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Tuesday
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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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The abbreviation [V] after a Member's name indicates that they contributed by video call.

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 SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
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 or for the Lords spiritual.

House of Lords

Tuesday 8 February 2022

2.30 pm

Prayers—read by the Lord Bishop of Chichester.

Royal Assent

2.37 pm

The following Acts were given Royal Assent:

Leasehold Reform (Ground Rent) Act,

Northern Ireland (Ministers, Elections and Petitions of Concern) Act.

Mathematical Sciences

Question

2.38 pm

Asked by ***Lord Davies of Brixton***

To ask Her Majesty's Government what plans they have to ensure that the United Kingdom remains a world leader in the mathematical sciences.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the EPSRC has committed £281 million to research grants for mathematical sciences between April 2015 and September 2021. To further support our world-leading mathematicians, UKRI has awarded around £104 million in additional funding over and above EPSRC's core mathematical sciences theme budget, in line with the Government's announcement in January 2020. Research England notionally allocated £55.2 million of mainstream quality-related research funding for mathematical sciences to higher education providers in England for the academic year 2021.

Lord Davies of Brixton (Lab): I thank the Minister for his reply and his acknowledgement of our world-leading mathematicians, but would he agree that, to be a world-leader in mathematical sciences, we also have to make greater efforts to encourage girls and young women to become mathematicians and do more to take advantage of all the talent that is available? Will the Minister indicate what steps the Government are taking to this end?

Lord Callanan (Con): I completely agree with the noble Lord, who I know has long advocated the importance of mathematics study. I point him towards the advanced mathematics support programme, which has a specific focus to get more students participating in A-level core maths. It works with schools and colleges to raise awareness of progression to mathematics at university. As I am sure the noble Lord is aware, there is also the national network of maths hubs to help local schools improve the quality of their mathematics teaching. The most recent Programme for International Student Assessment results show that England outperformed on the OECD averages for reading, maths and science.

Lord Craig of Radley (CB): My Lords, pure maths is becoming ever more significant in the world of digital research. Will the Government now make mathematical science a distinct research field, no longer subordinated within engineering and the physical sciences, where it still lingers under the outdated Science and Technology Act 1965? Surely, it is time to move on.

Lord Callanan (Con): I confess that I am not familiar with that legislation but I thank the noble and gallant Lord for his update. We have an excellent record on mathematics tuition and one of the best records in the world on advanced research papers, as shown by the number that have originated in the UK. It is an important area and we are doing well, but I am sure that we could always do better.

Baroness Garden of Frognal (LD): My Lords, leading on from the Question asked by the noble Lord, Lord Davies, the leading figures in four mathematical societies are all women: the president of the London Mathematical Society, the vice-president of the Edinburgh Mathematical Society, the chair of the Centre for Mathematical Sciences and the president—and three of the four vice-presidents—of the Royal Statistical Society. As the noble Lord says, however, this is not reflected in the number of female applicants across A-level and degree level. Maths should be fun. What are the Government doing to make it fun for women and girls—and, indeed, for boys and men too?

Lord Callanan (Con): I think boys like fun as much as girls do—sometimes even together. I am delighted to hear about all the excellent leading women who are in top-level positions. We, as the males in this world, will clearly have to do better to compete with their excellent record.

Viscount Hanworth (Lab): My Lords, the demise of mathematics in British universities is a direct consequence, albeit inadvertent, of the Government's policies. The Government have allowed universities to compete for students without limit in pursuit of enhanced student appreciation, which can affect student recruitment. In order to accommodate students of lesser academic ability, the universities have relieved many of their courses of the burden of mathematics. This is damaging our prospects as a technological nation. Have the Government envisaged any means of limiting this harm?

Lord Callanan (Con): I am afraid that I just do not recognise the picture the noble Lord is painting. The UK is a world leader in mathematical science and British mathematicians publish a large volume of highly regarded work. We have the fifth largest share of publications in the world. When looking at the top 1% of the most cited publications, UK mathematicians are responsible for the third largest share. I am sure we could always do more and better, but we have an excellent record.

Lord Birt (CB): My Lords, long ago I studied maths and further maths at A-level, and it was fun. Now, sadly, I struggle even to master my grandchildren's GCSE papers, but I recall enough of my time in

[Lord Birt]
mathematics to understand the supreme value of pure maths. Without Newton we could not have landed on the moon. Without Turing we would not have smartphones. Is the Minister aware of the disquiet in the maths community not only at the overall funding for mathematical sciences but at the insufficient investment in fundamental theoretical mathematics research? Will the Minister agree to consider if that really is the case?

Lord Callanan (Con): Like the noble Lord, I did mathematics at A-level, but an almost equally long time ago and I have forgotten most of it now. He makes a very good point. We have an excellent record of investment in mathematics but I will take his remarks back to the department and see if we can do better.

Baroness Meyer (Con): My Lords, if we are really serious about raising mathematical standards in the UK, has the time not come for the Government to give greater backing to the national mathematical Olympiad for pre-university students, the winners of which would go on to the International Mathematical Olympiad but also receive money for their studies?

Lord Callanan (Con): I thank my noble friend for her question. That sounds like an excellent event and I am sure we will want to do all we can to support it.

Baroness Chapman of Darlington (Lab): My Lords, the UK's position as a leader in maths would be more certain if we addressed inequalities in education at a young age. The Government should start by launching an urgent inquiry into the way A-level results were awarded last year, when we saw stark differences in the way that schools awarded top grades. As an example, one private girls' school in north London nearly trebled its rate of A* grades awarded, so that more than 90% of its entries were assessed as A*. Pressure on teachers from senior leaders—not at all schools, but at some—to game the system is deeply troubling and unfair. This must surely be investigated in order to restore confidence in the system.

Lord Callanan (Con): This is obviously an important subject but we are getting slightly off the original topic, which was maths research council funding. However, I would be happy to look at that issue in more detail and come back to the noble Baroness.

Lord Wallace of Saltaire (LD): My Lords, I second exactly what the noble Lord, Lord Birt, said about the importance of fundamental maths to a range of scientific disciplines. Risk analysis, neuroscience, biology—all now require an understanding of fundamental principles. I declare an interest, as my son teaches maths to biologists in the University of Edinburgh. We are, however, in severe danger of losing top-quality mathematicians because if they move to a merchant bank, their pay is so much higher than universities are now ready to offer. Will the Government look at how they maintain top-quality mathematicians in our university system to teach the fundamental maths that we need?

Lord Callanan (Con): Again, the noble Lord raises an important subject. We clearly want to make sure that some of the top mathematicians stay in our universities to educate the next generation of young people. I will certainly take his remarks back to the Department for Education.

Lord Hamilton of Epsom (Con): My Lords, the noble Baroness, Lady Garden of Frognal, says that maths should be fun for women. Can it actually be fun for anybody, even if it is very necessary for everyone?

Lord Callanan (Con): I am sure that maths can be fun for everybody. I am disappointed that my noble friend does not think so.

Lord Cunningham of Felling (Lab): My Lords, the Minister has rightly defended a reasonably good record of government funding of mathematics. I applaud that, but he is he convinced that sufficient attention is being given to biology, chemistry, physics and other scientific subjects, many of which now depend fundamentally on mathematics being inherent in their teaching?

Lord Callanan (Con): I will need to refer to the Department for Education for the details of how it supports these other vital subjects in its teaching programmes, but I agree with the thrust of the noble Lord's question.

E-scooters

Question

2.47 pm

Asked by ***Baroness Neville-Rolfe***

To ask Her Majesty's Government what plans they have to introduce a comprehensive policy to deal with the dangers and benefits of e-scooters.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Department for Transport is considering options for how best to regulate e-scooters and crack down on their illegal use. New measures being considered will be designed to create a much clearer, fit-for-purpose and fully enforceable regime for e-scooters and other micro-mobility devices. This will include robust technical standards and new rules for private and rental e-scooters.

Baroness Neville-Rolfe (Con): My Lords, e-scooters have become a menace and the Government are being too slow either to ban or, as we have heard, regulate them. They are dangerous in design, using up valuable rare metals in battery manufacture, and cause growing numbers of accidents among riders, pedestrians and the disabled, and arising from scooter-induced fires. The defence of the present situation is focused on the relatively small number of regulated trial rentals, not the hundreds of thousands in private ownership with very limited legal use. Can my noble friend the Minister advise the House what early action she proposes to remedy this situation? We need to try harder.

Baroness Vere of Norbiton (Con): The policy is still under development and I am grateful to my noble friend for highlighting her concerns for our consideration as we develop it going forward. It is very important that we develop a safe, proportionate and flexible regulatory regime. To do that, we need the data from the various trials which are going ahead, the future of transport regulatory call for evidence, ongoing conversations with stakeholders and more research. I reassure my noble friend that we are making progress. I recognise that there is more to be done.

Lord Clark of Windermere (Lab): The Minister describes a very complicated and confusing situation. Is she able to explain to the House where e-scooters can be legally used in England and where they cannot? Will she pass on that information to the police?

Baroness Vere of Norbiton (Con): Yes, I can explain that. It is illegal to use a private e-scooter on all public land. It is certainly illegal to use one on the pavement or the road. Trials have been set up around the country to develop evidence for future regulatory reform, and, within those trial areas, it is allowable to ride an e-scooter on a road or cycle path. We are working very closely with the police on enforcement; for example, the National Police Chiefs' Council is developing a national strategy for tackling the illegal use of e-scooters. My officials are working very closely with it on that.

Lord Rogan (UUP): My Lords, there is a growing problem with e-scooters being ridden in Northern Ireland illegally and erratically. They are permitted to be driven only on private land. A freedom of information request from the *Belfast Telegraph* revealed that the PSNI does not hold statistics on the number of fines or cautions issued. However, there is a perception that few, if any, offenders have been prosecuted. Does the Minister agree that addressing this potentially lethal threat to personal safety should be more of a priority for police forces across the United Kingdom, including in Northern Ireland?

Baroness Vere of Norbiton (Con): The noble Lord is most likely right that the PSNI does not hold data. Indeed, it is the case that police forces in England do not currently hold data relating specifically to offences by riders of e-scooters because they fall under the category of motor vehicles, and that data is therefore within that. At the moment the Home Office has no plans to introduce a requirement for forces to collect information, but, as the noble Lord set out, it is absolutely key that local police forces develop good action plans for enforcement, following the guidance that will be coming out from the National Police Chiefs' Council.

Baroness Randerson (LD): My Lords, last year, there were 931 casualties of e-scooter accidents—200 of those were non-riders—and there were three fatalities, yet there is absolutely no reference to e-scooters in the new Highway Code. Does this make the Government derelict in their duty to protect both riders and those who inadvertently cross their path? Does the Minister realise that, by tarrying so long on this, the Government are not leading but lagging behind the rest of the world?

Baroness Vere of Norbiton (Con): I am not sure I agree that the Government are "tarrying so long". It is really important that we get the correct balance between the enormous benefits that e-scooters can bring and safety on our roads. The noble Baroness is right to highlight some very serious safety concerns that have arisen. We are gathering the data, and we appreciate data that is coming into the department from all sorts of places and that we can subsequently analyse. But, as I said, e-scooters are not currently allowed on the roads, except in trial areas. It could become impossible to get a good legislative framework together, so, for the time being, within the trials, the e-scooter riders must comply with the rules, obviously, and take part in the training offered.

Lord Sandhurst (Con): My Lords, this matter is now urgent. What deadline has the Minister set her department for producing a report? We cannot go on with uninsured riders, very often moving around drugs and so on, or otherwise just knocking down pedestrians. Can we have a deadline, please?

Baroness Vere of Norbiton (Con): My department is currently considering how best to capture and publish the information that we are gathering from the trials. We hope to make progress on potential new primary powers. I cannot give my noble friend a deadline, but suffice it to say, at this stage, that we have a large team working on all the different elements to enable us to bring forward a legislative framework.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, having witnessed the increased use of e-scooters in London recently, I am irrevocably drawn to the conclusion that this is a catastrophe waiting to happen. I have witnessed almost every rule of the road being breached, including reckless and careless driving, excessive speed, lights being jumped, riding on footpaths and use without lights. Can the Minister advise the House of the number of e-scooter accidents and prosecutions that have taken place in London since e-scooters have been legalised and why was the opportunity missed to offer advice and guidance in the redraft of the Highway Code?

Baroness Vere of Norbiton (Con): I might swerve the Highway Code question because I think I have gone as far as I can in the answer to the noble Baroness, Lady Randerson, but I will slightly push back on what the noble Lord is saying because it is a bit concerning. A number of people have bought these scooters and obviously we want them in due course to be able to ride them safely. We will not be able to do that for all e-scooters or, indeed, for all riders but it is clear to me that people see them as an attractive alternative mode of transport. The key here is to legislate accordingly and that is what we are very much focused on. The noble Lord asked about safety stats. I can say that for the year to June 2021, the Metropolitan Police recorded 496 incidents of injury with e-scooters versus 25,666 where it was any vehicle.

Baroness Ludford (LD): The Minister mentioned earlier that she could not give any data for police enforcement of offences. But, as my noble friend Lady Randerson said, Department for Transport statistics for the year to June 2021, collected from police forces, show that there were nearly 900 accidents, with three people killed and 253 seriously injured. If her department can get accident statistics from the police, why can it not get statistics on enforcement and offences? Is it because her department is not encouraging the police to do any enforcement?

Baroness Vere of Norbiton (Con): No. Enforcement is going on: offenders are being fined and penalties are being given out. The reality is that the Home Office does not collect the data by the specific vehicle type that is an e-scooter.

Lord Holmes of Richmond (Con): My Lords, first, well over a million private scooters are estimated to have been purchased. Will my noble friend comment on the fiction that they are being ridden only on private land? Secondly, does she think that at point of sale, when purchases are being made, there is clarity and unambiguity that e-scooters are illegal except in trial areas or on private land rather than the reality of the chaos and catastrophe they are causing up and down the country?

