have just heard two very hard-hitting and detailed speeches from my noble friend Lady Neville-Rolfe and the noble Lord, Lord Green, about the vital role that enforcement plays and why it is so important that we check it is working effectively. In my few minutes, I want to focus on two aspects: transparency, to which the noble Lord has referred, and in particular fairness. The British public have a great interest in situations being fair, but both aspects will be needed in any enforcement regime that is to command public confidence over the longer term.

First, the present system is not fair to those people who try to come to the country legally. It cannot be right for other people to try to jump the queue with virtual impunity and at their expense. Good behaviour should have a proper reward. Secondly, it is not fair to the people who come here—these new arrivals—who will likely find themselves forced to work for below-standard wages in substandard accommodation, without any of the protections of the British state. It is modern slavery indeed. Thirdly, it is not fair to the British taxpayer who inevitably, in one way or another, usually hidden, has to foot the bill. Finally and most importantly, it is not fair to the members of our settled minority communities. Most but not all of the overstayers will be drawn from the races who make up our minority communities. Those members of our settled population, legally resident here and drawn from minority communities, are working hard to make a new life for themselves—and good luck to them. But they find their collective reputation damaged and undermined by a regime where many people are able to say that the system is not working and that they are somehow to blame.

How large is the problem? As is so often the case in this area, the data is imperfect. My noble friend Lady Neville-Rolfe referred to that fact. I have not been able to find any Home Office assessment of the overall problem since 2005, which would now be very much out of date. However, the Pew Research Center, a well-regarded authority, suggested last year that there may be 1.2 million unauthorised migrants in the country, or about 2% of our population. Noble Lords may point out that those are figures from the world at large, but there are some statistics from the EU. As of 31 March 2020—six months ago—the Home Office reported that 171,000 Bulgarian citizens and 564,000 Romanian citizens had sought settled or pre-settled status in this country. However, other Home Office figures showed that, as of 30 June 2019, nine months earlier, there were supposed to be only 109,000 Bulgarians and 457,000 Romanians officially resident in the country. That is an underreporting of 168,000 from those two countries alone, which of course form part of the EU.

1.45 pm

When my noble friend the Minister came to reply to the debate in Committee, she said:

"I do not think this is the right Bill … to make any changes to enforcement provisions, which would need to cover both EEA and non-EEA citizens".—[*Official Report*, 7/9/20; col. 573.]

I say with huge respect and very gently to her that that is not an accurate representation of the situation. We already have an enforcement regime for non-EEA citizens. We may think that it is no good, but it exists.

[Lord Hodgson of Astley Abbotts]
However, so far as EEA citizens are concerned there is no system and cannot be one, because we have free movement of labour until we finally leave the EU. Post Brexit, we will need one and we will need to check how effective it has been and is being. That is why my noble friend's amendment should be accepte-d.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I speak to Amendment 2 in my name, which takes us in a very different direction to the debate thus far. Amendment 2 has a modest snippet of text: "Leave out Clause 1". If noble Lords go back to the Bill, they will find that it covers "Repeal of the main retained EU law relating to free movement etc." This is the point, from the view of your Lordships' House, at which the freedom of movement that was the birthright for everyone born since 1992, and which their elders have enjoyed since then, is irrevocably wiped out. We have an expectation, as problematic as it sometimes is, that society is advancing and improving. Yet here we are, after 28 years, taking a massive step backwards. I credit the noble Baroness, Lady McIntosh of Pickering, for noting in Committee how much she personally had benefited from freedom of movement. Many other noble Lords will have similarly benefited, and others have noted it in the House during debate.

As I speak now, I think particularly of the 18 year-olds who are having such a torrid time at university or college or in seeking a job. They have endured all the chaos of A-level and GCSE results and now face losing an escape route—a safety valve—but, above all, an opportunity to roam a continent without restraint, free to study, to work, to live and to love without thought of visa or restriction. That loss should not be allowed to slip quietly into the political darkness.

Much of the focus of the debate around freedom of movement and on the Bill has been on the fate of some 4 million EU citizens in the UK. We will be debating and, I hope, adding some positive changes to the Bill for them later. There is also a rightful focus on the Britons who now face being unable to live in their own country with their European spousal partner and children. I hope your Lordships' House will also do something about that, but for now I will focus on the Britons affected. We cannot, of course, control what other countries do—by leaving the European Union, we have lost control of that—but we know that in Europe there is a strong tradition of reciprocity. Britons will largely be treated in European states as we treat their citizens here, which is something to think about right through this Bill's discussions.

Of course, rich people and those with connections will not be anything more than perhaps a little discommoded: if you have enough cash, you can buy a passport from several European countries, and if you have a higher level of earnings or savings, a visa will not be a barrier. Losing freedom of movement is a massive set-back for equality. Over the recent long, weary years of campaigning, I have met many Britons who were not rich and who had not started out with the advantages that many in your Lordships' House have enjoyed. However, they were able to establish a new life on the continent, with the choice of more than a score of countries before them; all they needed was a sense of adventure—or sometimes desperation—and a few pounds for a cheap coach fare, and they set out. They are some of the 1.2 million Britons who live in the rest of Europe, who will be profoundly affected by the decisions we are making today.

This is all one enormous, careless rush, with fewer than 100 days before the end of the Brexit transition period. In the Committee debate, the noble Baroness, Lady Hamwee, noted that the Bill removes

"all rights, powers, liabilities, obligations, restrictions, remedies and procedures which derive from EU law".—[*Official Report*, 7/9/20; col. 644.]

I cannot tackle everything, but I want to do everything I can to highlight this great loss. Therefore, I give notice that it is my intention to divide the House, as I indicated in Committee that I would do at this stage. I will ask every Member of your Lordships' House to be on the record: will you vote to greatly reduce the freedom we all enjoy from January, and probably for decades to come? Will you show your opposition, or will you remain off the record in the face of this massive loss?

Lord Paddick (LD): My Lords, I rise to speak to my Amendment 26 in this group, and my noble friend Lady Hamwee will speak to the other amendments in the group. I too am sceptical about the Government's ability to enforce immigration law in general and the end of free movement in particular. Indeed, as I have previously argued, there is evidence that, rather than "taking back control", the Government have made the UK border more porous.

At previous stages of this Bill, I have raised the issue of EEA and Swiss nationals, who will continue to be able to enter the UK using airport e-passport gates and who will benefit from visa-free entry to the UK, officially for six months at the end of the transition period, along with the nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA—the so-called B5JSSK countries.

I am very grateful to the Minister for meeting me face to face—a rare treat—along with several officials, who joined us virtually. The point of raising this issue now is to have on the record the fact that the Government's approach to immigration contains significant loopholes, which are as follows.

First, there will be no digital record of the immigration status of EEA and Swiss nationals, or those of the other B5JSSK countries that I have listed, visiting the UK under the six-month visa-free arrangements. This can be checked—for example, by landlords, in order to fulfil their right-to-rent obligations to ensure that they do not rent property to those who are in the UK illegally. The Government have no plans to change this situation other than an ambition that this will happen at some time in the future.

Secondly, there will be no way of tracking EEA, Swiss or other B5JSSK nationals once they have arrived in the UK, as no information will be recorded as to where they are going to be staying, there will be no stamp in their passport and there will be no way of establishing whether they have left the UK when or before the six-month limit has been reached.

Thirdly, in order to comply with the law—even though there is no way of enforcing it—all an EEA or Swiss national, or a national of one of the other

B5JSSK countries, needs to do is take a day trip on the Eurostar to Lille, for example, in order to be legally eligible to stay for another six months. In their *UK Points-Based Immigration System: Further Details Statement*, the Government claim that EEA and Swiss nationals should not

"in effect live in the UK by means of repeat or continuous visits."

However, in reality, there is no way of checking or enforcing this.

Fourthly, with the leeway provided to landlords under the right to rent scheme, landlords can rent a property for up to 12 months to an EEA or Swiss national, or to other B5JSSK nationals—even though they are legally allowed to stay in the country for only six months—without any sanction, civil or criminal. At the end of that period, the landlord can continue to rent the property to the EEA or Swiss national, or to one of these other nationals, provided they produce another ticket, boarding pass, travel booking or

"Any other documentary evidence which establishes the date of arrival in the UK in the last six months."

Fifthly, the Government cannot provide any details of the electronic travel authorisations, or ETAs, mentioned in the Government's immigration plans under the heading "The border of the future", or of how that system will operate. The Government claim that it will

"allow security checks to be conducted and more informed decisions taken on information obtained at an earlier stage, as to whether individuals should be allowed to travel to the UK."

In the meantime, and for the foreseeable future, the UK could be vulnerable to such individuals entering the UK—without checks or a visa—through the e-passport gates.

Every national of Australia, Canada, Japan, New Zealand, Singapore, South Korea or the USA used to hand in a landing card and be questioned by a Border Force officer at the UK border to establish where they were going to stay, how long they were staying and whether they had the means to sustain themselves without working illegally. I am told that about 3,000 US nationals a year used to be turned away at the border, but these individuals can now use the e-passport gates, almost always unchallenged. I understand that the reason the B5JSSK nationals were added to those who could use the e-passport gates was to better manage the queues at the UK border. Allowing people through the UK border more quickly by not checking whether they are entering the UK legitimately does not seem to be "taking back control" of our borders.

From 1 January, EEA and Swiss nationals will be able to enter the UK in the same way, even though free movement is supposed to be at an end. Can the Minister please confirm on the record that these loopholes do indeed exist and that there are no immediate plans to close them? Can she also repudiate the explanation offered by a lawyer friend of mine—who, when I discussed this issue with him, described the B5JSSK countries as "white" countries—by explaining how the B5JSSK countries were chosen?

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): The noble Lord, Lord Young of Norwood Green, has withdrawn from the debate, so I call the noble Baroness, Lady McIntosh of Pickering.

Baroness McIntosh of Pickering (Con) [V]: My Lords, this is an interesting group of amendments. I first congratulate my noble friend Lady Neville-Rolfe and the other co-signees of Amendment 1 on identifying what is clearly an issue that needs to be addressed. One need only look at the pleas from the county council and local authorities in Kent to see how they have been overrun in recent weeks by the large number of migrants coming in.

I will put a question for my noble friend the Minister to answer in responding to this group of amendments. Presumably, these migrants are counted when they enter reception centres, and so these numbers are available; is it the case that my noble friend Lady Neville-Rolfe has actually identified that, and what would be the best way of publicising these figures? One thing that my noble friend Lady Neville-Rolfe and others omitted to say was that they are of course bypassing the Covid security measures on self-isolation—although I suppose they are self-isolating in one respect. However, this issue is increasingly of great concern to the wider British public, and it needs to be addressed as a matter of urgency.

I thank the noble Baroness, Lady Bennett, for reminding me and the House of my comments, which I stand by. I have travelled widely and have family in Demark who I hope to continue to be able to visit, as I have friends in Belgium and France. On balance, between Amendment 2 and Amendment 26, I prefer Amendment 26 in the name of the noble Lord, Lord Paddick. I hope my noble friend the Minister will confirm that this is indeed the basis on which we will operate after 1 January. Can she go further and confirm that, if I or any individual crosses to another EEA country or Switzerland, we can also go through their EU gates and that this will continue on a reciprocal basis?

2 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): The noble Lord, Lord Greaves, has withdrawn, so I call the noble Lord, Lord Naseby.

Lord Naseby (Con): My Lords, I speak as someone who served on the Public Accounts Committee for 12 years in another place. The first thing that comes to mind is that the National Audit Office is principally in charge of the investigations there, sometimes prompted by the committee and sometimes by issues that are at the forefront of politicians' and other parties' interests. Those reports are always produced when there is a case to be looked at. The reports are taken very seriously and are of great substance. I was particularly pleased—this is the reason I am taking part in the debate on this amendment— to see that there was this PAC report on a subject that is likely to come before your Lordships' House. That report gives cause for considerable concern—that is probably a huge understatement. I hope my noble friend on the Front Bench, for whom I have a great deal of time, and those who are advising her will look at this very seriously. I think they need to go back also to the National Audit Office and look at some of the data, because it cannot all be reproduced in a report.

A couple of other issues come to my mind. My noble friend mentioned the 5,000 boat people. I sat on the Council of Europe for eight years—it is not just a

[Lord Naseby]
talking shop; it does some valuable work. This is the sort of issue where two countries are involved in something that is not acceptable to either country but nobody has managed to bang the heads of the head of states together to ensure that a solution is found.

I am a great lover of France; for years, I had a mobile home in the south of France and I love going there. But this is not in the interests of France; I know our Prime Minister is pretty busy, but it is time for someone in a very senior position to talk to the Prime Minister of France, so that we can stop these huge numbers. Maybe we will have to take a share of the very small proportion who are genuine asylum seekers but, for the rest, an answer has to be found.

As the House knows, I also specialise in south Asia. I lived and worked there for a number of years and—dare I mention?—I have written a book about Sri Lanka. There is a problem about asylum seeking from not only Sri Lanka but other parts of south Asia. Self-harming is not something that many people in the Chamber or elsewhere know too much about, but it is not as unusual in south Asia and south-east Asia as it would be in the western world. Self-harming is then transcribed into "torture", so when the individual presents themselves as an asylum seeker here, with an analysis from a UK doctor who of course has no idea about self-harming, it is pretty strong evidence that there has been torture—but there has not; there has been self-harming. That is something people should be particularly alert about.

We are being prompted daily to have an app on this and an app on that—track and trace is now the issue of the day. I do not know whether this happens, but it occurs to me that, given that the one piece of luggage that most migrants have with them is a mobile phone—or someone within their group has a mobile phone—those going into the reception area should have a track and trace system of their whereabouts, for a limited period, on some sort of app.

I listened to the noble Lord, Lord Paddick, with particular interest. He has put some genuine questions that I hope my noble friend on the Front Bench will take away, if she is not able to answer them today. There is clearly something not right in the areas that he has picked up.

I spent a great many hours recently on the Agriculture Bill, which has a section dealing with temporary agricultural workers. It is a fact that, in the UK at this point in time, there is not enough part-time or spare labour and ability in agricultural matters to bring in the harvest, particularly in Lincolnshire and the surrounding counties. I come from Bedfordshire; we are on the fringe, but there is a great deal of horticulture. We must not have another harvest next spring where we in the UK are short of people to harvest the crops. I just want to put that on the record.

Finally, as some will know, I am a former RAF pilot and still take a great interest in aviation. I unearthed, some years ago now, a manoeuvre that was being done with light aircraft out of small airports; they were basically flying out of the UK and, on the flight plan, there was no requirement to record who the people on the aircraft really were. Even where the people were recorded, there was no checking done on the way back as to whether the number who went out came back, whether they were the same people, or even whether they went back to the original airport they had started from. I still believe that that is a problem and should be looked at.

This is an important amendment. I am sorry to get a little technical, but the amendment says, "within six months". Having sat in the Chair down the other end, I would have to say that "within six months" suggests less than six months, and what I think my noble friend will be pushing for is that it should be done at six months or immediately after six months. If I am right, I hope that the Minister can ensure that that minor change can be implemented. I wish my noble friend all success with this very important amendment.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I confess to being slightly surprised by some of the comments in favour of Amendment 1; I am speaking against Amendment 1 and very strongly in support of Amendment 2 in the name of my noble friend Lady Bennett.

This is no time to be xenophobic and exclusionary. To suggest that the majority of migrants come over here on the basis of greed is to ignore the fact that the vast majority come over here to find a place of safety, not just for themselves but for their children. They come over here because they are absolutely desperate. Who would face that sort of crossing in a rickety boat if they did not have to? It is worth reminding your Lordships' House that some of the forebears of your Lordships benefited, as refugees, from the welcome that Britain extended to them.

When we look at these migrants, we have to accept that we bear some of the blame for their situation. It is not as simple as saying that it all happens abroad and we bear no responsibility. We sell arms to repressive regimes and we have to understand that that has consequences. We also use far more of our share of the earth's resources, which means that other places have less than their share, which creates environmental refugees. We also meddle in other people's wars. We do not have to go to war in far-flung places—we should be making sure that the world is a more secure place.

I benefited hugely from freedom of movement when I was young, and I would like my children to do the same, as well as the thousands of other young people who are reaching the age when they want to travel, visit other places and learn about other cultures. It is unfair that we ban this opportunity for young people, when we had it ourselves.

Finally on Amendment 1, as I have said and will never tire of repeating in your Lordships' House, ending freedom of movement is not the will of the people. You cannot assume that, because people voted for Brexit, they voted to end the freedom of movement. I and many others from the left voted for Brexit, but we did not vote to finish off freedom of movement. So, please, no more stuff about it being the will of the people; it absolutely is not.

On Amendment 2, we should see this as an opportunity to show the Government and the people of Britain that ending freedom of movement is not desirable but something extremely undesirable. I, for one, will be voting for the amendment.

Baroness Hamwee (LD): My Lords, the noble Baroness, Lady Neville-Rolfe, says that enforcement of immigration laws and regulations has been very weak. I say yes and no to that. Much could be said about evidence of torture and the age of young asylum seekers and so on; I do not want to get into that, nor the issue of which communities produce, as it were, the largest number of people here without authorisation.

From these Benches, we have long made the point that information is lacking. Information is basic to enforcement and we need that first and foremost. We need to know who arrives and who leaves. As I have understood it for a long time, including from speeches made by former Home Secretaries, the largest number of people who are here without leave are overstayers.

I said "yes and no" to the proposition about the weakness of enforcement. We believe it is important to have clear rules that are enforced; both are important for public confidence, as has been said. My noble friend Lord Paddick's explanation of a loophole he has identified and pursued with enormous determination is a clear example of why both rules and enforcement are important. But it is the rules themselves that need to command confidence first, and we say they need to be sensible, clear and compassionate.

What has been enforced with enthusiasm are activities like "go home" vans and getting people such as landlords and employers to do the enforcing. What is published with enthusiasm are rules that are pretty much impenetrable—sometimes to those faced with interpreting them and almost always to those directly affected. The Minister said in Committee that the Government were

"actively exploring legislative options to ensure … enforcement … can be tightened up."—[*Official Report*, 7/9/20; col. 573.]

I thought it sounded ominous, but I am sure she will take the opportunity today to explain what the Government are proposing. I hope she can be clear now, and whenever those options may come before us, about the facts, without going straight to assumptions about who is here without authorisation.

2.15 pm

Some would disagree with the amendment on the technical grounds that taking out Clause 1 wrecks the Bill, although no one has said that yet. I am naturally inclined to abide by rules—rules of procedure as much as any others. When, as a child, I saw a notice that said, "Don't go on the grass," I would not. Normally, that would be the end of the issue for me. But I started the debate on this Bill at a previous stage in the summer by saying the Liberal Democrats deplore so much of the UK's immigration policy, do not support the Bill and deeply regret the loss of free movement and of our membership of what we regarded as a union which has been much more than political.

Millions of people from EU countries have been here through free movement. They have become integral to our society, and British citizens have become part of their communities without ceasing to be British. Young people have learned alongside European colleagues. All of these, and we, embody being both British and European. A long speech from me is not needed to make the position on these Benches clear. We will be with the noble Baroness, Lady Bennett.

Lord Rosser (Lab): Amendment 1 calls for a report to be laid before Parliament on how the provisions under Schedule 1 to the Bill are to be enforced. The noble Baroness, Lady Neville-Rolfe, and other noble Lords have expressed concerns about the level and extent of immigration enforcement. I agree that proper, responsible enforcement is essential and that people need to have confidence in the immigration system.

Coming at it from a slightly different angle, we have seen the consequences of poor enforcement—from a broken detention system which can hold indefinitely people who have suffered abuse, while failing to deport criminals, to the Windrush scandal, in which law-abiding citizens had their lives shattered by an unacceptable Home Office culture. I, too, await with interest the Government's response to this amendment.

On Amendment 26, I thank the noble Lord, Lord Paddick, for his explanation of the purpose and reasoning behind it. I look forward to hearing the Minister's response in the light of the noble Lord's meeting with the Minister.

Amendment 2, from the noble Baroness, Lady Bennett of Manor Castle, would remove from the Bill Clause 1, which repeals the main retained EU law relating to free movement. I will say it: the amendment is effectively a wrecking amendment, since the overriding purpose of this Bill is to end rights to free movement. It would rerun the argument over the basic premise of the Bill.

The primary role of your Lordships' House is as a revising Chamber. It is not for us to vote down the clause that is central to the purpose of this Bill, whatever our individual views. Our focus today is on a number of vital issues on which we can apply pressure, and on attempting to make concrete changes to the Bill which, if this House agrees to them, the Commons would give serious consideration to and might even support. We have to be realistic about the changes we can make to this legislation. I note the noble Baroness, Lady Jones of Moulsecoomb, said she would be voting for Amendment 2. If it is put to a vote, we will not support it but abstain.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have spoken in this debate. I particularly thank my noble friend Lady Neville-Rolfe for bringing back her amendment, supported by the noble Lord, Lord Green of Deddington, and my noble friend Lord Hodgson of Astley Abbotts, about how the repeal of EU law relating to free movement set out in Schedule 1 will be enforced. I strongly support the premise of the amendment, but I hope I will be able to explain why it is not necessary to divide the House.

The premise of the amendment is particularly important in a post-Brexit era. On the point made by the noble Baroness, Lady Hamwee, I assure noble Lords that the Home Office will be updating its published enforcement policy with particular regard to EEA citizens and their family members who, having arrived here after the end of the transition period, from January 2021, must have leave to enter or remain. She pressed me on the legislative options. She will understand that I cannot pre-empt these, but I am sure they will become clear in due course

[Baroness Williams of Trafford]

The guidance will make it clear to immigration enforcement officers that no enforcement action should be taken in respect of those EEA citizens who can apply for the EU settlement scheme until the deadline of 30 June 2021. This includes while an application is outstanding after that deadline and pending the outcome of any appeal if the decision is to refuse status under the EU settlement scheme. Instead, officers should encourage EEA citizens to apply during the grace period. We have given a clear commitment that, where EEA citizens and their family members have reasonable grounds for missing the deadline, they will be given a further opportunity to apply. The Government will publish guidance on what constitutes reasonable grounds for missing the deadline in early 2021, as I articulated previously.

As I set out during our earlier debate on this amendment, we are now moving towards having a level playing field for EEA and non-EEA citizens, where they will be treated equally and will be covered by the same published guidance regarding the application of sanctions and enforcement measures if these are relevant. My noble friend Lady Neville-Rolfe has previously said that she wants to see robust enforcement and highlighted a number of practical suggestions made by the noble Lord, Lord Green of Deddington. I hope I can provide at least some assurances in these areas.

Enforcing the UK's immigration laws is critical to a functioning immigration system and effectively implementing the Government's policies. Tackling illegal working, targeting those in the country illegally and removing dangerous foreign criminals is an absolute priority. The fall in returns in the latest year was largely due to very few returns in the last quarter because of Covid. In addition, the Home Office has been operating against an increasingly challenging legal landscape in recent years, which the noble Lord, Lord Green of Deddington, referred to. In some cases, this has constrained its ability to return individuals, and this has been coupled with a noticeable increase in levels of abuse designed to delay and frustrate our processes, reducing the removals achieved.

In term of performance on deporting foreign criminals, more than 55,000 have been returned since 2010. To pick up on my noble friend Lord Hodgson's point about returns from the EU, of the 3,791 foreign national offenders—FNOs—returned from the UK in the year ending June 2020, two-thirds were EU nationals. We will also pursue action rigorously against individuals living in the community, actively monitoring and managing cases through the legal processes and negotiating barriers to removal. Despite logistical issues with flights in the current pandemic, the Home Office will continue to take these forward with routes currently available, and as further routes return.

The noble Lord, Lord Green of Deddington, made suggestions in Committee about illegal migrants destroying their documents and linking the issuing of visas to countries readmitting their own citizens. Visas are a border and national security tool. The UK keeps its visa system under regular review. Decisions on changes are always taken in the round and reflect key facets of the bilateral relationship with the country concerned. These will vary globally, but often include security, compliance, returns and prosperity. On his point about restoring the detained fast-track system for some asylum claims, unfortunately this process had to be suspended following a finding by the courts that the fast-track procedure rules were unlawful. However, we continue to explore options on tightening up key elements of our immigration system, including around asylum, appeals and enforcement.

Finally, the noble Lord mentioned the difficulty of preventing EU visitors and non-visa nationals working while in this country. Illegal working, as noble Lords will know, is a key driver of illegal migration; it encourages people to break our immigration laws and provides the practical means for migrants to remain in the UK unlawfully. This encourages people to take risks by putting their lives in the hands of unscrupulous people smugglers; it leaves them vulnerable to exploitative employers and results in businesses that are not playing by the rules undercutting legitimate businesses that are. It also negatively impacts on the wages of lawful workers and is linked to other labour market abuses such as tax evasion, breach of the national minimum wage and exploitative working conditions—including, of course, modern slavery in the most serious cases.

Immigration enforcement teams take the threat of illegal working extremely seriously and work with employers to deny illegal workers access to jobs by making it straightforward to check a worker's status and entitlement as well as providing a range of charged-for training and advisory services. Where employers do not follow the rules, we will apply a range of sanctions, from civil penalties to closure notices and, ultimately, the prosecution of criminal offences.

Turning to specific questions, a number of noble Lords mentioned the PAC report. We will, of course, respond to that in due course. The noble Lord, Lord Paddick, unsurprisingly referred to our meeting and the issue of e-gates. People cannot use repeat visits to live here legally and obtain the same rights as residents to work and obtain benefits. He talked about visitors repeatedly passing through e-gates after 31 December 2020. Those who do not have another form of UK status may be granted six months leave to enter but will not be able, as I say, to work or access benefits and services. They will, of course, be expected to leave the UK or extend their stay before their leave to enter expires, and they may, as I said, face enforcement or removal if they do not. Any EEA national arriving to work or study will need to apply under our new system and obtain prior permission, just like any other non-visa nationals. Without such permission, they will not be able to demonstrate their entitlement to remain in the UK for anything other than a visit.

We had what I thought was a very constructive conversation about how people might be currently trying to game the system, and about what the situation might be beyond January 2021. He asked me how the B5JSSK countries were chosen. There was an assessment of factors, including volumes and security and the issue was debated in both Houses. He also made the point that the countries were all white countries. Japan, Singapore and South Korea may not be, but I do not know how he defines "white". I will leave it at that, since it is a subjective matter.

I will repeat that a parliamentary report on enforcement, as required by this amendment, is unnecessary because policy guidance on enforcement is already published. I hope my noble friend will withdraw her amendment.

2.30 pm

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I have received no requests to speak after the Minister, so I call the noble Baroness, Lady Neville-Rolfe.

Baroness Neville-Rolfe (Con): My Lords, it has been a full and fair debate, with compelling contributions from my noble friend Lord Hodgson and the noble Lord, Lord Green of Deddington. My noble friend Lady McIntosh added to the richness of the discussion with her experience in Kent and her concern about Covid from those coming to this country. The noble Baroness, Lady Hamwee, rightly argued that information is often lacking and sought clear, well-communicated rules, which is all part of enforcement—we are on common ground there. The noble Lord, Lord Rosser, gave us further reasons why looking at what has happened and reporting on enforcement can be extremely useful in many different areas.

I was pleased to hear from the noble Lord, Lord Paddick, because of his expertise and experience; I noted that he was also sceptical about the Government's ability to enforce the law. He has a good point about automated gates and the need for ID for landlords—I have a minor interest there that I should probably declare. The world is changing, with digital rightly replacing paper-based solutions more and more, so work in this area must be progressed. I know that my noble friend the Minister agrees that work on digital ID and biometrics, which is being done by the Home Office and DCMS, can help in making a simple, clear, well-observed immigration system—as well as in liquor licensing, which is where we last discussed it.

I thank my noble friend the Minister for her careful replies on the specific issues we have all raised. I am sure we will all look at them very carefully. I agree with my noble friend Lord Naseby that the PAC's disturbing report should be listened to and acted on. So I hope that a report on immigration enforcement of the kind we have proposed can be initiated. Putting those who need to improve on report can be very effective.

However, I feel that the issues have been well aired today and I do not propose to press my amendment. I support this Bill and feel that the amendment of the noble Baroness, Lady Bennett, supported by the noble Baroness, Lady Jones of Moulsecoomb, would drive a coach and horses through it. As the noble Lord, Lord Rosser, said, it could be regarded as a wrecking amendment. I will therefore vote against Amendment 2 if the House divides. I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Baroness Bennett of Manor Castle***

2: Clause 1, leave out Clause 1

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I wish to move this amendment formally. We are in unprecedented political times. We are racing towards a disastrous year of chaos, confusion and disruption as a result of the ending of the Brexit transition and the continuing pandemic. I have listened very carefully to the debate—

Lord Parkinson of Whitley Bay (Con): The noble Baroness just has to move her amendment formally, which I believe she has done.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): I shall now put the Question. We have heard Members taking part remotely saying that they wish to divide the House on this amendment, and I will take that into account.

2.33 pm

Division conducted remotely on Amendment 2

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2.47 pm

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, we come now to the group beginning with Amendment 3 in the name of the noble Lord, Lord Rosser. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment, or the other amendment in this group, to a Division should make that clear during the debate.

Amendment 3

Moved by ***Lord Rosser***

3: After Clause 1, insert the following new Clause—

"Impact of section 1 on the social care sector

(1) The Secretary of State must commission and publish an independent assessment of the impact of section 1, and Schedule 1, on the social care sector within six months of this Act being passed.

(2) The Secretary of State must appoint an independent Chair to conduct the assessment.

(3) The assessment must consider the impact of provisions in section 1, and Schedule 1, on—

(a) the social care workforce;

(b) available visa routes for social care workers;

(c) long-term consequences for workforce recruitment, training and employee terms and conditions; and

(d) such other relevant matters as the independent Chair deems appropriate.

(4) A copy of the independent assessment must be laid before both Houses of Parliament within fourteen days of its publishing date."

Member's explanatory statement

This new Clause would require the Secretary of State to commission and publish an independent report on the impact of ending free movement on the social care sector, including the impact on the workforce (such as skills shortages), visa options for social care workers, and long-term consequences for recruitment, training and terms and conditions for staff.