Baroness Vere of Norbiton (Con): The department is acutely aware of the issue of the number of private e-scooters that are potentially being ridden on public land at this moment. That is why working as quickly as possible to develop a legislative framework, which will be set out in primary legislation, in order for them to be ridden legally. However, we are also reassured that the Consumer Protection from Unfair Trading Regulations 2008 stipulate that traders must give sufficient information to consumers; they must not mislead. Ministers from my department have written to retailers many times and the last written reminder of their obligations was in December 2021.

International Development

Question

2.58 pm

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government when they will publish their new strategy for international development.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, the Government will publish a new international development strategy this spring and it will guide our work for the coming decade and beyond. It will align our development work with the aims and objectives of the integrated review.

Lord McConnell of Glenscorrodale (Lab): My Lords, in our increasingly interdependent world, successive Secretaries of State for International Development and Prime Ministers have recognised the crucial importance of conflict prevention and peacebuilding in our international development strategy. That is precisely because those who are affected by violent conflict are those who suffer from the least development and the fewest opportunities; of course, those conflicts spill over and affect us in our country too. Will the Government give a cast-iron guarantee that, in the priorities outlined in the new international development strategy, this cross-party approach will be continued and that support for conflict prevention and peacebuilding will continue to be a priority for the United Kingdom?

Lord Goldsmith of Richmond Park (Con): I absolutely can provide that guarantee. The UK is committed to working to prevent and reduce the frequency and intensity of conflict and instability, and to minimise opportunities for state and non-state actors to undermine international security. As the noble Lord said, it is absolutely in our national interest to mitigate the global impact from terrorism, serious and organised crime, and health threats, as well as regional impacts of conflict.

Baroness Sugg (Con): My Lords, when DfID existed, the department regularly published detailed country profiles setting out the purpose for delivering aid, what UK aid had achieved, what it aimed to achieve, how the UK was supporting countries to transition from aid, what the UK was getting from that aid and future spending plans. I do not believe that this information has been updated since the merger, so can my noble friend the Minister tell me whether the international development strategy will include this detailed information? If not, is he able to commit that the department will publish it in the near future?

Lord Goldsmith of Richmond Park (Con): My Lords, priority outcomes will be tracked via a set of headline metrics contained in the FCDO outcome delivery plan, and that will be for all to see.

Lord Purvis of Tweed (LD): My Lords, the most vulnerable women and children on earth live in South Sudan, where one in 10 babies die before the age of five. As the UNICEF website highlights horrifically:

"Giving birth on the floor, cutting the umbilical cord with a stick. That is the reality for some women in South Sudan."

Any development strategy should look to increase support for those women and children, but the Government have cut support by 10% and, quite unbelievably, I understand that there are now discussions in the department to cut even further the combined health pool, which supports 80% of health provision in South Sudan. Will the Minister please intervene and make sure that these cuts do not happen, and then write to me and other noble Lords assuring us that they will not take place?

Lord Goldsmith of Richmond Park (Con): My Lords, on the issue of the geography and the example given by the noble Lord—whom I commend for being a champion for that continent—the UK remains a leader in international development in Africa. We are committed

to supporting the poorest people on that continent. That will be reflected in the strategy when it is published in spring. As well as providing humanitarian support, our UK aid is helping to protect rainforests, deliver vaccines, educate girls, reduce crime and improve economic growth and development.

Lord Anderson of Swansea (Lab): My Lords, between now and 2050, the population of Africa will double. One billion more people will need to be fed, to be housed and to be employed. What effect will this have on the new strategy? Will it be a priority—for example, by encouraging family spacing and discouraging adolescent childbearing?

Lord Goldsmith of Richmond Park (Con): My Lords, the Foreign Secretary has been clear—and it will be equally clear in the strategy when it is published—that we intend to restore funding for women and girls. We will continue to prioritise women and girls by supporting education systems, to empower women by strengthening sexual health and rights, and to work to end violence against women, including practices such as FGM. Within that focus on women and girls, we have already seen that one of the best ways to encourage stable populations is by investing in women and girls in the way that I have just described.

Baroness Greengross (CB): My Lords, at the end of 2021, the UK had delivered only 11% of the vaccines that it had earlier promised to the developing world. As a result, coronavirus has continued to spread and mutate throughout many of the poorest nations on the planet. How will the Government use their new strategy for international development to support and promote vaccinations in the poorest parts of the world? Do they support the World Health Organization's target of vaccinating 40% of the population of every country by the end of this year and 70% by the middle of next year?

Lord Goldsmith of Richmond Park (Con): Protecting global health and meeting the Prime Minister's commitment to deliver 100 million Covid-19 vaccine doses to the world's poorest countries remains a top priority. The integrated review set out the UK priorities for global health to build resilience, at home and overseas. This includes delivering the Prime Minister's five-point plan to bolster international pandemic preparedness, as well as reforming the World Health Organization and prioritising support for health systems around the world.

The Lord Bishop of Chichester: My Lords, parishes across England have links through the Anglican Communion with international communities where the issues of poverty, conflict and disease are most clearly felt. Those are shared by the people in our congregations in this land. As the bishops from the Anglican Communion gather for the Lambeth Conference this summer, I hope the Minister will enable us to present something about our nation's international strategy for international development that will address some of the most crucial issues. First, there are the ways in which human rights are trampled on, particularly in the context of persecution of people for their faith—both Christian and other faiths. Secondly, there is the use of opportunities for partnership with the Anglian Communion in that strategy. Thirdly—

Noble Lords: Oh!

Lord Goldsmith of Richmond Park (Con): I thank the right reverend Prelate for his question. The UK is blessed with the sheer breadth and diversity of organisations representing civil society, and chief among them is our network of churches. We are committed to working in partnership with a whole range of civil society organisations, including from the UK and beyond. I am very keen to hear the examples the right reverend Prelate cited and very happy to have that discussion on the specifics.

Lord Lansley (Con): My Lords, the volcano in Tonga demonstrated the vulnerabilities of island nations in the Pacific—as indeed, in a different way, has the Chinese Government's intervention in the Solomon Islands. Will my noble friend the Minister say that the international development strategy will give an enhanced priority to island nations in the Pacific, when it is published?

Lord Goldsmith of Richmond Park (Con): My noble friend makes an important point. Covid exposed the vulnerabilities of those small island developing states, in much the way that climate change, in the longer term, is exposing the vulnerabilities of small island states and small island developing states. So, yes, the answer is that we are increasing our emphasis on, and will boost our support for, small island developing states. Part of this is the Indo-Pacific tilt, which noble Lords have heard a great deal about. Equally, we will be raising our aspirations towards and support for the Caribbean, through overseas territories and beyond, for precisely the reasons my noble friend addresses.

Lord Collins of Highbury (Lab): The Minister reminded us of the Foreign Secretary's commitment to ensure that the strategy focuses on women and girls and, in her words, their "freedom to succeed". Malnutrition is the single largest cause of death in women worldwide and I was extremely disappointed that the Government were not able to make a commitment at the Nutrition for Growth Summit in December. However, I was heartened to see that our global leadership position is returning, in part with the announcement of £1.5 billion in funding for nutrition. None the less, this will not meet the WHO global nutrition targets by 2025. Will the Government review that pledge in time for the next Nutrition for Growth Summit in 2024?

Lord Goldsmith of Richmond Park (Con): The noble Lord is certainly right. Malnutrition contributes to nearly half of all child deaths globally. It is a key priority for the FCDO. Improving nutrition will play a key role in achieving all our objectives on ending preventable deaths of mothers, babies, children, women and girls through humanitarian aid and global health. The strategy, when it is published in the spring, will lay out what that means in terms of the financial priorities and allocations.

Lord Oates (LD): My Lords, do the Government agree that a key part of our international development strategy should be the promotion of democracy and good governance? What signal does the Minister think is sent when, following the elections and peaceful transfer of power in Zambia, we have cut its aid budget by 50%?

Lord Goldsmith of Richmond Park (Con): The reduction from 0.7% to 0.5% was always going to result in difficult decisions. It is not a decision the Government took lightly or that anyone in government welcomes. We will return to 0.7% as soon as the tests laid out by the Chancellor are met. As I have said, our focus on and recognition of the importance of the continent of Africa will be reflected in the changes going forward.

Parthenon Marbles

Question

3.10 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what recent discussions they have had, if any, with the government of Greece about returning the Parthenon marbles to Athens.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the Greek Prime Minister raised this issue with our Prime Minister when they met last November. Our Prime Minister emphasised the UK's longstanding position that this is a matter for the trustees of the British Museum, who legally own the sculptures. Her Majesty's ambassador in Athens has also discussed this issue with Greece's Minister for Culture, most recently in January. The British Museum operates independently of the Government, meaning that decisions relating to the care and management of its collections are a matter for its trustees. The Government fully support the position taken by the trustees. The Prime Minister made these points clear to the Greek Prime Minister when they met. Both agreed that the issue in no way affects the strength of the UK-Greece partnership.

Lord Dubs (Lab): My Lords, is the Minister aware that, in the British Museum, there are more than 108,000 Greek artefacts, of which 6,500 are currently on display? More importantly, will he accept that my plea that we should consider returning the marbles is based on the fact that they are a unique piece of art, they belong together and they have a proud history in terms of the Greek historical traditions? Surely we should think again.

Lord Parkinson of Whitley Bay (Con): My Lords, the British Museum has more than 4.5 million objects from its collection that are available to study online. It is visited by 6 million people a year, and its fantastic collection from across human history is admired by people from around the world. Sadly, half of the original sculptures on the Parthenon are no longer with us, mostly destroyed by the turn of the 19th century, not least in the appalling tragedies sustained in 1687 when the Venetian army hit the Parthenon, which was being used as an armament store by the Ottoman Empire at the time. Of the half that remain, around half are in the British Museum, where they can be admired as part of the sweep of human civilisation, and about half can be admired in the Acropolis Museum, seen alongside the building which they once adorned.

Lord Hannan of Kingsclere (Con): My Lords, human society rests on the principles of private property, of free contract and of the elevation of the individual above the collective. Will my noble friend confirm that these precepts are incompatible with the concept of a collective claim based purely on geography?

Lord Parkinson of Whitley Bay (Con): My noble friend makes an important point. The Parthenon sculptures were acquired by the late noble Earl, Lord Elgin, legally, with the consent of the then Ottoman Empire. The British Museum is always happy—and the trustees have made this clear—to consider loans to museums that recognise its legal ownership of the items. That is the stumbling-block in this instance.

Baroness Smith of Newnham (LD): My Lords, the British Museum Act has a provision that Nazi-looted art can be sent back, as can human remains within 1,000 years. Would the Government consider revising the Act to consider the return of other looted artefacts from wheresoever they came?

Lord Parkinson of Whitley Bay (Con): The noble Baroness makes an important point about two decisions that Parliament has taken in relation to items plundered under the Third Reich and human remains which are less than 1,000 years old. These were decisions taken by Parliament, just as was the passage of the British Museum Act, and just as was the decision, following the Select Committee that looked at this in 1816, to acquire the objects at the time. It was looked at again by a parliamentary committee in 2000 under the chairmanship of the late Sir Gerald Kaufman. The Government have no plans to change the law.

The Earl of Clancarty (CB): My Lords, would it not be a helpful step for the Government to set up an independent expert panel to deal with such concerns across all our national museums, to establish an ethical framework in which guidance can be given and decisions made?

Lord Parkinson of Whitley Bay (Con): The noble Earl makes an important point. We are working with Arts Council England to look at the guidance available generally to museums in considering questions of restitution and repatriation. I have had some fruitful and interesting discussions with museums, including, most recently, the Great North Museum in Newcastle, which is considering items in its collection. I will continue to have those conversations with museums with a range of views, but it is important that we get that guidance right. It is possible to add further grievance

—I have been following the issue of the return of the Benin bronzes by Jesus College, Cambridge, which has caused some disagreement between the current Oba of Benin and the Legacy Restoration Trust in Nigeria. We must get this right and act considerately.

Lord Sikka (Lab): My Lords—

Lord McDonald of Salford (CB): My Lords—

Lord Dobbs (Con): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Labour Benches, and the noble Lord, Lord Campbell-Savours, wishes to speak virtually. This is a convenient point for me to call him.

Lord Campbell-Savours (Lab) [V]: My Lords, how does the Minister respond to Boris Johnson's earlier elegant words of wisdom, when he wrote, in more romantic times:

"The Elgin marbles should leave this northern whisky-drinking guilt-culture, and be displayed where they belong: in a country of bright sunshine and the landscape of Achilles, 'the shadowy mountains and the echoing sea'"?

Would it not be a generous act in his final days, before —if I can possibly say this—being sacked, to arrange for their return? We could retain replicas.

Lord Parkinson of Whitley Bay (Con): My Lords, fortunately for all Ministers, government policy is not made by the things that Ministers wrote when we were undergraduates. The Prime Minister has made the long-standing position of Her Majesty's Government clear to the Greek Prime Minister, most recently when they met in November.

Lord Sassoon (Con): My Lords, as a former trustee of the British Museum, may I ask my noble friend the Minister if he agrees with me not only, as he said, that the British Museum is prepared to lend objects—and is at this point lending objects to many countries generously on a long and short-term basis—but that this requires an acknowledgement of the good title that the British Museum has to those objects?

Lord Parkinson of Whitley Bay (Con): I congratulate my noble friend on his recent appointment as chairman of Sir John Soane's Museum. He is absolutely right that the British Museum is indeed a very generous lender, both overseas and within the United Kingdom. Before the pandemic, the British Museum normally loaned over 2,000 objects to around 100 venues outside the UK every year. In addition, as I say, many millions of people come to see the items in its global collection in Bloomsbury. The British Museum will consider any request for part of its collection to be borrowed, but that requires its legal ownership of those items to be recognised.

Lord McDonald of Salford (CB): My Lords, can the Minister tell the House whether Her Majesty's Government are facing the issue of repatriating ancient treasures by themselves? I note that many European capitals are affected. For instance, the Louvre is home to the "Winged Victory of Samothrace" and the "Venus de Milo".

Lord Parkinson of Whitley Bay (Con): I think it is important that we look at this on a case-by-case basis. There are a number of national museums which are prohibited by law from deaccessioning items, and then there are others which are able to make a decision. That is where the guidance of the Arts Council will be important. The noble Lord mentioned the Louvre, which also contains one of the Parthenon sculptures—indeed, these wonderful items are to be found in museums in six countries across the world.

Lord Sikka (Lab): My Lords, the UK has the world's largest horde of culturally significant stolen artefacts, including the Ethiopian manuscripts, the Benin bronzes, the Rosetta Stone, the ring of Tipu Sultan and much more. These items matter to the places from which they were taken, often by force. Could the Minister please consider publishing a timetable for returning these items to their rightful place?

Lord Parkinson of Whitley Bay (Con): I am afraid I cannot agree with the noble Lord, nor indeed in completeness with the list that he cited. That is why, as I say, it is important that we approach this on a case-by-case basis, looking at the items, how they came to be in the United Kingdom, how they were acquired, whether they are—as in the case of the Parthenon sculptures—legally owned by the museums, and to look at these matters considerately.

Lord Dobbs (Con): My Lords, the task of a museum is to preserve, educate and inspire. In an era where we can now make extraordinarily accurate copies—down to the tiniest chisel mark and chip—could we not argue that we would be fulfilling our duties to protect and educate if we were to reunite the Elgin marbles and send them back to their birthplace, that wonderful museum by the Acropolis? Could we not also argue that this would be an act of historic inspiration which would make—how can I put this?—the Greek gods, as well as our Prime Minister, weep with gratitude?

Lord Parkinson of Whitley Bay (Con): My Lords, the Acropolis Museum is indeed remarkable. I had the pleasure of visiting some years ago, and I greatly enjoyed it—just as I have enjoyed visiting the British Museum, where, in the Duveen Gallery, the Parthenon sculptures there can be admired. They have been admired down the centuries by people including Keats, Wordsworth and Auguste Rodin, who have been inspired into making new works of art as a result. Sadly, it is impossible to reunite the Parthenon sculptures. Half of them have been lost over the last two and a half millennia. At the moment, around half of those that remain are in the British Museum, where they can be admired in the great sweep of human civilisation, and around half can be admired at the Acropolis.

Elderly Social Care (Insurance) Bill [HL]

Order of Commitment

3.20 pm

Moved by ***Lord Lilley***

That the order of commitment be discharged.

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

Motion agreed.

Arrangement of Business

Announcement

3.20 pm

Lord Ashton of Hyde (Con): My Lords, today is the penultimate day of Committee on the Nationality and Borders Bill. As the time available for this Bill in Committee is now limited, we will, I am afraid, sit late today to make sure that we get to the target group. It is perfectly possible if all noble Lords co-operate. There is no dinner break business, but we will take a short break of 30 minutes at around 7.30 pm.

I know the significance of the issues in this Bill. So far, we have debated more than 100 amendments; we have about the same number to go. We must finish this Committee stage by the end of Thursday. So far, we have spent 20 hours in Committee on the Bill, but there is a lot of other legislation to progress before the end of the Session. The *Companion to the Standing Orders* says:

"The House has resolved 'That speeches … should be shorter'. Long speeches can create boredom and tend to kill debate."

I know that the Front Benches will co-operate, as they have done hitherto, but I ask that all noble Lords do the same. There are very important issues to be discussed in the debates on this Bill but, if all bear in mind the guidance agreed by this House, we can ensure that everyone's contributions can be heard this afternoon and this evening.

It is not considerate to other noble Lords who want to speak on later groups to make long speeches early in the day, particularly if they repeat points that have already been made or are not directly related to the amendments. So I repeat my request that noble Lords be self-disciplined and considerate to other noble Lords.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the Government Chief Whip for his statement at the start of our proceedings.

As always, as the Official Opposition, we will use our best endeavours to progress proceedings. We have before the House important business that is not uncontroversial and deserves to be properly scrutinised in a business-like fashion, giving us the opportunity to understand fully the Government's intention, question the Government and get to grips with the reasoning behind the Bill during this Committee stage. I will be in discussion with the Government Chief Whip throughout the day on the passage of the Bill.

Lord Stoneham of Droxford (LD): On behalf of our Benches, I support the principles laid out by the Government and Opposition Chief Whips. It is in the interest of the health of the Front Benches that we at the very least try to end at a reasonable time tonight and on future evenings this week.

Lord Judge (CB): My Lords, on behalf of these Benches, I add my support. I hope that I am not the only person in the Chamber who wonders whether we are all abiding by the 30-second rule for questions and answers at Question Time.

Baroness Jones of Moulsecoomb (GP): I completely agree that long speeches are boring; I do not have a problem with that. My contributions this afternoon and this evening will be short. However, I point out that the Government do this House a disservice when they bring to us huge Bills that really ought to be four different Bills—the police Bill, for example. If they do that, we have to table a lot of amendments, which means a lot of debate. Perhaps the Government should extend the Committee and Report stages so that we can discuss these really important issues with enough time.

Lord Ashton of Hyde (Con): My Lords, I do not want to have a long debate; it rather defeats the object of my original remarks. I just point out to noble Lords and the noble Baroness that it is not simply a question of extending our Committee time. The only time left before Easter, if we are to complete the Bills that are already in progress, would mean going into the second half of the Easter Recess. We do not want to do that.

Nationality and Borders Bill

Committee (4th Day)

3.25 pm

Relevant documents: 7th and 9th Reports from the Joint Committee on Human Rights, 11th Report from the Constitution Committee, 18th and 19th Reports from the Delegated Powers Committee

Clause 28: Removal of asylum seeker to safe country

Amendment 100

Moved by ***Lord Kirkhope of Harrogate***

100: Clause 28, page 33, line 20, leave out paragraph (a)

Member's explanatory statement

This amendment is linked to the amendment to leave out paragraphs 1 and 2 of Schedule 3.

Lord Kirkhope of Harrogate (Con): My Lords, I hope that I will not bore you for long. I shall take careful note of the Chief Whip's remarks but I am

very pleased to introduce Amendments 100, 101 and 102. I thank those Lords spiritual and temporal who have added their names to these amendments and who are supportive of the contents.

These amendments seek to remove amendments to Section 77 of the Nationality, Immigration and Asylum Act 2002 from Schedule 3. The intention is to erase the proposal contained in the Bill to introduce powers to export offshore any person in the UK who is seeking asylum without first considering their claim. Few would disagree that protection and control of our borders, primary responsibilities of any Government, are noble and necessary objectives. A Home Secretary must be able to discharge her duties in this respect, which include expediting deportation swiftly and without delay where illegality has been determined under the rules. This was certainly my approach when I served as Immigration Minister in the 1990s.

Most would agree that the process by which we pursue these objectives matters no less than the solutions on the table. Indeed, solutions need to be effective, but they must also be pragmatic and practical, and enforceable under domestic and international law. They need to be imaginative but also financially viable. They must be firm but also fair. I am afraid that Clause 28 and Schedule 3 fail on these counts. In very literal terms, Clause 28 amends the Nationality, Immigration and Asylum Act 2002, which states that a person seeking asylum cannot be removed from the UK while their asylum claim is being processed—in other words, before a final decision is given on their refugee status, including access to an appeal. However, paragraph 1 of Schedule 3 to the Bill withdraws those rights by allowing the transfer of any asylum seeker to any country which will be listed in Section 77 of the Nationality, Immigration and Asylum Act 2002 as amended by Schedule 3.

Before Brexit, under the Dublin regulations, the UK Government could remove an asylum seeker from the UK while their claim was still pending but only to return them to the EU country of first entry and only after having issued a certificate under Schedule 3 to the Asylum and Immigration Act that permitted them a legal right to do so. With the end of the UK's involvement in the Dublin regulations this option became inaccessible. However, Clause 28 would provide the Home Secretary with the legal power to forcibly remove any asylum seeker from the UK while their claim is still pending to another country which the Government have deemed safe. Clause 28 would allow them to do this without seeking and issuing a certificate under Schedule 3 to the 2004 Act. This goes against our legal and constitutional principles and surely should be repudiated.

All credible immigration systems must first acknowledge the distinction between immigration and asylum. A person who comes here for economic reasons is definitely not the same as a person who comes here to seek safety. The Bill's failure to disentangle these definitions is significant because in the Government's bid to control overall immigration, it will be vulnerable people—those fleeing conflict and persecution—who would be disproportionately and adversely affected.

Many years ago, I oversaw an inquiry that included the viability of offshoring. At the time, the proposal was to create processing centres off the mainland but within British territorial jurisdiction. We quickly judged that to be deeply flawed as an idea, but the problems we identified around domestic offshoring are almost trivial compared with the problems we would face by offshoring asylum seekers to foreign territory. For one thing, it would be a clear breach of our principles in the 1951 convention on refugees. We may be abrogating our responsibilities for dealing with applications, as well as those to the asylum seekers themselves, who, by international law, should be able to retain control over where and when they submit those requests. Indeed, a person's physical removal from the UK would effectively terminate their claim for asylum in the UK, transferring it instead to a third country.

3.30 pm

Turning the asylum process on its head in this way draws us on to shaky ground, posing numerous questions that the Government have not yet answered. We still do not know which country might be willing to act as a hub. Albania and Norway have outrightly rejected the offer. Rwanda may or may not be in the running, and there are rumours of Ascension Island—a place with no infrastructure, no means of direct access and no real links to the outside world. We also do not know how the migrants would be treated once they were there. In the Australian centres in Nauru and Papua New Guinea, reports of mistreatment and indefinite detention abounded, with cases of people being left in limbo for as long as eight years. Senior UN officials described the Nauru camp as cruel and inhuman, and many other notable activists similarly decried its record.

The Government claim, and will no doubt continue to claim in relation to Clause 28, that there is an absolute bar on removing an individual from the UK where there is a real risk that they will experience torture or inhuman or degrading treatment, yet some of the countries under consideration can hardly be described as exemplars of rules and rights. The truth is that, once outside the UK's jurisdiction, people sent offshore will have none of the safeguards of UK law. I cannot see how this would work or how it could be acceptable.

On top of that, we do not know for sure whether those asylum seekers who have had their applications accepted would then be allowed to come into the UK. Existing UK case law holds that an asylum seeker cannot be granted asylum unless they are in the UK at the time of decision, but this Bill provides no power for the UK to readmit them or grant them any form of leave, and neither does it explain what will happen to those who have had their applications rejected. Where, if anywhere, will they be sent? What support, if any, will they receive? People's lives are then at stake.

The extent of the powers conferred by such legislation necessitate clearly defined and transparent policies. It is not at all clear how this policy would work. We know that the Australian experiment on which this policy was modelled was a failure—one centre has been completely abandoned, and one no longer accepts new refugees, though the latter is still costing the Australians billions of dollars to maintain.

We also know that offshoring is ineffective as a deterrent to boat crossings. More people arrived by boat in Australia in the first year of offshore detention

[Lord Kirkhope of Harrogate]
than in any previous year. The authorities resorted to using maritime interceptions instead, with the Australian navy endangering lives as a result. This is such an appalling prospect here, and I was relieved that border coastguards have ruled themselves out of any such endeavour. The so-called deterrent did not work there and would not work here.

We know that the costs of offshoring would be exorbitant—current conservative estimates put them at £2 million per person per year. We are talking about a bill running into the tens of billions of pounds. It is an astronomical sum of taxpayers' money to pump into a project so fraught with problems. I pity the Minister who would have to justify this expense to the public at a time of serious economic uncertainty.

Finally, there is no question that we need urgent action and we need to be decisive. But decisive should never mean draconian. Current problems cannot be remedied by harsher policies. Offshoring is an extreme solution that is practically flawed, morally dubious and destined to fail. If the United Kingdom truly wants to be firm and fair, we must not allow this clause on to our statute book. I beg to move.

The Lord Bishop of Durham: My Lords, in rising to support Amendments 100 and 101, to which I have added my name, I declare my interests in relation to both the RAMP project and Reset, as set out in the register.

When people arrive on our shores seeking protection, we have a responsibility to treat them as we would wish to be treated if we had to flee for our lives. It is right that we have a process to determine who meets the criteria for refugee status, but while we determine this, we are responsible for people's safety, welfare and care. If we move them to other countries for the processing of their asylum claims, I fear a blind eye will be turned to their treatment. How will we be sure that they are being treated humanely and fairly, and would our Government even give this much concern once they had left our shores? If we look to the experience of Australia and the refugees accommodated in Nauru, as the noble Lord, Lord Kirkhope, has just mentioned, we hear deeply shocking accounts of abuse, inhumane treatment and mental and physical ill-health.

As mentioned in relation to an earlier amendment, I visited Napier barracks last week to see improvements that have been made since the exposure of the disgraceful conditions at the beginning of last year. If what we have seen at Napier is permitted to happen in the UK, what can we expect overseas, where accountability and monitoring will be so much harder? The monitoring of asylum accommodation contractors in the UK is poor, which gives us some idea about the level of monitoring we could expect of offshore processing.

What standard will be set for offshore accommodation? Will it be detention? How can UK safeguards be enforced in another country? Will there be a maximum period of stay? Minister Tom Pursglove stated in the Public Bill Committee that

"we intend their claims to be admitted and processed under the third country's asylum system."—[*Official Report*, Commons, Nationality and Borders Bill Committee, 26/10/21; col. 397.]

This is deeply concerning. These asylum seekers are the UK's responsibility; they came to us to ask for protection, and we cannot simply wash our hands of them. What will be the acceptable standards of a country's asylum system for us to discharge refugee determination to them? Can the Minister confirm that, if an individual is granted asylum offshore, they will be granted any form of leave in the UK and readmitted?

We had assurance in the other place from Minister Tom Pursglove that unaccompanied children will not be included in offshoring, but will children in families be offshored? If not, can the Minister assure us that families will not be split up in this process? We need to see any such commitments written into the Bill. I also want reassurance from the Minister that offshore agreements will not be linked to international aid agreements. This would be wrong, so can she give us that reassurance?