Lord Rosser (Lab): Amendment 3 is similar to that moved by my noble friend Lord Hunt of Kings Heath in Committee. It would require the Secretary of State to commission and publish an independent assessment on the impact of ending free movement on the social care sector, including the impact on the workforce—such as skills shortages—visa options for social care workers, and long-term consequences for recruitment, training and staff terms and conditions. The independent assessment must be published within six months of the Bill being passed and laid before both Houses of Parliament within 14 days of its publishing date.

In Committee, there was little disagreement over the current state of the social care sector: low-paid, undervalued and skilled work; a very high staff turnover rate of over 30%; well over 100,000 vacancies; and some 20% of the workforce being from other countries, including the EU, with that source of staff about to be closed down in three months' time as a result of the advent of the points-based immigration system and the overwhelming majority of care staff not being eligible for the health and social care visa. There was, I think, a large measure of agreement too that the sector needed to place greater emphasis on training and increased professionalism, and that not everyone in the labour market would have the necessary aptitude and attitude to meet successfully the demands and requirements of care work.

The Government rejected the very similar amendment moved by my noble friend Lord Hunt of Kings Heath, not on the basis that an inquiry into the social care sector was not needed but on the basis that a mechanism already existed that kept the social care sector under review. The Government, through the Minister, said:

"I very much agree that it is essential that policies are kept under review, particularly when the Government are introducing a new, points-based immigration system from January. Independent scrutiny and review are a good thing, but I am not sure that we need to legislate to provide a whole new mechanism."—[*Official Report*, 7/9/20; col. 608.]

The Minister then went on to say that the Migration Advisory Committee had been in existence for some years, and that noble Lords should be in no doubt about the close interest that it took in the health and social care sector. It is true that the MAC reports on the social care sector. Indeed, in a wide-ranging—I think 650-page—report yesterday on the shortage occupation list, covering numerous sectors, it again expressed concern about the social care sector and argued that if the necessary domestic funding increase and pay increases it has been calling for, in its own words, "for some years" did not now materialise in a timely manner, it

"would expect the end of freedom of movement to increase the pressure on the social care sector, something that would be particularly difficult to understand at a time when so many care occupations are central to the Covid-19 pandemic frontline response."

The MAC also said that a potential rise in labour supply to the care sector as a result of UK job losses elsewhere cannot be "predicted with any certainty". This Bill makes an immense change to our immigration system, which will have a significant effect on our already understaffed and underresourced social care sector at the same time as we are going through a global pandemic. Our care sector has always been vital; now it is part of our front line. We need more than the regular reporting mechanisms. This amendment would provide for that much-needed specialist, timely and targeted review of social care—of workforce numbers, the impact of the Government's decision not to include many care workers in the health and care visa, and what this all means for future planning for the sector at this crucial time, including terms and conditions and training for a talented, caring workforce.

The Government have already made the decision to change the immigration system and have said that they want to see competitive terms and conditions in the sector and not have people on the minimum wage. The Government have also said they want the right number of people to meet increasing demands with the right skills, knowledge and behaviours to deliver quality compassionate care. Those are very commendable objectives, and a recognition from the Government that they are, as my noble friend Lord Hunt of Kings Heath said in Committee, the main funder and regulator and set the whole context in which the sector operates.

With the Government having decided that this low-paid, undervalued but skilled sector, with its enormous turnover of staff and vacancies running well into six figures, is now to face, on top of that, a significant

[Lord Rosser]
source of labour being closed down in just three months' time, social care faces a potential perfect storm. With social care facing such an unprecedented situation, now is the time for a fresh set of eyes to make an expert assessment of the impact of the end of free movement on a sector that already has existing significant problems of pay, conditions, turnover and training that need to be addressed if ever-increasing demands for social care are to be met. We need an assessment that has a major input from people who have expertise in, and specialist knowledge of, the field of social care, and can bring a fresh perspective to bear on a sector whose existing, as well as pending, problems will have to be addressed if the Government's goals of a better paid, more highly trained and professional workforce with much lower turnover rates than at present is to be achieved.

The amendment does not ask for too much; it does not pre-emptively write the Government's policy for them but merely asks for a timely, thorough and independent analysis of how to support our care sector and its staff and enable it to achieve the goals set in the light of the impact of the provisions of this Bill. It will help to prevent the issue of the state of our care sector being yet again kicked into the long grass. How many times in the past decade have we been promised a plan for the social care sector that has failed to materialise? This Bill is a crucial moment, and we should use it wisely. The amendment also has support from the BMA and the Royal College of Nursing. We do not want to find ourselves in a few years' time with a social care sector that has not progressed from its present state following the imminent change in the immigration system. We need to act now, which is why the fresh independent assessment called for in Amendment 3 is needed.

In moving this amendment, I have to say that, if the Government's response is similar to their response in Committee to the amendment moved by my noble friend Lord Hunt of Kings Heath, I shall seek a Division. I beg to move.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, my Amendment 30 is along the lines of Amendment 3, but tougher and more radical. I would love to know that there is some support for it, but I think Amendment 3 will edge it. However, this amendment has huge support, and I thank the people from the Scottish National Party, who on a point of principle do not take their seats in the House of Lords—or what seats they might be offered. They have done all the work in getting together a huge variety of people, including RNIB Scotland, UNISON, Macmillan Cancer Support, Disability Wales, the Church of Scotland and the Northern Ireland Council for Voluntary Action. I could go on: more than 40 organisations and NGOs support this amendment.

An absolutely crucial point, which the Minister did not tackle when I presented this amendment in Committee, was that this proposal draws in all four nations. That is something that Amendment 3, I am afraid, does not mention. My amendment would probably enable the Government to have much more support for their work; it would strengthen buy-in from stakeholders across the four nations and increase the status and profile of the evaluation.

Many of the points I wanted to make have already been made by the noble Lord, Lord Rosser, very eloquently, but many bear repeating. The Government are closing their eyes to a potential problem. My key concern is about the health and social care workforce. The organisations that have contributed to this amendment are aware that some health and social care organisations rely heavily on workers from other parts of the EU and cannot continue in their present form without support. If they are allowed to fail, other parts of the health and social care system will be needed to fill those gaps.

On efficiency and effectiveness, research carried out by the Health and Social Care Alliance Scotland in communities across Scotland highlighted that people who use support and services have concerns about their future availability. That means that with the health and social care system already creaking, combined with an elderly workforce, some people will have to try to find their own ways to minimise any negative repercussions as a result of changes accruing from leaving the EU. Then there is the adequacy of public funding for the health and social care sectors. The alliance's report raised major concerns about the impact of Brexit and the potential loss of EU funding in health and social care in Scotland, particularly to third-sector organisations, which have a key role in the provision of health and social care services. Any loss of funding will place a further strain on that whole sector, and it seems that the Government are not acknowledging that it will be a problem.

I would therefore like the Minister to answer my point that my amendment would create buy-in from the four nations, which the Government seem to be ignoring at the moment. Also, it is quite possible that without the extra workforce that we currently get through people coming from other countries, the whole system could start to fail. Are the Government prepared to put enough money into it to make sure that it does not fail and let down all the people who care about this service?

3 pm

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I am very grateful to my noble friend Lord Rosser for adopting many of the terms of my amendment in Committee and for the eloquent way in which he introduced his amendment.

No one could doubt that social care is under pressure. The social care workforce is already facing a crisis, with more than 120,000 vacancies. According to our House of Lords Economic Affairs Committee, in 2018, 1.4 million older people in England had an unmet care need. The committee found that publicly funded social care support is shrinking, as diminishing budgets have forced local authorities to limit the number of people who receive public social care.

We are in a vicious cycle: after decades of reviews and failed reforms, the level of unmet need in our care system increases; the pressure on unpaid carers grows stronger; the supply of care providers diminishes; and the strain on the care workforce continues. That is even without considering the impact of Covid, which has been huge, and before the new immigration controls come in at the end of the year.

I therefore remain bemused by the decision of the Home Office to exclude the great majority of care workers from the new health and care visa as a result of them not meeting either the income or the skills thresholds that have been set. My noble friend Lord Rosser mentioned the Minister's comments at Second Reading. She has justified this by the need for employers to end what she described as "the easy option" of using migrant labour to undercut our own workforce "for far too long". She also pointed to the advice of the Migration Advisory Committee, which has maintained that the problems in this sector are caused by a failure to offer competitive terms and conditions, in itself caused by a failure to have a sustainable funding model—although as my noble friend Lord Rosser today suggested, the committee's latest report clearly shows that it is now developing a rather more nuanced position. I wonder why. In Committee, the Minister went further. She said:

"If people say that the response to the social care issue should be, 'Well, employers should be allowed to bring in as many migrants as they want at the minimum wage,' first, that does not sound like the low-wage problem of the social care sector is being dealt with and, secondly, it suggests that one of the groups that will really suffer from that is the social care workers."—[*Official Report*, 7/9/20; col. 610.]

I do not need reminding of how important skilled care workers' jobs are. Of course I want more people training and entering the care sector at a decent wage, but as my noble friend Lord Rosser said in Committee, you will not solve the care sector's problems by suddenly snapping off its ability to recruit staff from abroad from the end of the year; all you will do is tip it into an even bigger crisis than it is in.

The Minister has never responded to the central point of my argument, which is that the major fault for the problem has to be laid at the Government's door. This is a government-controlled sector. The Government are the main funder and regulator. They set the whole context in which the sector operates. They have had countless reviews, but refuse to come up with any solution. There is no sign of the long-promised Green Paper. Mencap said today that the sector needs a credible, well-thought-out and properly funded care workforce plan to create and maintain a sustainable social care workforce—I agree with that.

I want to come back to the Minister, because if she is saying that staff should pay more, I agree, but is she going to will the means? Will she commit to increase support to local authorities? What about self-funders? Does she think they should pay more? At Second Reading, I think, I pointed out that if you took the current lifetime pension allowance of just over £1 million and bought an annuity with it at age 60, you would not be able to cover the average nursing home fees. So can the Minister tell me whether the Chancellor is going to raise the lifetime pension allowance?

If the Home Office is convinced that the woes of the sector are entirely down to the sector itself, let it produce the evidence. Let the Minister agree to a rapid review of the funding of the care sector and the impact of Clause 1 in shutting off an extremely valuable source of labour for this important but vulnerable part of our society.

Lord Patel (CB) [V]: My Lords, I am pleased to have added my name to this amendment in the name of the noble Lord, Lord Rosser. The greatest risk identified for health and social care in the House of Lords report *The Long-term Sustainability of the NHS and Adult Social Care* was the need for long-term funding arrangements for social care and, importantly, for an appropriately trained workforce for the NHS and social care. As far as social care is concerned, the Government have not addressed either, and more than three years have passed since the publication of the report. The result is that more care homes are closed and there is a massive shortage of care home staff, as has already been mentioned.

As a nation, we are getting to a point where "shameful" is the only word that can describe our failure to look after our old and frail. The pandemic has brought hardship and pain to all our citizens, but the elderly in our care homes have paid a heavy price: 30,500 excess deaths among care home residents and 4,400 more among those receiving care at home. We have failed them in many ways. We have exposed them to greater risk from the virus, we did not protect the few staff looking after them and we did not recognise their increased risk from the virus. It seems that the only people who stood by them were nurses and poorly paid care staff, the majority of whom are from overseas.

ONS figures show that social care workers are at highest risk of Covid-19 mortality. Shamefully, the United Kingdom ranks number two in the world, after Russia, for the number of deaths among healthcare workers, and the majority of them worked in social care. Some of the poorly paid and so-called unskilled paid with their lives. Many of them were not citizens of our country. We saw on our televisions poorly paid staff, many from European and other countries, working in crowded nursing homes and living in tents in the back gardens of nursing homes so that they could isolate and protect our elderly and vulnerable, who were also isolated from their families and friends.

It is estimated that we have a shortfall of approximately 122,000 care workers. So what are we saying to these dedicated, hard-working people who want to come and willingly look after our most vulnerable? We are saying, "When your visa runs out, we want you to go back to where you came from. We don't want any more of you to come. You will not meet the unrealistic criteria we set for salaries, and the visa and health charges will be unaffordable for you as these are now our new rules. Besides, we are going to have mass unemployment, and we are going to ask all those unemployed to staff our care homes and look after our elderly. We don't recognise that it is a task that requires some skills, compassion and a caring attitude or a feeling of vocation, as you do."

It is time for the Home Office to review the current proposals, which do not provide a migratory route for care workers. This is a modest amendment, in that it asks for a review. All it asks is that the Government produce evidence of the impact of the legislation on the social care workforce and social care. I strongly support it, and I hope that many others will do so. It is

[Lord Patel]
about people whom we need—those who want the opportunity to provide compassionate care for the elderly and the frail.

I know that my namesake leads the Home Office, and we know each other, but I say to her, "Priti, on this occasion, I do not agree with you".

The Lord Bishop of Durham [V]: My Lords, I speak in support of Amendment 3. First, I draw attention to my interest, as recorded in the register, of receiving support from the Refugee, Asylum and Migration Policy project.

In Committee, I spoke to an amendment that would facilitate the immigration of highly skilled people who had been forcibly displaced by war or persecution. I am glad that the Government have responded positively to that proposal, which others in this place spoke in support of.

I thank the Minister for the helpful and productive meeting that I had with her and her colleague, the Immigration Minister. I was joined by Talent Beyond Boundaries and Fragomen. I hope that she will be willing to place on the record today the Government's commitment to developing a pilot for health workers, possibly in the education and business sectors. I and others here who are interested will be keen for her to update the House on progress in due course. Following that positive meeting and the promises made at it, I have not pressed the amendment that I tabled in Committee because of the Government's constructive willingness to further develop the proposal, which applies to the health and social care area.

The Government, rightly, are keen to welcome those who wish to come here with the skills to support themselves and whom businesses in the UK are ready to employ. I am therefore puzzled that social care seems not to receive the attention in immigration policy that it should.

We all know that the average pay of care workers is not high. Indeed, the figures that I have seen suggest that it is typically around £17,000 per annum. This means that such workers will not qualify for a work visa, even with a reduced salary threshold. I know that the Government wish to encourage employers to increase salaries and train domestic workers, rather than allow migration to be used as a shortcut or cost-saving measure. That is welcome, although of course it will require the Minister and her colleagues to have stern conversations with their colleagues in other departments about the necessity for a better-funded care system. Such a system will also need radically better joint working between health and social care, as highlighted, for example, in the 2016 King's Fund report, *Supporting Integration Through New Roles and Working Across Boundaries*.

The Migration Advisory Committee is surely right that over the long term the solution to our care crisis lies in raising wages to attract more domestic workers, rather than using migrant workers to plug the gap. Nevertheless, the MAC was also surely right to point out this week that the cliff edge of ending free movement in the middle of a global pandemic, in which care workers are very much on the front line of safeguarding our most vulnerable neighbours, friends and family, will very much increase the pressure on the system, as the MAC puts it.

Those of us who support the amendment hardly support low wages for key workers—far from it. I believe strongly in a real living wage above the national minimum wage and in care workers being appropriately recognised and rewarded for their vital work. We are concerned that the blunt treatment of social care in the new immigration system poses significant systemic problems that could include staff shortages. The impact of those shortages will be felt by the most vulnerable in our society who rely on social care. They deserve better than "fingers crossed", which is, I am afraid, the impression that we are left with of the current approach.

I am not unused to working within institutions with byzantine processes—I am a bishop of the Church of England, for goodness' sake, as well as in this place. Therefore, I have some sympathy with the Government's desire to simplify the immigration system and to resist a proliferation of special routes for particular circumstances, yet simplification is not a virtue if it becomes inflexibility or bluntness in the application of rules that will exclude from coming to the UK the very people our care sector most urgently requires. The creation of a health and care visa has, of course, been welcome news, but I know that my puzzlement that social care appears not to be adequately included is shared by others.

The amendment strikes me as modest but important. It places on the Government merely a duty to publish an independent assessment of the impact of ending free movement on the social are sector. Since international workers account for one-sixth of care workers in England, we would have to be dangerously incurious not to want to know the impact that the biggest change in immigration policy in a generation has on a sector that cares for the most vulnerable among us. Such reports as we have had already from the MAC and others only confirm that there is a knotty problem still to unravel in this tangle of issues about chronic low pay and an unnecessary reliance on skilled migrant carers. I will therefore support the amendment.

3.15 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I support Amendment 3, in the name of the noble Lord, Lord Rosser. He, like others, made a very comprehensive speech in defence of the arguments for the maintenance of the social care sector. If we as human beings applauded, as we did earlier this year, this sector, which is central in our fight against Covid-19, then the Government and all of us acting together in Parliament should show due recognition of it and support this amendment. It would allow a report to be carried out within six months of the Bill being passed showing the impact of the ending of free movement and the non-accessibility of visas for care workers on that sector and on our healthcare system.

I have had many letters from those involved in the caring profession, who want us to support this amendment. It is vital and is supported by the British Medical Association and the Royal College of Nursing. At Second Reading, I said that this legislation ends the free movement of citizens from the EU, the EEA and

Switzerland to the UK. Many in our social care sector come from those countries. They provide an invaluable service with care, compassion, hard work and diligence to a large range of people who are deeply unwell. That work has become particularly acute during our ongoing Covid crisis. At a stroke, the decision to end free movement diminishes the UK. Not only does it break family ties and damage our economy but it creates huge obstacles for employers and degrades international research, co-operation and understanding. It also derails our social care sector.

Social care is already under pressure not only because of Covid but because of rising waiting lists for health and medical care in the health service. If people are not allowed to remain and are no longer employed in the National Health Service, which we cherish, that will place it under a tremendous burden. We should try to remove that burden, so I make a special plea to the Minister to accept the amendment and ensure that a report is made available within six months of the passing of this legislation. Perhaps for the first time, we will be able to see, in statistical data, the contribution made by these people and by our social care sector, as well as the deficits in the sector where the Government need to plug the holes.

If the noble Lord, Lord Rosser, who I believe is already of this mind, decides to push the amendment to a Division, I will support him.

Baroness Masham of Ilton (CB) [V]: My Lords, in supporting Amendment 3, I congratulate the movers. However, I hope that the Government will realise that we are now in a social care crisis and that we should face up to the challenges now. There is a serious shortage of live-in carers to help disabled people, due to the combination of coronavirus and Brexit. Good social care takes the pressure off the NHS.

Many elderly and disabled people are at serious risk because they have had their benefits cut. Coupled with shrinking local authority budgets, the workforce is under pressure exactly when it is needed most. Also, the vast proportion of migrant employees in social care will be ineligible to work in the UK ,as most care workers' earnings do not meet the threshold for the new skilled visa, as has been mentioned several times.

I wish Amendment 3 good luck.

Lord Horam (Con): My Lords, I was not able to take part in Committee because of the all-consuming HS2 Committee, along with the noble Lord, Lord Liddle, who I see is in his place. However, I sat in on part of the debate and heard the remarks of the noble Lords, Lord Rosser and Lord Hunt of King's Heath, a very formidable pair when they debate these issues. It is rather like facing Federer and Djokovic at the same time, because of their very stringent remarks. In a conversation outside the Chamber, I said to the noble Lord, Lord Rosser, that from what I had heard, I thought that he rather had a point. We all know where we want to be with social care. We want a well-paid and well-motivated workforce. We all know, sadly, where we are, and as he said in his previous remarks and repeated today, it is a question of the transition, of how we get from where we are to where we want to be.

Two things have happened since the previous debate. First, we had a report yesterday from the Migration Advisory Committee, which, as I am sure that the Minister will say when she winds up, is particularly concerned by the problem we face of a sudden end to the situation we are facing today, a precipice, before we reach any better solution. Incidentally, the MAC's report covers 650 pages; I hope that when the Home Office look at some of these reports it cuts down the bulk. I do not know whether Ministers read all these reports, but it has become pretty much impossible. We are almost beyond despair when we see such a bulky product.

The second thing to have happened since the previous debate is the Chancellor's Statement last Thursday. He flagged up in detail the situation which we all have been facing regarding unemployment, and finally put some numbers on it, pointing out that with the withdrawal of the very supportive job system that he has at the moment, we may well be looking at an additional 2 million unemployed people. At the moment, there are an estimated 122,000 vacancies in the social care sector, but surely it is not beyond the wit of God to find among those 2 million people some who might help in the social care sector. Indeed, it is likely that they will be exactly the sort of people who could care for people—they are people from the retail sector and from the hospitality sector. Some of them may not have exactly the right aptitudes and attitudes, as the noble Lord, Lord Rosser, said—a nightclub bouncer might not be exactly the right person to go into the social care sector—but many will have exactly the human skills that we are looking for. If you cannot find 122,000 people from that additional 2 million unemployed, you really are not trying.

It is fair to say that many of the companies in this area who manage the care homes are a motley crew. The noble Lord, Lord Blunkett, in the previous debate, made the point that many of the private equity companies got into this area and—sad to say—piled up debt on many of these companies and have sought a way out without too much care for the social consequences or the effect on their clients. That is a fair point, which I am worried about as well, but there are also many good companies in this area, trying to do good work, who really care about their clients and are trying to find a way forward. Therefore, we should give them the opportunity of recruiting from among those British people who may become unemployed.

As for the point made by the noble Lord, Lord Hunt, that this is a sector that overall is controlled by the Government, that is fair, but none the less the Government are providing £1.5 billion of extra money for the sector through additional local authority subvention. There is also the Skills for Care programme, which is ongoing. This all indicates that there may be additional support for a company which is trying to do the right thing.

The MAC also said in its report that immigration is not the answer in the long term, and I do not think it should be. It highlights that, all too often, we have looked at recruitment difficulties and said that we must import from abroad, rather than looking at it the other way around, at what the problems are and how we can recruit, train and pay properly the people in

[Lord Horam]
this country before we look abroad. Indeed, I had the advantage of a personal chat about this with Professor Bell, the new chair of the MAC, and he made a very interesting point. He said that, in other countries with an equivalent of the Migration Advisory Committee, its reports do not just go to the Home Office, as they do here, but in the first instance to the education, business and health departments, with the implication "What are you doing to solve the problems of recruitment yourselves, before we even consider going abroad for further support?" Traditionally, we have too easily looked at this the wrong way around.

Mention has been made of the British Medical Association's briefing, which we have all seen today. Once again, it makes the same mistake by talking about how we must import people to help with the obvious problems of recruitment in various sectors, from doctors and nurses to social care workers, but there are two remarkable omissions in that briefing. First, there is no mention of manpower planning in the NHS. Yet, as my noble friend Lord Lilley pointed out in a previous debate on this subject, 43% of those who apply for a nursing course are turned away. I cannot believe that 43% of those who apply are inadequate for the job, but they are being turned away for some reason. Equally, we do not know the situation with doctors, where there are similar figures. But, none the less, we should look at manpower planning as a whole in the NHS sector.

3.30 pm

Secondly, we have also to look at the consequences for other countries of our perpetually seeking to solve our problems by recruiting abroad. It is fair to say that the BMA should not necessarily consider this; it is a British trade union, so perhaps that should not be its concern. None the less, in Lesotho, for example, which my noble friend Lord Hodgson of Astley Abbots mentioned, there was a pandemic and there were far too few doctors and nurses. I myself went to Botswana some time ago and found that it had a serious AIDS problem and there were not enough nurses. Why? The nurses had gone to the NHS because the pay was better. There is a similar problem in Malawi, and look at India, which has huge problems at the moment—its health service is collapsing—yet we are still recruiting doctors from there. Surely, there is a moral issue here. How is it that this country, which is rich and well developed, is trying to prop up the NHS by recruiting from countries with far less well-developed health systems than ours, and which are far poorer and less developed?

We should always try to solve the problems by looking at how we train, educate and pay our own people. Given that unemployment is rising to the level forecast by the Chancellor, surely, this is an inescapable requirement.

Lord Blunkett (Lab): My Lords, that was a very thoughtful and interesting contribution. I agreed with some of it, in particular the accolades paid to my noble friends Lord Rosser and Lord Hunt. They made such excellent speeches that I can be brief, given that many Members wish to speak today, and I have some sympathy for both Front Benches regarding the length of our sessions at the moment, not least on this Bill. However, I want to draw attention to one or two of the issues that have arisen.

Mention has been made a number of times of the Migration Advisory Committee. I heard Professor Bell on the radio yesterday making the perfectly reasonable case that, as my noble friend Lord Rosser excellently pointed out, it is important that care workers be paid more and respected more. I am fully in favour of trying to tackle head-on the understaffing, underpaying and undervaluing that currently constitutes the general attitude, despite all the sympathy often exuded towards those working in the care sector. However, Professor Bell eloquently made the point that I want to make: that you can get almost £1 an hour more working in general retail than in residential care, despite the enormous challenges arising during the Covid pandemic, as spelled out by the noble Lord, Lord Patel.

Here is a thought. I have it on the good authority of Professor Bell that, according to the Migration Advisory Committee, which concluded its main survey work in March, the consequences of the pandemic are twofold. First, yes, there will be greater unemployment, and that will be felt differently in different parts of the country and will therefore have a differential impact. I do not expect people to move for £8.70 an hour—which is the average pay in residential care, because that is the minimum wage across the country—given that they could not even afford to pay the rent; that is, if they have not been evicted by the time they get there because the moratorium has been lifted. We therefore have to have some common sense here.

There is no sign of the pay increase that should be taking place now, and the oven-ready deal promised a year ago has not yet emerged from the AGA—when it does, it will probably be grossly undercooked—so we will not have a solution. It is no good Professor Bell —I am very happy to debate him on this—going on the radio or producing a 650-page report saying, "Wouldn't it be nice if the Government coughed up the money so that local authorities can pay increased rates?", and that we should protect ourselves from exploitation. That is not happening. I pay tribute to the noble Lord who has just drawn attention to what I said in Committee about private equity investment in this area.

My noble friend Lord Hunt made the important point that there will be a cut-off point in three months' time. Yes, of course we should be emphasising this and supporting people to take up jobs in social care. We should be training them properly and giving them a career pathway so that they can see the way ahead. Their career pathway is somewhat blocked at the moment by the fact that, the higher up you go, the more likely the Government are to allow someone from outside the country to come in and take the job. I tried to explain that on a previous occasion, but I do not think I was eloquent enough. I will use this example: you can come in and drive a BMW but you cannot come in to drive an elderly Robin Reliant that has rusted to the point where the brakes do not work and the doors are falling off. That is what happened in social care, as illustrated by the noble Lord, Lord Patel. There is death and fear within the sector. You will not cure that in three months, nor persuade other people to move

house to take up jobs because they have just been made redundant from quite well-paid employment in areas where they hope to take up training and other opportunities.

I therefore appeal for everybody, including the Migration Advisory Committee, to get real. I appeal to the Minister to go back to government—it is not her fault but that of the Treasury—and say, "In the next three months, we as a Government will not solve this problem. We will not be able to encourage sufficient people to take up these jobs. We know that the turnover rate is massive"—it is even greater than my noble friend Lord Rosser said—"that the vacancies exist and are unattractive, and that some people will be highly unsuitable." So, for goodness sake, let us have a continuing review. That is all Amendment 3 asks for: to get this right and ensure that the consequences of closing the door to the other 27 members of the European Union on 31 December do not have a disproportionate impact on the care of those we are supposed to care about. This is why this debate is taking place, because of the new situation arising from the way we are treating those from the European Union and the EAA. Were that not to happen, we could have a more rational debate, as appealed for by the previous speaker, on how we adjust to ensure that we are not reliant in key areas —including, apparently, butchery—on drawing in people from across the world. That includes, of course, doctors and nurses, who, under the programme that has been laid out, will be allowed to be recruited into the country.

There are such contradictions and we are in such a cliff-edge position that I have gone on longer than I intended, because the more I think about it, the more passionate I am to ask for a bit of common sense.

Baroness Smith of Newnham (LD): My Lords, I rise to speak in support of Amendment 3. Personally, I have quite a lot of sympathy with Amendment 30, put forward by the noble Baroness, Lady Jones of Moulsecoomb, which she referred to as "tougher and more radical". I voted to remain in the European Union precisely because I recognise the importance of free movement of people. I agreed with virtually every word said by the noble Lord, Lord Blunkett, and I shall be brief, because I am aware that we are only on group 2 and the target is to get to group 14 this evening.

The social care system is in crisis. All noble Lords who have spoken have referred to the difficulties that it faces—problems that have been made clear by your Lordships' Economic Affairs Committee over the years. The Minister should not have to answer for the social care system. She is not the Minister for Social Care; she is Minister of State in the Home Office. The noble Lord, Lord Horam, is right: the equivalent of the Migration Advisory Committee should report to not just the Home Office but to the Department for Education, the department of health, the Treasury and BEIS because they all need to understand the skills deficits in this country.

The specifics of Amendment 3 are about the social care sector. This Bill is in front of us today because of Brexit but the social care sector is highlighted because of the Covid crisis. Today's amendment would have been necessary even without six months of a global pandemic, but that pandemic has made clear to everybody both the importance of social care and the huge numbers of EU and third-country nationals in this country looking after some of the most vulnerable people in our society.

It cannot be right to say that those people should not be here and should not be working. We value people being here. Although the noble Lord, Lord Horam, is undoubtedly correct that we need to ensure that British people are adequately skilled, can we really assume that we will suddenly go in the next 14 weeks from no training to saying that someone who is unemployed can take on a job in the care sector that is being vacated by an EU national who has gone home and will not be replaced by another EU national? There might be medium and long-term aspirations for change, but we must accept that the change on 1 January will be immediate.

For that reason, I ask the Government to take this modest amendment very seriously. In her letter to noble Lords earlier today, the Minister referred to Amendments 3 and 30. She stressed that the MAC is a "world-class, independent body" and that it will report. Well, it reported yesterday and expressed its concern about the social care sector. If she cannot give us an answer today, will she come back before Third Reading with some recommendation of how she plans to reconcile her letter to your Lordships, the MAC's report and the importance of ensuring that, on 1 January, the social care system is not even more vulnerable than it is already? I strongly support Amendment 3.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I will speak to Amendment 3 in particular and Amendment 30. It is a pleasure to follow the noble Baroness, Lady Smith. I want to follow up on the remarks of the noble Lord, Lord Blunkett. I remind my noble friend the Minister that she will have encountered in her previous life many of the problems that are being rehearsed by noble Lords speaking to Amendment 3. I remember being a local MP. For the first 13 years, I did not have a jobcentre in my constituency; only in the last five years was I able to visit a local jobcentre in my constituency. When we got the figures on unemployment, I always asked for the figures on job vacancies. Inevitably, the majority of them were for social care workers and were the hardest to fill.