Offshoring would be a huge cost to the taxpayer. Can the Minister tell us what work has been done on the costs? Have such costs been endorsed by HM Treasury?

The financial cost is not the only one: there would be a significant cost to our international standing. Are we so keen to tarnish our reputation as a country where human rights are upheld for this inhumane policy, rather than one that is rooted in what will actually work to reduce the need for people to have to use criminal gangs? We will discuss these policy proposals in future debates.

People seeking asylum have arrived on our shores, seeking UK protection. We are responsible for them. It is not a responsibility we can pass over to others. The potential for standards and safeguards to drop is a very serious risk, with the challenges of monitoring and accountability at distance. They would far too easily become forgotten people. Offshoring must simply be ruled out of order.

Baroness Stroud (Con): My Lords, I too support Amendment 100, in the name of my noble friend Lord Kirkhope, to which I have been pleased to add my name. I refer to my entry in the register of Members' interests.

The question of offshore detention is undoubtedly one of the most controversial aspects of this Bill, which is designed to stem the flow of small boats from France. The stated objective of this policy is one of deterrence, but opponents of the policy have rightly been asking: at what cost?

Before we look at the issue of offshoring, I will take a moment to look at and think about the sorts of journeys taken by those fleeing violence and war. Asylum seekers are frequently exposed to intolerable levels of risk as they travel. Irregular migrants face dangerous journeys: they are unprotected, they accumulate debt, and they have no legal recourse. The limited opportunities for legal migration force individuals to use people smugglers where there is a risk of being trafficked. Asylum seekers who fall prey to human traffickers can be exploited in both transit and destination countries. During the asylum seeker's journey, the fine line with human trafficking—the acquisition of people by force, fraud or deception with the aim of exploiting them—can be easily crossed.

Just imagine you go through all that and end up on these shores. It has taken your savings and months of your life to arrive here from, say, Afghanistan, Syria or Iran. On arrival on our shores, we greet you and, before we have even assessed whether or not you are a refugee, put you on a plane and take you back to the continent from which you came. That action alone could kill someone, but my question is also: what does that make us?

Before I set out my reason for asking the Home Secretary to think again about the use of offshore detention and processing, whether in Rwanda, Ghana or Ascension Island, as we have heard, I will return to the point I made last Tuesday. The best hope of a fair, just and affordable solution to the issue of the Calais boats still lies with a diplomatic solution with the French and EU nations. Will my noble friend the Minister comment on the *Telegraph* story on Wednesday about the French President's apparent openness to a deal over channel crossings? As I have suggested a number of times, a returns agreement with the French is likely to be the only viable way to stop the crossings. I imagine this taking the form of an agreement that those who have crossed here irregularly are sent back to be assessed in France; in return, we commit to taking a certain number from Calais. This is a win-win solution that would genuinely destroy the economic model of the people smugglers, would cost less and would be far more humane.

Could my noble friend the Minister also provide an estimate of the cost of offshore processing? A cursory glance shows that a room at the Ritz costs between £650 and £700 a night. Extrapolate that and one finds that it costs around £250,000 to stay at the Ritz for a year. The estimates of what the Australians pay for one asylum seeker held in detention vary from that amount to eight times that. How can that be justified?

It is not only the cost that concerns me. Can the Minister provide reassurance that no children will be sent offshore and that women who are vulnerable to sexual violence will receive proper protections? The concerning stories that emerge from processing camps in other countries should give us pause for thought before we embark down this road. When there are other potential diplomatic avenues that the Government are yet to properly consider, offshoring looks like an oversized hammer being used to crack a nut, with the potential for corrupting our character as a nation and our international reputation, and increasing racial tensions domestically and the administrative burden and cost to the state. I urge the Minister to think again and for this House to give the other place an opportunity to think again.

Baroness Jones of Moulsecoomb (GP): Outside on the streets today are people supporting those of us who are fighting this Bill. They understand the damage it does not only to the refugees and people seeking asylum here but to the Government's reputation. I do wonder. We have to say these things, because our consciences would not let us not say them, but are the Government listening? I rather think not. Essentially, these clauses are about being able to deport refugees while their asylum claim is being processed. That is not fair on the individuals involved and, I would argue, is inhumane. They are simply being herded like cattle and packed off to be trafficked, essentially.

Clause 28 and Schedule 3 make provision for safe countries, but no provision for safe accommodation. We know that the accommodation we provide here in the UK is pretty substandard and, sometimes, outright revolting, so I have no trust that safe countries will do any better than we have. I have a question that I would like answered today: what steps will the Government take to assess the conditions and that these people are being treated well in those safe countries?

3.45 pm

Lord Horam (Con): My Lords, I will follow on from what the noble Baroness and my noble friend Lord Kirkhope said. I will say a little bit on the Australian experience, which is the only relevant extant experience that we have at the moment.

What happened in Australia was that, in 2001, the Liberal Party of Australia and the National Party of Australia, the equivalent of our Conservative Party, introduced offshoring as a policy. I have no knowledge of how it worked at that point—I just do not have any information—but it carried on until 2008, when the Australian Labor Party was elected in a general election and desisted from offshoring. After that, there was a huge increase in the number of boats coming into north Australia, up to about 50,000 a year, and, as a consequence of that, the Labor Government did a U-turn and reintroduced offshoring. Unfortunately, this was too late in terms of political consequences: it lost the general election, and, in 2013, a new Liberal and National Government came in, reintroducing offshoring and beefing it up, with the army and navy playing a role in all of that. That is the history of it.

It was then highly successful: the offshoring completely stopped the human traffickers' business—they had no more scope to bring people over because people simply did not believe that they would get into Australia—and the whole thing was a success, so much so that the opposition Labor spokesman agreed that, essentially, the boats had been stopped by the offshoring techniques. Thereafter, the Australian Labor Party changed its policy, and the policy now has cross-party support in Australia—both the Liberal Party and the Australian Labor Party support it—and boats no longer go across from Indonesia to Australia. The policy succeeded.

As my noble friend said, it is perfectly true that there are some issues in Nauru and Papua New Guinea—essentially residual issues arising from previous years—which have been difficult to resolve. I am sure that we would all want those to be resolved quickly and properly for humanitarian reasons.

However, clearly the Government are looking at this. Of course, there is no guarantee at all that such a policy, which was successful in Australia, would be successful here—one cannot pretend that that is necessarily likely to happen. The fact is that, although the situation is the same, in that people are crossing by sea to England and the UK as they were to Australia, the geography and the politics are different, and it is quite possible that it would not work in British circumstances. That is the truth of the matter.

[Lord Horam]

None the less, it would be a dereliction of duty if the British Government did not try to look at this and examine whether it can work. The first thing that they have to do is, as the Australians did, pass the relevant legislation that enables them to put this into practice and see whether it does, in fact, work. That is where we are now—we have not done anything about it, and it is not in place. It will not be in place until some time after we have passed this legislation—

Baroness Stroud (Con): Could my noble friend outline his thinking on, for instance, the proximity of Nauru to Australia and whether that is not more the equivalent of saying that France or another European nation would be the location of the offshoring, rather than, say, Rwanda, which is on completely the other side of the world? Could my noble friend perhaps acknowledge the differences and unpack that for us a little?

Lord Horam (Con): Yes, I do acknowledge the differences, which is why I said that there is no guarantee at all that, even if this is tried, it will work in British circumstances. All I am saying is that it worked in Australian circumstances, the Government are clearly interested in this and, as I say, it would be a dereliction of duty if they did not put this among their options and pass the legislation that enabled us to try this out. That is where we are now.

I point out that, after the success of this policy in Australia, the Australian Government were enabled to expand the legal routes for asylum seekers to go to that country because it ceased to be controversial: immigration was less controversial as a consequence of the anti-boat policy being successful. The fact is that, as I have said before in these debates, if the public do not buy into the policy, you will have problems in persuading them to have more immigration. If they buy into it because they can see that you are controlling your borders, they have a more relaxed attitude to immigration and accept higher levels of it because they can see that they are in control of both the amount and the type of immigration coming in.

Therefore, there is a prize at the end of this for those who genuinely want to have more immigration, frankly, than we have at the moment, and if you can seem to be in control. What worries people is if you are not in control—if they can see clearly that people are behaving illegally getting here, jumping the queue and all the rest of it. In view of what the Whips on both sides have said, I do not want to go on any longer, but we ought to consider this in a rational and sensible way, as a clear option that any responsible Government of whatever kind should pursue; and I point out that, in Australia, for example, it does have all-party support.

Baroness Lister of Burtersett (Lab): My Lords, we have obviously been reading different things because everything that I have read and heard about the policy in Australia suggests that it is far from successful, and certainly not for asylum seekers themselves.

Lord Horam (Con): If the noble Baroness reads the evidence given by the Australian high commissioner to the House of Commons—evidence-taking on a section of this Bill—she will find that much of what I have said is corroborated there.

Baroness Lister of Burtersett (Lab): I tend to give more credence to people on the ground, but there it is.

I share concerns that have already been raised about potential health and human rights implications and the general dehumanising nature of a power that allows the British Government, in the words of the UNHCR,

"to externalise its obligations towards refugees and asylum seekers to other countries with only minimal human rights safeguards".

No doubt, we are talking about poorer countries on the other side of the world to which asylum seekers will be moved like cattle, as the noble Baroness, Lady Jones, said.

I want to raise a few questions; some have been covered so I will not repeat them but build on them. First, with regard to children, who a number of noble Lords have mentioned, in the Commons the Minister assured Caroline Nokes, a former Immigration Minister, that unaccompanied children would not be transferred for offshore processing. When she asked about accompanied children, and about what would happen to a child who turned 18 during the process of applying for asylum, answer came there none. I hope that there will be an answer to those questions today.

Can the Minister also say what would happen to a child whose age is disputed? When we reach that group of amendments—probably around midnight, so it will be great scrutiny—we will hear of the widespread fears among medical and social work professionals and children's organisations that Part 4 of the Bill will lead to many more children being wrongly assessed as adults. If so, I fear that many unaccompanied children could be transferred because it is not believed that they are, in fact, children. I would welcome the Minister's thoughts on that. Can she assure us that no young person will be transferred while the age-assessment process is going on?

Secondly, building on what the right reverend Prelate and the noble Baroness, Lady Stroud, said, the UNHCR observes that the Bill

"is silent on what, if any, legal obligations the United Kingdom would consider itself to have"

towards asylum seekers once their asylum claims have been dealt with. It expresses concern that there is nothing in the Bill that confines the application of the changes to extraterritorial processing, which is the stated purpose in the Explanatory Notes.

Detention Action warns that, even if a third country's authorities recognised the asylum seeker as a refugee, the Bill provides no power for the UK to re-admit them or grant them any form of leave. Can the Minister say whether this interpretation is correct? If it is not, can she assure us on the record that those who are deemed to qualify for refugee status will be readmitted to the UK—that is, the country from which they sought refugee protection—and explain under what legal power in the Bill they would be so readmitted? If Detention Action's interpretation is correct, this is not simply about offshore processing, which is a euphemism, but, even more shockingly, it is about the Government

wiping their hands of all responsibility for those who qualify for refugee protection via a claim for asylum—not short-term offshore processing but long-term deportation. If so, the case for Clause 28 and Schedule 3 not standing part of the Bill is that much stronger.

Lord Paddick (LD): My Lords, the Government's position in justifying this and other measures in the Bill rests on the UK's so-called excellent track record on refugees, and the Minister has repeatedly pointed to the UK's track record on resettlement schemes. The UNHCR thinks differently:

"Resettlement programmes, while welcome, are, by themselves, an inadequate means for fairly distributing global responsibilities towards refugees and sharing the burden currently shouldered by major host countries."

It goes on to give the facts about the numbers who are making their own way from areas where people are being persecuted. It concludes:

"For all of these reasons, the Bill undermines, rather than promotes, the Government's stated goal of improving the United Kingdom's 'ability to provide protection to those who would be at risk of persecution on return to their country of nationality.'"

As the noble Baroness, Lady Jones of Moulsecoomb, has just said, one of the reasons for offshoring is to temporarily house asylum seekers while their claims are being considered. Would the Minister like to comment on an article in the *Times* on Saturday that claimed that Priti Patel, the Home Secretary,

"wants to … reject Channel migrants' claims for asylum within a fortnight of them reaching Britain"?

The story claims that

"government lawyers raised concerns over the plans"

but the Secretary of State

"believes a fortnight is a 'reasonable' window for immigration officials"

to make such a decision. According to the article, a Home Office spokesperson told the newspaper:

"We do not comment on leaks",

so I ask the Minister a different question. Does she believe that two weeks is a reasonable timeframe to consider asylum seekers' claims? If so, there would not appear to be any need for offshoring.

The Bill goes from bad to worse. As Amnesty and Migrant Voice put it,

"the prevailing attitude emanating from the Home Office … appears determined by any means and at almost any cost to seek nothing more than avoiding its responsibilities while demanding other countries should take theirs. This is a hopeless prescription from which no good can possibly come".

The Home Office is seeking the power not only to remove an asylum seeker to any country while it considers their claim, but to do so and then tell that country, "If you think they are a refugee, you take them. It's not our problem any more". I do not know how the Government think they can persuade another country to take the UK's unwanted asylum seekers on either a temporary or a permanent basis. According to Amnesty and Migrant Voice, offshoring by Australia effectively excluded legal, judicial, medical, humanitarian and media scrutiny; has cost a fortune—over £500 million a year, according to the British Red Cross—and, contrary to what the noble Lord, Lord Horam, seems to have seen or heard, has failed to stop those seeking asylum, including those arriving in Australia by boat.

I understand that academic evidence on the whole offshoring scheme was given by a university in Australia to the Public Bill Committee in the other place that appears to contradict the evidence that the Australian High Commission gave to the same Committee, so there is clearly a serious difference of opinion as to whether the scheme is successful. Apparently, the independent academic assessment of the scheme thinks it is a failure. The UNHCR says:

"As UNHCR has seen in several contexts, offshoring of asylum processing often results in the forced transfer of refugees to other countries with inadequate State asylum systems, treatment standards and resources",

which amendments in this group seek to address.