I know from personal experience of two care providers for young people requiring social care—there was Leonard Cheshire initially, then Wilf Ward, both of which do marvellous work; I pay tribute to them—that they are unable to match the basic starting salary of someone in a supermarket who may want to come off the current unemployment list to take any job. Stacking shelves in a supermarket is less demanding, less physically onerous and pays more. I do not know whether my noble friend the Minister shares my pessimism but I do not foresee a rush of people—who in any event may not be suited to be a carer. The clue is in the name: you have to care, to be incredibly patient and to be quite physically fit. Many will simply not qualify.

3.45 pm

Following on from what many noble Lords have said in the debate on this little group of amendments, I want to curtail my remarks to nudging my noble friend the Minister to come forward with an alternative

[Baroness McIntosh of Pickering]
to Amendments 3 and 30, grasp the bull by the horns and come up with a proposal somehow to increase the funding per hour for social care. I realise that there is not a Budget now so there may be a delay. Going back eight years, I know from having a parent who was in self-funded social care in his own home—in my father's case, for some three years—that it amounts to something like £40,000 a year, at a conservative estimate.

We are in the midst of a care crisis and potentially are about to lose those who come here and make up not quite the 20% of the workforce that we heard in the figures presented in this debate, but among the 20% that comes from outside the UK a large number of people will be from the EU. I hope that my noble friend the Minister will use her best offices to ensure that we grasp the bull by the horns now so that we have a safe and secure supply of workers coming from countries with which we are used to dealing. They have a fantastic work ethic. We must ensure that they continue to come here and are paid a higher rate than currently; that may also attract more indigenous people who find themselves out of work at this time.

Lord Judd (Lab) [V]: My Lords, I thank my noble friend Lord Rosser very much for moving this crucial amendment in such a powerful and forceful way. I should declare an interest because my grandson, who is very close to me, took the opportunity of the longer summer break for schools after the public examinations to go and work on the front line in a care home. He is intelligent, perceptive and caring, so I learned a great deal from what he told me.

What troubles me in our considerations is this: just how many of us would have thought of using some of our available time working in a care home? Would the noble Lord, Lord Horam, for example? We expect all sorts of other people to do it but we are not prepared to commit ourselves. Of course, this is also coupled with the extraordinary way in which we are so sentimental about workers in the care sector. We clap our hands and celebrate—I have done it—but where is the recognisable esteem in which we hold these people? We all know that they are grotesquely underpaid. We talk about them and how we will find sufficient numbers and all the rest of it; perhaps we should have at the top of our list proper remuneration for this highly demanding work.

A lot has been said about workers from outside Britain. It was quite insensitive because some of the most dedicated, loving care for those with serious conditions has come from those workers. Why can we not talk about them as people—fellow members of the human race—rather than as immigrants?

The amendment is important because we all know that the past summer—goodness knows what will happen this winter—has demonstrated an interesting contradiction. On the one hand, dedicated staff, against all the odds, have been doing their best in so many places to help those in great need, while we have failed to accord proper status in our social order to the people doing such work. It is surely because we have become a society in which success is regarded as a matter of how much money you make and how quickly you make it, rather than a society in which care, support and service to the community are regarded as of the highest order and significance. We have had a terrible crisis in the care sector this past year. May it not be repeated. Let us look at some of the underlying issues and put them right at once. The amendment will help us to introduce the necessary disciplines if we are to approach issues of this kind.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): The noble Lord, Lord Young of Norwood Green, has withdrawn, so I call the noble Baroness, Lady Hamwee.

Baroness Hamwee (LD): My Lords, the noble Lord, Lord Judd, has clearly passed on to his grandson the importance of contributing to service in its widest sense. I very much agree with his analysis but then I almost always do.

By definition, members of the largest cohort in the social care sector do not fall within paragraph 1 of Schedule 1 but are very much affected. They are certainly part of the social care workforce and are impacted by the availability of social care workers employed in the sector. I mean, of course, the many people who support and care for someone older, disabled or seriously ill at home. According to Carers UK, one in eight adults—6.5 million people—are so engaged. The carer's allowance is around £67 a week. I could go on but I do not get the impression that noble Lords need to be convinced of the importance of the sector, including those who do not have formal, paid-for care at home or in a care home. The informal carers and those for whom they care are impacted as well as those in public or private employment. The number of those in private employment is considerable. The noble Baroness, Lady Masham, referred to the NHS.

That is not the only reason we support the amendment. The noble Baroness, Lady Finlay, in Committee, reminded us that there are 115,000 European nationals in the social care workforce, despite high vacancy rates. It is, as other noble Lords, have said, a skilled profession with some skills that cannot be trained into a person and come from one's personality and often culture, and include physical fitness, as we were reminded by the noble Baroness, Lady McIntosh. At a previous stage of the Bill, the noble Lord, Lord Lilley, said that he would have supported similar amendments but for the absence of a reference to training, which is now included in the amendment—rightly so—because training in practical and technical matters is important. However, that does not detract from my observations about personality.

The need for carers will not diminish. My noble friend Lady Barker reminded us, although I do not need reminding, that many of us are ageing and do not have children to shoulder the work—and it is work —done by families, however lovingly. She gave us the figure of 1 million but one should add families with a disabled child, for instance.

Like my noble friend Lady Smith, I have a lot of sympathy with Amendment 30 and many of my comments apply to it. In Committee, the Minister relied on the MAC having licence to consider any aspect of migration policy. However, when prompted by yesterday's report, I looked at the website—it may have been changed now—which referred only to commissions by the

Home Secretary. However, the committee's pursuit of the matter is welcome. The noble Lord, Lord Horam, will note that in quoting the chair's reference to the

"struggle to recruit the necessary staff if wages do not increase as a matter of urgency",

I am relying on a press release, not the 600 pages of the report.

As regards the amendment of the noble Lord, Lord Rosser, it is right that the assessment should be commissioned by the Home Secretary, because she should own the work. We are not "incurious", as the right reverend Prelate said, and will support the amendment.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken in one of the most thoughtful debates on the Bill. I want to reflect first on the point made by the noble Baroness, Lady Smith of Newnham, who said that had it not been for the pandemic, we might not be having this debate. I honestly think that we would have been doing so in some form or other. I am not taking issue with what she said but I want to make a further point.

Baroness Smith of Newnham (LD): I said that we would have been having this debate but the pandemic made it worse.

Baroness Williams of Trafford (Con): In that case, I agree with the noble Baroness. However, the main part of my point was related to the issue on which my noble friend Lady McIntosh challenged me. She asked whether, given my background, I could see the problems to which noble Lords are referring. I can absolutely see them. In fact, in 2005, when I was a new leader of a council, and David Cameron a new leader of the Opposition, he asked me what the biggest challenge was for local authorities. Straight off, I said social care, and, 15 years later, that remains the case. The noble Lord, Lord Judd, referenced those who care voluntarily. There are so many that they save the state billions of pounds a year for the work that they do without being paid. I therefore join noble Lords in paying tribute to this sector, which has done so much, particularly during the pandemic. As the noble Lord, Lord Patel, said, people in social care have given and lost their lives to the fight against the disease.

I turn next to points about the Migration Advisory Committee. First, I turn to the comment of the noble Lord, Lord Blunkett, which he has made before, about the contradictory nature of what we are debating. In one sense, we highly value our social care workers and in another, as someone else said, they earn less, in some cases, than retail workers. That is the challenge at the heart of this: social care needs to be paid decently and seen as a decent career path for people to want to go into it.

I could stand at this Dispatch Box and give my view on the silver bullet that would sort this all out, but I am afraid that I cannot. It is not that it is above my pay grade but, as my noble friend Lord Horam said, this is a challenge for every department and government —and, actually, every one of us. I had a chat with my noble friend Lord Hodgson before this debate; he is probably sitting there very frustrated because he did not put his name down to speak, and I know that he would have wanted to talk about the report that the MAC issued yesterday on the review of the shortage occupation list. One of its key findings is that senior care workers, nursing auxiliaries and nursing assistants should be added to the UK-wide shortage occupation list. The Government want to take time to consider carefully what the MAC has said—as noble Lords I have said, it is a 650- page document—before we take any final decisions, and we will of course respond in due course.

The noble Baroness, Lady Smith of Newnham, challenged me for a timescale, and "in due course" is about as far as I can go at this stage. The noble Baroness, Lady Jones of Moulsecoomb, talked about the devolved Administrations' part in all this. Of course, it is a reserved matter. The new system will work for the whole of the UK and we have a national advisory group, with which we are engaged on the proposals, but it includes the Welsh NHS Confederation, Social Care Wales, NHS Scotland and Scottish social carers.

I turn to the amendments at hand. Amendment 3 returns to issues raised by the noble Lord, Lord Hunt of Kings Heath, in Committee, but it also incorporates a requirement to report on immigration routes for social care workers, which was raised during Committee by the noble Lord, Lord Patel, and goes to the essence of the amendment of the noble Lord, Lord Rosser, in Committee, about a specific route for the social care sector. During our debate in Committee, the noble Lord, Lord Hunt of Kings Heath, rightly highlighted the significant shortages in the social care sector, as did the noble Baroness, Lady Masham, amounting to around 120,000 vacancies. The noble Lord, Lord Blunkett, also talked about the high turnover, which I think I said was 31%, but he thinks might be even higher.

We must keep it in mind that that is the situation despite the fact that EEA and Swiss citizens have had, and continue to have, free movement rights up to the end of this year. The noble Lord also highlighted the fact that the social care workforce is made up of approximately 83% British citizens, 7% from the EEA countries and about 9% from non-EEA countries. What struck me as interesting about those figures is that a higher percentage of people from non-EEA countries than from EEA countries are working in social care, even though they have no dedicated route to do so. Currently, while social care workers do not meet the skills threshold, a range of other immigration routes are available to them which provide a general right to work, such as dependants, those on family routes or youth mobility.

As part of the UK's new points-based immigration system, we are expanding the skills threshold, which will bring jobs such as senior care workers within scope of the skilled worker route. Increasingly, people of all nationalities will be able to benefit from this offer providing they meet the other requirements, such as salary threshold. However, I want to be clear that, as my noble friend Lord Horam points out, the Government do not see the immigration system as the solution to all issues in the social care sector. I think there is now general acceptance across your Lordships' House that that is the case.

[Baroness Williams of Trafford]

With that in mind, we are working alongside the sector to ensure that the workforce has the right number of people to meet increasing demands, with the right skills, knowledge and approach to deliver quality, compassionate care. The Department of Health and Social Care has launched a new national recruitment campaign called Every Day Is Different to run across broadcast, digital and social media. The campaign highlights the vital role that the social care workforce is playing during this pandemic, along with the longer-term opportunities of working in care.

The Government have also commissioned Skills for Care to scale up capacity for digital induction training provided free of charge under DHSC's workforce development fund. This training is available for redeployees, new starters, existing staff and volunteers through 12 of Skills for Care's endorsed training providers. The Government are committing record investment to the NHS, including the NHS long-term funding settlement, which has now been enshrined in law. At the Budget, the Chancellor outlined over £6 billion of further new spending in this Parliament to support the NHS. This includes £5.4 billion to meet our manifesto commitments of 50,000 more nurses, 50 million additional appointments in primary care, more funding for hospital car parking and establishing a learning disability and autism community discharge grant to support discharges into the community.

As my noble friend Lord Horam pointed out, we are also investing in social care. DHSC is providing councils with access to an additional £1.5 billion for adult and children's social care in 2021. We have also announced £2.9 billion to help local authorities in response to the coronavirus crisis. The Department of Health and Social Care is also working closely with Skills for Care to help employers train new recruits and volunteers and to refresh the skills of its current workforce.

In Committee, the noble Baronesses, Lady Hamwee and Lady Masham of Ilton, highlighted that working in social care, especially when caring for people who have severe disabilities, requires much more than just technical skills. I totally agree. Social care jobs will not be for everyone. However, it is a sad consequence of the current pandemic that many people have lost their jobs. While not all of them will have the necessary caring skills, I think there are many people in the UK who really do care, and it is vital that we take the opportunity to emphasise the importance of social care work and ensure that it is a rewarding job for people.

The view that migration is not the solution to the challenges faced by the care sector is supported by the Migration Advisory Committee. My noble friends Lord Hodgson of Astley Abbotts and Lord Lilley referred to that in Committee. We need to make changes to the way we train, recruit , attract and, crucially, retain staff in health and social care, but without making changes, the immigration system will continue to be used as a failsafe to maintain a broken system that relies on bringing people in on minimum wage and holding down wages.

The Government continue to commission and fund a range of training opportunities to help recruit people into the sector and develop leadership within social care. This includes the Think Ahead programme, which has taken on more than 400 applicants since it was launched in 2015. It trains graduates to become mental health social workers. There is also the workforce development fund, which helped nearly 2,800 establishments to support nearly 14,500 learners in 2018-19. This fund will continue to focus on key priorities in future.

Turning to the specifics of the amendment, it is of course sensible that policies are kept under review—something the Government stand by in the current system and will ensure continues under new arrangements. We already have the MAC, and its advice has been accepted by all types of Government over many years. I know that some noble Lords do not share my views on the expert advice provided by the MAC, but surely there cannot be disagreement that the MAC has repeatedly considered the needs of the social care sector, as referenced by the report yesterday.

We should not take for granted the Government's own extensive engagement with stakeholders across the whole of the UK, and indeed the critical role that this House plays in scrutinising policies and intentions. So I do understand the intent of the noble Lord's amendment to ensure the protection of a vital sector. We already have a world-class independent body with new autonomy to review any part of our immigration system, as referenced today, in the last 24 hours. I hope the noble Lord will therefore feel that Amendment 3 is not necessary and will be happy to withdraw it.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I have received no requests from noble Lords wishing to speak after the Minister, so I call the noble Lord, Lord Rosser, to reply.

Lord Rosser (Lab): First, I share the views that the Minister expressed about the quality and value of this debate. I thank all noble Lords who have spoken and I thank the Minister for her response.

I think that there is a general acceptance that the social care sector is in crisis, with low-paid and undervalued skilled work, a very high staff turnover rate and a very high level of vacancies. On top of that, the crisis could well be exacerbated by abruptly closing down a significant source of labour from abroad in three months' time. In response to my amendment, the Minister referred to the role of the Migration Advisory Committee. But the MAC is not a specialist committee on the social care sector, as, frankly, was indicated very clearly by its recent 650-page report, *Review of the Shortage Occupation List: 2020*, which simply indicates that it covers a wide breadth of sectors and occupations within those sectors and is looking at migration issues.

However, it is clear from the MAC's recent report that it feels that the views it has expressed in the past have not had much impact, because it has made reference to "again" expressing concern about the social care sector, and to issues that it has been pressing "for some years". I think this means that, while the work that has been done by the MAC over a number of years is to be welcomed, clearly it does not feel that that it has had much impact. Perhaps that is because it is not a specialist committee on the social care sector; it is a committee that looks at migration across the board.

I think that that makes the case that, in view of the crisis in the social care sector, which may well get worse at the end of this year in light of the changes to the immigration system, there is a clear-cut case for a stand-alone, in-depth, specialist report on the social care sector and the impact of the provisions of the Bill, as provided for in the amendment, and that it is needed now if the goals that have been set for the sector—goals relating to better pay, training, professionalism, a reduction in turnover and a reduction in vacancies—are to be achieved. We badly need this in-depth specialist assessment to be made, as called for in the amendment, and I do wish to test the opinion of the House.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): The Question is that Amendment 3 be agreed to. The Question will be decided by a remote Division. I instruct the clerk to start a remote Division.

4.14 pm

Remote Division on Amendment 3 called.

4.32 pm

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I am afraid that the technology has let us down and that the attempt to vote on Amendment 3 has failed. I believe that the intention now is to adjourn the House briefly while we sort out the problems, and then rerun the vote.

Motion to Adjourn

Moved by ***Lord Parkinson of Whitley Bay***

That the House do now adjourn.

Lord Parkinson of Whitley Bay (Con): My Lords, I beg to move that the House do now adjourn for 15 minutes while we try and sort out those problems.

Motion agreed.

4.33 pm

Sitting suspended.

4.48 pm

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I understand that the problem with the technology is not yet fixed. I do not think we are very clear about how long it will take. Therefore, the suggestion is that the House should be adjourned during pleasure.

Motion to Adjourn

Moved by ***Lord Parkinson of Whitley Bay***

That the House do now adjourn.

Lord Parkinson of Whitley Bay (Con): My Lords, I beg to move that the House do now adjourn during pleasure until the time shown on the Annunciator.

Motion agreed.

4.49 pm

Sitting suspended.

5.30 pm

Lord Ashton of Hyde (Con): My Lords, I apologise for the technical hitch; it is the first time that the voting system has let us down. I am afraid that it is not going to be fixed today. We have talked to the clerks and the usual channels, who have shown great flexibility, and I think noble Lords will be amazed at the speed at which we are altering procedures. We intend to carry on with the debate outlined in today's list. As usual, movers or Front-Benchers must give notice of whether Members wish to vote or wish to withdraw their amendments in the normal way. Then we will have a deferred Division on the amendment at some time in the future if the mover or Front-Bencher indicates that they want a Division. That will probably be on Monday 5 October, the second day of Report. That will allow the House to continue its scrutiny and also, where necessary, to test the opinion of the House, albeit later.

The Deputy Speaker (Baroness Henig) (Lab): My Lords, the Division on Amendment 3 has been deferred, so I now call Amendment 4. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. As we have just heard, anyone wishing to press this or anything else in this group to a Division—which I should emphasise will not take place today—should make this clear in the debate.

Clause 4: Consequential etc. provision

Amendment 4

Moved by ***Baroness Hamwee (LD)***

4: Clause 4, page 2, line 34, leave out "appropriate" and insert "necessary"

Member's explanatory statement

This amendment would restrict the Secretary of State's discretion and preclude the making of unnecessary regulations.

Baroness Hamwee (LD): My Lords, I moved Amendments 4 and 5 in Committee; they are amendments to what the Public Law Project called the "breathtakingly wide" powers proposed to be given to the Secretary of State. It is ironic that when elsewhere negotiations are going on—or maybe not going on—regarding the sovereignty of the UK Parliament, we are being faced with exercising our sovereignty in order to pass it back to the Executive.

Amendment 4 would substitute in Clause 4, which is about regulation-making powers, the word "necessary" for "appropriate". Amendment 5 would take out the ability for the Secretary of State to make regulations "in connection with" anything in Part 1. Taken together, these terms give the Executive huge latitude. I am glad that the names of the noble Lords, Lord Rosser, Lord Pannick and Lord Alton, have been added to my amendments. The clause would read, "such provision as the Secretary of State considers necessary in consequence of any provision" of Part 1.

The amendments follow the report of the Delegated Powers and Regulatory Reform Committee, a member of which, the noble Baroness, Lady Meacher, made a very balanced speech at the last stage of the Bill. She acknowledged, as I do, that consequential amendments through means of secondary legislation are generally needed—although, as she said, when they can be they

[Baroness Hamwee]
are to be put in the Bill, with regulations then used for tidying up. But as the breadth and number of amendments in Committee showed—that is, amendments to the Bill—a huge number of topics can fairly be said to be connected with Part 1. Those topics were all approved by the clerks to the House as being within scope of the Bill.

The noble Lord, Lord Blencathra, chair of the DPRR Committee, said that he spoke in sorrow, rather than being vicious, about its reported criticisms or concerns about the clause. I think we are entitled to expect more of the Government—and this is not vicious, but many degrees up from sorrowful—than the defence that:

"There are clear constraints on the use of the power in Clause 4. It can be used only to make regulations that amend primary or secondary legislation 'in consequence of, or in connection with' Part 1".

That is exactly what we object to. I had forgotten to comment on the offensive—and I say that deliberately—power to amend primary legislation through regulations. The Government's reply to the committee's report included the Minister again asking your Lordships to consider the illustrative draft of the regulations which, shortly before the last stage, had been circulated, and to

"take comfort that this power is specifically to deliver the end of free movement".—[*Official Report*, 7/9/20; col. 641.]

That is also relied on in the long letter from the Home Office, which I received at lunchtime today—and I dare say that the timing was similar for other noble Lords. I have to confess that I have not been able to get my head around quite all of it.

The draft regulations referred to are, frankly, fiendishly complicated, and are causing a lot of anxiety both as to the extent they are understood—especially as to any omissions—and to the extent they are not understood. But whatever they are like, we have nothing that we can look to as an assurance that there will not be more regulations. The "lawyers", I am told, are engaged in an exhaustive process of analysing this draft. It may bore others as much as it does me to say it, but whatever the intentions of this Government and this Minister today, that would not matter one jot tomorrow in terms of curbing the power in Clause 4. I beg to move.

Lord Pannick (CB) [V]: My Lords, I agree, as I usually do, with the noble Baroness, Lady Hamwee. She mentioned the report of the Delegated Powers and Regulatory Reform Committee. There was also a report on this subject by your Lordships' Constitution Committee, of which I am a member. We issued a report on 2 September, our 11th report of the session. At paragraph 22, we said:

"We agree with the conclusions of the Delegated Powers and Regulatory Reform Committee about the powers in clause 4. A Henry VIII clause that is subject to such a permissive test as 'appropriateness', and which may be used to do anything 'in connection with' in relation to so broad and important an issue as free movement, is constitutionally unacceptable. Such vague and subjective language undermine fundamental elements of the rule of law."

That is the view of your Lordships' Constitution Committee, in a unanimous report from Members from around the House. I am very disappointed that the Government have been so far unwilling to engage with that advice—and certainly to accept it.

The Delegated Powers and Regulatory Reform Committee noted, in paragraphs 18 to 19 of its excellent report, the exceptional breadth of Clause 4(1). What it does is empower the Secretary of State not merely to make regulations "in consequence of" this legislation but "in connection with" this legislation. As the committee explained, that would confer on Ministers the power to make whatever regulations they think appropriate, provided they have some connection with the legislation, "however tenuous". Given the exceptional breadth of the delegated powers in Clause 4, I also support Amendment 9 in the name of the noble Lord, Lord Rosser, which would impose a sunset clause on these powers.

I have one further point. This Bill is far from unique in seeking to confer excessively broad powers on Ministers. The Constitution Committee has repeatedly drawn attention to the need for effective limits on delegated legislation, to ensure ministerial accountability to Parliament. I am pleased that Members of the House of Commons, in the last few days, have begun to recognise the dangers of such legislation, not least because, when regulations are brought forward, they are unamendable. Your Lordships' Constitution Committee has regularly made this point in reports over the last few years. The unacceptable breadth of provisions such as Clause 4 in the Bill is, I regret to say, typical of a Government who, too often, see Parliament as an inconvenience rather than the constitutional authority to which the Government are accountable.

Lord Alton of Liverpool (CB): My Lords, first of all, I would like to apologise to the noble Baroness, Lady Hamwee, for missing, in these rather disrupted circumstances, the very beginning of her speech today. But I am very pleased to be able to support her amendment and the others that are grouped with it.

In Committee, we had a discussion about some of the powers contained in this Bill, and I am pleased to be a signatory to Amendment 4. But I would also like to support Amendment 5 and, for the reasons my noble friend Lord Pannick has just advanced, Amendment 9 in the name of the noble Lord, Lord Rosser, which is about a sunset clause. Amendment 5 seeks to narrow the powers of the Secretary of State, and in a way that is at the heart also of Amendment 4, which is what I want to address this afternoon.

All these amendments seek to rein in some of the powers which Ministers are taking. It is a particular pleasure to be able to follow the noble Baroness, Lady Hamwee, and my noble friend Lord Pannick. He referred to the Constitution Committee and its work, and I entirely agree that the substitution of the word "necessary" for "appropriate" places a higher threshold into the Bill—but you might wonder why on earth we would be spending so much time on just two words. Why does that really matter?

Yesterday in Grand Committee, in the context of the Trade Bill, I questioned, yet again, the Government's overuse of secondary legislation and their unconvincing assertion that this amounts to effective parliamentary scrutiny and accountability. I recall that the last time the House of Commons failed to pass an affirmative action Motion was in 1978, the year before I was elected to the House of Commons. The chairman of the 1922 Committee, Sir Graham Brady, has rightly

warned of the dangers of the Government taking a whole range of powers that effectively neuter due parliamentary process, and I agree with him.

5.45 pm

The Delegated Powers Committee, invoking the wretched Henry VIII, who was referred to by my noble friend Lord Pannick, said:

"The combination of the subjective test of appropriateness"—

the word that is in contention here—

"and the large number of persons who will be affected, make this a very significant delegation of power from Parliament to the Executive."

The committee suggested that alternative approaches could be used and warned against the potential misuse of loosely drawn powers in the future.

All this is in the context of a Bill which, the committee says,

"creates a substantial change to immigration law."

Taken alone, we probably should not get overexcited by one word, but let us put that word into the context of a range of other considerations about which we, as Parliament, should be greatly exercised.

In your Lordships' House, I have recently participated in debates about the Medicines Bill, the Trade Bill and, last Friday, coronavirus regulations. In every one of those debates, and others, noble Lords have questioned the use of sweeping powers, often taken under the cloak of Covid or the pretext of Brexit, all minimising the role of the legislature and, in some instances, creating governance by edict and decree, and even with speculation that our own armed forces might be used to enforce some of these regulations.

This comes on a day when we read in the *Financial Times* that the Government seriously considered using Ascension Island, 5,000 miles from the United Kingdom, as a potential asylum-processing centre—a bizarre, wholly impractical and ultimately inhumane proposal that demonstrates why Parliament must not cede its powers or be missing in action when these sorts of crazy ideas are mooted. Rather, it should be seeking and working with the Government to find practical and imaginative proposals to tackle the reasons why this worldwide displacement has left 70 million people as refugees in the world today. The answers to that will not be found on Ascension Island. It is in this sort of context that we must never allow any Government to create a fiction around parliamentary accountability.

Last Friday, the noble Lord, Lord Forsyth of Drumlean, eloquently and vividly described what has been happening. He used the words,

"the strange death of parliamentary democracy in our country."—[*Official Report*, 25/9/20; col. 2009.]

This was the noble Lord, Lord Forsyth, whom I hugely admire and greatly agree with.

In these circumstances, we turn to trusted sources—to the sort of bible of Parliament, *Erskine May*, or to our own oversight committees: the noble Lord, Lord Pannick, has just referred to the Constitution Committee. But what does the Delegated Powers Committee have to say about other powers being taken in the Bill. It says the Bill is giving Ministers, in the context of social security co-ordination regulations,

"almost absolute power to rewrite the Co-ordination Regulations at any time of their choosing."

And of course Parliament will have no power to modify such SIs, only to approve them—along with the little-used power to reject them.

What has the Delegated Powers Committee said about the response of the Government? In a withering rebuke, it describes

"inadequate justification for a wholesale transfer from Parliament to the Government of power to legislate in a field that could … impact on large numbers of UK citizens resident in EEA members states, and EEA nationals resident in the UK."

The committee made no secret of its aversion to the Government's use of skeleton Bills to accrue further powers, the failure of Ministers to give adequate explanation of why they need such wide-ranging powers—powers which are often not time-limited—and the failure to require any duty to consult on why they are taking such a range of powers.

In Committee, I said that skeleton Bills were turning us into a skeleton Parliament. We need to put skin on the bones of overused powers that may suit government departments but eviscerate Parliament. Under the cover of Covid and Brexit, we are seeing the systematic curtailment of many of Parliament's powers that we should guard and cherish ferociously. It is simply not good enough to be told to rest content with the thought that good and decent Ministers will never abuse such powers.

As it happens, the noble Baroness, Lady Williams, is a conscientious and diligent Minister who came to the House with a high reputation for her leadership of Trafford Council. She is well schooled in local government in what I often describe as the "university of adversity". She has a well-earned reputation that she holds to this day. However, Ministers come and go—I hope that the noble Baroness will not go for a long time—and Parliament changes, but the legislation we pass takes on a life of its own. We have a duty to build in adequate accountability, scrutiny, checks and balances.

Let me end by reminding the House of what EM Forster said in his wonderful book *Two Cheers for Democracy*—I think he said that only "Love, the Beloved Republic," was worth three cheers. In *Two Cheers for Democracy* he said that the great justification of our imperfect parliamentary system is the curmudgeonly, awkward squad of parliamentarians who sometimes manage to get some minor injustice put right. Let us not be undertakers at the strange death of parliamentary democracy but jealously guard the hard-won rights to hold Governments to account, and in doing so, to take the opportunity sometimes to put a minor injustice right. I have great pleasure in supporting these three amendments.

Lord Judd (Lab) [V]: My Lords, I thank the noble Baroness, Lady Hamwee, for introducing this group of amendments, and I thank the noble Lord, Lord Pannick, for his powerful intervention on behalf of the Constitution Committee. If we take our committee system seriously, we should take very seriously indeed the unanimous view of the Constitution Committee on such crucial issues.

I am afraid that what we have before us is another example of what I think is a deliberate confusion. Tremendous emphasis was made at the time of the referendum that the case for Brexit was to take power back.

[LORD JUDD]

What on earth does that mean in a representative democracy? It means giving strengthened powers to a democratic political system—parliamentary democracy. Are we a parliamentary democracy, or are we not? The powers that are envisaged in this legislation are too great and too wide; they are in need of very careful scrutiny.

I am glad that we have moved forward since Committee, because we previously talked about a 12-month curb on the powers but now we are talking about a six-month term, which is an altogether sensible and healthy development. I strongly support this group of amendments.

Lord Rosser (Lab): My Lords, I agree with the intentions and objectives of Amendments 4 and 5 for the reasons given by all noble Lords who have spoken, including the noble Baroness, Lady Hamwee, and the noble Lord, Lord Pannick.

Amendment 9, to which my name is attached, as is that of my noble friend Lord Kennedy of Southwark, provides for a sunset clause on the powers set out in Clause 4 of the Bill. It stipulates that regulations can be made only under subsection 4(1) for six months after the end of the transition period. Clause 4(1) states:

"The Secretary of State may by regulations made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of, or in connection with, any provision of this Part."

The part in question is Part 1, which contains the measures relating to the end of free movement. The Government maintain that the Henry VIII powers in Clause 4, which are so wide-ranging in the way they are worded that they would enable the Government to modify by unamendable statutory instrument both primary immigration legislation and retained direct EU immigration legislation, are to address only necessary technical changes to primary legislation arising from the ending of free movement.

I put a similar amendment down at the Committee stage, but the difference is that that amendment provided for a longer sunset clause. I have now reduced it to six months in the light of the Government's response in Committee which was—I shall heavily paraphrase—that we will have used the powers in Clause 4(1) for the required consequential amendments regulations relating to the end of free movement within the next few months, if not by the end of the transition period, and that therefore there is no need for a one-year sunset clause. The Government went on to say that they needed to retain the power to make regulations under Clause 4(1) because—I shall paraphrase once again—they might find that, at some stage, they have overlooked the necessary consequential amendment and would not want to be faced with the prospect of having to pass further primary legislation to rectify the problem. In other words, these Henry VIII powers which are being handed to the Secretary of State cannot be time-limited because the Government are not confident of their own ability to identify the required consequential amendments in good time.

The Government have also argued that, since the powers in Clause 4(1) relate only to the ending of free movement, the passage of time itself will eliminate the need to use these powers. I would argue that having a sunset clause, now reduced in this amendment to six months in the light of the Government's response at the Committee stage, would help to concentrate the mind of the Government in making sure that they had correctly identified all of the consequential amendments related to the end of free movement. Knowing that the power to continue to use Clause 4(1) is there for however long it is needed is surely not conducive to effective and properly thought through legislating. Instead, it is conducive to sloppiness over legislating if the prospect of having to go through a further stage of primary legislation to correct an oversight that should have been avoided is removed. I also think that giving these considerable powers to the Secretary of State without any time limit for the reasons the Government have given is, to put it very politely, an incorrect application of the purpose for which such powers were envisaged and intended.

Although I am not going to call for a vote on my Amendment 9, I hope that the Government will be prepared to reflect further on this and come back at Third Reading with an alternative approach.

Baroness Williams of Trafford (Con): I thank the noble Baroness, Lady Hamwee, and the noble Lord, Lord Rosser, for speaking to their amendments, which concern the regulation-making power in Clause 4. I shall reiterate the point I made in Committee, which is that it is absolutely right that parliamentary scrutiny should include the scope of delegated powers in the Bill. The debate in this House was helpfully assisted by the latest report of the Delegated Powers and Regulatory Reform Committee and the intervention of its chair, my noble friend Lord Blencathra, for which I am grateful. The Government have considered the recommendations made in the report carefully and I have written to my noble friend and other Members of the Committee.

I shall address first Amendments 4 and 5 in the name of the noble Baroness. The purpose of Amendment 4 is to limit the use of the power in Clause 4 to make legislative changes that are "necessary" rather than "appropriate". The purpose of Amendment 5 is to limit the power to changes that arise as a consequence of Part 1 of the Bill but are not "in connection with" it. The Government have now shared an illustrative draft of the regulations which are to be made under this power later in the year, subject to Parliament's approval of the Bill. As I explained in my formal response to the Delegated Powers and Regulatory Reform Committee

"In so doing, the Government's intention was to demonstrate the necessity of having the power in clause 4, as it is drafted, and how it will be used in tandem with the power in the EU (Withdrawal Agreement) Act 2020 to end free movement in a way that is coherent, comprehensive and fully meets the requirements of the withdrawal agreements."

6 pm

There are clear constraints on the use of the power. It can be used to make regulations that amend only primary or secondary legislation

"as a consequence of, or in connection with"

Part 1 of the Bill, on ending free movement and protecting the rights of Irish citizens. It cannot be used in relation to the UK's withdrawal from the EU more generally or to make wider immigration changes.

The regulations make the statute book coherent on the repeal of free movement, align treatment of EEA citizens arriving from next year with that of non-EEA citizens, and implement our obligations to afford equal treatment to those within scope of the residence provisions of the withdrawal agreements—nothing more than that.

The Government consider that the inclusion of "in connection with" provides a clearer basis for making provision for those not exercising free movement rights at the end of the transition period when they are repealed by the Bill, but who are eligible to apply to the EU settlement scheme as a result of the UK's more generous implementation of the withdrawal agreements. These include EEA citizens not carrying out qualifying activity in accordance with free movement law because, for example, they were not workers, students or self-employed persons. This element of the power is required to ensure that everyone who obtains status under the EU settlement scheme is treated equally in respect of their right to stay in the UK.

For these reasons, the Government cannot accept these amendments. I hope that, having had time to digest and reflect on the provisions in the illustrative draft regulations, noble Lords will accept that they deal with the

"mechanics for ending free movement",—[*Official Report*, 7/9/20; col. 632.]

to borrow a phrase used by the noble Baroness, Lady Hamwee, in Committee.

Amendment 9, in the name of the noble Lord, Lord Rosser, would sunset the regulation-making power in Clause 4. It seeks to set the end date for using the regulation-making power as six months after the end of the transition period—that is, 30 June 2021. As he explained, this is six months earlier than in his Committee amendment. As my noble friend Lord Parkinson said then, the power in Clause 4 is required to make amendments to primary and secondary legislation to reflect the end of free movement. It is the Government's intention to make all the necessary changes in the regulations to come into force at the end of the transition period to coincide with the end of free movement.

We will endeavour—I quote the noble Lord—to

"jolly well … get things right first time".—[*Official Report*, 9/9/20; col. 833.]

However, as noble Lords will appreciate, having seen the illustrative draft regulations, they are long and make a large number of mainly technical changes in respect of immigration, nationality, benefits and housing legislation. It is important that, should the Government identify a need to make further changes, we have the power to do so. There are clear constraints on the regulation-making power. All changes to legislation must be

"as a consequence of, or in connection with"

the ending of free movement by Part 1 of the Bill. The greater the passage of time, the less likely this will be, so the power cannot be used indefinitely. The power cannot be used to amend wider legislation unrelated to the ending of free movement, now or in the future. Nor can it be used to amend future primary legislation. Any resulting regulations amending primary legislation will be subject to the full scrutiny and approval of both Houses of Parliament. I hope that those assurances will reassure the noble Baroness and the noble Lord and persuade them not to press their amendments.

Baroness Hamwee (LD): My Lords, I thought I would leave the Constitution Committee to the noble Lord, Lord Pannick, and he did not disappoint—he never does. Words such as Parliament being "an inconvenience" and "the fiction" of Parliament's involvement have been referred to. I am sorry that the noble Baroness, Lady Meacher, was not here to hear my compliments to her on her very measured speech as a member of the DPRRC at the previous stage, but it was measured, and the more powerful for that.

I do not resile from the comments that I have made about the single words which somebody said we get excited about. I do get excited about single words—they are very important. Like other noble Lords, I feel that Parliament is being sidelined.

The lawyers who have been engaged on the draft SIs that have been published must be absolutely exhausted. I think that they would probably be the most enthusiastic supporters of Amendment 9, but perhaps I am too sympathetic as a long-retired lawyer. I wonder whether there might be a need for further tidying up but I do not want to make the Government's case for them.

The Minister said that the debate has been assisted by the DPRRC and its chair. It has been assisted but it has not led to any change. In the reply that we have had today, she has used similar language—that the inclusion of "in connection with" provides a clearer basis for dealing with issues and that the words are more apt to describe the cohorts referred to. However, for me, that raises more problems, because it distinguishes between those who have exercised the opportunities to apply for settled status and those who would rely on treaty rights to which they are not entitled. I am becoming quite technical here but that takes us to the issue of comprehensive sickness insurance, which I hope we will get to on Monday.

I have said it before and will say it again today—I hope, for the last time—that of course we do not expect to see another illustrative draft instrument, but there would be nothing to prevent the Minister bringing forward further statutory instruments in the next few months. It is the words in the clause rather than any limited time in which the clause might apply that are the most relevant.

Now that I have said all that, I shall not say it all again and I do not propose to ask the House to consider it. I therefore beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5 not moved.

The Deputy Speaker (Baroness Pitkeathley) (Lab): We now come to the group consisting of Amendment 6. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 6

Moved by ***Lord Green of Deddington***

6: Clause 4, page 3, line 8, at end insert—

"( ) Any regulations made under subsection (1) which make provision to permit EEA and Swiss nationals to enter the United Kingdom for the purpose of taking up employment must include a specified limit on the total number of such persons to be granted permission for that purpose each calendar year."

Member's explanatory statement

This amendment would oblige the Secretary of State to place an annual limit on the number of EEA and Swiss nationals that may be granted permission to enter the UK to take up employment when making regulations under Clause 4(1).

Lord Green of Deddington (CB) [V]: My Lords, first, I thank the Minister for her full and careful answers to a number of points that I raised in Committee. However, I now turn to Amendment 6.

Many noble Lords will have noted that I have retabled the three amendments that I put down in Committee. My reason is that the Government's responses to these issues need further exploration—indeed, they set the tone for the whole new immigration system. The first of these amendments, concerning the cap, is by far the most important and of course is the subject of this amendment.

In Committee, I made the case for a cap with the powerful support of the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Lilley, and I was also supported by the noble Lord, Lord Adonis—a man who clearly has the courage of his convictions.

I see that the Home Office has today announced a new nationwide campaign to ensure that businesses are ready for the introduction of the UK's new points-based immigration system as free movement ends. I note that this is going ahead before this Bill has been passed by Parliament and before the new Immigration Rules have even been published.

The Minister for Future Borders and Immigration, Mr Kevin Foster—by the way, I think he is the 16th Minister for immigration that I have dealt with—is reported to have said:

"Our new system has been designed with businesses in mind, treating people from every part of the world equally, welcoming them based on the skills they have to offer and how they will contribute to the UK, not where their passport comes from. It will be simpler for businesses to access the talent they need as we have removed the Resident Labour Market Test, lowered the skills and salary threshold, and suspended the cap on skilled workers."

What it comes down to is this: the Government have cherry-picked advice from the Migration Advisory Committee to enable them to produce a policy that is entirely to the benefit of business and which, frankly, ignores the interests of British workers. Indeed, we now face a situation where millions of British workers will become unemployed and yet, for the convenience of business, the door will be wide open for an unlimited number of foreign migrants to come here and work. So, noble Lords may think it is "game and set" to the CBI. Maybe, but it is not "match".

It seems that the Government are just ploughing on. Never mind that the MAC advised in January 2020 against the introduction of a tradable points system for the main work permit route—indeed, it pointed out that such a system had failed in the UK in the past, as some of us remember—and never mind that the Australians, on whose scheme this one is supposed to be based, have a cap on a number of key categories.

This policy is extraordinarily dangerous. The number of UK jobs that will be affected is huge—in the order of 6 million or 7 million. The number of potential candidates around the world who meet the A-level requirement and are of an age at which migration is quite common runs into literally hundreds of millions. How many of those speak enough English we do not know, but the point is that the numbers are huge.

Noble Lords will have noticed that the Government address these issues in purely economic terms. This is not solely an economic matter. The real-world impact on our own people is also extremely important. As I mentioned, we have a rapidly rising level of unemployment that will also run into millions, yet the Government's policy not only ignores that baleful prospect but runs entirely counter to the sense of fairness that is such a strong British characteristic.

That, I am sure, is why public opinion is so strongly in favour of control. Nearly 60% of the public indicated in a recent YouGov poll that immigration has been too high and needs to be much more carefully controlled. Indeed so. Nor, by the way, is this a question of "Little Englanders". A 2019 Delta poll found that the share of Scots in favour of a firm limit on the number of work permits was even higher than in England, 76% compared to 71%. Of course, the Scots are well-known for their common sense.

The central difficulty with the Government's policy is the clear risk that the numbers will run away with them. If that were to happen at a time of high and rising unemployment, their credibility with key supporters would be shot. Yet the irony is that an effective precaution is a relatively simple matter: to introduce a cap on a monthly basis until the situation is clearer. Even now, it is not too late for the Government to rethink and remind the business community that they are a Government for all the people, not the tool of the few. What reason could they give for such a change? Simple: that this policy was drawn up, and indeed announced, before the full force of the Covid virus had struck the UK. What explanation could be clearer, simpler or easier to justify? I hope we will hear a cautious response from the Minister. I beg to move.

6.15 pm

Baroness Neville-Rolfe (Con): My Lords, I rise to support Amendment 6, moved by the noble Lord, Lord Green of Deddington, and to which I and my noble friend Lord Horam—a fount of experience and common sense, as we heard in his earlier comments on social care—have added our names. Of course, the noble Lord is an esteemed expert in the field; there is no greater expert on some of these matters.

As the noble Lord said, the amendment calls for a limit on the total number of EEA and Swiss migrants coming into the UK for employment each calendar year. In practice, this would involve a limit on all immigration for employment. There is clearly a serious risk of the numbers getting very large indeed, as we have heard, if we do not find a way to control immigration

more directly. We have to get this right or we will feel the result in public anger in years to come. Effectively leaving the number of migrants to the interests of employers, as is now proposed, is one-sided and inappropriate. It would make it impossible to plan properly for the investment we will need, given the scale of the dynamic change we will see. We will need additional houses, schools, hospitals, GP surgeries and transport facilities; we debated that in Committee but I do not think that anybody disagreed about the need for public investment to deal with the demographic change.

I know that we have the Migration Advisory Committee to help us and that, unlike SAGE, it includes economists; indeed, it is dominated by them. However, as I have already said, I fear that it is too focused on attracting talent from abroad in the employer's interest; indeed, the Minister's statement today heightens that fear. It is odd for me to speak against what might be seen as my own interest as a director—I refer to my interests in the register—but we are dealing with difficult economic dynamics and sensitive points of politics in what is already one of the most crowded countries in Europe. As the noble Lord, Lord Green, said, this is not an economic matter alone. Fairness is very important.

I believe that we need as many jobs as possible for those already in the UK, particularly given the extension of the Covid restrictions and the resulting rise in unemployment, which, sadly, will grow further. We also need a greater incentive for employers to train in the skills that we require in a more digital, flexible world. I therefore very much welcome the fact that a revolution in skills was at the heart of the Prime Minister's welcome announcement yesterday. However, as the noble Lord said, it is not too late for the Government to look carefully at the arrangements they have made and perhaps change them in the light of the Covid tsunami.

Lord Horam (Con): My Lords, it has been obvious during these debates on the immigration Bill that there are two clear points of view. One is that we should carry on roughly with the status quo, which primarily reflects the interests of business. The other view, which perhaps supports workers' interests, is that we need more control than we have now and a lower level of immigration. My point is a simple one: both points of view can be accommodated. I hate to use the phrase, "We can have our cake and eat it" because it has been somewhat devalued by our Prime Minister. None the less, the fact is that we can do that if we think this through carefully.

The supporters of the existing immigration policy, at a fairly high level, want to have freedom of movement for academics, creative people, entrepreneurs, engineers and all the valuable people we need in our society and contribute so much. For example, it was recently pointed out that nearly 50% of the Nobel prizes won by people in the UK have been won by people who originated abroad. However, to get that element in society, you do not need to have a net immigration level of over 350,000 a year. It can all be done on a net immigration level of 50,000, 70,000 or less than 100,000, which we had for decades before the Blair Labour Government opened the gates in the early part of this century.

Therefore, the problem with the large-scale immigration that we have had for the last 15 or 20 years, as has been pointed out by my noble friend Lord Hodgson, is that it affects the quality of life, puts a huge strain on resources, has a big environmental and social impact and affects jobs and wages. Even the MAC has pointed out that people on low wages have had them reduced by 5% in real terms over the last few years. It even led to the biggest tragedy of all for people who are remainers, like myself—Brexit. The casual treatment of people's views on immigration was a clear factor in the referendum and certainly a decisive view of those who voted for Brexit. In other words, the liberals and middle-class people who wanted more immigration dug their own grave over the referendum.

The way out of this dilemma is absolutely clear, as has been pointed out by the noble Lord, Lord Green of Deddington. It is to have a cap at a reasonable level. You could then accommodate the people who want to bring in the creative artists, entrepreneurs, businesspeople and so forth without having the numbers that are objected to by the workers and the bulk of people in this country.

In my previous speech, I praised the pamphlet produced by my noble friend Lord Hodgson, who looked at the issue in totality in relation to the demographic trends and population. I will now quote from another pamphlet that was brought out a lot less recently: *Beyond the Net Migration Target*, by the Onward think tank. The author is Will Tanner, who was a special adviser in the Cameron Government to Theresa May, when she was Home Secretary. He states:

> "We recommend that the Government moves to a detailed and transparent Sustainable Immigration Plan, which would set out ministers' objectives for the level and composition of migration and be updated on a rolling basis every year… This type of detailed approach is commonplace in other countries… For example, Australia has an annual planning program, where it sets the number of permanent visas in the budget each year."

Tanner sets out what happens in Australia. For example, from 2019 to 2020, they planned to have 30,000 employer sponsored visas and skilled independent visas to the tune of 18,652. All this is set out in an annual budget decided between the various departments and stakeholders concerned, brought to their Parliament, debated and settled, and they have another look at it the following year. It is all perfectly transparent, above board and very democratic. The same thing happens in Canada and New Zealand. All these people are very experienced in dealing with this problem of immigration.

There it is: it can be dealt with by the simple methods already extant in other countries. I say to my noble friend on the Front Bench that this is the way forward to meet both these objectives: those of the people who understand the value of a limited amount of immigration and those who do not want the high level of immigration that we have had over the last 20 years. Both sides can have what they want, and I present this to my noble friend as one of the answers to the way forward. It is a very simple pamphlet and, unlike the 650 pages of the MAC report, at 21 pages it is very readable. I hope that she can take this on board and present it to the Home Office as a very sensible way forward.

Baroness Smith of Newnham (LD): My Lords, in the previous group of amendments, my noble friend Lady Hamwee suggested she did not want to do the Government's job for them. On this occasion, I beg to disagree with her and hope that maybe I can begin to do the Government's job for them. In Committee, there were criticisms of certain amendments being put forward because they related only to EEA nationals. In particular, the noble Baronesses, Lady Bennett and Lady Lister of Burtersett, said that if they had been able to they would have created amendments that were holistic, but they were told that such amendments would be out of scope because the Bill is limited to immigration responding to the context of Brexit.

My starting point on reading this amendment was simply to ask why. If one had a normal debate in which one could intervene, particularly at an earlier stage—in Committee, not on Report—the obvious thing would simply have been to jump up and intervene on the noble Lord, Lord Green of Deddington, moving the amendment and ask why. The question of a cap for EEA nationals raises all sorts of questions which I hope the Minister will say are not acceptable in the context of the Bill, because why should there be a cap on EEA nationals? Whether you believe in cakeism—as the Prime Minister does—or, like the noble Lord, Lord Horam, you are trying to find a way to meet the concerns of those people who want to limit immigration and those who want a more open approach to immigration, there is surely a question of why there should be a cap on EEA nationals. I can only assume that it is because those noble Lords who tabled the amendment could not bring in a cap more generally.

It will come as no surprise that, from these Liberal Democrat Benches, I am not in favour of a cap. In particular, some of the concerns raised by the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Horam, seem to relate to questions of migration much more generally. We are talking about the context of the transition period ending on 31 December and a change from 1 January. Are we really anticipating that, all of a sudden, millions of EEA nationals who are not currently in the United Kingdom will want to rush to the United Kingdom to fill jobs? I do not think we are. Surely, if we are interested in fairness, as the noble Lord, Lord Horam, talked about, we should think about everybody who might want to come to live and work in the UK. Why should there be a separate status in that sense for EEA nationals?

I cannot see a case for this amendment, and I hope the Minister might, for once, actually agree with me.

The Deputy Speaker (Baroness Pitkeathley) (Lab): My Lords, the noble Lord, Lord Randall, is not speaking on this amendment, so we will go directly to the noble Baroness, Lady Jones of Moulsecoomb.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I agree with every word that the noble Baroness, Lady Smith of Newnham, has said, and she is much more polite than I feel able to be. This amendment is nasty and it is pointless. It is nasty because it panders to a right-wing obsession with immigration caps that are utterly arbitrary—on an arbitrary group of people or a number—and it is pointless because the Bill already removes freedom of movement. Can we please not bother debating this any more? It is not worth it.

The Deputy Speaker (Baroness Pitkeathley) (Lab): The noble Baroness, Lady McIntosh of Pickering, is no longer speaking, so we will go directly to the noble Lord, Lord Naseby.

6.30 pm

Lord Naseby (Con): My Lords, I hope the Government will listen to the noble Lord, Lord Green, who has been very persuasive over a great many years. He does his homework and is well worth listening to.

Context is the key issue. It does not take a genius to work out that we will probably have higher unemployment in the next two years than anyone in this House has ever experienced. Against that background, the driving force must be how we get our people back into work. That must be the number one priority.

I had the privilege, with my noble friend Lord Horam, of reading economics at St Catharine's College, Cambridge. We were taught in some depth about Keynesian economics. Keynes came to the fore between the wars, with the unemployment situation. It was his driving force that produced the system whereby the public sector produced public sector works and employed the unemployed. That must be the driving force for the next two years.

There will be sections of society where we need immigration. Two come to mind: we always seem to be short of qualified doctors and we are clearly short of lab technicians, otherwise the testing and the analysis of it might be working together instead of one behind the other. Sections of our economy will need immigration, but it is not beyond the worlds of all of us to sit down and work out where that should happen.

I am pleased the Minister has made a statement today having consulted business—somewhat in contrast to Mr Gove and the haulage industry. Nevertheless—although I have not seen the whole speech—if he is talking to business, that is good.

We need more control. I do not know what the right figure is, but it is 100,000 or under. Our Government should look at that hard and in the context of where we really need some help because we sadly cannot use our unemployed.

I finish with basically the same sentence as I finished up with on the Agriculture Bill: we need to produce more home food. To do that, we need people to work in the fields, bring in the harvests, pick the apples, dig up the leeks, whatever it may be. If there are not enough people among the unemployed in Britain prepared to do that, we jolly well have to take it on the chin and bring in people to do it.

Lord Hodgson of Astley Abbotts (Con): My Lords, I was very sorry not to be able to be here for the debates in Committee on these amendments, to which I put my name. I had an unavoidable business commitment elsewhere. I apologise to the House; I took the trouble to read *Hansard* carefully.

I support the amendment of the noble Lord, Lord Green. We need a limit on the annual numbers from the EEA and Switzerland seeking employment. The noble Baroness, Lady Jones of Moulsecoomb, said we should stop talking about it and just get on with it. She is right in a way, because a cap is inflexible and clumsy, but I have come to the conclusion—somewhat reluctantly—that it is inevitable and the only way we will be able to grasp the challenges that the number of arrivals in this country now poses.

Simply put, without a cap the Government will never get control of this issue. The noble Baroness, Lady Smith of Newnham, who I am glad to see is still in her place, asked why we think this. History, particularly recent history, has shown how extraordinarily difficult it is to grasp this problem. We have heard a lot about taking back control, but the awful fact is that, where we have no control over current arrivals—those from the EEA—arrivals are falling, but where we have always had control, they are rising sharply. In 2016, there were 133,000 arrivals from the EU; now there are 58,000, in the figures produced by the ONS a few weeks ago. Meanwhile, the non-EU arrivals were 175,000 and are now 316,000—nearly double.

I sat in this Chamber for many hours, hearing all those noble Lords saying that Brexit was going to chase everybody away and no one would come here because we would all be anti-foreigner. I can tell the House that in 2016, 308,000 people arrived here, and the latest figures say that 374,000 have arrived, so that is not a sign that people are being frightened away. Nor is it about no immigration. It is about scale—about 374,000 people. It is about 900 a day and all that means. I will not go through the things other noble Lords talked about, such as houses and the impact. We have 6 million more people in this country, and that is with drastically reduced levels from where we are today. If we go on at the current level, it will be 8 or 9 million more. At 6 million more people, we will build over an area the size of Bedfordshire by 2040. No ifs, no buts, no maybes—that will happen. We will almost certainly be unable to stop it, because you always look 10 or 15 years out when you do demographic planning. We need to be honest and clear about the implications of the decisions that we take in Bills and statutes like this.

How has this happened? At root, it is because it is in employers' commercial interest to recruit trained but cheaper labour from overseas. Why go to the trouble and the expense of training members of a settled population, many of whom may be quite recalcitrant and not particularly grateful, when you can avoid all that effort by recruiting someone from overseas, who is probably jolly grateful? British industry and commerce have become addicted to overseas recruitment at the expense of our own people. Figures bear that out. My noble friend Lord Horam referred to the think tank Onward. Last year it reported:

"Since 2011 employer spending per trainee has fallen by 17% in real terms".

Employers have avoided having to put money into training; they have been able to go overseas instead.

In researching the pamphlet I recently published, I investigated the engineering industry, another sector where employers are always bemoaning the lack of UK-grown engineers. I was absolutely astonished to learn that last year, six months after graduation, fewer than half the engineering graduates of this country were working in engineering. I understand that they are not all going to go into engineering, but fewer than half is a surprisingly small number. When I went to talk to some of these young men and women about why they had not moved into engineering, they said that one of the problems is that UK employers preferred to offer jobs to someone with experience—no surprise there. UK undergraduates find themselves in a position where they cannot get experience without a job, and they cannot get a job without experience.

My noble friend will no doubt point to the Migration Advisory Committee, which has been the subject of a number of our conversations this afternoon, and its enlarged remit. The MAC is a fine body of men and women, but even a cursory reading of its annual report shows the enormous pressure that it is under to effectively abandon all controls. To quote from page 81 of last year's annual report: "The majority of respondents"—that is, employers sending information to the MAC—

"agreed that there should not be a salary threshold above the National Minimum Wage".

Secondly:

"There was stronger support for the idea of a salary threshold that was in some way variable to reflect employer needs".

That effectively means nothing. On page one of the report, the MAC pointed out that this was the inevitable conclusion of "an employer-driven system".

My noble friend on the Front Bench is a redoubtable Minister, as is the Home Secretary. No doubt there are many redoubtable Ministers in the Government, but they will find themselves under irresistible pressure, carefully argued by employers, about the inability of the UK to compete on a world stage unless more arrivals are permitted. Under that pressure, Ministers will first buckle and finally break. As other noble Lords have pointed out, the full effect of the pandemic has yet to make itself felt. Surely none of us seeks to argue that the consequences for the employment of our settled population will be anything other than lessened. Against that background, allowing annual immigration of 374,000 a year—1,025 a day—must be ill-advised and maybe runs the risk of societal disorder. That is why a cap—clumsy, yes; inflexible, yes—set annually, debated and approved in Parliament, is critical. That is why I support the amendment of the noble Lord, Lord Green.

Lord Paddick (LD): My Lords, the Bill is about ending the free movement of people from the EU and EEA, and Swiss nationals. The noble Lord, Lord Green of Deddington, and other noble Lords oppose the proposed points-based immigration system that relies on measures other than a cap on numbers to control immigration to the UK. As my noble friend Lady Smith of Newnham said, on 1 January at the end of the transition period, the rights of EU citizens to come and work in the UK will be replaced by controls based on salary and skill levels. That will also apply to migrants from the rest of the world. The number of EU migrants has already fallen significantly, and will continue to do so, as a result of the end of free movement that the Bill brings about. While we on these Benches regret that, it

[Lord Paddick]
is the consequence of leaving the EU. That is what the UK people voted for; we have already left and will suffer the consequences.

I shall engage to some extent with some of the issues that the noble Lord, Lord Green of Deddington, raised and come back to them on future amendments. He said that the system was entirely for the benefit of business and not of British workers, would cost between 6 million and 7 million jobs, and that there were hundreds of millions of people potentially qualified to come to the UK to take those jobs. He said that the public were in favour of control. However, my understanding is that there will be control but of a different type from setting a cap. Presumably, although the Minister will enlighten us, salary levels and qualification requirements can and will be varied if necessary if consequently we suddenly face a so-called avalanche of people coming to the UK from areas other than the European Union. Any avalanche from the European Union would have happened already because, at the moment, there is free movement.

It is interesting that noble Lords opposite talk about business interests, yet in other debates they argue that we need a strong economy to pay for public services. The fact is that migrants, particularly migrant workers, contribute far more to public services than they receive in public services, and they certainly contribute more than the average UK resident does.

We on these Benches believe that government departments such as the Department for Business, Energy and Industrial Strategy and the Department of Health and Social Care have knowledge of the migrants that the UK economy needs, and that they, not the Home Office, should decide on immigration policy, points-based or otherwise. I will not entirely do the Minister's job for her but perhaps she can convince the noble Lord, Lord Green of Deddington, that his amendment is not necessary because the points-based system will effectively reduce immigration.

6.45 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, this amendment was moved by the noble Lord, Lord Green of Deddington, in Committee and my noble friend Lord Rosser responded to that debate. I think it is no surprise that I do not agree with the amendment as worded for several reasons. In particular, I do not believe that it serves the interest of the United Kingdom well. Governments can set targets and give the impression that they are doing something to grab a few headlines but, after that, can fail to deliver what they said they were seeking to achieve. Immigration is often treated like that, so an arbitrary cap that is routinely broken is of no use whatever.

As we complete the Brexit process—I hope that we will have an agreement with the European Union in place shortly—we need an immigration system that responds to the needs of the economy and the welfare of the United Kingdom. That is what is important here. We do not want something that will be bureaucratic and unworkable and that would cause more problems than it would supply solutions. Our economy will have enough problems in the years ahead without the difficulty this amendment could wreak on it.

Lord Horam (Con): Will the noble Lord give way?

Lord Kennedy of Southwark (Lab Co-op): No. I cannot.