"It can lead to situations in which asylum seekers are indefinitely held in isolated places where they are 'out of sight and out of mind', exposing them to serious harm … UNHCR has voiced its profound concerns about such practices, which have 'caused extensive, unavoidable suffering for far too long', left people 'languishing in unacceptable circumstances' and denied 'common decency.'"

I am hoping that this apparently unworkable and morally repugnant provision is yet another paper tiger, designed to appeal to the *Daily Mail* in deterring genuine asylum seekers, but that it is no more than propaganda. Clause 28 and Schedule 3 should not be part of the Bill. All the other amendments in this group are well-meaning, but they are window dressing.

4 pm

Lord Kerr of Kinlochard (CB): It seems to me that the amendment of the noble Lord, Lord Kirkhope, and indeed all those in this group have to be right. The idea of offshoring is immoral and it would not be in line with the traditions of this country. It is also impractical; for one thing, it would be horrendously expensive, as the Australian experience shows. Offshoring in Australia has proved as damaging to its exchequer as to the reputation of Australia. Of course, that is not what the high commissioner said. I used to be a diplomat and one tends not to say that sort of thing about one's own country when on diplomatic duty.

However, the real and biggest reason I am against this provision is that it is illegal. It is a clear breach of the refugee convention. We had this argument before, so I can do it in shorthand: there is no provision in the refugee convention that fits with proposed new subsection (2B)(b) of Schedule 3, which is at line 20, where a safe country is defined as

"a place from which a person will not be removed elsewhere other than in accordance with the Refugee Convention".

The refugee convention, however, says nothing about removal to third countries, safe or not. It says that a refugee is a refugee in a place when he says he cannot go home, because he will not be protected at home and would like to ask for the protection of the host state in the country where he is. That is what the refugee convention says. It says nothing about how he got there, nothing about a "first safe country" and nothing at all about exporting him somewhere else, so the language of new subsection (2B) in Schedule 3 is a misreading of that convention.

Of course, we know that the Government are deliberately misreading the refugee convention. I still think it would assist our debates greatly if the Government

[Lord Kerr of Kinlochard]
would change their mind and let us see the legal advice which has caused them to take the eccentric view that they take of the convention, and hence to propose Clause 11 and all that follows.

Lord Cormack (Con): My Lords, I intervene briefly and for the first time in this debate, provoked into doing so by what the noble Lord, Lord Kerr of Kinlochard, has just said. It is fundamentally wrong to legislate in a way that obliges you to break international law. It is very simple, but that is it. We do not have islands around our shores where we can gather together vast groups of potential refugees and asylum seekers.

The other day I was reading a review of a book, which has just come out, about the Isle of Man in the Second World War. There was of course great panic about people of German origin—although most of the poor people were of Jewish origin as well—domiciled in this country. They were rounded up and taken there. There are some fairly inspiring stories but also some very depressing stories. We have to tread exceptionally carefully here. We have gone on a lot about global Britain, but if I am to be proud of global Britain, I want to be proud of a country that is upholding the highest international standards.

Although I take on board what my noble friend Lord Horam said a few moments ago—he made a gently forceful speech that deserves consideration—I just cannot for the life of me think that to herd people into encampments in Rwanda and other far distant places is anything other than a repudiation of our standards as a great country. It would be fundamentally wrong for us to go along this line. Treat thy neighbour as thyself. There is a lot of wisdom in the 10 commandments. A bishop should really be saying this rather than me, but I really believe that it is essential that whatever we do is consistent with our record as the great nation that abolished slavery throughout its dominions and before that abolished the slave trade. There were battles in Parliament for both, but my parliamentary hero is William Wilberforce and I do not want to see his reputation traduced.

Lord Sentamu (CB): My Lords, I have been sitting on my hands because whenever you tell a personal story, it looks as though you are not pleading what the noble Lord talked about—law. We arrived in 1974 and were treated with such great respect, love and care. For about 20 years we travelled on a British travel document. That kind of hospitality was of great help to us all.

The way I read this clause is almost as a revisitation of Guantanamo Bay—a very bad piece of work—or voluntary rendition, whereby people were taken from one country to another to sort out whether they were terrorists or not. This country should not use offshoring. The word "offshore" already does not have a good reputation in terms of money and offshore investment. This is a country that has been the mother of parliaments and the mother of legislation and where the rule of law is what governs all of us. How can we get a third country to take what we call refugees?

I can assure noble Lords that there will be many countries in Africa that will volunteer to do it. The question we have to ask is: how do those seemingly wonderful countries treat their nationals? Do they treat them in the same way that this country does? I would be very doubtful. For the sake of the rule of law, for the sake of this great Parliament and for the sake of the British people who have been very good in welcoming the likes of me, this clause should—please—not become part of the legislation.

Baroness Neville-Rolfe (Con): My Lords, I am also very impressed by the moderate contribution from my noble friend Lord Horam on the Australian experience. I have a question, therefore. How do the Australians get round the alleged breach of the refugee convention?

Lord Rosser (Lab): I reiterate what was said a little while ago: this is about asylum, not general immigration policy. There is a considerable difference between the two; that does not always get recognised.

This proposal to offshore asylum claims is inconsistent with the global humanitarian and co-operative principles on which refugee protection is founded. Frankly, if everybody did what we are proposing, there would not be much of the refugee convention left, as I am sure everybody recognises and, in their heart of hearts, knows to be true.

Having made those introductory comments, I will endeavour to be brief. I want to ask one or two questions. The Minister in the Commons said:

> "Schedule 3 aims to reduce the draw of the UK by working to make it easier to remove someone to a safe country where their claim will be processed. It amends existing legal frameworks to support our future objective to transfer some asylum claims to a safe third country for processing."—[*Official Report*, Commons, Nationality and Borders Bill Committee, 26/10/21; col. 388.]

As I have just indicated, the Minister referred to "some asylum claims" being transferred. Will the Government spell out in their reply what categories or types of asylum claims would be processed in another country, and what categories or types of asylum claims would be processed in this country? In addition, based on claims made over the past three years, what number or percentage of total asylum claims and claimants would be processed in and removed to another country, and what number or percentage of total asylum claims would still be processed in this country? I assume that the Government have figures on that.

Information on the countries we have reached agreement with for offshore processing has been, to say the least, a bit thin on the ground, with Ministers saying to date that they are not prepared to enter into a "running commentary" on the conversations that are taking place. I hope that the Government will be a little more forthcoming today on which specific countries we have reached agreement with, or confidently expect to reach agreement with, and which countries have declined to reach an agreement with us. Also, how many different bilateral negotiations are we currently involved in?

It is unacceptable to be told by the Government that we should agree to a policy and its associated clauses and schedules, which, however repugnant, are meaningless and cannot be implemented unless appropriate agreements are reached with other countries—and then, when asking the Government to give information on whether

and what agreements have been concluded, to be told by them that it is none of our business. That is what the Government have been doing to date. We expect better from their response today. However, if the Government are going to continue to play dumb on this issue, perhaps it would be better for them to withdraw Clause 28 and Schedule 3 until such time as they have concluded agreements with other countries, without which the policy cannot be implemented.

The only thing the Government have said is that the model the Home Office intends to proceed with is

"one where individuals would be processed as part of the asylum system of the country that we had an agreement with, rather than people being offshore and processed as part of our asylum system."

So it is not just offshoring; it is also treating and dealing with people under another country's asylum system rather than our own. The duty to ensure that the rights of asylum seekers are respected would still fall on the UK; it would be helpful if the Government could confirm that in their response.

Essentially, as has already been said, the UK would be outsourcing its refugee convention obligations, potentially to less wealthy nations. The UNHCR has been highly critical of efforts to offshore asylum processing, noting how

"offshoring of asylum processing often results in the forced transfer of refugees to other countries with inadequate State asylum systems, treatment standards and resources. It can lead to indefinite 'ware-housing' of asylum-seekers in isolated places where they are 'out of sight and out of mind', exposing them to serious harm. It may also de-humanise asylum-seekers."

4.15 pm

The comment has already been made that it appears that the Government are seeking to emulate as a model the Australian system—a system which has been widely condemned for its human rights abuses. Offshoring presents a significant risk of harm, particularly to vulnerable people, since the reality is that the UK Government would have much less control over the treatment of detainees than they do in this country, where there have nevertheless been unacceptable incidents and unacceptable standards. Since the Government have said that the object of offshoring is deterrence, there must presumably be no exceptions to the policy. Perhaps the Government could confirm whether or not that is the case.

Policy measures that rely on deterrence assume that people have a choice in the decisions they make. People who are forced to flee their country because of violence and persecution in reality have no such choice. Consequently, deterrent measures will not stop them making the journey to find safety.

There is no empirical evidence to support the effectiveness of offshoring as a deterrent strategy in respect of those fleeing persecution. The likelihood is thus that offshoring will be completely ineffective in its aims as well as inhumane—that is leaving aside the moral issues that have already been referred to. I shall not go into the figures, but I too believe that the financial cost of the Australian system is very high. It would be helpful if the Government could say in the light of the Australian experience on costs what their estimated cost per case is for this country in respect of an asylum claim processed in another country and the asylum seeker being transferred to it, since I assume that the Government will have some fairly accurate and up-to-date figures on that point.

Will the Government also say what their evidence is to substantiate the claim in the Explanatory Notes that the policy will

"deter irregular migration and clandestine entry to the UK"?

I am not sure what the evidence is to substantiate that assertion.

In the Commons, the Minister said:

"Schedule 3 is designed to be part of a whole system deterrent effect to prevent illegal migration. Access to the UK's asylum system should be based on need, and not driven by the actions of criminal enterprise."—[*Official Report*, Commons, Nationality and Borders Bill Committee, 26/10/21; col. 388.]

Can the Government say how this policy of processing asylum claims in another country and removing claimants to that other country is based on need? No assessment of need would be made before a person could be moved to that third country, so need does not enter into it as far as the Government are concerned. If I am wrong in that, no doubt the Government will say why it is based on need.

In addition, the Commons Minister mentioning "criminality" later in that response does not make this a clause which is targeted at criminals. It is targeted at people who are desperately seeking refuge and have legitimate reasons to be granted it. It is not targeted at those involved in the kind of criminal enterprise to which we all object most strongly and wish to see stamped out.

On another issue—it has already been raised, but I shall repeat it—in the Commons the Government said that children would not be transferred overseas for their claims to be processed. I too ask: what happens if a family arrives seeking asylum? Will they be split up, with the parents sent to a third country for their claim to be processed and the child or children remaining in this country for their claim to be processed here? As others have asked, what happens to those whose asylum claims are accepted and who have had the claim processed overseas? What happens to those who have been removed to another country for their claim to be processed if their asylum claim is rejected?

My name is down in respect of two stand part notices, in relation to Clause 28 and Schedule 3. This is an unworkable, highly expensive and politically driven policy which is not even backed up by the agreements with other countries that are needed to bring it into effect. The policy appears based on the Australian model, which was costly and did not seem to provide as much deterrent effect as intended as far as those arriving by boat were concerned.

Lord Etherton (CB): My Lords, I add my name to that of the noble Lord, Lord Rosser, in giving notice of my intention to exclude Clause 28 and Schedule 3 from the Bill. To move an asylum seeker to a detention or reception centre offshore while their claim is being assessed is wrong in principle, oppressive in practice, contrary to the 1951 convention and lacking sufficient safeguards under the Bill. Many speakers referred to Australia's policy of offshore processing, as an example

[LORD ETHERTON]

both of how awful it can be and, by one speaker, of a successful operation to deter unlawful immigration. It is worth putting a little flesh on the Australian experience.

In 2013, Amnesty International published a report, *This Is Breaking People*, highlighting a range of serious human rights concerns at the Manus Island, Papua New Guinea, immigration detention centre. In an update, Amnesty International reported that, in two days in February 2014,

"violence at the detention centre led to the death of … a 23-year-old Iranian man, and injuries to more than 62 asylum seekers (some reports suggest up to 147 were injured)."

It said in the report:

"There are credible claims that the asylum seekers … were attacked by private security guards, local police and possibly other contractors working at the centre. The response by security guards and local police to protests by asylum seekers was brutal and excessive."

Amnesty's report raised a number of concerns about living conditions, including overcrowding, cramped sleeping arrangements, exposure to the elements, as well as a lack of sufficient drinking water, sanitation, food and clothing. The update said:

"Since the violence on … February 2014, Papua New Guinean nationals no longer enter the compounds for catering or cleaning … Asylum seekers are delivered meals in take-away packs for self-distribution and also bear sole responsibility for cleaning the ablution blocks."

At the time of Amnesty's site visit in March 2014,

"ablution blocks in all compounds were dilapidated, dirty, mouldy, and"

some latrines were

"broken and without running water."

Amnesty International expressed concern about the issue, saying:

"Australian and Papua New Guinean authorities are deliberately denying asylum seekers' right to access lawyers and human rights organizations."

In an article published by the Australian Institute of International Affairs in February 2017, it was said:

"LGBT asylum seekers are particularly vulnerable … and face significant disadvantages and dangers. In detention they experience discrimination, harassment and violence from other detainees and from members of staff. The detention environment has serious long-term effects on their mental and physical well-being."

From time to time, Ghana and Rwanda have been floated in the media as places to which asylum seekers in the UK might be transferred, although Ghana has officially denied any such possibility. The appropriateness or inappropriateness of such locations for LGBTIQ asylum seekers is manifest. In Ghana, same-sex sexual acts carry a potential sentence of up to 25 years. There is a current proposal to raise the minimum sentence to 10 years and to require conversion therapy. LGBTIQ people face homophobia, physical violence and psychological abuse.