Lord Horam (Con): But on the last group—

Lord Kennedy of Southwark (Lab Co-op): No. In their contributions, the noble Lords, Lord Horam and Lord Hodgson of Astley Abbotts, referred to think-tank reports. I will be interested in the reports from those think tanks. I should declare that I am the treasurer of a think tank—the Fabian Society—but I am a bit concerned about these bodies because, unlike the Fabian Society, a lot of them are quite opaque. We do not know who funds them, where the money comes from or who is behind these reports, so I would be a bit more interested in what those bodies had to say if we knew who paid for what. The noble Lord, Lord Hodgson of Astley Abbotts, will speak on the next group, so maybe he can tell us who funded the report to which he has referred many times. I will be interested to hear that.

The noble Lord, Lord Paddick, made an important point about the number of EU migrants coming to the UK. In fact, that number has fallen. I carefully read the debate in Committee on this and on many points I found myself in agreement with the noble Baroness, Lady Williams of Trafford, and I have heard nothing so far in the debate to persuade me otherwise.

Baroness Williams of Trafford (Con): I thank the noble Lord, Lord Green, for retabling his amendment; I acknowledge and respect his expertise in this area. I also apologise for allowing the noble Baroness, Lady Smith of Newnham, to intervene because I have now set a precedent. I should never have done that. No one is allowed to intervene.

The amendment effectively intends to reintroduce an annual limit on the number of people who may be granted permission to enter the UK to take up skilled employment. The existing cap, which the Government have committed to suspending, is set at 20,700, and is administered on a monthly basis to those seeking entry clearance as a skilled worker. As outlined in Committee, this sounds like a very sensible measure to control and limit migration to the UK, but we cannot know how many people will seek to come to the UK using the new skilled worker route. The impact of some of the key changes, including the expansion of the skills threshold and the reduction of the general salary threshold, is also unknown. Where possible, Home Office analysts have tried to predict possible impacts, and the points that the noble Lord, Lord Green, made so eloquently may well come to pass.

The amendment provides an opportunity for me to reinforce the importance of implementing a flexible immigration system. Our proposals will do that and ensure that the system can be adapted and adjusted, subject to social and economic circumstances—to which the noble Lord, Lord Paddick, alluded—but we cannot get away from the fact that the amendment would add to the burden on businesses, considerably slow the process of recruiting a skilled migrant, and create uncertainty among employers.

Any cap, including the one we have at present, creates an odd dynamic when it binds us to consider a migrant a valuable addition one month but unwanted the next. This may only be a perception based on the mechanics of a cap, but it is a perception that we want to address, instead focusing on our commitment to continue to attract those with the skills and talents that we need.

The noble Lord highlighted three issues with suspending the cap. The first issue is that an estimated 7 million UK jobs will be open to new or increased international competition. However, these jobs are currently under more competition due to freedom of movement. The imposition of any control, instead of allowing free movement to continue, protects those jobs. Ending free movement and requiring an employer to meet the requirements of being a Home Office licensed sponsor and pay relevant immigration charges, including the skills charge, makes the employment of a resident worker the simpler option. Again, I draw your Lordships' attention to the Migration Advisory Committee's September 2018 report on the impact of EEA migration in the UK. It said that it did

"not believe that the welfare of existing residents is best served by a cap for two reasons. First, the cap, when it binds, constrains inflows of a group of migrants which the evidence suggests are the most economically beneficial … Second, the cap creates unpredictability when it binds as there can be sharp increases in the minimum salary threshold that skilled visa applications face."

The salary requirements rise as this is the mechanism for selecting which roles are granted permission.

The noble Lord's second issue is that the number of potential applicants is huge. That has always been the case. The advancements in education around the globe and the increase in populations inevitably mean that more people can qualify as skilled migrants. Addressing the point made by the noble Lord, Lord Paddick, the MAC also said:

"We believe that if the Government wants to reduce migration numbers it would make more economic sense to do so by varying the other aspects of the scheme criteria".

Therefore, we have retained the immigration skills charge in the future system and will continue to operate a range of salary thresholds.

Thirdly, the noble Lord advocates that there would be a great incentive for employers to go for cheap, competent, non-unionised workers. To this end, we are maintaining the position in our new immigration system that those under the skilled worker route be paid a minimum salary level, which has been calculated so as not to undercut domestic workers. The level and operation of salary thresholds has been based on the advice of the MAC. I am sure that the noble Lord would agree that considering the impact of policies on the UK's economy is an area that the MAC excels in.

Maintaining a sponsor licence also requires compliance with UK employment laws on treating employees equally. We completely accept that the first stage in our plans for the points-based system will need monitoring to assess the impact of the changes on the resident labour market and key sectors, and we are committed to doing just that. On the basis that we are maintaining robust protection for resident workers and providing certainty for UK businesses and employers, and because the key expert advisers have said that we should not apply an annual cap on skilled workers, I hope that the noble Lord, Lord Green, is happy to withdraw his amendment.

The Deputy Speaker (Baroness Pitkeathley) (Lab): There are no requests to speak after the Minister, so we return to the noble Lord, Lord Green of Deddington.

Lord Green of Deddington (CB) [V]: My Lords, I thank the Minister for her response, which I will study very carefully. I welcome her indication that the Government will keep a close eye on the numbers. I hope that that will not exclude the possibility of introducing a cap if, in the light of experience, they feel that they should move quickly.

I am grateful for the widespread and powerful support from most noble Lords who have spoken in this debate. The noble Lord, Lord Paddick, rightly appreciated that the proposed cap was to apply to immigration as a whole from 2021. Leaving aside the mechanics of this Bill, the policy issue is for immigration as a whole from next January.

I would like to correct one misapprehension which is important. We are not suggesting that 6 million or 7 million people will arrive. That is the number of jobs that will be open to competition under the new regulations. Having said that, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

The Deputy Speaker (Baroness Pitkeathley) (Lab): We now come to the group consisting of Amendment 7. I remind noble Lords again that Members, other than the mover and the Minister, may speak once only and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 7

Moved by ***Lord Green of Deddington***

7: Clause 4, page 3, line 8, at end insert—

"( ) Regulations under subsection (1) must make provision for the Resident Labour Market Test (as set out in the Immigration Rules Appendix A: attributes) to apply to job offers where a job offer forms part of the application of EEA and Swiss nationals seeking to enter the United Kingdom for the purpose of taking up employment."

Member's explanatory statement

This amendment would require that job offers made to EEA and Swiss nationals which form part of an application for that person to enter the United Kingdom should first be advertised in the domestic labour market in accordance with the Resident Labour Market Test.

Lord Green of Deddington (CB) [V]: My Lords, in Committee, the Minister quoted extensively from the Migration Advisory Committee. She said that the MAC had reported that it was "sceptical about how effective" the labour market test would be in giving settled workers the first opportunity to fill jobs—I think she just mentioned that again. She went on to quote the MAC saying,

"We think it likely that the bureaucratic costs of"—

[Lord Green of Deddington]

a labour market test—

"outweigh any economic benefit".

Her third quote was that the MAC thought it

"important to have protection against employers using migrants to under-cut UK-born workers."

It continued:

"The best protection is a robust approach to salary thresholds and the Immigration Skills Charge". —[*Official Report*, 9/9/20; col. 844.]

Those are the technicalities.

I have checked those quotations. They came from the MAC final report on EEA migration in the UK, dated September 2018. This report specifically recommended that there should be no change in the £30,000 general salary threshold that was in effect at the time—yes, no change. So those quotations have clearly been stripped of their original context.

If the Government are now keen to invoke the MAC, they might wish to note the committee's previous findings. In February 2012, it said that increasing exemptions from the labour market test would mean:

"Resident employees stand to lose out from increased labour market competition."

Again, in 2015, it said that the labour market tests

"help protect the domestic workforce from being displaced or replaced by migrant workers".

Whatever it said most recently and in whatever context, it has clearly consistently recognised the impact of a labour market test. In the light of those previous recommendations and the lack of any subsequent detailed work by either the MAC or the Home Office to consider the potential displacement impact, the complete abolition of the labour market test is of considerable concern.

The context in which these proposals are now being considered, of rising unemployment, which a number of noble Lords have mentioned, and increasing youth unemployment, surely requires the Home Office to commission some serious analysis before implementing what could be a drastic step.

Further, the MAC, and worse still the Government, completely ignore the fact that widespread concerns about the abolition of the test are not just about economics. Other noble Lords have mentioned the importance of fairness. These matters are about fairness and perceptions of fairness. That explains why, as I mentioned in Committee, 77% of the public believe that employers should prioritise the hiring of UK workers.

At this point, I should like to recall that this amendment was powerfully supported in Committee by the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Lilley, both basing themselves on their experience of these matters at very senior levels of industry.

It is now obvious that the Government are struggling to justify a complete failure to give British workers an opportunity even to apply for jobs that are to be offered overseas. What this comes down to is whether the Government are going to cave in to the convenience of business or give British workers a fair chance. Which is it to be? Or have they already decided against British workers?

Finally, I notice that both the Labour and Liberal Democrat spokespersons avoided taking a view on this matter in Committee. They seemed to be unsighted. Perhaps they will take the opportunity of Report to clarify their positions. I beg to move.

Baroness Neville-Rolfe (Con): My Lords, I strongly support this amendment, to which I have added my name. Indeed, of the three proposed by the noble Lord, Lord Green, this is the one I have most hope of the Government accepting, in the context of the narrow EU-EEA focus of the Bill. I find it extraordinary that we should be thinking of dropping the long-standing requirement that jobs be advertised in the UK before overseas recruitment takes place. This will encourage employers, especially big employers, to recruit overseas without even trying the home market. We already have the benefit of the pool of 3.8 million or so EU citizens who have applied for the EU settlement scheme. Thanks to coronavirus, UK jobs are being lost everywhere, from the high street to our wonderful arts and entertainment industries.

In earlier discussions, defending the decision to dispense with the labour market test and the 28 days of domestic advertising it lays down, the Minister put a lot of emphasis on the salary thresholds and the immigration skills charge. I am not against the points-based system, as the noble Lord, Lord Paddick, seemed to suggest; however, with my experience of a number of industries, I think the thresholds look much too low, especially post-Covid. The skills charge has to be set against the recruitment fees that might have to be paid in the more demanding UK market. I appreciate, of course, that there will be scope to flex these numbers going forward—that seems to be what the Minister has been saying—however, I think this particular change is especially unwise.

While I do not rule out special arrangements for agriculture, mentioned earlier by my noble friend Lord Naseby, and for health workers—although the latter steals training and talent from countries that sometimes badly need it—we need our jobs to go to the home team wherever possible. We need a mechanism to encourage training, especially in the social care sector, which is crying out for suitable people, as my noble friend Lord Horam explained so eloquently in relation to Amendment 3. We are embarking on a skills revolution in the UK, and a jobs-first pledge, by advertising at home, should be part of our prospectus.

As I have said before, I am puzzled that trade unions such as USDAW, who I have worked so well with and who have done such a fine job in retail, are not strongly supporting the retention of some form of labour market test.

Lord Horam (Con): This is about the resident labour market test and I find it quite astonishing, like my noble friends who have spoken to the amendment, that this should be removed at the point when we are entering a period of huge unemployment, as predicted by the Chancellor in his Statement only a few days ago. It is completely astonishing that that should be the case at the moment.

It is also amazing that the noble Lord, Lord Kennedy, has so far not supported such an amendment: it beggars belief, frankly, that the Labour Party spokesman

is willing to give this up in such circumstances. I hate to attack—rather, argue—with the noble Lord but he did take me on in our last debate. I will not take long over this but he did ask, "Who is this think tank, Onward?" It is a perfectly reputable, charitable think tank. The point it was making, as am I, is that Australia has had a cap on immigration for years. We have imported half the Australian points-based system but are refusing to import the rest, which is the cap. They say in Australia, "no cap, no control", and that is why they have a cap.

It is the same in Canada, where they have the same system and it is debated in Parliament. It is all perfectly transparent and its Parliament has a role. It is the same in New Zealand. The noble Lord, Lord Kennedy, also said that he was worried about the economy, but Australia and Canada have successful economies and caps on immigration; New Zealand has a successful economy. They are all rather more successful than we are, in many respects. I advise the noble Lord, as a true friend—we served together on the Electoral Commission and I really appreciate him as a stalwart Labour man—to think again about this and reposition his party. Believe you me, if the Labour Party does not reposition itself on immigration, I can tell him, it is in real trouble.

Lord Hodgson of Astley Abbotts (Con): My Lords, I support this amendment, as the House would expect, but before I get there, the noble Lord, Lord Kennedy, threw down a challenge and I had better get to that first. I am pleased to be able to tell him that I paid for every single bit of that pamphlet. Every single envelope, stamp, and bit of printing was paid for by me and I am happy to share the receipts and information with him if he wishes. The only time that I used any of the facilities of the House was to distribute the pamphlet, a copy of which went to every Member of your Lordships' House and every Member of the House of Commons.

I support the remarks of the noble Lord, Lord Green, and my noble friends Lady Neville-Rolfe and Lord Horam. I do not want to go over all that again now. In my remarks on Amendment 6, which we have just dealt with, I explained how employers have become addicted to cheap labour from overseas because it is in their commercial interests to do so. As a result, we have become thoughtless and careless about the employment opportunities for our settled population. We have young people locked into zero-hours contracts. We have members of minority communities locked into low-paid, low-prospect jobs. Increasingly, and really seriously because they are a larger part of our population, the over-50s find it hard to get jobs even as we raise the retirement age. A 2018 House of Commons report revealed that 1 million people over 50 would like to work or work more; 14% of 50 year-olds are out of work and 35% of 60 year-olds are out of work. Removing the resident labour market test opens them up to an even greater degree of unemployment risk.

As many noble Lords have said, as the impact of the pandemic makes itself felt, all these problems will get worse. How do we protect and look after our settled population in these circumstances, particularly since these same economic pressures will make employers ever keener to game the system and access cheaper labour from overseas? The first line of protection would have been a cap but we are not going to have it because my noble friend the Minister has told us so. This amendment is a second line of protection, as explained by the noble Lord, Lord Green of Deddington, since the resident labour market test prevents the grosser excesses of undercutting wages by recruiting from overseas.

I apologise to the House for not having been present in Committee, but I have read the debates and, following a point made by my noble friend Lord Horam, I was really astonished by a comment made by the noble Lord, Lord Rosser, at col. 843 of *Hansard*, about the trade unions. Why every union at the Trades Union Congress is not down here supporting this amendment as a way of helping and protecting the working man they seek to represent, absolutely astonishes me. Now, that is for the party opposite to sort out.

The strains that our society will face do not just come from the pandemic. They will come also from the impact of the fourth industrial revolution—from artificial intelligence and robotics, not often mentioned in our debate so far. In those circumstances, policies that will likely result in close to 1,200 people arriving on an average day cannot be sensible.

A key determinant of a person's self-confidence and sense of self-worth is, undoubtedly, purposeful and secure work. Professor David Blanchflower said in his book *Not Working*, published last year:

> "Unemployment hurts and it hurts a lot."

The amendment, if the Government accepted it, would help reduce but, sadly, not eliminate that level of hurt, which is why I support it.

Lord Paddick (LD): My Lords, I begin to wonder whether we should swap Benches at this stage. Again, the noble Lord, Lord Green of Deddington, longs for the old immigration regime that he has criticised so much. This time it is the resident labour market test or, as the former leader of the Labour Party, Gordon Brown, may have put it, "British jobs for British workers".

The noble Baroness, Lady Neville-Rolfe, posited that UK employers were likely to recruit from overseas without even considering UK workers, and the noble Lord, Lord Hodgson of Astley Abbotts, said that UK employers were addicted to using imported, low-wage labour. I thought that under the points-based system there was a minimum salary of £25,600, which does not sound to me like undercutting UK labour.

Surely, British employers will look to avoid the immigration skills charge by hiring a UK resident in preference to a migrant, if they possibly can, and British employers will look to avoid having to pay a licence fee to be an authorised sponsor of migrant workers, if they possibly can. Migrants will be deterred from working in the UK, including in the National Health Service and social care, because they will have to pay the immigration health surcharge in addition to income tax, national insurance and VAT—effectively, having to pay twice for the National Health Service. Migrants will also be deterred from working in the UK because they will have to pay far more than the cost price of a visa, and because of the salary and skill

[Lord Paddick]
levels they will have to attain to secure enough points to get a visa in the first place. From 1 January, all that will apply to all new migrants from the European Union as well as those from the rest of the world. Therefore, I do not think that the noble Lord's amendment is necessary and we do not support it.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 7, proposed by the noble Lord, Lord Green of Deddington, was discussed in Committee. I am all in favour of maximising opportunities for British workers to have employment and skilled employment. Good companies invest in their staff, and it makes good sense to do so. It is much more sensible, when possible, to recruit and train staff locally, for all the reasons given by the noble Lord, Lord Paddick, including the charges that employers incur when recruiting workers from abroad.

This amendment adds a test and a further layer of bureaucracy. For me, the case has not been made for why we should support it. Again, I find myself in agreement with the Minister and her position, as well as with the position of the MAC, which concluded that the likely bureaucratic cost would outweigh any economic benefit of bringing this test back in.

I should say that I have enormous respect for the noble Lord, Lord Horam. We are good friends; we served together for many years on the Electoral Commission. My only point about think tanks—and I am heavily involved in one—is that for some we are unclear about where their funding comes from. I am pleased that we now know that the noble Lord, Lord Hodgson, generously funded his own report. Sadly, of course, we do not know where the money of many of the think tanks that we refer to comes from. With all due respect, it is good of him to fund himself.

I do not think that the case has been made for this amendment in any sense, and I look forward to the Minister's response. So far, I have heard nothing that could persuade me to support it.

7.15 pm

Baroness Williams of Trafford (Con): My Lords, I again thank the noble Lord, Lord Green of Deddington, for the return of this amendment, on which we had an interesting and mixed debate in Committee; it has been no different on Report.

As I outlined in our previous debate on this matter, this amendment would have the effect of reintroducing into regulations a resident labour market test for EEA and Swiss nationals and reversing a government decision to abolish this test under the UK's new points-based immigration system. I have to say to noble Lords that the Government did not take this decision lightly or indeed in isolation. On the face of it, it sounds absolutely fair and sensible to require a job to be advertised in the UK for 28 days to establish whether there is anyone suitable in the domestic labour market before the job can be offered to an overseas migrant. However, we should be imposing a resident labour market test only if we think it would genuinely offer extra protection to resident workers and, in turn, support UK employers and organisations to access the skills and talents they need. The Government do not think that is the case. Not only does it add a burden on business and considerably slow down the process of recruiting a skilled migrant, without any guarantee of a vacancy being filled from the resident workforce, but it does so at a time when we are seeking to streamline and simplify the system and give UK employers and organisations the certainty they need.

My noble friend Lord Lilley—I am glad he is in the Chamber—rightly drew our attention in Committee to his experience of visiting Nissan, highlighting its enthusiasm and drive for training and retaining people in the UK. I am sure all noble Lords would agree that this is something to be celebrated and encouraged. Indeed, it fits with the Government's clear assertion that immigration must be considered alongside investment in and development of the UK's resident labour force.

However, I recognise the valid point made by the noble Baroness, Lady Ludford, who is not in the Chamber today, about the immigration system not being the way to enforce and encourage training of domestic workers. Where I would respectfully stray from her view is to say that while our immigration system should not be considered a silver bullet, it absolutely has its part to play in supporting businesses and ensuring that they invest in training to encourage staff retention. We must achieve a sensible balance.

That view and the decision to abolish the existing resident labour market test is not just a government opinion; it is based on the clear economic advice of the Migration Advisory Committee. The noble Lord, Lord Green, and others in this House are correct in saying that the MAC's expertise is focused on economics, but one strength of the MAC is that it does not represent any one sector or industry. The MAC is well used to running large-scale consultations and assimilates evidence from many employers, businesses and sectors to produce carefully considered conclusions that apply to the best interests of the whole of the UK. This is exactly what the MAC did in reaching its findings and recommendations in its September 2018 report. I note the point that the noble Lord, Lord Green, made about the MAC's view on the salary threshold at the time.

The decision to abolish the resident labour market test was not simply a U-turn undertaken given pressure from businesses. I highlighted this during our debate on this subject in Committee, but it is worth reasserting what the MAC said given the concerns of many Peers—which I and the Government share—around the uncertainty that many UK workers will face as a result of the current pandemic.

In addition to the economic arguments, as part of its September 2018 report the MAC said:

> "We do think it important to have protection against employers using migrants to under-cut UK-born workers. The best protection is a robust approach to salary thresholds and the Immigration Skills Charge and not the RLMT."

The Government agree, and that is why we are maintaining a firm requirement in the new points-based system for migrants who come under the skilled worker route to be paid a salary which does not undercut domestic workers.

We are also retaining the immigration skills charge. The requirement to pay that charge—alluded to by the noble Lord, Lord Paddick—the proceeds of which contribute directly to the UK skills budget, helps ensure that employers are unlikely to employ a migrant when there is someone more suitable to undertake the role within the domestic labour force. Given the expansion of the skills threshold and the fact that UK employers will no longer be able to rely on recruiting EEA citizens coming to the UK under free movement, we consider it very likely that the charge will create an appropriate barrier and will result in businesses thinking twice before looking immediately to the overseas labour force.

On the basis that we are maintaining robust protection for resident workers, and because the key expert advisers have said that we should not apply a resident labour market test, which echoes views heard by the Government from extensive engagement with stakeholders across the UK, I hope that the noble Lord will feel happy to withdraw his amendment.

The Deputy Speaker (Baroness Henig) (Lab): There are no requests to speak after the Minister, so I call the mover of the amendment, the noble Lord, Lord Green of Deddington.

Lord Green of Deddington (CB) [V]: My Lords, I thank the Minister for her response. This is not the time to counter anything that she might have said, but I fear that the Government may come to regret their reliance on a group of economists, however capable they certainly are. For example, she made no mention of the concept of fairness. I think that most of us who have dealt with employees of any kind understand the overriding need for people in charge to be fair. Therefore, I was amazed that the noble Lords, Lord Paddick and Lord Kennedy, care so little, it would seem, about the genuine concerns of what I like to call real working people.

I will leave it at that, except to thank the other noble Lords who spoke with most effective support for our proposals. With that, I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

The Deputy Speaker (Baroness Henig) (Lab): We now come to the group consisting of Amendment 8. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 8

Moved by ***Lord Green of Deddington***

8: Clause 4, page 3, line 8, at end insert—

"(5A) Where regulations made under subsection (1) make provision for the minimum salary requirement for new entrants to be lower than the equivalent salary requirement for other migrants, the regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(5B) For the purposes of subsection (5A), "new entrant" means an EEA or Swiss migrant who meets one of the following criteria—

(a) the migrant is switching from the Student or Graduate to the Skilled Worker route;

(b) the migrant is under the age of 26 on the date of their application; or

(c) the migrant is working towards a recognised professional qualification or moving directly into a postdoctoral position."

Member's explanatory statement

This amendment would require parliamentary approval of regulations which would make provision for the recruitment of new entrants to the labour market at pay rates below the general salary requirement under the new Points Based System.

Lord Green of Deddington (CB) [V]: Noble Lords will be glad to hear that this is the last of my amendments. I realise that I have not declared my non-financial interest as president of Migration Watch UK, but I think that that is very well known in the House.

I retabled this amendment because the prospects for young British workers are getting substantially worse as the Covid crisis intensifies, yet the Government seem to be set on a policy that can only make matters even worse for this very important section of our workforce and, indeed, our society. I just cannot understand how they feel that they can brush this matter aside.

The Minister sent a letter to all Peers on 15 September after the second day of Committee. In it she said that, although some of the questions raised in the debate were outside the scope of the Bill—which they were—she has sought to answer them as fully as possible, and I am grateful for that. The annexe to that letter set out the current arrangements for the new labour market entrants from overseas so as to allow noble Lords to "compare and contrast" them with the new proposals. Unfortunately—I say this with care—the effect of this is unintentionally, I am sure, misleading.

The document provides extracts from the current rules that appear to show that new entrants can already be admitted at a similar low-salary level to that proposed with the rather clear implication that little will change. However, no mention is made of at least two fundamental changes that would indeed make a clear difference.

First, the new proposals will allow not just graduates to come and earn £20,000 or so a year, as at present; they will also allow young migrants to come to do A-level jobs for the same money, thus enormously increasing the numbers of those—from all over the world—for whom £20,000 for an A-level job will indeed be an attractive salary. One could perhaps add that many will have families already here who will encourage them and that this can lead to settlement. However, the Government's own impact assessment states:

"Setting the new entrant salary threshold at 30 per cent below the experienced threshold is estimated to reduce salary thresholds for 55 high-skilled occupations but increase it for 16 high-skilled occupations."

Secondly, I stress again that there will be no cap under the points-based system; that is quite clear at the moment—they are not putting in a cap. Therefore, the numbers of young people recruited will be constrained only by employer demand. Furthermore, the removal of the labour market tests means that employers can go abroad directly, whether or not willing candidates might be available in the UK. Noble Lords might

[Lord Green of Deddington]
remember that, some years ago, a factory in Northampton that makes sandwiches brought in a plane of 250 people to work there; they were not necessarily young workers, but they were brought in en masse. I checked later with the Minister responsible and found that that firm had not even been in touch with the local jobcentre.

That is just one example of the way employers have brought in—and could well do so in the future under the new conditions—significant numbers of young workers who would directly take the jobs of our own young workers. Therefore, taken as a whole, the annexe to the noble Baroness's letter, although described as a response, does not actually answer any of the points I raised. Rather, it confirms that the position is in fact very much as I described it.

In a nutshell, this is a wholesale revision of the so-called new entrant route, to the considerable disadvantage of our own young people. I had hoped that it would be called out in the responses from the Opposition Front Benches, but I have no great hope of that in the light of what they have just been saying. Therefore, I await the Minister's response again, and I beg to move.

Baroness Neville-Rolfe (Con): My Lords, I shall speak to this amendment, with which I have much sympathy. It seems surprising that we are offering a new entrant route, allowing employers to pay a third less than the headline rate, particularly as those with A-levels will now be able to come in as well as graduates, as the noble Lord, Lord Green, has just explained.

As a businesswoman with experience in quite a number of sectors, the going rates for the points-based system already look low and are likely to make overseas migrants attractive. That is especially true for the various professionals in the paper that my noble friend the Minister has helpfully circulated. That would be good news, for example, for US banks and legal firms in London, which should be employing local talent and not necessarily bringing it in from abroad.

Moreover, I think that the coronavirus will have had a dampening effect on some wage rates, so I think these numbers may already be out of date and, of course, it is important, as the Minister said, that the MAC keeps them under review very regularly. I hope I am wrong, but everybody has been saying that the tsunami of the coronavirus is likely to change the labour market.

7.30 pm

We can argue about the correct consultation and scrutiny process, which is the subject of this amendment. Actually, I agree with some of the sentiments expressed earlier in the debate on Amendment 4, on the lack of parliamentary scrutiny of regulations made under some of the Bill's provisions. However, I would argue that Parliament is in fact going too far in permitting such a scheme for new entrants on this scale; I do think we could live to rue the day. We are bringing in too many changes at once, and we risk losing control of our borders. This is another change, like the advertising of vacancies at home, that I think the Secretary of State should look at again. I hope that she will reach some of the conclusions that I and our colleagues have reached in looking in detail at these important provisions and the points-based proposals that the Home Office has now helpfully brought forward.

Lord Horam (Con): The contributions to this debate are getting shorter and shorter, and I intend to adhere to that pattern. The simple point I want to make is that this is part of a loosening of the arrangements—I would not call them controls—which were put in place at the beginning of this year and then amplified in July. Of course, since then we have had the coronavirus pandemic. We have the prospect now of an additional two million unemployed, and young people coming into the job market face a very bleak situation. These are not normal times.

The Treasury has responded rapidly and comprehensively to this situation with a major package earlier in the year and the less pronounced package of the last 10 days. What I hope and expect is that the Home Office reacts similarly and recalibrates the ideas it had before the world changed when the coronavirus set in. We really do need it to respond. I do not believe that the Home Office is unfit for purpose, as was once said by a Labour Minister. It has many able civil servants who are perfectly capable of responding to a changing situation, but they need to show it now; otherwise, people will lose faith in the Government.

Lord Hodgson of Astley Abbotts (Con): My Lords, one of the weaknesses of the whole Bill is the extent to which the detailed implications are contained in regulations which are only now beginning to emerge. Every Member of your Lordships' House will be aware that the scrutiny of regulations is much less effective than that of primary legislation; the noble Lord, Lord Pannick, raised that issue in the debate on one of the previous amendments. I should perhaps, just for the record, declare that I am the chairman of the Secondary Legislation Scrutiny Committee, but I am speaking for myself, not for the committee.

As the noble Lord, Lord Pannick, said, the regulations are unamendable, so the House is left with what I call the "nuclear option" of complete rejection. Unsurprisingly, the House has veered away from that course of action, except on the rarest of occasions. That is one of the reasons why I support the noble Lord, Lord Green, in this case, because he is actually trying to wrest back a bit of control by having some more specific plans built into the Bill. They are necessary for the reasons that he, and indeed my noble friend Lady Neville-Rolfe, laid out. In its way, this amendment is the third and last line of protection in regulating the extent to which the employment opportunities of our settled population can be undermined.

We already know that there is no cap and that we will have no resident labour market test. Therefore, if my noble friend the Minister refuses to accept this amendment—and I fear that if I could glance over her shoulder at her speaking notes, I would see that she might just be going to do that—it is extremely likely that our future levels of immigration will continue, probably in excess of a quarter of a million each year. It may be slightly below what we have now, at 320,000, but it will be well over a quarter of a million each year.

In Committee I chided the noble Lord, Lord Kennedy, who has been coming back at me this afternoon, when he refused to back my proposal to establish an office for demographic change, which was a planned idea, independent and transparent, to look at the complexities of these issues in the round—environmental, ecological, societal. It is easy to laugh—the noble Lord is already grinning—but the reality is that there are serious issues around water, land quality and species loss which are all related to how our population is growing. They are not entirely due to it, but they are very largely related.

I said to the noble Lord, I hope, gently, because I do not want to upset him—he is a sensitive soul—that his party had to decide where it stood on demographic growth, of which immigration is a part, because it is an issue that really resonates in the country. We have heard the percentages; 60% to 70% of people are concerned about it. In particular, his party must decide where it stands, or all the possibilities of recovering the red wall, now blue wall, seats will be vanishingly small.

However, it is perfectly fair to say that this is not without dangers for my party. We will face quite significant challenges. If those of us who are concerned about what happens if our population grows by 6 million or 8 million are right, and the package of policies before us continues to allow rapid growth—it is not about whether they are foreigners, black or white, or what their colour is; it is about the number of people—we will have two big challenges. First, a lot of the people who turned the red wall seats into blue wall seats did so because we promised a sustained reduction in the level of immigration. If we do not deliver that, they will feel betrayed and let down.

In parallel with that, every year we will have to build 100,000 houses to accommodate the quarter of a million people likely to arrive. The noble Lord, Lord Paddick, says that they pay more in tax than they draw in benefits, but there is a much more complicated issue, with which I will not bore the House this evening, about the capital investment to maintain and extend our roads and structures. They are not covered just by taxes; a much bigger level of capital expenditure is required. He and I can discuss this over a socially distanced cup of coffee, but I will not bore the House with it now.

We will build 100,000 houses a year, and they will be built in our shire counties. These people will not be delighted about it. We know that; housebuilding is intensely unpopular. The coming storm about the planning algorithm, which is now doing the rounds, is just the beginnings of the trouble there will be if we continue down this road. My noble friends Lord Horam and Lady Neville-Rolfe are right. The Government are wrong in believing they have the situation under control.

My noble friend the Minister nobly and loyally marches to the beat of the Home Office drum, which essentially says, "Don't worry; it will be all right on the night". I wish I shared the department's confidence.

Lord Paddick (LD): My Lords, my understanding is that what lies behind this amendment is the aim to allow Parliament to set a rate for new entrants instead of it being set at 30% lower than the national average going rate of £25,600 under the points-based system. To restate what I have said before, this Bill is about EU migration, on which there is no restriction at the moment. From 1 January, if this Bill becomes law, there will be restrictions on EU migrants and a salary floor for new entrants.

It seems that the gut reaction of the noble Lord, Lord Green of Deddington, to the new entrant salary level being set independently based on economic research by the Migration Advisory Committee at £20,480 is that it is a bit low. But as the Minister explained in Committee, the MAC found that those starting in their careers were typically being paid 30% less than those who were established in their role; hence the floor for new entrants is 30% less than the £25,600 set as the salary floor for migrants under the new points-based system. I am not sure whether the noble Lord, Lord Green of Deddington, is arguing that £25,600 is too low and therefore the new entrant salary level is too low, or whether 30% less for new entrants is not typical of a new entrant and therefore it should be something other than 30% less than the established rate.

If the noble Lord's amendment is agreed, I would have to ask him on what basis he thinks Parliament should decide the new entrant salary level. I understand that the noble Lord believes that migration decisions should be based not on economics but on politics. May I say that I deny that I care little for ordinary working people, as the noble Lord said? If he would care to read in *Hansard* what I actually said, he will see that I felt that there were alternative protections for ordinary working people to what he was suggesting, which is completely different

We on these Benches believe that economic migration should be based on economics, while immigration by asylum seekers should be based on the compassionate consideration of the evidence of their claim. On that basis, we cannot support the noble Lord's amendment.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 8, proposed by the noble Lord, Lord Green of Deddington, is the third amendment that he has proposed; we considered them previously in Committee. I shall not detain the House for long, but I will say that I listened to the debate on 9 September and I have listened carefully to the debate today, but I am not persuaded by the arguments made so far. These matters are kept under review and if the problem the noble Lord is alluding to is a problem, I am sure that the Government would act. We are probably a bit constrained by our procedures in this debate; in many ways these amendments could all have been debated as one group.

Like the noble Lord, Lord Paddick, I am disappointed by the noble Lord, Lord Green of Deddington, and other noble Lords on the Benches opposite. I just do not accept the assertion behind these amendments—that the UK will be flooded with migrants from the European Union when we have heard that the numbers are actually going down, given the difficulties that will be in place at the conclusion of the Brexit deal. I am not prepared to accept what has been suggested. I may be wrong, but I do not believe that Tesco and the Co-op are going out to recruit all over Germany, France and elsewhere for people to come and work here, given all the charges that would involve for these companies.

[Lord Kennedy of Southwark]
All those sorts of companies recruit their staff locally. They have huge staff turnover and they engage people locally.

I am also happy to say that this country has benefited hugely from immigration over many years and we should never forget that. However, the one thing I agree strongly with the noble Lord, Lord Hodgson, about is his point about Bills and regulations. He is right to say that over the past 30, or perhaps 40, years there has been a drift, so that Governments of all persuasions produce skeleton Bills with more and more stuff being dealt with in regulations. There are many times when we have all felt frustrated by how we are dealing with these issues. I accept that.

I note that the noble Lord, Lord Hodgson, was interested in and concerned about the position of the Labour Party. I thank him for that. The Labour Party will be fine and we will put forward our position at the next general election. However, I thank him for his concern. I should say, however, that in all the amendments to which the noble Lord, Lord Hodgson, has spoken, his own Front Bench does not agree with him. He has a problem, I suggest, with the Conservative Party as well. Maybe he should look there.

I take exception to the suggestion of the noble Lord, Lord Green of Deddington, that I care little for ordinary working people. I care greatly about workers in this country and their families. We do not agree in this House—that is fine—but to suggest that I do not care, or that the noble Lord, Lord Paddick, with whom I agree, does not care, is wrong. That suggestion from the noble Lord, Lord Green, is regrettable. We can disagree on politics and policies. I come from a family of people who have worked hard in this country and care about how the working people in this country are looked after and protected. I will leave it there and look forward to the Minister's response.

7.45 pm

Baroness Williams of Trafford (Con): I thank the noble Lord, Lord Green of Deddington, for retabling his amendment and all noble Lords who have spoken in support or opposition.

The noble Lord, Lord Green, seeks to put in place separate parliamentary approval for regulations allowing EEA and Swiss nationals who are new entrants to the labour market to be paid less than other skilled workers. I recognise the intention behind this amendment. He is absolutely right that, in using salary thresholds as a mechanism to control immigration, protect the domestic workforce from being undercut and ensure the UK's economy prospers, we must have confidence that salary requirements are set at the right level. It is for these objectives, in addition to ensuring that migrant workers are not exploited and that a skilled migrant is coming to the UK for genuine skilled employment, that a system of salary thresholds will form a critical part of our new skilled worker route.

In Committee, the noble Lord, Lord Green of Deddington, and my noble friend Lady Neville-Rolfe spoke about the risk of losing control of our borders and disadvantaging young people and the unemployed in the UK. The noble Lord also mentioned the Government's recently launched Kickstart programme and his concerns that its benefits would be reduced due to our young people facing further difficulties and unlimited competition from those overseas migrants who meet the new entrant definition. I hope I can reassure noble Lords that this is simply not the case. Our salary requirements for all skilled workers are based on national earnings data for UK workers. Furthermore, while new entrants will benefit from a reduced salary rate, recognising these individuals should not be disadvantaged by the fact that they typically earn around 30% less than experienced workers, they will still need to meet other mandatory requirements to be successfully granted leave. Namely, along with all other skilled workers, they must have a sponsoring employer, a job at the appropriate skill level and be able to speak English to an accepted standard. Furthermore, the new entrant rate is not an indefinite offer. It is designed for those essentially at the start of their careers.

The noble Lord, Lord Green, also voiced concerns about settlement, given that the new skilled worker route will be a route that allows this, subject to meeting relevant requirements. While this is indeed the case, I can confirm that individuals will need to be paid at least the going rate for their occupation by the time they reach settlement. While it may not sway the views of some noble Lords, the Government did not agree this proposal in isolation. We sought independent advice from the MAC, outlined in its January 2020 report on salary thresholds and a points-based system and, following careful consideration of its findings and our own extensive engagement, accepted its recommendations.

I should like to put on the record that reduced rates for new entrants are not new; they have been a part of the immigration system since 2013. While we intend to continue the new entrant salary rate, in future the Immigration Rules will set a more consistent 30% reduction across all occupations. As the MAC identified, the differences in the current system are very large for some occupations. New entrant quantity surveyors, for example, may be paid 69% less than more experienced migrant workers in the same profession.

Turning to the crux of this amendment, the noble Lord is right that there should be parliamentary scrutiny of these requirements, but there is already a long-established procedure for that. The Government are required to set out their immigration policy in the Immigration Rules. This includes salary requirements and reduced rates for new entrants which can determine whether an immigration application succeeds or fails. Changes to the rules must be laid before Parliament, either House may disapprove the changes by negative resolution within 40 days of them being laid and the Secretary of State shall make any changes that appear to her in the circumstances to be required. Any such changes will be laid before Parliament within a further 40 days. I do not think it is necessary or proportionate to introduce a new procedure for salary requirements for new entrants, particularly at a time when the Government are committed to simplifying and streamlining arrangements. Furthermore, there seems to be no particular reason for the procedure for new entrant salaries to be different from the procedure for the general salary requirements or, indeed, any other requirements for skilled workers.

Additionally, as is made clear in recently published policy statements on the UK's new points-based system, measures will be introduced in a phased manner and we will retain the ability to make adjustments based on experience and, crucially, to respond to the needs of the UK economy. New regulations under an affirmative procedure would lessen this responsiveness and could risk splitting up interconnected policies which together create a robust element of control, protect domestic workers and ensure that those who have the skills and talents that we need and who want to make a positive contribution can come to the UK.

For the reasons that I have set out, and on the basis that we will continue to lay before Parliament the full details of the requirements, including those for new entrants, I hope that the noble Lord will be happy to withdraw his amendment.

Lord Green of Deddington (CB) [V]: My Lords, I am grateful to the Minister for that full account of the Government's policy, which we will study in detail. It is not feasible to do that on the hoof. Let me say first that I certainly did not intend to suggest that the noble Lord, Lord Kennedy, or the noble Lord, Lord Paddick, do not care about working people. Clearly, they spend much of their lives among working people and the noble Lord, Lord Kennedy, was actually a trades union official for some time. However, I think they have not correctly judged the likely effect of the measures the Government are bringing forward, and I fear that—from everyone's point of view—it is going to go pear-shaped. I am grateful for the powerful support of the noble Lords, Lord Horam and Lord Hodgson, and the noble Baroness, Lady Neville-Rolfe.

In the end, this comes down to a question of judgment about the raft of measures that the Government are bringing in in January and applying to the whole world. We have dodged some of the technicalities, but we are not talking about applying these things to EU citizens only. We have a brand-new, massively new system and it is very dangerous for the stability of public opinion on this matter. I thought that the noble Baroness, Lady Neville-Rolfe, hit the nail on the head with some very wise words. She said that this looks as though it is going too far with too many changes at once. That was simply put but none the less powerful, relevant and to the point. In the end, we will see what the numbers do. It will be a while before they take off, but my instinct is that they will, and at a very awkward time for the Government. That is their problem, but they have been warned. With that, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9 not moved.

The Deputy Speaker (Baroness Henig) (Lab): We now come to the group beginning with Amendment 10. I remind noble Lords that Members other than the mover and the Minister may speak only once, and that short questions of elucidation are discouraged. Anyone wishing to press this amendment or anything else in this group to a Division should make that clear in debate.

Amendment 10

Moved by ***Lord Rosser***

10: Clause 4, page 3, line 8, at end insert—

"( ) The Secretary of State may not make regulations under subsection (1) unless—

(a) a Minister of the Crown has published guidance on the "reasonable grounds" for permitting applications to the EU Settlement Scheme on a date later than the deadline for application to the scheme;

(b) the guidance includes instruction on the immigration status of a person who is eligible to apply for the scheme in the period between the deadline for application and the date their application is made; and

(c) a copy of that guidance has been laid before Parliament."

Member's explanatory statement

This would prevent regulations being made under this Clause until the Government has published guidance on what reasonable grounds will be accepted as a reason for making a late application to the EU settlement scheme and how a person will be affected in the gap between the deadline and the date they apply.

Lord Rosser (Lab): My Lords, Amendments 10 and 13, in my name and that of my noble friend Lord Kennedy of Southwark, both relate to the EU settlement scheme, on which we had debates in Committee. I have tabled the amendments in this group not in order to have a rerun of those debates but to follow up on some specific points.

Amendment 10 would require the Government to publish guidance on the "reasonable grounds" that will be used to permit late applications to the scheme, with particular focus on the interim period between the deadline for the scheme and the date on which a late application is entered. The Minister has said in previous debates that early in 2021 the Government will publish guidance on what constitutes missing the deadline.

Our concern is the gap between the deadline and the date on which a late application is made. If a person applies to the EU settlement scheme after the deadline with a legitimate claim that is successful, there will have been a gap of perhaps some months between the deadline and the date on which they applied, during which they did not have legitimate immigration status in the UK. They might be an elderly person who has continued seeing their GP in that time, or a key worker who has continued going to work. Will there be repercussions for having continued these activities while not in possession of settled or pre-settled status? Or, once a person applies and is accepted, will they be considered to have had that status, which they are entitled to, for the entire period since the deadline? It would be helpful to have some clarity from the Government on that issue.

Amendment 13 relates to the protection of rights during the grace period between the end of the transition period and the EU settlement scheme deadline. I thank the Government for providing an illustrative version of the SI, but some concerns have been raised over its scope. The3million has raised concerns that

"In their current form, the regulations appear to exclude a large cohort of people from having a legal basis to live in the UK during the grace period and whilst their application is pending.

[Lord Rosser]

The regulations limit a legal basis to live in the UK to those who were 'exercising treaty rights' in accordance with existing EEA regulations by the end of the transition period."

This appears to mean that EU citizens not exercising their treaty rights would fall outside these protections. That could include a person who is self-sufficient or reliant on their spouse for household income, or someone who is currently out of work and does not have comprehensive sickness insurance. It could also include those who would have a hard time showing evidence of economic activity, such as victims of trafficking or of modern slavery.

The current context of the Covid pandemic and job losses is relevant here. Job losses have been considerable and the prospects of new work can at present be low. To fall within the protection of the regulations, there must be the prospect of acquiring further work following the loss of a job. Stakeholder groups are concerned that there is a serious risk that those who cannot find work by the end of the year will not be protected by these regulations. Can the Government provide reassurance on the scope of the intended regulations? If that is not possible now, will the Minister undertake to look at this issue? I beg to move.

8 pm

Lord Judd (Lab) [V]: My Lords, I thank my noble friend for having introduced this amendment, for the considerate way in which he did it, and for the questions which he posed to the Minister, to which I hope she will reply.

It would be difficult to overestimate the degree of concern that exists among voluntary and civil society organisations which are looking after children and seeing to their protection. I know that across the House, irrespective of party, there is a real concern that we should always be seen in the world as a country which gives genuine priority concern to children.

Among those organisations is of course Amnesty, and it is worth seeing what it has to say on this. Many of these children may do themselves harm; many of them will be British citizens or entitled to register as such. It is vital to their interests that they are encouraged to act on these rights of British citizenship and that local authorities are encouraged and supported to assist children in doing so. If that is not done, these children may lose their rights to British citizenship, either because for some the right is lost on their reaching adulthood since delay may mean evidence becomes increasingly inaccessible to establish, or because an encounter with the criminal justice system may bar their exercise of the right on the basis that they are regarded as not of good character.

Amendments 10, 13 and indeed 18 are concerned with ensuring that EU citizens are not left without settled status. These are important concerns, because being without status or confirmation of it exposes someone to immigration powers and exclusions. These immigration powers include the ability to detain and remove a person from the United Kingdom, and those immigration exclusions include the ability to prohibit a person from such things as working, renting accommodation, holding a bank account, accessing free healthcare and applying for social welfare. There are a number of telling concerns around this area of the Bill, and I thank my noble friend for having introduced the amendment.

Baroness Hamwee (LD): My Lords, late applications are indeed very important, and guidance will be essential. There is a lot of concern about what may lie behind an EU citizen not having applied for settled status, not with the intention of somehow evading the authorities or doing anything sinister or underhand. For instance, as we have said before, people may believe that an application is not necessary because they have a permanent residence document. Many reasons are cited, and no doubt there are many which none of us has thought of. After all, that is the human condition.

There are people whom the Home Office information has failed to reach or who have not understood it. I am aware that the Home Office plans to step up its communications after the end of the year to try to reach those who have not applied. However, it is worth mentioning again that, when the UK switched to digital television, there was an enormous campaign which was generally accepted as successful, but even that success left 3% of households not switching and finding overnight that their televisions did not work, and that was a much more straightforward subject than this is.

The point made within the amendment, and by the noble Lord, about status in the interim period is hugely important, and I hope to come back to that later in this Bill. They have got to be secure in the interim; it would be an enormous breach of faith if that was not the case. In Committee, the Minister sought to reassure noble Lords that there is plenty of time to apply under the EU settled status scheme, but that is not the point; it is what the Government's "compassionate and flexible approach" will amount to in practice in their pragmatic take on this.

I confess that I had hoped to get an amendment down on comprehensive sickness insurance—essentially, what the position is on the grace period—in time for today, but it defeated me. I refused to be completely defeated and, with a little more energy, got back to it and it has been tabled, but too late for today, so we will have an opportunity on Monday.

We have the Government's SI in draft in what I understand to be close to its final form, but those who know this subject inside out—and I do not—are still poring over it. That includes the3million, which is doing the most impressive job on all of this subject, both at a technical and at a human level. It is entirely appropriate to seek an assurance that the draft regulations provide the protection that we, and the noble Lord, Lord Rosser, would expect to see during the grace period.

The noble Lord, Lord Judd, was right to remind us of the particular position of children who have not been able to exercise treaty rights, if I understand the position properly. The guidance needs to be as extensive as is appropriate or, to hark back, as is necessary. I say that because on a different matter, on 9 September, the noble Lord, Lord Parkinson, from the Dispatch Box, said that an amendment which I was speaking to was not necessary, and referred the Committee to the draft illustrative regulations proposed under Clause 4(1),

which, as he said, do not include any provisions relating to the subject matter I was discussing. They do not. But reading that afterwards—and I do not think the noble Lord meant it as cynically as I then read it—it was tantamount to saying, "It is not necessary because we are not doing it." I did read the passage through two or three times.

I have my concerns, as I have said, about the whole of Clause 4, but I am not sure it is appropriate to hold back on all the regulations until this temporary protection is sorted out. But then, frankly, I am not here to help the Government sort out that type of thing. I am glad the noble Lord has tabled this amendment, spoken to it and drawn the potentially precarious position of a number of people—possibly quite a lot of people—to our attention, and I support him.

Baroness Williams of Trafford (Con): My Lords, I thank the noble Lord, Lord Rosser, for his amendments. I hope that what I will say will reassure him and that he will feel happy to withdraw them. Both amendments seek to prevent the Government from making regulations under Clause 4 until we have published guidance on late applications made under the EU settlement scheme, the grace period statutory instrument and guidance on its operation.

I turn first to Amendment 10, which concerns the publication of guidance on how the Government will treat late applications to the EU settlement scheme. The Government have made clear their commitment to accepting applications after 30 June 2021, where there are reasonable grounds for missing this deadline. This is in line with the withdrawal agreements, which now have direct effect in UK law via the European Union (Withdrawal Agreement) Act 2020, so this commitment is effectively enshrined in primary legislation.

As I mentioned during Second Reading and more recently in Committee, the Government intend to publish guidance on reasonable grounds for missing the deadline in early 2021. This will be well in advance of the deadline. For now, our priority must be to encourage those eligible to make their application before the deadline. This will ensure that they can continue to live their lives here, as they do now, with the certainty that status granted under the scheme will provide them. We do not want to undermine those efforts and risk inadvertently causing people to delay making their application.

The noble Lord, Lord Judd—humanitarian that he is—supported by the noble Baroness, Lady Hamwee, talked about vulnerable people, particularly children. The Government are doing all that they can, using all available channels, to raise awareness of the scheme and ensure that vulnerable groups are helped to apply.

The published guidance, when it comes at the beginning of next year, will be indicative, not exhaustive. All cases will be considered in the light of their individual circumstances. Apart from asking for the reason for missing the deadline, the application process will be the same; we will consider the application in exactly the same way as we do now, in line with the immigration rules for the EU settlement scheme.

A person with reasonable grounds for missing the deadline, who subsequently applies for and obtains status under the scheme, will enjoy the same rights from the time they are granted status as someone who applied to the scheme before the deadline. However, they will not have those rights in the period after the missed deadline and before they are granted status, which is why we are encouraging and supporting people to apply as soon as possible. It is very pleasing that over 3.9 million people have done so.

In addition, it is important to remember that the regulations under the Clause 4 power include provisions relating to the rights of those with status granted under the EU settlement scheme. To delay those provisions, as envisaged by this amendment, would therefore be counterproductive in our collective effort to protect the rights of those resident in the UK by the end of the transition period, as well as Irish citizens.

Amendment 13 would require the Government to publish the draft statutory instrument that will temporarily protect the rights of EEA citizens who are eligible to apply to the EU settlement scheme but have not done so by the end of the transition period, together with accompanying guidance. That instrument, as noble Lords know, is the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, which I will refer to as the grace period SI. An illustrative draft was shared with this House before Committee. Since then, on 21 September, the Government have formally laid the SI in Parliament.

The purpose of the grace period SI is to set the deadline for applications to the EU settlement scheme as 30 June 2021 and to protect the existing rights of resident EEA citizens and their family members during the grace period. It will save relevant legislation otherwise repealed by Clause 1 of and Schedule 1 to this Bill at the end of the transition period. This will mean that EEA citizens can continue to live and work in the UK as now throughout the grace period and pending the resolution of their application to the EU settlement scheme, providing they apply by 30 June 2021.

I reassure noble Lords that EEA citizens' rights to live and work in the UK will not change during the grace period, nor does the grace period SI change the eligibility criteria for the EU settlement scheme. Therefore, there is no change to the Government's policy that comprehensive sickness insurance is not required to obtain status under the EU settlement scheme.

Noble Lords asked me about the scope of the regulations. People need to exercise free movement rights to benefit from the savings in the grace period SI. We are not inventing rights of residence to save them, because that is not what the withdrawal agreement says. The statutory instrument will be subject to debate and approval by Parliament and will need to come into force at the end of the transition period. Where relevant, Home Office guidance will be updated to reflect the statutory instrument before the grace period commences.

I hope that I have explained that clearly and that, therefore, the noble Lord will feel happy to withdraw his amendment.

Lord Rosser (Lab): I thank my noble friend Lord Judd and the noble Baroness, Lady Hamwee, for their contributions to this brief debate, and the Minister for her response, which I shall read carefully in *Hansard.*

[Lord Rosser]
At the moment, I am not entirely sure whether I have had the reassurances that I sought; maybe I have and I shall realise that when I read her reply.

I raised the issue of someone who applied late and ended up with a gap of some months between the deadline and the date when they applied, in which they did not have a legitimate immigration status in the UK. I sought an assurance that, once a person in that situation applied and was accepted, they would be considered to have that status to which they were entitled for the entire period since the deadline. I am not quite sure whether the Minister was saying that they would, or not, but I shall read her reply very carefully.

I was not entirely clear again whether the Minister accepted the view of the3million organisation that the regulations would exclude a cohort of people from having a legal basis to live in the UK during the grace period or whether she was saying that would not be the case. Again, I shall read her response carefully. In the meantime, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Lord Parkinson of Whitley Bay (Con): I am afraid that we need to have a very short break to assist those who are looking after us technically.

8.18 pm

Sitting suspended.

8.33 pm

The Deputy Speaker (Lord Alderdice) (LD): My Lords, we now come to the group consisting of Amendment 11. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 11

Moved by ***Baroness Hamwee***

11: Clause 4, page 3, line 8, at end insert—

"(5A) Regulations made under subsection (1) must make provision to enable UK citizens falling within the personal scope of—

(a) the Withdrawal Agreement,

(b) the EEA EFTA separation agreement, or

(c) the Swiss citizens' rights agreement,

to return to the United Kingdom accompanied by, or to be joined in the United Kingdom by, close family members.

(5B) Regulations under subsection (1) may not impose any conditions on the entry or residence of close family members of UK citizens which could not have been imposed under EU law relating to free movement, as on the day on which this Act comes into force.

(5C) For the purposes of subsection (5A)—

"close family members" means—

(a) children (including adopted children), and

(b) other close family members where that relation subsisted on or before 31 January 2020 and has continued to subsist;

"Withdrawal Agreement", "EEA EFTA separation agreement" and "Swiss citizens' rights agreement" have the meaning given in section 39 of the European Union (Withdrawal Agreement) Act 2020 (interpretation)."

Baroness Hamwee (LD): My Lords, at the previous stage of the Bill and very late in the debate on this amendment, which was then in the name of the noble Lord, Lord Flight—I am glad that he is able to be here this evening—having listened to the Minister I asked what she would advise a couple living in the EU, one British and one an EU national, if they both have elderly parents, on one side of the family in the UK and on the other in that EU country. They would be—they are—faced with not just the end of free movement but an impossible choice: not just where they should live after March 2022 but which parents they should decide to care for personally. They will have to make that decision within the next 18 months—15 months after the end of the transition. The Minister had an impossible task in responding to my question as to whether picking between parents was a humane response. She argued that people will have had plenty of time, but does that really address the point?

Since Committee, I have had so many emails, as no doubt have other noble Lords, making it clear how many different family situations there are, but all presenting families with similarly impossible choices. I thank everyone who has written to me and to other noble Lords. They have taken such care to contact us, not with standard formulaic emails but with powerful descriptions of their situations, their concern and their distress. Noble Lords will understand that I want to read some of them into the record, and that I cannot read them all. As examples, however, there is a lady of 75 living in the Netherlands supporting a Dutch companion, and vice versa, whose mother is 96 and in a care home there. There is a lady of 79 in the UK who expected to receive support and part-time care from her daughter, who would be prepared to give it provided that her French husband is able to move to Britain. A couple in France with a 12 year-old son are faced with whether to uproot him from school. There is a family in Italy, one parent British and one Italian, with two teenagers of dual nationality—one of whom has just started at university in the UK, while the other may want to make her life here; the parents may want one day to follow their daughters. And so it went on.

We are a global society. Families come in all shapes and sizes, and in all places. Many people make the point that their residence outside the UK makes them feel no less British and that they are surprised to find themselves writing as they do. Many say that the prospect of separation from family is unbearable. All say that when they moved abroad, they had no idea that there could be restrictions or conditions on returning as a family.

The amendment provides that the regulations

"must make provision to enable UK citizens falling within the personal scope of"

the agreements referred to

"to return to the United Kingdom accompanied by, or to be joined in the United Kingdom by, close family members"

without

"conditions on the entry or residence of close family members … which could not have been imposed under EU law relating to free movement … on the day on which this Act comes into force."

I have been asked about a detail of the amendment: the reference to "close family members". As it happens, in a Select Committee yesterday the Immigration Minister used exactly that phrase in discussing family reunion. I suppose the technical answer is that these provisions would be implemented by regulations which would be precise, but by anyone's definition partners and parents "where that relation subsisted", which in the case of parents it obviously would, at the end of the year and continues to do so would fall within it, as well as children.

The Minister explained in the context of various amendments in Committee that the Government were seeking to be not discriminatory but to end discrimination between, on the one hand, EEA/Swiss citizens and, on the other hand, other citizens. But the Government's proposals for ending the current arrangements in March 2022 would discriminate between those families of mixed nationality who happened to have settled in the UK and those who settled elsewhere in the EU. They would require Britons who wish to return to meet conditions for sponsoring a spouse and children.

The financial requirements—the minimum income requirements—are not easy nor by any means available to everyone. Some 40% of UK workers could not reach the minimum income requirement, and the non-British partner's income can be taken into account only after six months, assuming he or she can get here in the first place. If you want to bring elderly parents, they have to be so much in need of care that, according to evidence given to a working party that I chaired some years ago, they would probably be unfit to travel. If you yourself are older and no longer earning, can you reach the income threshold? This would be discrimination against our own citizens, imposed retrospectively on citizens who had no expectation that this choice might lie ahead.

Lifting the end date would not mean unlimited numbers of people coming here with their families. As I have explained, we are talking about people who fall within the agreement, their families and children, and others with whom the relationship subsisted before January 2020. I asked rhetorically in Committee if this was really humane. I ask now whether it is the right approach—to ask that, I think, would also be rhetorical. Since Committee, I have begun to realise just how inhumane it is, so I give notice now—I suppose it is notice for Monday—that, barring assurances which I cannot say I anticipate, though they would be very welcome, I will press the matter to a vote in accordance with current procedure. For the purposes of the debate this evening, I beg to move.

The Earl of Clancarty (CB): My Lords, I have added my name to Amendment 11 in the name of the noble Baroness, Lady Hamwee. When I spoke to it in Committee, I genuinely thought that this was something the Government had overlooked. I discover that this is not the case and that there is some history behind the Government's position. The reason perhaps for my naivety is that the argument as I saw it, and as I still see it, is very simple: it would be wrong to put a deadline on British citizens returning to the UK with their families. It would be deeply unfair to do so, and I am glad that the noble Baroness intends to press this to a vote if the Government do not accept the amendment.

The Minister cited in Committee the case that the Conservative Government of the day brought against Surinder Singh in 1992, and said at the beginning of her reply that the amendment

"refers to a specific cohort of people relating to what is known as the Surinder Singh route for family immigration."—[*Official Report*, 9/9/20; col. 827.]

I fear that this statement betrays an element of cynicism in government thinking about this issue—for which I of course do not blame the noble Baroness. However, this is an inappropriate analogy, in the sense that the Government have clearly not accepted the decision made in Surinder Singh's favour. It is an inappropriate analogy for a couple of other reasons. One is that there is a universal cut-off point that applies both to British and European families, which is of course the end of this year. We will not then be part of the EU and there will be a limit on the number of families, European and British, who might then come to this country from Europe.

The second thing to say is that we are talking about many British citizens who have been married for many years, often to other European partners—though it should not matter where in the world their partners have come from—and often they are building families with strong and complex roots in the UK and the rest of Europe. They have done so believing at the time that they had a settled life in Europe, wherever that may be in Europe; that was their bone fide position. Yes, people get divorced—and indeed married—for all kinds of reasons; that is life. But this Government are applying the Government of 1992's perception of that case to generalise about all British families living in Europe. British citizens and their families in Europe are not that cohort, as this Government perceive it, and it is insulting to all British families currently living in Europe that they should draw that analogy.