In Rwanda, same-sex sexual relations are not unlawful, but there are no anti-discrimination laws relating to sexual orientation or gender identity, including in relation to housing, employment and access to government services, such as healthcare. A 2021 report on Rwanda by the Immigration and Refugee Board of Canada cites sources disclosing discrimination and stigma facing LGBTIQ people in religious and civil society, the media and business, harassment by the police and the use of indecency and vagrancy offences against transgender and gender-diverse people. The experience in the offshore detention centres I referred to in Australia and the position in Ghana and Rwanda show the inappropriateness of holding asylum seekers in offshore detention or reception centres.

In particular, the following are not answered in the Bill, the Explanatory Notes or any other guidance from the Government. First, how will asylum seekers have access to legal advisers with knowledge of the law and practice relating to UK asylum claims, assuming that they are being processed under UK law, which is complex and difficult? Secondly, legal aid and advice is available to refugees in the UK, but there is nothing to suggest that it will be available to refugees in offshore holding centres. Thirdly, and as has previously been pointed out, if conditions in the proposed offshore centre are so bad as to cause physical or mental harm to refugees, whether through physical conditions in the centre or—in the case of single women or LGBTIQ members, for example—because of discrimination, harassment, bullying and violence from staff or other asylum seekers, will they be able to have recourse or bring proceedings in the UK, or will they be restricted to such remedies as might be available in the foreign country?

Until these fundamental questions are answered and set out expressly in the legislation, there should be no question whatever of exporting refugees to offshore holding centres. To do so would be inconsistent with the spirit and the letter of the refugee convention and the UK's own history of welcome to genuine asylum seekers over the centuries.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have spoken to this group of amendments, and I thank my noble friend Lord Kirkhope of Harrogate for tabling his Amendments 100, 101 and 102.

On the back of my noble friend's point, it might be helpful to clarify the definitions of "asylum seeker", "refugee" and "economic migrant." An asylum seeker is a person, either in transit or awaiting a decision, seeking the protection of a state under the terms of the refugee convention. A refugee is a person who meets the definition of "refugee" in Article 1 of the refugee convention—they do not have to be recognised by a state to be a refugee—and so it follows that a "person with refugee status" is a person who meets the requirements under the UK Immigration Rules to be granted refugee status.

The term "economic migrant" is inexact. It may, of course, refer to a person who is using or looking to use economic routes, such as FBIS, to enter a state. However, there will be people who meet the definition of Article 1 of the refugee convention but are looking to enter the UK and choosing it over other countries purely for economic reasons. One of the objectives of the *New Plan for Immigration* is to ensure that the most vulnerable can be protected, which in turn means that those attempting to enter the UK for economic reasons should use the appropriate routes.

Changes within Clause 28 via Schedule 3 are one in a suite of critical measures designed to break the business model of people smugglers and are the first

step in disincentivising unwanted behaviours—for example, by dissuading those who are considering risking their lives by making dangerous and unnecessary journeys to the UK in order to claim asylum. By working to establish overseas asylum processing, we are sending a clear message to those who are risking their lives and funding criminal gangs both here and abroad or abusing the asylum system elsewhere that this behaviour is not worth it. We must make it easier to ensure that such people are simply not allowed to remain in the UK.

It also might assist noble Lords—and indeed my noble friend Lord Kirkhope of Harrogate—to know that for nearly 20 years, it has been possible under UK law to remove individuals from the UK while their asylum claim is pending if a certificate is issued under Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, so this is not a new concept. What this measure does is amend our existing legal framework to make it easier to remove such individuals. I do not know which noble Lord asked this, but Schedule 3 also defines the term "safe third country".

4.30 pm

We will do this by making it possible to remove someone without going through a certification process, providing that the country they are being removed to meets the safety criteria that we have set out in the Bill. Even where we determine that it is generally safe to transfer people from the UK to one of our international partners, every individual in scope for processing overseas will be able to rely on the UK's obligations under Article 3 of the European Convention on Human Rights, so as not to be transferred to a country where they would genuinely be at risk of inhuman and degrading treatment, just to answer the point of the noble and learned Lord, Lord Etherton.

We have been open and frank about our intentions to pursue agreements which would enable asylum processing overseas. We are working closely with like-minded partners to fix our broken asylum system and consider how we could work together in the future. My noble friend Lady Stroud talked the other day about our relationship with France, and today about some very positive reports in the press about our progress with France. We have a shared recognition of both the urgency and the magnitude of the situation that we are both facing. We will also discuss all options in the spirit of our close co-operation and partnership. My noble friend is absolutely right: President Macron made comments in the French press last week that indicated that France is aligned with the UK on the need to work together to deter crossings, both to save lives and to stop the criminal gangs.

I do not wish to pre-empt the exact form or content of future arrangements more generally, and I will not be drawn into speculation on whom we are talking to, as this would tie the hands of our negotiators. However, I can assure my noble friend that the bottom line is that this Government will act in accordance with our international obligations. To be clear, this means that we will not seek to transfer anyone overseas for asylum processing where to do so would breach the UK's obligations under the refugee convention or the ECHR, for example.

I turn now to Amendment 101A, from the noble Baroness, Lady Hamwee. These are matters for the negotiating table. What this clause does is amend our existing legislation to make it easier to transfer someone overseas for their claim to be processed, in the event that we secure an agreement with a like-minded partner. Again, to reassure noble Lords, we will remove an individual only where this can be done in accordance with our international obligations.

We cannot accept Amendment 196, from the noble Baroness, Lady Hamwee, which would not have its intended consequence to limit the Government's ability to remove people with pending asylum claims. I have already set out how it has been possible, for almost 20 years, to remove individuals from the UK while their asylum claim is pending if a certificate is issued under Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Therefore, laying before Parliament a policy statement is unnecessary, as we already have the means to remove someone with a pending asylum claim. There is nothing to be gained from Parliament debating legislation pertaining to the removal of people with pending asylum claims, as this legislation is already in force.

I will turn to some other questions. My noble friends Lady Neville-Rolfe and Lord Horam talked about the systems in Australia and Denmark. As I have said on previous occasions, each state will interpret the refugee convention in its own way, as Australia and Denmark clearly have.

My noble friend Lord Kirkhope of Harrogate also asked about the cost to the UK taxpayer, as did other noble Lords. I am afraid I cannot give an approximation as it is a matter for the negotiating table, which I will not prejudice.

The right reverend Prelate the Bishop of Durham asked about the inhumanity of offshoring. We will continue to uphold our international obligations and ensure that all removals of individuals are compliant with our obligations under Article 3 of the ECHR, which protects against torture and "inhuman or degrading treatment".

The right reverend Prelate the Bishop of Durham, the noble Lord, Lord Rosser, and the noble and learned Lord, Lord Etherton, asked about children, women and other vulnerable people. Noble Lords are absolutely right that the Minister made our position clear in Committee and on Report in the Commons. I will not go further than what he said there.

The Lord Bishop of Durham: The problem is that the Minister only said, "unaccompanied children", and did not refer to children in families. I am sorry, but we do not have the confirmation that this addresses the whole range of scenarios—such as families being split up—which we have raised but have not been answered.

Baroness Lister of Burtersett (Lab): Before the Minister replies, I also asked some questions about children and, more specifically, about when they turn 18 and whether their age will be challenged.

Baroness Williams of Trafford (Con): I thank both the right reverend Prelate and the noble Baroness for those points. Generally, in the asylum system in the UK, when someone is about to turn 18, their status changes.

The right reverend Prelate is absolutely right; I did not answer questions about all children in all situations. On the previous day in Committee, I went at length through the routes by which children and families can come to the UK—there are several routes, and I think I cited four.

My noble friend Lady Stroud asked about victims of modern slavery and human trafficking. We will only ever act in line with our commitments under our international legal obligations, including those which pertain to potential victims of modern slavery.

The Lord Bishop of Durham: The Minister has made me even more disturbed. She has not said—and neither has anyone in the other place—that families and children will not be offshored.

Baroness Williams of Trafford (Con): As I have just said, I will not go any further than my honourable friend did in the House of Common, save to say that people who—

Lord Rosser (Lab): I understand that the Minister may be unable to respond immediately to the extremely valid question the right reverend Prelate has asked. Presumably, however, the Government as a whole know the answer to his question. Why does the Minister not agree to write to us and tell us what those answers are?

Baroness Williams of Trafford (Con): I have said I will write, but to be more explicit than my honourable friend was in the Commons might risk exploitation on routes taken by children. Therefore, this is as far as I will go today. I will lay out the various safe and legal routes through which children can come to this country and reiterate what my honourable friend said in the House of Commons.

Baroness Lister of Burtersett (Lab): I am very sorry but the noble Baroness is not answering the right reverend Prelate's question. It is not about safe and legal routes but about who will and will not be offshored, which is an awful term. She seems to be saying that children who are accompanied, who are in families, could well be offshored. Is that correct? The Minister in the Commons refused to answer the question and avoided it; I am afraid that is what the Minister is doing here.

Baroness Williams of Trafford (Con): My Lords, I am not trying to avoid it; I am saying that that is about as far as I can go. However, I will try to outline any further detail that I can in writing to noble Lords. Noble Lords will know—

Lord Cormack (Con): My Lords—

Baroness Williams of Trafford (Con): I will not take the intervention just yet. I do not generally make misleading comments standing at the Dispatch Box. I will further write.

Lord Cormack (Con): I am most grateful and apologise. Can my noble friend say whether she expects that, by the time we reach Report, she will be able to answer that question? Can she also say whether there are any countries with which we are close to agreement and, if so, what countries those are?

Baroness Williams of Trafford (Con): I cannot say what countries we are in discussion with, other than confirming to my noble friend Lady Stroud that we are having some very positive discussions with France. On the other question, I cannot acquiesce to going further at this point, because I do not want in any way to make comments that might put children in danger. As I have just said to the noble Baroness, Lady Lister, and the right reverend Prelate the Bishop of Durham, I will write in as much detail as I can following Committee.

Baroness Stroud (Con): I thank my noble friend for giving way. I think I heard that her concern is that saying that children with families would be exempted from being offshored could lead to a fuelling of the trafficking of children to ensure that those families who wanted to travel to the UK would be accepted here. Is that what my noble friend is saying? Some clarity on that would be really helpful, as well as some distinctions in that policy, which obviously she wants to mitigate, and the policy around families who are obviously families—who have proof of it—coming here. Would the Government split them up, let them remain here or be offshored?

Baroness Williams of Trafford (Con): I agree with the noble Baroness that we need to strike that balance between abuse of the system and providing refuge to those genuinely in need, but she will also know that we have several family reunion routes, which I went through the other day in Committee. With all that, and the commitment to write to the right reverend Prelate—

Lord Paddick (LD): I am sorry to intervene just when the noble Baroness thought she had finished. She said that there is already a power to remove asylum seekers while their claim is being considered. Is she referring to when the Secretary of State issues a certificate to say that a claim has no merit and someone can therefore be deported before their appeal is heard? In that case, that is a limited number of people and a very different system from the one proposed here. Can she tell the Committee how many people have been issued with such a certificate and been deported during their application process in that way, compared with the numbers the Government anticipate will be affected by this new proposal?

Baroness Williams of Trafford (Con): The noble Lord talks about deportation; we generally refer to deportation in the context of criminals. No, it is not under those provisions.

4.45 pm

Baroness Lister of Burtersett (Lab): My Lords, I am sorry, but a whole range of noble Lords asked a question, in different ways, about what happens to the asylum seekers if they are granted refugee status in the country to which they have been offshored. Are they allowed back into this country or are they just left there? If they are left there, they have, in effect, been deported.

Baroness Williams of Trafford (Con): My Lords, I do not have the answers before me, so I will write on the questions that I have not answered, if that is okay with the noble Baroness.

Lord Kirkhope of Harrogate (Con): My Lords, I thank my noble friend for her responses and all noble Lords for their very important contributions on a really significant part of the Bill. I stand by what I said in my remarks, and I think that others will do so too, despite assurances that we may have received. I would be very grateful if the Government would perhaps be prepared to discuss this matter further between now and Report. On that basis, without further ado, I beg leave to withdraw my amendment.

Amendment 100 withdrawn.

Clause 28 agreed.

Schedule 3: Removal of asylum seeker to safe country

Amendments 101 to 102 not moved.

Schedule 3 agreed.

Clause 29: Refugee Convention: general

Debate on whether Clause 29 should stand part of the Bill.

Baroness Chakrabarti (Lab): My Lords, any anxiety that I may have felt earlier this afternoon about the Whip's injunction to be brief largely evaporated in the distinguished debate that I just heard, because, the more I heard the eloquent succinctness, particularly of noble Lords opposite—the noble Lord, Lord Kirkhope, the noble Baroness, Lady Stroud, the noble and right reverend Lord, Lord Sentamu, and others—the less anxious I felt about initially crossing sections of my notes out and eventually remaining silent. So I feel equally confident about the solidarity and inspiration to come.

With the Committee's indulgence, I propose to open up this section on interpretation, which goes on for about three groups, but not to pop up on each group; rather, I shall make my points about this whole concept of reinterpreting the convention here. I do so knowing full well that noble Lords from around the Committee will ventilate granular and very important concerns about reinterpreting "social group", for example, from the disjunctive to the conjunctive approach to trip up some claimants—or about doctoring the burden and standard of proof and turning persecution, in the context of non-state persecution, into something that does not grant refugee protection where the reasonable steps in which the other state is engaged are totally failing, and so on. Initially, then, I will leave others to extrapolate those concerns and, instead, my own part in the collective approach in this Committee will be on the fundamental problem with reinterpreting the refugee convention in this legislation, which begins with Clause 29 and goes on. I hope the Committee is happy for me to make my contribution on that basis.

I have a fundamental objection to the entire approach with this reinterpreting of a shared post-World War II refugee convention, not because I do not trust this country to take control of its borders and laws and so on, but because in order for the convention to work, it has to be an international enterprise, and also because I trust our courts. Although Ministers have said at various points on previous days of this Committee that it is for Parliament, not the UNHCR, to interpret the convention, what they really mean is that it is for the Home Office and not the courts—neither the courts over there, nor the courts here.

What is really going on is that the Government are not taking the approach that they took with the internal market Bill of just being open and honest about an intention to violate international law; they are doing it by this sleight of hand. You could almost call it "violation laundering", because they will palm it off on Parliament and, once they have done that—once this rewriting of the jurisprudence of the convention has been passed through Parliament—we will be the laundromat: it will be on us that decades and continents-worth of international human rights jurisprudence around this convention will not bite any more to protect those seeking asylum in the UK. I certainly do not want that on my conscience, and I suspect the Committee does not either.

This is wrong because it is a violation of the principle that this treaty has been entered into in good faith, which is obviously a principle of common sense and the Vienna convention, and so on. It is outrageous because it is telling the courts, including our own, that all this jurisprudence that has been built up over years of dealing with cases, with some of the greatest jurists in our history, including Lord Bingham, can go out of the window because the Home Office has a better idea—one which is, of course, designed to trip people up. Let us be clear: it is not designed to extend convention protection to more people; it goes back to the stump speeches we heard from various noble Lords last week about numbers and so on and is not at all about refugee protection and honouring the convention.

I get to the point where I actually think that maybe it would be more honest for the Government to do what some noble Lords have occasionally tempted them to do, which is to put their hands up and say, "We don't believe in this refugee convention anymore. It is inconvenient and old-fashioned; we don't like the numbers, and we're not having any of it." There is something Orwellian, distasteful and misleading of the electorate to go through these contortions and perversions of language and law.

Maybe other noble Lords in Committee will have a different view of that, but it is coming to the point where these contortions of language and jurisprudence are so obscene and genuinely Orwellian—I know that

[Baroness Chakrabarti]
word is overused, but for me it was never about having six cameras in the street instead of three; for me, it is about *Politics and the English Language*, Orwell's greatest work, and the abuse of language that leads to the abuse of people. That is what is wrong with this whole section—it is not in good faith; it is not a reflection of the jurisprudence; it is an attempt by sleight of hand to undermine it.

This is not just terrible in the context of refugee protection, which, given what is at stake, is bad enough; it is really bad for Britain and the rule of law, which is arguably one of our greatest exports—not David Beckham's left or right foot, not even Shakespeare or Elgar, but the rule of law. It is the reason why, unfortunately, so many oligarchs want to come here, in addition to hiding their money. They want to sue each other in our courts and hire some of our noble and learned Lords to go and judge their arbitrations in secret, because there is something magical and special about our law.

When we share our jurisprudence in good faith with supreme courts and constitutional courts around the world, we are not just affecting refugee protection here but influencing that jurisprudence all over the world; and that is an export too. You cannot measure it in pounds and pence, but you can measure it in a truly global Britain and a better world. There needs to be this international conversation between judges here and over there, in good faith and influenced by each other's jurisprudence. By reinterpreting the convention, we throw it all out. It is year nought in the Home Office, and all that jurisprudence goes out the window because we have rewritten the convention via this totally offensive clause. Of course, Ministers have an oath, and they are supposed to respect international law—enough said about that.

I am glad that the noble Baroness, Lady Williams, is having a break now, not just because it is good to have a break but because it gives me the opportunity to put a question to the Minister the noble Lord, Lord Wolfson, that I tried to put last night in the context of a different Bill, about whether the Government have already instructed parliamentary counsel on the Bill to scrap the Human Rights Act. In the last group, the noble Baroness, Lady Williams, invoked convention rights, the ECHR and our participation in that in defence, so it is an important question in practical terms, because it can always be said that we will not be sending anybody for Article 3 treatment and so on and so forth. It is also really important because Section 3 of the Human Rights Act requires that all other legislation be read compatibly with convention rights as far as it is possible to do so. In this pandemic period, I have heard noble Lords opposite, and Ministers in particular, invoking that in defence of the CHIS Bill, the overseas operations Bill, the police Bill: "Don't worry, because remember, there is always the Human Rights Act as a catch-all protection—particularly the interpretation provision but also the duty on public authorities to comply." If parliamentary counsel have already been instructed to draft the Bill that will scrap the Human Rights Act, we need to read all of this in a slightly different light, do we not? Frankly, even in the light that we currently have, it is bad enough.

Baroness Hamwee (LD): My Lords, my name is to the opposition to Clause 29 and the other clauses mentioned in this group as well. Of course, opposing Clause 29 is a consequence of opposing the other clauses, all of which, we say, should go. I have written down "clauses on interpretation"; the term "laundering" had not yet occurred to me, but I follow the point about the interpretation or laundering of the refugee convention. The overall point, as I say, is that they should all go.

On Second Reading, I described it as perverse to use domestic legislation to impose an interpretation of an international convention. Since then, at earlier points in this Committee, we have heard much more powerful, analytical, legally informed responses, and, though I am speaking before the contributors to whom I am referring, I think I would be much better following them—that is not intended to be at all disrespectful to the Minister, nor indeed to the very experienced lawyer from whom we have just heard. The humanitarian arguments have been very well put, but the short point I took away from an earlier day is inarguable. We are party to the convention: it is our law; it is well-established law. If we were to leave the convention—which, of course, I am not advocating—that would be another matter. But we have not left it, and I hope we are not going to.

5 pm

The proposed interpretations are not simply a collection of different bits of law; they rewrite the whole of it in a way that undermines the spirit and intention of the convention and—there is a lot of agreement on this in the Committee, I believe—in a manner inconsistent with international standards. We will become out of step with the internationally accepted interpretations and out of step with the international community, or, at any rate, those parts of the international community that we want to be in step with.

I turn from the macro to the micro, although it would not seem micro to the people involved. On Clause 35, which deals with Article 1(F) of the convention, perhaps the Minister could say whether I am correct in my assumption, as I think I must be, that the other parties to the convention have not agreed a variation; otherwise, the clause would not be there, as it could be dealt with internationally. This is the provision about what is meant by a "serious non-political crime", which has impacts for the application of the convention, which does not to apply to, among others, a person who

"has committed a serious non-political crime outside the country of refuge prior to his admission to that country".

I understand from the statement issued by the UNHCR that the purpose of Article 1(F) is to deny the benefits of refugee status to people who would otherwise qualify but are "undeserving of such benefits" for that reason. This is

"to ensure that such persons do not misuse the institution of asylum in order to avoid being held legally accountable".

The position is

"to protect the integrity of the institution of asylum"

and this should be applied "scrupulously".

I was quite intrigued by this. I had to stop myself pursuing reading about it because it would have taken me far too long, but am I right in thinking that this is

an outcome of the case AH (Algeria)? I am sure that the Minister has a briefing on this. I understand that the facts there concern the difference between courts of different countries and that signatory states are

"not free to adopt their own definitions"

of what constitutes serious crime. That is what the Court of Appeal had to say. Of course, that does not answer my point about unilateral interpretation.

Unless the Government have a change of heart, I cannot see that we will not be returning to this on Report, so all the excellent briefing that we have received can wait until then. We have been given such great tutorials and I think that we will receive more. All that briefing has been welcome but may not have been necessary.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I shall continue to limit my interventions in Committee to expressing views that I hold simply as a lawyer, the course I took on Tuesday of last week, when we were discussing Clause 11. That gave us an early introduction to the very provisions with regard to reinterpreting the convention that we are now concerned with. I reserve the right, when we come to Report, to come in on what I regard as the more obviously mean-spirited and ill-judged other provisions, which are, as is patent, designed to deter as many as possible of those who would otherwise wish to seek refugee status in this country.

Clause 29, as has already been pointed out, is an omnibus provision that takes you into further and more specific, and therefore more specifically objectionable, provisions, which take the convention apart and reinterpret it piece by piece. As both noble Baronesses have said, that is itself intrinsically an objectionable way to proceed with regard to one's legal obligations.

There are three further stand part notices in this group. I will not touch on all of them because time is the enemy today, as it will be on Thursday. On Clause 33, the protection from persecution, as the Bingham Centre for the Rule of Law has valuably pointed out, this clause fundamentally changes the approach to protection from persecution from a focus on meaningful and effective protection against persecution, which our long-established jurisprudence establishes is the correct focus, to a focus on the existence of a reasonable system to prevent, investigate and prosecute instances of where, despite the system, there has been persecution. This refocusing mischievously—and, I suggest, in legal terms, fatally—sidesteps the all-important question of whether the system is likely to protect the individual concerned.

In the interests of time, rather than make comparatively lesser points on the other two named clauses, Clauses 34 and 35, I will pass on. I say only on Clause 35, mentioned by the noble Baroness, Lady Hamwee, that this is directed to Article 1(F) of the convention. Clause 35(2) goes to Article 1(F)(b), concerning serious non-political crimes, and we will come in the next group to Clause 37, which deals with Article 33 of the convention on non-refoulement. Whatever the position on non-refoulement that may be arrived at under the refugee convention, even if, for example, the asylum seeker was found to be a war criminal and so is denied refugee status under Article 1(F)(a) of the convention—see Clause 35(1) of the Bill—it still is not possible to return that person to their country of origin if they would be persecuted. That is simply precluded by Article 3 of the ECHR.

I have had a helpful exchange of emails with the Bill manager. I asked the Minister at our Cross-Bench meeting a question which she referred to the Bill manager; namely, whether any of these provisions in the Bill were intended or calculated to alter any of the well-established and authoritative case law in this country. Except for one point which the Bill manager made regarding Clause 37, which corrects an ambiguity that arose under Section 72 of the 2002 Act, I am unpersuaded that where there is a recognised departure from our case law, it is properly made under this Bill. I finish at this point.

Baroness Jones of Moulsecoomb (GP): My Lords, I have been here for only eight years, which is not long in your Lordships' House, but I have never seen so many attempts to delete clauses from a Bill—and of course that is completely the right thing to do here. With this Government, I always look for dead cats being thrown on the table to distract us from something much worse that is happening under the table, but there are so many dead cats in this Bill that I am assuming they are all genuine bits of the Bill that the Government want to pass, which is quite disturbing.

Here the Government are trying to unilaterally rewrite international law, and they are doing so to appease the far right, both in their party and in the country. That is a pointless thing to do; you will never appease the far right. It is an example of the Government throwing away decades of international progress on domestic and international policies only to appease a segment of society who are outspoken and noisy—like the Greens, I suppose, but, unlike the Greens, they actually have malign intent.

We are sending a signal to the world that we are not competent to run our country any more, and certainly not worthy of being part of any international grouping that believes in progress and the rights of the human being.

Lord Alton of Liverpool (CB): My Lords, I add my voice to those of the noble Baroness, Lady Jones, my noble and learned friend Lord Brown of Eaton-under-Heywood, and the noble Baronesses, Lady Hamwee and Lady Chakrabarti, in saying to the Minister, for whom I have considerable respect—I know of his own track record in the area of international law and the upholding of human rights—that beyond the legal arguments that have already been put to him is the reputational damage to this country, not least because of international issues, some of which he will be aware of.

Anything that we do to dilute our commitment to the 1951 convention on the treatment of refugees—any unravelling or unscrambling of our commitments—is to be deplored. I will give two examples to the Minister. I co-chair the All-Party Parliamentary Group on North Korea and am vice-chair of the All-Party Parliamentary Group on Uyghurs. In the case of North Korea, we, the United Kingdom, will regularly raise with the People's Republic of China the refoulement policy of

[Lord Alton of Liverpool]
sending North Koreans from the PRC, to which they have escaped, back to North Korea, knowing that terrible things, including executions, will happen to them when they are sent back—a clear dereliction of the commitment to which the PRC signed up in the 1951 convention on the treatment of refugees.

In the case of Uighurs, Turkey is presently considering sending back Uighurs because of an agreement that it has reached with the People's Republic of China. Everyone in your Lordships' House—notably the noble Lord, Lord Anderson of Ipswich, who is in his place; he raised this issue with me as recently as last week, in another debate—is well aware that there are 1 million Uighurs in detention centres and camps in Xinjiang, and we know of terrible atrocities that have occurred. Our own Foreign Secretary has said that a genocide is under way. In that context, for any country, and in the case of Turkey a NATO country, to be sending people back, again in violation of its duties in the 1951 convention, seems to be deplorable. However, the United Kingdom can hardly start lecturing others not to do these things if we ourselves are going to unscramble and diminish the importance of the 1951 convention.

I suppose that, as a post-war baby, I have maybe too much admiration for what was not entirely a golden age, but think about all the things that were put in place at that time: everything from the Marshall aid programme to the 1948 Universal Declaration on Human Rights, with its 30 articles that set out our rights on an international basis, and the 1948 convention on the crime of genocide. Given all those things that have been put in place, we should think extraordinarily carefully before we do anything to diminish or dilute them. That is why I hope the Minister will give proper consideration to the interventions that he has heard so far—I am sure he will—and, between now and Report, see what more we can do to ensure that we do nothing to diminish the importance of the 1951 convention.

Baroness Hamwee (LD): My Lords, does the noble Lord agree that it is, as he says, about more than our reputation and not being able to lecture or set a good example to others? It enables others to point to us.

5.15 pm

Lord Alton of Liverpool (CB): Yes; not for the first time I agree with the noble Baroness, Lady Hamwee. It was British lawyers who crafted these things. Look, for instance, at the Nuremberg trials and the role of people such as Hartley Shawcross, who was the Labour Member of Parliament for St Helens, and the law officers from the United Kingdom in the establishment and creation of these things. They were a gift to many other nations. That is why we should be holding and enhancing them, not doing anything to diminish them.

Lord Anderson of Ipswich (CB): My Lords, I struggle with some of the dilemmas presented by Clauses 29 to 37, for very much the reasons given by the noble and learned Lord, Lord Clarke of Nottingham, in his frank and powerful speech of 1 February on Clause 11. There are, after all, circumstances in which Parliament may legitimately set out its interpretation of treaty provisions and overrule decisions of our courts. There is also a desire, which others on these Benches may share, to give the Government the benefit of the doubt if they can show us why their proposals are not in breach of international law.