8.45 pm

As the Minister might imagine, it is clear that, among British citizens and their families abroad, the concerns are widespread. I will quote one example to add to the number that the noble Baroness, Lady Hamwee, has given. A British woman I have spoken to, in a relationship with an Italian citizen since before the referendum and now married with a two year-old boy, has a father in the UK. Her husband is tied to his job in Italy, and it is simply impractical for them as a family—and will be, perhaps, for another 10 years—to make the move that she thinks she may have to make at some stage to look after her father in the UK in years to come. Leaving it beyond March 2022 would become a bureaucratic nightmare that risks splitting up the family for several years, even if income criteria are eventually met. As we have already heard, this is by no means a lone case.

It is worth saying that over 50 veterans from across the armed forces who live abroad have signed a letter in support of this amendment, one that was co-ordinated by British in Europe. Some Peers may have received this already. Of course, from having been in the armed forces abroad, they will know precisely what these concerns will entail and, indeed, may have younger family members in this position too. As they say in their letter: "Why should service personnel or anyone who is British be discriminated against in this way?"

[The Earl of Clancarty]

The Government's position on this seems so unnecessary and unfair, especially in consideration of the fact that EU citizens who have settled status will—correctly—have lifetime rights to have existing spouses join them in the UK. This is a question of fairness and humanity, and I hope that the Government will relent.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I was pleased to attach my name to this amendment in the name of the noble Baroness, Lady Hamwee, but, after the powerful debate we had in Committee, I am very sorry that it was still necessary to put this down again.

In our debate on Amendment 6, the noble Baroness, Lady Smith of Newnham, referred to the long and continuing discussion the Minister, the noble Baroness, Lady Lister of Burtersett, and many others—including myself—had in Committee about the many amendments that we sought to have applied to all affected by immigration law, the ruling out of the scope of those amendments and the claims from the Minister that what we were tabling was subsequently discriminatory. However, that is an argument that cannot—or, certainly, should not—be applied to this amendment; the situation of Britons married or partnered with Europeans is particular, but it can only be said that it is particularly awful.

No one with a non-EU spouse or partner could have predicted the "onerous" and "unjustified" minimum income requirement applied in 2012. Those are not my adjectives but those of a High Court judge. What I would call an unreasonably harsh assessment might be to say "Well, they should have known that the rules could change when they made their family arrangements". Yet the many Britons who have been writing to me—and, as the noble Baroness, Lady Hamwee, said, no doubt to many other Members of your Lordship's House—who established families in Europe decades ago, in many cases, could not conceivably have imagined the dreadful state of British politics over the past five years that has brought us to the current pass. I join the noble Baroness, Lady Hamwee, in thanking all of them for taking the time and having the courage to share their circumstances with us in the hope that we can get the Government to listen.

Rather than making my own arguments, I want as closely as possible to let Jane, a Briton who gave me permission to share her story, speak for herself in your Lordships' House. She says:

"I am a British citizen, resident in Italy since 1993 with my Italian husband and children; I have my widowed mother, aged 76, living alone in the UK. She is fortunately in good health at the present time. However, one must be realistic. In time, she may need extra care. As her only child, I, with my husband, have always reassured my mother that we would be there to care for her in her later years, but due to the possible outcome of this Bill, we are increasingly worried.

Like many other Britons who moved to the EU while Britain was a member, I had—and expected to keep—an almost unfettered right to return to the UK with my family. My mother and I were safe in the knowledge that I could always come back should the need arise. I do not want my mother to have this worry. I would like her to grow old knowing that we can come back to the UK should that need arise. Unless this Bill is amended, this right will be removed on 29 March 2022, creating impossible choices for me and thousands of families like mine.

The Government's answer is that we are given 15 months from the end of transition to return with our families to the UK. This is ignoring the massive practical difficulties of uprooting ourselves from family life and work in our country of residence. I have my own business here in Italy, not to mention my husband's work and our children's education, and there may be no need for that uprooting."

Will the Minister personally respond to Jane and tell her what the Government's justification is for putting her and her family in this situation?

The Green Party group wholeheartedly offers the noble Baroness, Lady Hamwee, its support if she chooses to put her amendment to a vote.

Baroness Lister of Burtersett (Lab): My Lords, I was prompted to speak in support of the amendment by an email that I received this week from a British citizen born of British parents in Britain. During voluntary service overseas, she met and married an Italian. She lived in Italy, working for a UN agency for 30 years. They adopted a boy whose nationality is Italian. After her husband died, she hoped to return to the UK, where her brother and sister live. However, this would now mean her leaving her son behind, which, she writes,

"I could never do. We are very close. I could never leave him behind, with me in one country and him in another."

Both she and others in a similar situation cannot believe that their families will be split up in this way in future.

I refer to what the Minister said in Committee at the end of the debate on another amendment relating to family reunion. She appeared to agree with the argument of the noble Lord, Lord Green of Deddington, for raising the minimum income threshold—referred to earlier by the noble Baroness, Lady Hamwee—from £18,600 to £25,700, or even £38,000, to cover the cost of public services or make a net contribution to public finances. I know that these figures came from the Migration Advisory Committee but they are premised on a narrow understanding of what constitutes a contribution to our society. It is the same kind of thinking that will exclude care workers and other key workers from immigration, as we heard during the debate on a previous amendment. The argument discounts the importance of the right to family life. I hope that the Minister will say now that I misread what she was saying and that she was not supporting the suggestion to raise the threshold.

The damaging impact of the minimum income threshold has been documented in a number of studies, most recently from the University of Bristol. It wrote of

"not just emotional impacts of separation, but financial, mental and physical hardship."

The family reunion rules divide far too many families already. They need reviewing. For now, we can at least prevent even more families—like those of the mother who emailed me and the many other people who have emailed other Members of your Lordships' House—being split up in this cruel and heartless way. We can prevent that happening by supporting this amendment.

Lord Oates (LD) [V]: My Lords, my noble friend Lady Hamwee has already eloquently set out the powerful arguments for this amendment, as have the noble Earl, Lord Clancarty, and the noble Baronesses, Lady Bennett of Manor Castle and Lady Lister of Burtersett.

As my noble friend Lady Hamwee told us, in Committee she asked the Minister how she would advise a couple, one British and one an EU national,

who both have elderly parents, in which country they should choose to live. Which set of elderly parents should they pick? In response, as my noble friend reminded us, the Minister said that the Government had given people "plenty of time", but that is not an answer. It does not matter how much time they have had; they could have had all the time in the world. It does not change the fact that the Government are forcing them to make an invidious choice, to make it by 2022 and to live with it ever after. If they need to stay in the EU member state of the EU national to look after his or her parents, after 2022 they will no longer be eligible to return to the UK together. I ask the Minister once again: how should that family make their choice? I would like her to provide an answer to that essential question—which she failed to give to my noble friend—because it goes to the heart of the issues and the terrible choices that will be inflicted on our citizens and their families as a result of the Government's policy.

The Government have made much of taking back control. This is a test for Ministers of what that control will mean in practice. Will they act with compassion or with cold-hearted indifference and in doing so inflict intolerable injustice on thousands of families of our citizens? I am sure I am not alone—and we have heard testimony from previous speakers—in having been contacted by numerous British citizens with heartrending stories of the misery that the Government's present policy will cause to them and their loved ones. People who settled as British citizens in the EU and who made their lives there with their partners, who now, through no fault of their own, face their future plans being torn up by ministerial obduracy and callousness.

One such example is Fiona, who lives in Luxembourg with Miguel, her German-Chilean husband. He studied his O and A-levels in the UK, where his father was a professor. He later took a job as a translator in Luxembourg, where Fiona joined him. They have now been married 25 years and have lived in Luxembourg all that time. They always assumed they would be able to return together to the UK, as Miguel was an EU citizen, and they made their life plans on that reasonable assumption. Now—through no fault of their own—unless they return before 2022, Fiona would only be able to do so alone. In theory, her two children could come with her, as they are dual nationals, but if this is the way the UK intends to treat their German father they have no wish to do so, and I cannot say I blame them. Fiona says: "As a British citizen, I feel exiled from my country of birth and the rest of my UK family." That is the reality of the Government's position: to de facto exile British citizens from the land of their birth.

The only argument I have heard Ministers advance to justify the injustice they are about to inflict is that somehow maintaining the existing position would not be fair on British citizens living outside the EU who are married to non-UK nationals. This is the hollowest of empty arguments. British citizens moving to live in an EU member state had the reasonable expectation that they would be able to return to the UK with their partner at any point. The gross injustice lies in the fact that existing rights are being stripped away. If the Government do not move on this policy, British citizens will face a very stark choice come 2022: they will either have to return alone, without their wife, husband or other family members, or not at all. That is the reality.

I hope that all Members of the House will be clear, when they eventually get to vote on this amendment, that they will not be voting on some abstract piece of policy; they will be deciding the future of thousands of British citizens and their families. They will be deciding whether those families have to pick which elderly parent they will stay to care for, or which life plans they have to tear up. Above all, they will be deciding whether to lift a massive burden of anxiety from the shoulders of our citizens in the EU or to impose a further weight of misery upon them. Even at this late stage, it remains in the Government's hands to show, by accepting this amendment, that they have a human face. However, if they do not, I hope that they will be resoundingly defeated when the virtual Lobbies function once again.

9 pm

Lord Kerr of Kinlochard (CB) [V]: My Lords, I congratulate the Minister on her stamina and courtesy in enduring a lot of Second Reading speeches earlier. I wonder whether, like me, she misses Lady Mar, who was very good at intervening on Report to criticise those making Second Reading speeches. This debate is rather different and I sympathise with the Minister for a different reason: she has a very difficult task in answering the question from the noble Baroness, Lady Hamwee, repeated again tonight.

The oddity of this debate is that we are seeking to avoid discrimination against UK citizens. The EU citizen who is here now or will be coming here by the end of this year has, quite rightly, the right to keep here or bring in family members, but from 2022 the UK citizen living abroad, where he or she went exercising legitimate expectations, will have that right withdrawn. I agree with everything that the noble Lord, Lord Oates, has just said.

I find it hard to understand the response that the Minister gave to the question from the noble Baroness, Lady Hamwee, last time. I am particularly puzzled by the Catch-22 situation: from 2022, the accompanying partner will have to satisfy the minimum income requirement, but how will the returning partner be able to demonstrate the six-month history of earning in order to satisfy the requirement? It seems to be a really rather vicious Catch-22.

However, the core of the matter is the extraordinary callousness of requiring our citizens living abroad to make the difficult choices that are spelled out in our email inboxes these days: whether to break up the family, to favour looking after a dependent relative in the country of residence somewhere in the EU 27, or to come back to look after a dependent relative in this country. Those are the only three options available. It really is extraordinary that we should put our citizens in that position. They exercised their legitimate expectations and expected to lose none of their rights—and were told that they would lose none of their rights—when they chose to marry and live somewhere in the EU 27, or 15 or 12, or whatever it was at the time.

[Lord Kerr of Kinlochard]

We need a proper answer to the question from the noble Baroness, Lady Hamwee. If we do not get one—and I feel sorry for the Minister, because I do not think that she will be able to answer satisfactorily—then I will certainly vote for this amendment.

Lord Judd (Lab) [V]: My Lords, the noble Lord, Lord Oates, was absolutely right. Do we want to be a society based on compassion and concern, or to become a nation without a beating heart on humanitarian issues of this kind? As far as the European Union is concerned, there is of course a special challenge because citizenship means citizenship, going right back to classical times, but we took away what people in good faith had come to understand as their citizenship and the rights that followed from it when they went to make lives, futures and careers overseas. They never dreamed that they were breaking links with their home base. Many of them wanted to return at some point and of course, as we have heard from one speaker after another, many have families rooted here for which they feel responsible; they want to be able freely at a time of crisis to return and succour the needs of such people.

It is altogether good news that the noble Baroness, Lady Hamwee, has moved this amendment; it represents the kind of Britain in which I want to live, given the values behind it. Do we believe that families are fundamentally important psychologically, for mental health more generally, for physical health and to the well-being of citizens, or not? Do families provide a unit of stability in the midst of an increasingly complex, demanding and unpredictable world, or do they not?

What are we doing with this Bill? It is almost impossible to understand how the Government have got themselves into this position. I hope we stand very firmly behind the noble Baroness this evening, or whenever it is we are allowed to vote on this matter.

Baroness Smith of Newnham (LD): I support the amendment in the name of my noble friend Lady Hamwee. That probably comes as no surprise to noble Lords.

I am going to do something that I normally try not to, and that is to rehearse one of the arguments that has been going on for years. For five of the six years that I have been a Member of your Lordships' House we have been talking about having a referendum on leaving the European Union, having that referendum, and then trying to deal with the fallout from it. The debates that we were having in October 2015 have been rehearsed again and again. I have tried not to rehearse them; I recognise that the UK voted to leave, that we have left and that at the end of the transition period things will be different.

However, one of the points made during the debates on the European Union Referendum Act 2015 was the importance of enfranchising EU nationals resident in the UK but also UK nationals resident elsewhere in the EU. That was suggested precisely because those groups of people were disfranchised yet were potentially going to—I will not use "suffer", as I realise that that could be seen by some as inflammatory—be more clearly affected than many of the rest of us who are not actively using our rights as EU citizens. British citizens who have opted to use their rights under EU law to marry, reside and exercise the right to family life as EU and UK citizens should not have those rights torn away from them.

We have heard many individual cases this evening, but I will take a slightly more general approach. When an EU national is working abroad in another EU country, family members also have the right to reside and work in that country, regardless of their nationality. That has applied to UK citizens. The Minister puts forward the idea that somehow people have 15 months to make a make-or-break decision: "You can come back now or stay away. You can't come back with your spouse, your children, your in-laws, your close family members." Is that really what people thought that they were voting for? Taking back control surely is about us making the right decisions. They do not have to be xenophobic or exclusionary, or choices that say no to people. Why should we make it harder for those British citizens who have chosen to live in other countries—because they were exercising their rights and living with people they loved—to be back in the United Kingdom after March 2022 than it will be for EU citizens with settled status? We should at least be as generous to our fellow British citizens who have used their EU rights as we are to EU citizens who will benefit from settled status. Can the Minister please talk to her colleagues in the Home Office and make the Government think again?

Lord Flight (Con): My Lords, I hope that the Government have already seen what course of action they should take. I can see absolutely no sensible reason for the proposals being as they are and, apart from the issue of acting in a civilised way towards individuals, I cannot believe that so many people or such high costs are involved, so I cannot understand why so far the Government have been stuck on this issue.

As we know, the purpose of the amendment is to preserve the rights of UK nationals living in the EEA and Switzerland who return to live in the UK in future to bring with them or to be joined by non-British family members on the same terms as at present. Unless this Bill is amended, British citizens who moved to the EU or EEA while the UK was a member of the EU will lose their right to return to their country of birth with a non-British partner or children, unless they can meet financial conditions beyond the reach of many. If they need to return to look after an elderly parent, thousands will now have to choose between returning alone and leaving their families behind or abandoning their parents to stay with their non-British families in the EEA. Nobody should have to face such a choice.

The problem is that the Government are using the end of free movement to make these British citizens for the first time meet the minimum income requirement for family reunion. The MIR has been roundly criticised, because it is so high that 40% of UK workers would not be able to reach it, and because of the Catch-22 rule that the non-British partner's income can be taken into account only if they have been working in the UK for six months. How can they get into the UK if they cannot satisfy the MIR? The MIR is harsh but what makes it doubly unfair to apply it to this group of

British citizens is that the change is, in effect, retrospective. When they left their homes in the UK to move to the EU or EEA, those people were safe in the knowledge that if they established a family while they were abroad they could bring them back to Britain, and the British parents they left behind had the same expectations.

It also leads to the perverse result that the British Government's approach involves discrimination against its own citizens: while British citizens who have moved or will move to the EEA before the end of 2020 will face these restrictions, EU citizens who have moved or will move to the UK before the end of 2020 will not. They will have the right under the withdrawal agreement to bring existing family members here for life, as well as keeping their existing rights to return to their country of birth with families they have made in the UK.

9.15 pm

The Government's answer is that they have given us 15 months from the end of transition to return with families to the UK. This ignores the massive practical difficulties of uprooting adults from work and children from school at a time when there may be no need to do so. As the noble Baroness, Lady Hamwee, put it so well in Committee:

"I simply ask the Minister what she would advise a couple, one British and one an EU national, who both have elderly parents. She is suggesting that they should pick between them for future care by the end of 2022. Is this really a humane approach?"—[*Official Report*, 9/9/20; col. 829.]

I just add that I believe we should welcome warmly refugees fleeing vicious regimes who want to come to the UK and often put their lives at risk to be here. Many are highly skilled and they and their families will, in time, make huge contributions to this country. I would like to see us be helpful and welcome them. I detect quite often nowadays that the approach is rather more aggressive. Let us be civilised.

Lord Dubs (Lab) [V]: My Lords, I am grateful to the Minister, who, as always, makes herself available and is happy to give us briefings and have chats about impending legislation. I had quite a long chat with the Minister the other day about this Bill and this amendment.

I cannot help feeling that the Government are making an enormous mistake. This is not the way to treat people; this is not the way to behave. We were told that people will have 15 months to sort themselves out, but this proposal takes away a basic right—whether you have 15 months or longer to accept it, it is still taking away a basic right. That is surely unacceptable.

As the noble Lord, Lord Flight, just said, this is retrospective legislation. Nobody knew at the time; this has been invented subsequently. Not a single person in this position—and I have had masses of emails, as we all have, with terribly sad stories of people who are bewildered and agonised over what to do—had any idea that this was going to happen to them. None of us did until recently. For a year or two after the referendum, we had no idea that this would be the case.

When I had a chat with the Minister and her officials, one of the arguments put—I do not think I am out of order in putting the argument, as she is bound to put it herself later—was that we would have two sorts of British people. Say we had a British person married to an American, compared with a British person married to a French person: the British person married to an American would not have the right that we are arguing for on behalf of the British person living with an EU partner. But, of course, no British person married to an American ever thought that they would have that right, but we are taking away the right from people who expected to have it all along.

As the noble Lord, Lord Flight, also said, this discriminates against British people. How does it do so? An EU citizen living in Britain with a British partner has the right to go backwards and forwards to EU countries with no constraints of the sort that we are seeking to impose on British people. We have retrospective legislation that will discriminate against British people, which is surely outrageous, and the arguments do not stand up. I honestly believe that the Government should back off. This is a very big mistake.

Lord Rosser (Lab): My Lords, I will not go through and repeat all the arguments in favour of this amendment, so eloquently put by many noble Lords. I agree wholeheartedly with what has been said. I want to read from one of the emails that I have received. It says: "I am a British citizen, born and bred in England, who currently lives in France with my Dutch partner and our 12 year-old son. My ageing parents still live in the UK and it is not beyond the bounds of possibility that at some point in the future, I would like to return to live in the UK, principally to be closer to my parents and to help look after them in the autumn of their years. I was horrified to learn that, as things currently stand, from 2022, I would face a means test in order to return to the UK with my family—a means test to return to the country of my birth and of which I am a fully fledged citizen. I am sure you can appreciate what an absurd situation this is. Like all other British citizens who moved to the EU while Britain was a member, I had and expected to keep a right to return to the UK with my family. At the time I left the UK, my parents were safe in the knowledge that I could always come back, should the need arise. Many of us met a non-UK partner while living in the EU and made a family with them, believing that our family would remain united wherever we lived. Unless this Bill is amended, our right to return home with our families will be removed from 29 March 2022, leading to impossible choices for me and thousands of families like mine. This would be a completely inhumane situation."

I shall read just the last sentence of another email I have received. It says simply: "Unless this Bill is amended, the right of UK citizens to live in their own country with the partners of their choice will be negated for no obvious benefit to anyone. Is this a humane or necessary approach?" No doubt that is a question that the Government will answer in their reply, but I say now that if this amendment is put to a vote, we will be supporting it.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken in the debate, in particular the noble Baroness, Lady Hamwee, for speaking to Amendment 11, which seeks to continue the current family reunion arrangements provided under EU law, as the noble Earl, Lord Clancarty, pointed out, by the so-called Surinder Singh route. This amendment

[Baroness Williams of Trafford]
was tabled by my noble friend Lord Flight in Committee. It would require the regulations made under Clause 4 to provide a lifetime right for UK nationals resident in the EEA or Switzerland by the end of the transition period to return to the UK accompanied or to be joined by their close family members under current EU free movement law terms. The amendment seeks to provide this cohort with preferential family reunion rights under EU free movement law indefinitely. The result would be that the family members of such UK nationals would forever bypass the Immigration Rules that otherwise apply to the family members of UK nationals.

Family members of UK nationals who are resident in EEA states and Switzerland at the end of the transition period are not protected by the withdrawal agreements. However, the Government made the decision to provide arrangements for them. They will have until 29 March 2022 to bring their existing close family members —a spouse, civil partner, durable partner, child or dependent parent—to the UK on EU law terms. The family relationship must have existed before the UK left the EU on 31 January 2020, unless the child was born or adopted after this date, and must continue to exist when the family member seeks to come to the UK. Those family members will then be eligible to apply for status to remain here under the EU settlement scheme. Family members will, of course, be able to come to the UK after 29 March 2022 but will then need to meet the requirements of the Immigration Rules applying to family members of UK nationals, irrespective of where they come from.

A number of noble Lords asked me to advise them on what choices they would make. For a number of reasons, I cannot do that, not least because I am not an immigration lawyer. But it is not the case that UK nationals who wish to return to the UK from living in the EEA after 29 March 2022 will be required to abandon family members overseas. Those families will have to meet the requirements of the UK family rules, as I have just said, the same as family members of other UK nationals who already have to do this. This is a matter of simple fairness.

In Committee, my noble friend Lord Flight, was concerned that we were affording lesser rights to UK nationals than to EU citizens in this regard. Under the withdrawal agreements, EEA and Swiss citizens have lifetime rights to be joined here by existing close family members, but only if they are resident in the UK by the end of the transition period. UK nationals in EEA states and Switzerland have the same rights of family reunion in their host countries. By contrast, the amendment does not specify a date by which the UK national must return to the UK, meaning they could return at any point in the future and continue to benefit from EU family reunion rules. Such preferential treatment is unfair and cannot be justified in relation to the family reunion rights of UK nationals outside of EU law. The rights for those affected by the end of free movement should, after a reasonable period to plan accordingly, which our policy provides, be aligned with those of other UK nationals who have always resided in the UK or who seek to bring family members to the UK after a period of residence in a non-EEA country. To do otherwise would perpetuate a manifestly unfair situation for all other UK nationals wishing to live in the UK with family members from other countries.

The noble Baronesses, Lady Hamwee and Lady Bennett, the noble Lord, Lord Kerr, and my noble friend Lord Flight touched on the minimum income requirement. I appreciate the concerns that noble Lords raised in Committee. We think that the threshold is set at a suitable and consistent level and promotes financial independence, thereby avoiding burdens on the taxpayer. The MIR, as it is called, has been based on in-depth analysis and advice from the independent Migration Advisory Committee. The Supreme Court has also endorsed our approach in setting an income requirement for family migration which prevents burdens on the taxpayer and ensures that migrant families can integrate into our communities.

The noble Baroness, Lady Lister of Burtersett, referred to something that I mentioned in Committee. I am not sure that I am going to get this right. If I do not, I shall write to her or we can come back to it again. She was talking about £25,700. I understand that the minimum income requirement for a partner or spouse is £18,600, rising to £22,400 for sponsoring one child and the same again for sponsoring another. Can we speak after Report, or I will write to her after looking at *Hansard*?

My noble friend Lord Flight and the noble Lord, Lord Kerr, talked about Catch-22 in meeting the minimum income requirement. It does not exist as noble Lords described, as the minimum income requirement is generally to be met from the UK national partner rather than from the foreign national partner.

I know that I shall not have reassured noble Lords, because many of them tell me that they are going to vote on this, but that is my explanation of the logic of what the Government are doing. I hope—but I doubt—that the noble Baroness will withdraw her amendment.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): I have received no requests to speak.

9.30 pm

Baroness Hamwee (LD): My Lords, I agree with the noble Baroness on one thing: I am not going to withdraw my amendment. I thank all the speakers, all those who have written to us and the organisation British in Europe, which has helped us understand the position and made sure that so many British people in Europe understand it.

It was notable to me that the speakers all used different examples. I think all of us have had the experience of being briefed and finding that one's briefing is anticipated by several previous speakers—not so today. Our correspondents have written a variety of speeches for us. What I had not known until this evening was the position of veterans who served in the Armed Forces abroad, and who—this is very powerful—are making their views known. I am grateful to the noble Earl for raising that.

The Minister said we were asking to for ever bypass immigration laws. That is a very loaded way of putting it. She talked about simple fairness; well, simple fairness demands not changing the rules affecting our fellow

citizens, who could never have anticipated the situation, nor anticipated that their own spouse would be regarded as an unacceptable burden on the state.

We should not be callous, to adopt one term that is being used, about the legitimate expectations of our fellow citizens. Let us not be callous, and, as the noble Lord, Lord Flight, said, let us be civilised. So, I do not beg leave to withdraw the amendment, and I will put it to the House when we are able to have a Division on the matter.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): I will now put the question on Amendment 11. Notice has been given of the intention to press this amendment to a Division. I will need to collect the voices, but if there is a dissenting voice, the Division will have to be deferred.

Remote Division on Amendment 11 deferred.

We now come to the group consisting of Amendment 12. I remind noble Lords that Members other than the mover and the Minister may speak only once, and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 12

Moved by ***Baroness Hamwee (LD)***

12: Clause 4, page 3, line 8, at end insert—

"( ) The power to make regulations under subsection (1) does not include power to make provision inconsistent with the withdrawal agreement as defined by section 39 of the European Union (Withdrawal Agreement) Act 2020 (interpretation)."

Member's explanatory statement

This amendment would ensure that the power created in subsection (1) can only be used in ways that are consistent with the UK's obligations under the EU Withdrawal Agreement.

Baroness Hamwee (LD): My Lords, this is an amendment I moved in Committee. I said then that there was nothing subversive about it, no cunning plan; it simply seeks to ensure consistency with the withdrawal agreement in the light of the power in Clause 4 to make regulations which may modify primary legislation.

When the amendment was originally drafted, the issue was not so topical as it has subsequently become—in another context, of course—and it is still topical. But I do not need to go there. The objection is to Clause 4. The withdrawal agreement is an international treaty; we should be entitled to rely on it and not have the risk of the Government resiling in any way from it through any means, and certainly not through inherently low-profile secondary legislation, which is, in effect, unamendable and unstoppable.

Immigration law is fiendishly complicated and quite often changed through rules. I am not accusing Ministers of attempting to slip something through, but mistakes can happen. We should stick with where we believe we are on the withdrawal agreement. I beg to move.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): I call the noble Lord, Lord Flight, who will be followed by the noble Lord, Lord Rosser.

Lord Flight (Con): The purpose of the amendment is to ensure that the power created by this clause can be used only in ways which are consistent with the UK's obligations under the UK-EU withdrawal agreement. Clause 4(2) enables regulations to be made to amend earlier primary legislation. The UK-EU withdrawal agreement is incorporated in UK law by the European Union (Withdrawal) Act 2018, as amended. It follows that, as drafted, the Clause 4 power enables the Secretary of State by regulation to modify the application in the UK of the withdrawal agreement.

The withdrawal agreement is the vital underpinning of the rights created in UK law for UK citizens living in the EU and EU citizens living here. It is a matter of constitutional concern that it should be given the maximum possible legal protection. As regards immigration, it underpins the UK's EU settlement scheme for EU citizens in the UK. It is therefore essential both for EU citizens in the UK and for British nationals in the EU that the withdrawal agreement remains sacrosanct.

It will no doubt be said that a UK Government would never act in breach of an international treaty. Be that as it may, Clause 1, enabling legislation, should never be drafted in such broad terms that this could happen. On Clause 2, where proposed legislation might be seen as a breach of the withdrawal agreement, the decision on whether it does in fact do so should be a matter for Parliament to consider properly through primary legislation.

Given the complexity of immigration legislation in the UK, without the amendment it is also possible that a regulation may be entirely unwittingly in breach of the agreement but that that inconsistency is not spotted. There is no downside to our proposed amendment. It does no more and no less than ensure that the withdrawal agreement is honoured.

Lord Rosser (Lab): As the noble Baroness, Lady Hamwee, said, she tabled this amendment in Committee. It would prevent regulations that are made under Clause 4 being able to include any provisions that could be inconsistent with the withdrawal agreement. Its intention is to make sure that nothing can be done that undermines the rights of UK citizens in the EU and EU citizens here that were guaranteed under the withdrawal agreement. I await with interest to hear the response. I assume that the Minister will be able to provide adequate reassurance that rights in the withdrawal agreement are protected. There would certainly be an issue if the Government were not able to provide that reassurance.

Lord Parkinson of Whitley Bay (Con): I thank the noble Baroness, Lady Hamwee, for speaking to Amendment 12, which as she said was previously tabled in Committee, and my noble friend Lord Flight and the noble Lord, Lord Rosser, for speaking in this short debate on it.

Amendment 12 seeks to prevent the Government using the power in Clause 4 to make regulations which are inconsistent with the EU withdrawal agreement. The Government have placed a very high priority on ensuring the protection of the rights of EU citizens who have made the United Kingdom their home. Our commitment is, I hope, evident in the effort and

[Lord Parkinson of Whitley Bay]
resources that we have already devoted to the EU settlement scheme. I am happy to restate that the Government have absolutely no intention of acting incompatibly with the citizens' rights provisions of the withdrawal agreements.

As has been explained, we already have a legal obligation to comply with those agreements, which also have direct effect in domestic law in accordance with the European Union (Withdrawal Agreement) Act 2020. If further reassurances were needed—and it sounded as if noble Lords wanted some—a formal independent monitoring body is being set up by the Ministry of Justice under Article 159 of the EU withdrawal agreement to ensure compliance by the UK with Part Two of the withdrawal agreement concerning citizens' rights.

The Independent Monitoring Authority has been established under Section 15 of the European Union (Withdrawal Agreement) Act 2020. It will be a new, independent body which is fully capable of monitoring our domestic implementation and application of the citizens' rights aspects of the agreements. It can launch inquiries, receive complaints and bring legal action to identify any breaches in how the agreements are being implemented or applied in the UK.

For these reasons, we continue to think that this amendment is unnecessary. Moreover, adopting it would call into question why this restriction has not been included in every other item of legislation across the statute book. For these reasons, I hope the noble Baroness will feel able to withdraw her amendment.

Baroness Hamwee (LD): My Lords, it is fairly recently that some of us have felt it necessary to require assurances that legislation that a particular Government make will not be changed and broken—even in a specific and limited way. One understands that successive Governments may do so. It seemed necessary to make the point again because we are in such a strange situation. I was not sure about the powers of the Independent Monitoring Authority; I was under the impression—this is my failure to do my homework properly—that it would not have the power to take legal proceedings in a way which met this point. I am interested to know that.

I am clearly not going to pursue this. I want to take what is said at face value and I hope that the noble Lord's successors do not prove me too naive in doing so. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 13 not moved.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): We now come to the group consisting of Amendment 14. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in debate.

Amendment 14

Moved by ***Lord Dubs***

14: After Clause 4, insert the following new Clause—

"Children in care and children entitled to care leaving support: entitlement to remain

(1) Any child who has the right of free movement removed by the provisions contained in Part 1 of this Act, and who is in the care of a local authority or entitled to care leaving support, is deemed to have and be granted indefinite leave to remain within the United Kingdom under the EU Settlement Scheme ("the Scheme").

(2) The Secretary of State must, for the purposes of subsection (1), issue guidance to local authorities in England, Scotland, Wales and Northern Ireland setting out their duty to identify the children of EEA and Swiss nationals in their care or entitled to care leaving support.

(3) Before issuing guidance under this section the Secretary of State must consult—

(a) the relevant Scottish Minister;

(b) the relevant Welsh Minister; and

(c) the relevant Northern Ireland Minister.

(4) The Secretary of State must make arrangements to ensure that personal data relating to nationality processed by local authorities for purposes of identification under subsection (1) is used solely for this purpose.

(5) Any child subject to subsection (1) who is identified and granted indefinite leave to remain status after the deadline for applications under the Scheme will be deemed to have had such status and all rights associated with that status from the time of the Scheme deadline.

(6) This section comes into force on the day on which this Act is passed and remains in effect for 5 years from the day of the deadline of the Scheme.

(7) For the purposes of this section, children "in the care of a local authority" are defined as children receiving care under any of the following provisions—

(a) section 20 of the Children Act 1989 (provision of accommodation for children: general);

(b) section 31 of the Children Act 1989 (care and supervision);

(c) section 75 of the Social Services and Well-being (Wales) Act 2014 (general duty of local authority to secure sufficient accommodation for looked after children);

(d) section 25 of the Children (Scotland) Act 1995 (provision of accommodation for children);

(e) Article 25 of the Children (Northern Ireland) Order 1995 (interpretation); and

(f) Article 50 of the Children (Northern Ireland) Order 1995 (care orders and supervision orders).

(8) For the purposes of this section, a child "entitled to care leaving support" means a child receiving support under any of the following provisions—

(a) paragraph 19B of Schedule 2 to the Children Act 1989 (preparation for ceasing to be looked after);

(b) section 23A(2) of the Children Act 1989 (the responsible authority and relevant children);

(c) section 23C(1) of the Children Act 1989 (continuing functions in respect of former relevant children);

(d) section 104 of the Social Services and Well-being (Wales) Act 2014 (young people entitled to support under sections 105 to 115);

(e) sections 29 and 30 of the Children (Scotland) Act 1995 (advice and assistance for young persons formerly looked after by local authorities); and

(f) Article 35(2) of the Children (Northern Ireland) Order 1995 (persons qualifying for advice and assistance)."

Member's explanatory statement

This new Clause aims to ensure that the children of EEA and Swiss nationals who are in care, and those who are entitled to care leaving support, are granted automatic Indefinite Leave to Remain under the EU Settlement Scheme to ensure they do not become undocumented.

Lord Dubs (Lab) [V]: My Lords, I express my thanks to the Minister, the noble Baroness, Lady Williams, for a very helpful conversation we had about this and other clauses in the Bill. I am afraid that, despite that, it is my intention to seek the opinion of the House when we get to vote on it next Monday. I am still grateful to her—I do not want her to feel that conversations with me are totally without benefit for me; it was very useful to have had it.

The purpose of this amendment is to fast-track children in care and care leavers who are resident in the UK through the EU settlement scheme and grant them settled status. The idea is that they should have that settled status and not be undocumented, as they might otherwise become.

9.45 pm

Let me say at the outset that this amendment would not preclude children applying for British citizenship. Local authorities should act in the best interests of children in their care. That means seeking legal advice and applying for citizenship if they are eligible. I expect the statutory guidance accompanying this amendment to make that clear. This amendment would therefore provide a safeguard if and where a local authority could not support the child to secure citizenship before the EUSS deadline. I welcome the Minister's supportive comments in Committee and her reaffirmation that she does not want to see children become undocumented as we leave the European Union. On that we are in complete agreement. Nevertheless, I am concerned that the Government have yet to acknowledge that this is a very serious issue for a small but significant number of young people.

In Committee the Minister raised three points in opposition to this amendment: first, that it would somehow create another Windrush scandal; secondly, that work is already under way with local authorities to ensure that vulnerable children are eligible to regularise their status before the deadline and that no extra safeguards are needed; and thirdly, that the cohort will be able to apply past the deadline. I shall deal with those three points because I am certainly not happy about two of them.

First, the Government have been quick to claim that this amendment will create a declarative scheme leading to another Windrush crisis. Ironically, the Government's inaction means that many children in care and care leavers will be left undocumented. The real point is that the amendment does not say that they are to be "declared" to have settled status; it specifically sets out that they are to be "granted" settled status. That will be quite different from the people who suffered in the Windrush crisis. The act of granting status would require that these children and young people be identified and registered with the scheme in some manner. I simply ask the Minister to set out in her response to this amendment what systematic work is under way to identify all children in care and care leavers who need to regularise their status as we leave the European Union.

Secondly, I understand that there is some ongoing work with local authorities, and perhaps the Minister can elaborate on it. I understand that local authorities have been approached to see whether they can identify such children so that their status can be regularised in time, but I wonder whether that is sufficient. Will this guarantee that every child is assisted and granted a permanent immigration status? The Children's Society and the British Association of Social Workers have stated that much more needs to be done, and done quickly. Local authorities are asked to do a somewhat different thing—namely, they should go straight to the Home Office to regularise status—but that should be done through social workers. Social workers are very hard pressed, but they are pretty hard pressed anyway in contacting embassies and so on on behalf of individual young people, so direct access to the Home Office to regularise their status would be quicker and would reduce the burden on local authorities rather than increase it. The last thing that any of us want is to increase the burden on hard-pressed local authorities.

Thirdly, the Minister said that eligibility to apply after the deadline is the final safeguard. I am glad that she has reconfirmed that this group will be eligible to apply for that status, even after the deadline, but I wonder whether that is in itself an adequate safeguard. What happens if people are undocumented? Care leavers may suddenly face homelessness or the threat of destitution. They may lose status and become undocumented. They would lose access to services and to any benefits they may receive and be unable to open bank accounts or lease a property. They would lose the right to work or to healthcare and be unable to apply for a driving licence. The Minister will say that all that can be sorted out, but I wonder whether it can be. What happens if a social worker changes hands —some children have had several changes of social worker—or children have been adopted, or have left care and their contact details have changed? It is a bit of a fragmented system.

I should like to feel sure that these children will not lose their immigration status in the future. I fear that that will be the case and we surely do not want any more undocumented people living here. We have had enough of them, as has been mentioned in earlier amendments. I know that the Minister is approaching this matter in good faith; she assured me of that. She said that nobody wants children to be undocumented but I should like to hear a bit more and for her to indicate the work that her department is doing to support local authorities to identify EEA and Swiss national children in their care. How many of them have secured pre-settled and settled status through the scheme to date? I am not satisfied with the safeguards. We owe young people a little more than the current uncertainty. Unless I receive satisfactory assurances in her reply, I give notice that I shall test the opinion of the House on Monday. I beg to move.

The Earl of Dundee (Con) [V]: My Lords, as the noble Lord, Lord Dubs, has just explained, the amendment would ensure that children in care were entitled to remain in the United Kingdom.

When the same amendment was debated in Committee, several of your Lordships emphasised that post Brexit it is both logical and necessary for children who are already in care, along with those entitled to care, to be able to stay in the United Kingdom, for otherwise where would these children go?

[The Earl of Dundee]

Nor, of course, can it be in the child's best interest to be removed from care in the United Kingdom simply because we are leaving the European Union. Equally, under our own law and that of the United Nations Convention on the Rights of the Child, we are obliged to look after the child's best interest in all respects. In Committee, my noble friend the Minister affirmed that this is what we will do.

However, the Government are concerned that post Brexit an automatic right to remain in care in the United Kingdom would encourage local authorities not to apply for leave to remain for each child currently in their care.

Yet surely local authorities providing care to EEA and Swiss children ought not to have to face the additional administrative burden and red tape implied—to have to make an application for leave to remain for each and every child before the given deadline.

Would it not be much better and far less time consuming if, rather than dealing with the majority of cases, local authorities instead had to deal with only very few of them? Those are the cases where it might not be in the child's best interest to remain in the United Kingdom. For the latter cases, an administrative act could easily be made before the given deadline in order to avoid the automatic or de jure leave to remain after having left the European Union.

Therefore, without the amendment, local authorities would have to shoulder an unnecessary burden just at a moment when they had many other pressing tasks to perform.

Yet, at the same time, acceptance of the amendment means that children currently in care would no longer be uncertain about their future care if, for whatever reason, local authorities should not be able to meet the deadline for an application for leave to remain.

Worse still, without the amendment there is also a risk that, after the given deadline will have passed, some children might then be deported.

For these reasons, I hope that my noble friend will accept what the noble Lord, Lord Dubs, proposes.

Baroness Meacher (CB): My Lords, I rise to support Amendment 14 in the name of the noble Lord, Lord Dubs, which seeks, of course, to offer security to EEA children in care in the UK and those entitled to care-leaving support. The noble Lord and his colleagues have set out the case for the amendment very clearly and I certainly do not want to repeat their comments, but I want to add my support as someone who worked in mental health services for many years—decades, actually—originally on the front line. My recollections of the vulnerability of those children remain with me even after what is perhaps four decades.

I thank the noble Baroness, Lady Williams, for her helpful letter explaining the Government's position. I welcome her assurance that protecting the rights of EEA citizens who are resident in the UK has been the priority since the outcome of the EU referendum, and that the Government have been working with local authorities and others to ensure that vulnerable children obtain immigration status. It seems that the Government agree with the sponsors of this amendment that it is essential that children in care and care leavers have secure UK status.

The Government may have identified a weakness in our amendment—that it would not in fact provide these children and young people with the clear status we all want them to have—although I was very much reassured by the comments of the noble Lord, Lord Dubs. I hope the Minister can clarify this point, because it really is of fundamental importance.

If needed, I hope the Government will table their own amendment at Third Reading to make sure that the Bill fulfils what are not only our objectives, but theirs. I think the Minister would welcome the fact that the amendment places a duty on local authorities to identify which children in their care are at risk of losing their status when the UK leaves the EU, and therefore which children need support to get through the hoops to achieve settled status. This is so important, because local authorities do not routinely collect nationality data on children in their care. They may assume that none of their children are from the EEA and will not take any action on this important issue. It is easy to anticipate that, through no fault of their own, these children could end up undocumented.

The evidential burden for settled status is another problem, particularly when people are up against a deadline. By reducing the evidential burden, many of these vulnerable children will be rescued from having undocumented status after the transition period. The Home Office has previously stated:

> "Children who do not apply because their parent or guardian did not submit an application on their behalf can submit a late application. This includes children in care and care leavers".

If the Home Office is committed to the principle of late applications for these vulnerable children, why not support that principle through this amendment? Or does the Home Office have in mind that these children be given pre-settled or temporary status? If so, Ministers will know that this only defers the problem of lack of documentation when they come to apply for permanent status. I would be really grateful if the Minister clarified this point.

Finally, the numbers of children involved are perfectly manageable: 5,000 looked-after children and 4,000 care leavers across the whole of the UK would need to apply to the EU settlement scheme. My preference would be for a government amendment, if necessary, meeting the precise objectives of this amendment, to be tabled at Third Reading. If, however, the Minister is unable to agree to work with the noble Lord, Lord Dubs, and others to generate the right amendment for Third Reading, if necessary, I hope that he will press this amendment to a vote, and I will certainly support it.

Baroness Smith of Newnham (LD): My Lords, I can be brief, because this amendment has cross-party support, but I have a couple of specific questions for the Minister. Like the noble Baroness, Lady Meacher, and the noble Lord, Lord Dubs, I did not read the amendment as declaratory. My reading was that looked-after children should be given settled status. I assume from the Minister's letter of earlier today and the comments on the declaratory scheme that the problem with Amendment 14 lies in proposed new sub-paragraph (1):

> "is deemed to have and be granted indefinite leave to remain".

Perhaps "is deemed to have" suggests that that person will not have any documentary evidence.

As the noble Baroness, Lady Meacher, suggested, if that is indeed what the Minister understands by the declaratory nature of the amendment, it would be helpful if the Minister considered a rephrasing in a government amendment that would have the import of granting settled status to looked-after children and care leavers. Then, they would have settled status and documentary evidence, since the only reason that such people would end up in a Windrush-style situation is if the Government left them there.

10 pm

If somebody is deemed to have and is granted settled status or indefinite leave to remain, there is no reason why that should not come with documentary evidence. I would clearly prefer that to be a physical document, but I understand that the Minister might consider that inappropriate and that everything has to be electronic. If that is what is suggested for EU citizens having settled status, can the Minister not at least look at care leavers being given indefinite leave to remain but having documentary proof, so that it does not fall as a declaratory system? I do not believe that that is what the signatories to this amendment intended.

The Lord Bishop of Durham [V]: My Lords, I too speak in favour of this amendment and support fully the explanation of why it is needed by the noble Lord, Lord Dubs, but also the very helpful interventions by the noble Baronesses, Lady Meacher and Lady Smith, who asked for clarification of just what the objection is. Like the noble Baroness, Lady Smith, I do not read the amendment as declaratory. It is about being granted indefinite status but, as both noble Baronesses said, if the Government can come up with slightly better wording, fine.

I simply remind the Minister and the Government that it is their responsibility to protect the most vulnerable children in our society, which surely includes children in care. They have an added vulnerability when they have uncertain status, so it is absolutely the Government's responsibility to ensure that these children are not left with anything indefinite at all about their standing, and that their welcome as part of our society is clear.

In the Psalms, the King is told that he is to

"defend the cause of the poor of the people"

and

"give deliverance to the children of the needy".

The King in those days, of course, had absolute rule. For our current purposes, it falls upon the Government to defend the cause and give deliverance to the children of the needy. I hope the Minister will agree that this amendment is necessary and that if it needs altering, she will bring back the relevant changes at Third Reading.

Lord Kerr of Kinlochard (CB) [V]: I refer to my interests as recorded in the register. In the letter that the Minister was good enough to send us at lunchtime today, she said of this amendment that

"it would risk putting children in a more vulnerable position because they would effectively be required to prove that they were once a child in care every time throughout their adult life that they were required to prove their status. We cannot put our most vulnerable children in this precarious position and the Government is adamant it will not do so".

Yes, but I would like to encroach, very rashly, on the territory of the right reverend Prelate the Bishop of Durham and refer to King Herod. I am sure King Herod was quite adamant that it would be entirely wrong to make all boys in and around Bethlehem prove throughout their adult life that they were not the King of the Jews, particularly when a simpler remedy was at hand. The statement in the letter is odd.

I supported this amendment in Committee because it seemed to me that there was a real risk of these children falling into a crack and that we had a duty to make sure that they did not. I do not think that their problem, if this amendment were now carried, would be that they had, for the rest of their lives, to carry proof that they had once been in a care home. I do not see that at all. I listened very carefully to the noble Baronesses, Lady Meacher and Lady Smith, and it seems to me that they would be carrying proof of their status, which would have been established; that would be the proof they would carry, not proof that they had once spent time in a care home.

If there is a technical problem with the drafting of the amendment that enables the drafter of the Minister's letter to conclude or pretend that we who support this amendment are ready to see people having to prove, for the rest of their lives, that they were in a care home, let us correct it. I think the amendment does not indicate that this is the risk; it requires local authorities to act in loco parentis and, if it is in the best interests of the child, to get the process under way to give children the proof of the status that they will enjoy like anybody else who has citizenship, pre-settled or settled status, leave to remain or whatever. That would be the proof they would need to carry and, yes, that might be quite onerous, but the Minister could assist us on this when we come to Amendment 18 and agree with those of us who think that it would be a kindness to allow physical proof.

Lord Randall of Uxbridge (Con) [V]: My Lords, I am always attracted to any amendments put down by the noble Lord, Lord Dubs, as he is inestimable in this field. I was going to ask my noble friend on the Front Bench some questions, but they have already been asked.

We have one advantage—or I do—which is that, because we are talking about a deferred Division on Monday, I can listen to my noble friend the Minister's replies and, more importantly, have the weekend to digest them before I decide whether I shall support the noble Lord, Lord Dubs, in this amendment. I agree with those who say that, if the amendment is deficient in some ways, I would like to hear that something will be brought forward that could rectify this and make it possible for the sentiments in the amendment to be raised.

Lord Judd (Lab) [V]: My Lords, it is always a particular pleasure for me to support anything put forward in this context by my noble—and very good personal—friend Lord Dubs. As I have asked on other amendments, do we or do we not see the well-being of children as one of our high responsibilities in any future society that we want to become? How can it be in the interests of stability and security to have children who are semi-alienated by the situation in which they find themselves? That spells trouble for the future.

[Lord Judd]

However, it is not just about our security. It is about wanting to ensure that children who have been through God knows what—it is very difficult to imagine the traumas that they must have had—are given the certainty that they need, with the backing of local authorities. This is not just a technical matter. In requiring local authorities to play their part in this, we will be building up a culture in which the nation shares in this commitment to children.

Baroness Hamwee (LD): My Lords, yesterday the EU Security and Justice Sub-Committee was discussing refugees and unaccompanied asylum-seeking children with the Immigration Minister. He said, and I made a particular point of noting it—the Minister here does not need to look worried—"We always listen very carefully to Lord Dubs." Well, that will be important for the next amendment, but I will apply it to this one as well, and I am very pleased to have added my name to the amendment on behalf of these Benches.

My noble friend Lord Bruce of Bennachie said at the last stage:

"We all know that children in care are especially disadvantaged, almost by definition".—[*Official Report*, 16/9/20; col. 1292.]

I much prefer that term to "vulnerable" because many of them are extraordinarily resilient. But, however resilient you are, if you do not neatly fit a Home Office category, you are likely heading for problems and any parent, including a corporate parent, should do their best to pre-empt that.

In Committee the Minister explained the support services, I think she called them, for looked-after children and care leavers to assist them to make applications. That is of course welcome, but it would take someone much more confident than I am to be certain that no one will slip through the cracks.

In view of the time and in particular of the very thorough analysis of the amendment, especially by the noble Lord, Lord Kerr, I do not think I should take more of the House's time, other than to encourage noble Lords to support the amendment—unless of course we hear from the Minister that the point is going to be taken up.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I fully support Amendment 14, moved by my noble friend Lord Dubs, which would add a new clause to the Bill. This clause was debated in Committee. I was persuaded by my noble friend's argument then, and I am very much of the opinion that he is right on this issue and deserves the full support of the House when we vote on this issue next Monday, if the Government are not prepared to give way.

The clause would provide for children who are EEA or Swiss nationals and in care, along with those entitled to care leavers' support, to be granted automatic indefinite leave to remain under the EU settlement scheme. The amendment, as we have seen tonight and as we saw in our debates a few weeks ago, has cross-party support. I am sure the Government have seen that support, and it would be good if the Minister could tell us what discussions took place at the Home Office between Committee and Report. I would be interested to know that; I hope this has not just been rejected out of hand.

My noble friend Lord Dubs said that the amendment would ensure that none of the children became undocumented. Identification is a serious problem for individuals, as my noble friend has outlined. There is also the whole issue that my noble friend talked about of local authorities all having different practices.

The amendment would speed up the process and enable social workers—who generally do a fantastic job, and we all know how much pressure they are under—to go straight to the Home Office and not have to deal with consulates and embassies, getting documents from abroad and the general bureaucracy of dealing with another country. It would avoid all that paperwork. My noble friend also set out the real problems that these children could suffer if the amendment is not agreed.

I agree with the remarks of the noble Earl, Lord Dundee. This really is a sensible amendment that deserves a positive response from the Government. I also agree with the remarks of the noble Lord, Lord Kerr, and the noble Baroness, Lady Meacher.

This is the decent thing to do for these children. We are talking about a relatively small number of children, but the amendment would ensure that no one fell into the trap of becoming undocumented. As the noble Lord, Lord Bruce, mentioned in the previous debate, children in care face all sorts of additional challenges. They are not with their parents. In effect, the local authority is the parent looking after them. All this amendment seeks to do is ensure that they do not have further issues to deal with, either as a young person leaving care or in many years' time when being undocumented may pose a problem and leave them unable to establish their identity properly. The Government should give way on this small measure.

10.15 pm

I commend the work of the Children's Society to identify and raise the plight of these children. It has campaigned to ensure that they have protection and that their problems are not added to through becoming undocumented. As I say, this is the decent thing to do. The right reverend Prelate the Bishop of Durham said that it is the responsibility of government to protect the most vulnerable. I agree. Children in care are some of the most vulnerable people and deserve proper support and protection.

I should add that I am a vice-president of the Local Government Association. Local authorities do a fantastic job. I am happy to pay tribute in particular to Kent County Council for the work that it does despite the pressures on it; it genuinely does a very good job.

As I said, this is one small measure that the Government could accept to make things a bit easier for vulnerable people. I hope that the Minister will give us a positive response. One thing I have noticed about this Bill is the fact that the Government are giving absolutely nothing away. It is most regrettable that there has been very little movement—not even an indication that there may be some movement—from the Government. As I said, if my noble friend puts this amendment to a vote, I will be delighted to support him in the Lobbies on Monday.

Baroness Williams of Trafford (Con): My Lords, I thank the noble Lord, Lord Dubs, for the new clause proposed by his Amendment 14. I also thank the noble Lords who spoke to it.

We are all absolutely united on one thing: that children in local authority care need secure status just as much as any other EU citizen needs secure status. On that, we are absolutely as one, I think. However, the amendment does not provide for the fast-tracking of children through the EU settlement scheme because subsection (1) of the proposed new clause says that a relevant child

"is deemed"—

that is the word used; we assume that it is a declaratory system—

"to have and be granted indefinite leave to remain".

It therefore bypasses the EU settlement scheme by giving indefinite leave to remain without the need for any application to the scheme—that is, no secure evidence of status is documented and the child would have to prove constantly that they were in the scope of this declaratory system. The only way to prove status is through the EU settlement scheme, in my view.

A near-identical new clause was tabled by the noble Lord, Lord Dubs, in Committee. It called for children in care and care leavers who have their right of free movement removed by the Bill to be granted ILR—indefinite leave to remain; that is, settled status—under the EU settlement scheme automatically, removing any requirement for a local authority to apply on their behalf.

I am afraid that those good intentions—they really are good intentions—will not be well served by this proposed new clause. I am trying to be helpful rather than resistant to what noble Lords are saying because Windrush has shown us that a declaratory system under which immigration status is conferred on people automatically, without providing secure evidence of it, does not work. We need to learn the lessons of that.

The proposed new clause would place a vulnerable group at greater risk of ending up without secure evidence of UK immigration status. That is not an outcome that the Government can accept or one that your Lordships would want. We are focusing our efforts on working closely with local authorities—I will go into more detail on that—to ensure that these people, like other vulnerable groups, get UK immigration status under the EU settlement scheme. This will provide them with secure evidence of that status and ensure that they can prove their rights and entitlements here in the years ahead. That really is the right practical approach.

We have discussed and agreed with local government its role and responsibilities towards children and care leavers under the scheme. Local authorities and, in Northern Ireland, health and social care trusts are responsible for making an application under the scheme on behalf of an eligible child for whom they have parental responsibility by way of a court order. Their responsibilities in other cases to signpost the scheme and support applications have also been agreed, including where care leavers are concerned. That is reflected in the guidance issued to local authorities regarding their role and responsibilities for making or supporting applications to the scheme in respect of looked-after children and care leavers. We have also provided a range of support services—such as the Home Office-run EU Settlement Resolution Centre, which is open seven days a week—to ensure that local authorities can access help and advice when they need it.

We have heard estimates of the number of children in care. In the absence of local authority data, the Home Office made some broad initial estimates. These were based on data from the ONS, which put the proportion of EEA citizens per local authority at 5.8%, and on government data on the volume of children in care and care leavers per local authority. The resulting figures—of around 5,000 children in care and 4,000 care leavers—provided a reasonably generous basis for the new burdens assessment.

We have also recently conducted a survey of local authorities across the UK as part of the support that we are offering them with this very important work. The survey asked them to provide an assurance that they have so far identified all relevant cases. Just under 80% of local authorities have responded so far, and I thank them for that, given the pressures which the pandemic has placed on them. The emerging picture is that actual volumes of eligible cases might be significantly lower than the overall estimate of 9,000. The results are still being collated, but we have so far identified fewer than 5,000 children in care and care leavers eligible for the EU settlement scheme, with around 40% of these having already applied for status under the scheme and most of that group having already received an outcome of settled status.

Obviously there is more work to be done to check and analyse the results, but the initial indications are that local authorities have the work to identify and support relevant cases well in hand. We will be sharing that data from the survey with the EU settlement scheme safeguarding user group, comprising experts from local authorities and the voluntary sector, to help them discuss the scheme's progress. As noble Lords will know, we have also given money to voluntary organisations, and earlier this year we announced a further £8 million for this work in 2020-21. In addition, the withdrawal agreements oblige us to accept late applications where there are reasonable grounds for missing the deadline of 30 June next year—a matter I talked about earlier.

I think noble Lords can see that the Government are doing everything they can not only to identify these children but to ensure that, through the EU settlement scheme, not through a declaratory scheme, these children will have the secure status that they rightly deserve. Therefore, I hope that the noble Lord will withdraw his amendment.

The Deputy Speaker (Lord Alderdice) (LD): I have received requests to ask short questions from the noble Baroness, Lady Hamwee, and the noble Lord, Lord Kennedy of Southwark. I call the noble Baroness, Lady Hamwee.

Baroness Hamwee (LD): My Lords, the Minister has talked about declaratory arrangements, and said that the lessons of Windrush are that this is dangerous. Is the problem not how the Government respond to situations in the future, rather than what type of scheme it is?

Baroness Williams of Trafford (Con): My Lords, I hope I made it very clear at the beginning of this debate that I want each child to have secure status, and a declaratory system does not ensure that, both now and in the future.

Lord Kennedy of Southwark (Lab Co-op): Just to pursue that point, can the Minister set out why that is the case? If you have the children—you know who they are and you have their details—the Government can then set out that the children have settled status, and then you would have records. The problem with Windrush was that there were no records, and that was the dispute, but if the Government actually set out to create records then you have got that system there.

Baroness Williams of Trafford (Con): The noble Lord will appreciate that an application to the EU settlement scheme is an application, with a result of settled status being either confirmed or not. A declaratory scheme confers a deemed leave on a sort of blanket basis, as opposed to each individual applying to the scheme. Therefore, children in years to come might have to prove that they were in the scope of that declaratory scheme; that is what I mean. We are not seeking different ends in this; we are just talking about different ways of going about it. I am trying to explain why an actual application is a more secure way of going about it.

Lord Dubs (Lab) [V]: My Lords, I am grateful to all noble Lords who took part and contributed to the debate, even if one or two of them posed a few questions, which I shall try to deal with. I am also grateful to the Minister for her positive attitude to the end we all seek, even if the path to that end may differ in her view from our view. I emphasise that this amendment had cross-party support in the Commons and has cross-party support here, so there is a wide level of support for this.

On the question of declaratory or granted and so on, my understanding is very clearly that the intention behind it was that children would be granted settled status—not declaratory status, but settled status. The fear was that if any of them were undocumented and slipped through the net, they would be in the Windrush situation, not the other way around.

The process is, I believe, as follows: the social worker would be able to contact the Home Office directly about the individual and their background, the result of that application would be that settled status would be granted, and that would be indisputable and there could at no point in the future be any doubt about it. That seems to me pretty clear. The danger that the amendment refers to is that if there is no settled status, and the child is undocumented, then trouble can begin. In many cases, I agree that that would be picked up, but it may not be picked up in every case, and the dilemma for any young person who finds that they are undocumented and have all sorts of difficulties seems to me awful. That is the purpose of this amendment.

I might be persuaded by the Minister if she said that at Third Reading she will put forward an amendment which will deal with this apparent difficulty—I do not think it is a difficulty. I repeat that the purpose of the amendment is simply to say that they should be granted settled status—not declared to have a status, but granted settled status. That seems to be absolutely clear, and that will be the result of the social worker approaching the Home Office. In the circumstances, I beg leave to press the amendment.

The Deputy Speaker (Lord Alderdice) (LD): I will now put the question on Amendment 14. Notice has been given of the intention to press this amendment to a Division. I will need to collect the voices, but if there is a dissenting voice, the Division will have to be deferred. We heard the mover, taking part remotely, say he wishes to divide the House in support of this amendment, and I will take that into account.

Remote Division on Amendment 14 deferred.

United Kingdom Internal Market Bill

First Reading

The Bill was brought from the Commons, read a first time and ordered to be printed.

Sentencing Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to.

House adjourned at 10.30 pm.

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