The problem I have in that regard is that we have seen impressive formulations of the case against these clauses: for example, from the UNHCR, in the opinion of Raza Husain QC, and in the briefing from the Bingham Centre to which the noble and learned Lord, Lord Brown of Eaton-under-Heywood, has referred. What we—or at any rate I—have not seen is how the Government seek to justify these clauses against the requirements of the refugee convention, as interpreted by the Vienna Convention on the Law of Treaties.

For example, under Article 31.3 of the Vienna convention the interpretation of a treaty can legitimately be influenced by state practice. Do the Government rely on the statute or case law of other states as support for the interpretations that they ask us to enact? If so, which states and in relation to which clauses of the Bill? Do they say, in relation to each relevant provision of the refugee convention, that those practices establish

"the agreement of the parties regarding its interpretation"

within the meaning of Article 31.3(b) of the Vienna convention?

As a second example, the United Kingdom made various reservations and declarations at the time it ratified the refugee convention. Do the Government contend that these clauses, or some of them, constitute de facto reservations in so far as they purport to constrain, as a matter of law, the interpretation or application of the refugee convention? In that case, what are their arguments for their timeliness and permissibility and, if they are permissible, their compatibility with the object and purpose of the convention?

I appreciate, of course, that there are conventions regarding the publication of law officers' legal advice, but surely a way can be found of conveying to your Lordships, and to the public, a detailed and authoritative explanation of the Government's legal position in more detail than can be explained, however lucidly, by a very lucid Minister in this Chamber. Whether such advice will be enough to allay the concerns of those of your Lordships who take seriously our obligations under international law I cannot say, but at least these clauses will not be lost by default, which I suspect may be the alternative if we are left in the dark.

Lord Hodgson of Astley Abbotts (Con): My Lords, if I may intervene briefly, I am not an expert in this field but once the lawyers start quoting clauses, sub-clauses and those sorts of things, one has to be careful. This is obviously an important point, and I was really taken by the speech of the noble Lord, Lord Alton. He has spent a lot of time on this and one has to respect the work he has done. He talked about us unscrambling. When my noble friend comes to wind up, can he say whether we are unscrambling or simplifying?

Some of the way this seems to read is that we are making a thing clear for everybody. Therefore, far from undermining what we stand for, we are making it clearer for everybody, and as such for the people of this country, to understand what the Government are

trying to do, and thereby increase the degree of informed consent—a concept about which I am very keen. I understand the complications of the legal interpretations put forward by many noble and noble and learned Lords, but I would like my noble friend to tell me: are we simplifying or unscrambling? If we are simplifying, that seems a desirable thing to do.

Lord Paddick (LD): My Lords, taking up what the noble Lord, Lord Hodgson of Astley Abbotts, just said, my lay and naive understanding of international conventions, such as the refugee convention, is that processes of clarifying or simplifying should involve international co-operation and coming to a global agreement over what those interpretations, clarifications and simplifications are.

Amnesty and Migrant Voice put it differently. They say:

"Clauses 29 to 38 constitute an attempt by the Home Office via legislation to unilaterally re-write the UK's international refugee law obligations and, in doing so, reverse the decisions of the UK's highest courts".

As I have said before in this Committee, international conventions, as far as I am concerned, serve no purpose unless the signatories abide by a common understanding of what the convention means. Any deviation from the settled and accepted interpretation of an international convention must be agreed universally, not unilaterally, as these clauses attempt to do. Any attempt by the Bill effectively to rewrite what it means could result in the UK breaching its international obligations and we believe that none of these clauses should stand part of the Bill.

Lord Rosser (Lab): As has been said, this part of the Bill provides for "interpretation" of the refugee convention. It includes some entirely new provisions and replicates or amends some existing provisions.

On existing provisions, this part of the Bill repeals the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. These regulations transposed a key EU directive on standards for asylum systems, the qualification directive, into UK law. The Bill repeals the regulations and puts versions of the provisions into primary legislation instead.

The UNHCR noted with concern the Government's approach to interpreting the refugee convention. I will read an extract from its legal observations on the Bill in full. It said:

"We note with concern the Government's approach to interpreting the Refugee Convention. Any treaty must be 'interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.' In the case of the Refugee Convention, as the UK Supreme Court has noted on more than one occasion, 'There is no doubt that the Convention should be given a generous and purposive interpretation, bearing in mind its humanitarian objects and the broad aims reflected in its preamble.' In addition, the Vienna Convention specified a range of sources that 'shall be taken into account' in interpreting a treaty; these all reflect the agreement of the parties, and include other agreements and instruments from the time the treaty was concluded, as well subsequent agreements, State practice and international law. In other words, States cannot, under international law, unilaterally announce their own interpretation of the terms of the agreements they have made with other States. This, too, has been repeatedly recognised by the House of Lords and the Supreme Court of the UK."

I do not want to repeat what has already been said, but I just ask: do the Government agree with that extract from the UNHCR's legal observations on the Bill? If they do agree with it, do they believe that they are still abiding by it?

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, I am grateful to all noble Lords who have taken part in this debate.

The starting point is that we are no longer members of the European Union and, by extension, the Common European Asylum System. In response to the point made by the noble Baroness, Lady Hamwee, these provisions are not a direct response to the case of AH (Algeria). They are about having an opportunity to define clearly and unscramble refugee convention terms following our exit from the EU. It is right that, at this time of legal change, we take the opportunity to reassess the operation of our asylum system and reconsider our approach not only to fundamental policies but to processes, so that we can create a clearer and more accessible system.

The fact is that the development of the asylum system through international conventions, European law, domestic legislation, Immigration Rules and case law has created a complex legal web that can be difficult to understand and apply; that goes for claimants, decision-makers and the courts. I do not propose to use props—I understand that that is not permitted—but, for my own assistance on a later group, I brought a book called, rather laughingly, *The Immigration Law Handbook*. We consider it a desirable law reform to define clearly key elements of the refugee convention in UK domestic law. In response to my noble friend Lord Hodgson of Astley Abbotts, that is exactly what we are doing. We want to make the position clearer for everyone, including decision-makers and the courts.

A lot has been said that touches on the same point but, with great respect, the noble Baroness, Lady Chakrabarti, perhaps put it most forcefully. She used a number of metaphors. Let me respond to them. This is not about tripping anybody up. It is not a sleight of hand; it is difficult to do one of those on the Floor of your Lordships' House. This is about bringing clear definitions before Parliament and having them all in one place. The central point is this: there is nothing wrong—indeed, I suggest that there is everything right—with the UK, through this Parliament, interpreting its obligations under the refugee convention. That is entirely lawful. I use "lawful" in both its narrow and wide senses. It is lawful in the sense that it is in accordance with the law; it is also lawful in the broader sense of being in accordance with the political or constitutional principle that we call the rule of law. Further, it is in accordance with the Vienna convention. Everything we are doing complies fully with all our international obligations, including the refugee convention and the European Convention on Human Rights. I will come back to the question that the noble Baroness asked me in that regard a little later.

With respect to the noble Baroness, Lady Hamwee, it is not perverse to use domestic legislation to give effect to and interpret international treaties. I assure the noble Baroness, Lady Jones of Moulsecoomb, that

[Lord Wolfson of Tredegar]
I am not in the business of appeasing the far right; nor am I in the business of deleting obligations under international law. Many of the definitions, which repay careful reading, are very similar to those already used in the UK—for example, those contained in the 2004 qualification directive, which was transposed into UK law via the 2006 regulations.

I am grateful to the noble Lord, Lord Alton, for his kind words. I assure him that I of course give proper consideration to international reputational impacts, but surely there can be no adverse impact by complying with international law and interpreting treaties in accordance with the Vienna convention.

Baroness Jones of Moulsecoomb (GP): I am sorry, I missed my moment; I should have spoken as soon as the Minister spoke to me. I did not accuse him of trying to appease the far right. I hope I did not say that—I certainly did not mean to—but I do accuse the Government of it. I know that the Minister did not write this Bill, but that is something I see the Government as guilty of.

Lord Wolfson of Tredegar (Con): I did not take it personally. I agree that I did not write the Bill. It would be a far worse Bill, and the noble Baroness would like it even less, if I had written it. But I replied in that way because I take the view that if I am standing here defending government policy, then I will stand here and defend government policy. I certainly would not defend a government policy which was simply appeasing the far right. So, that is why I replied in those terms. I know that the noble Baroness was not making a personal attack; I did not take it that way.

To finish my point to the noble Lord, Lord Alton—

5.30 pm

Lord Green of Deddington (CB): My Lords, can we have a little less talk about the far right? Some 70% of the population think that the present Government's policy on asylum is a failure.

Lord Wolfson of Tredegar (Con): My Lords, I do not want to get into the question of whether the Bill is going too far or not far enough, and whether our policy is good, bad or indifferent, on this group of amendments. If I may say so, those are Second Reading-type questions. I was simply responding to the point put by the noble Baroness.

To return to the point on Turkey, whether its acts are in accordance with the refugee convention is really a separate issue. I do not mean to diminish or demean this, but what we are talking about here are not acts, so to speak. We are talking about the fundamental question of whether it is proper—because the charge put against me is that it is not—for this Parliament to set out its interpretation, the UK's interpretation, of the international obligations we have under the refugee convention.

Lord Alton of Liverpool (CB): Before the Minister leaves that point, I was not specifically asking him to respond to Turkey's actions. I was saying that it diminishes our ability to speak to countries such as Turkey or China—which I also referenced—if we are ourselves seen to diminish our responsibilities under the 1951 convention. That comes to the question that the noble Lord, Lord Rosser, put about how this is seen beyond our shores by international institutions that have examined what we are trying to do. I hope the Minister will address that point as we proceed.

Lord Wolfson of Tredegar (Con): I was going to come to the point made by the noble Lord, Lord Rosser. Let me just say a sentence about it now: the UNHCR is not the interpretive body of the refugee convention. Each state under the convention is there to interpret its obligations, in accordance with the Vienna convention. That is the system which the state parties have set up. When we have a phrase—we will get to one a little later—such as "serious non-political crime", the state parties have to interpret it. We will get to an example in the next group—this is a little cliffhanger—of where different countries have approached the question differently. There is nothing wrong with that, provided that they are all acting in accordance with the Vienna convention in good faith in seeking to interpret their obligations.

Respectfully, I think that the noble Lord, Lord Anderson of Ipswich, essentially accepted that basic proposition under the Vienna convention, and he was obviously right to do so. He sought characteristically carefully—if I might say so—to seek disclosure of the legal advice on which the Government are relying, while recognising the conventions which apply to that. I listened carefully to what he said. I will read *Hansard* to see whether there is anything more I can say in writing to him; I do not want to rush from the Dispatch Box. There may or may not be anything more I can say, but I will read that point carefully. I think he recognised that there are conventions in this area which do apply.

However, I say to the noble Lord, Lord Paddick, that it is not a question of having to agree with all the other signatories. This is not about amending the refugee convention; it is about interpreting it. That is a very different thing. If you want to amend a contract, you need the other party's agreement, but interpreting a convention is for each state party.

I will say a few words about the substantive clauses, although I think it is fair to say that those were not really the Committee's focus. Clause 29 sets out how key terms which are defined in the following clauses will be applied; they are the key components of the refugee convention. Clause 29 also revokes the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. Those are the regulations through which we transposed our obligations under the EU qualification directive 2004. Because we are out of the EU, we need to do that in a different way.

However, we will continue to grant humanitarian protection to eligible individuals who cannot be removed from the UK to their country of origin if their removal would breach the UK's obligations under Articles 2 or 3 of the ECHR. It is important to clarify—I am sure Members of the Committee know this—that these are not individuals protected under the refugee convention. However, we will make further changes to align the entitlements of permission to stay granted on the basis of humanitarian protection to that provided to group 2 refugees.

In response to the noble and learned Lord, Lord Brown of Eaton-under-Heywood, we believe that Clause 33 provides a system of effective protection from persecution. Clause 34 deals with relocation, but I do not think any noble Lords spoke to it directly, so I will just refer to it and move on.

On Clause 35, of course we have a proud history of providing protection to those who need it, but that should not apply to those who commit serious crimes, putting the communities that host them at risk and endangering national security. We believe we are right to define and legislate in this area. I say to the noble Baroness, Lady Hamwee, that that is a good example of serious non-political crime. That is a phrase in the refugee convention, but it is not further defined in it. Each state has to look at it and define it, in accordance—always—with the Vienna convention.

Baroness Ludford (LD): The Minister keeps saying that each state will define the refugee convention, and he alluded to the EU qualification directive; there is also the procedures directive. I declare an interest, as I worked on both directives as an MEP. Of course, that was an attempt not for each state in the EU to do its own thing but to have a collective set of laws which interpreted the refugee convention in detail and, as far as I know, complied with it. That prevented each country doing its own thing in a potentially destructive way.

Baroness Hamwee (LD): I have an associated point, to save the Minister bobbing up and down too much. I entirely take the point about non-political crime. I just wanted to make it clear that I was referring only to that bit of the Bill when I mentioned the case. I was not suggesting that it was the prompt for the whole of this part. But can the Minister explain more about the impact of our leaving the EU? Does that give us a legal opportunity, or is this happening because it is a convenient political point in the calendar, as it were?

Lord Wolfson of Tredegar (Con): On the first point, of course the EU sought to interpret the refugee convention for all its members. But that actually makes my point, because it is only for the members of the EU. All the other states will interpret it in their own way. If you want to hand over your interpreting power to the EU, that is fine if you are a member—but I suggest that that does not cut across my basic point.

As to the effect of leaving the EU, if we have hitherto signed up to various interpretations through EU regulations, we now have an opportunity to look at the matter afresh, as I said when I began. To go further into that point would go way beyond the scope of this group.

Finally, I come back to the question put to me by the noble Baroness, Lady Chakrabarti, about "scrapping"—I think that was the word she used last night as well—the Human Rights Act. I said last night, and I will give the same answer now, that the Human Rights Act brings into English domestic law the European Convention on Human Rights. We have reaffirmed—I did it yesterday; I will do it again now—that this Government will stay in as a signatory to the convention.

Baroness Chakrabarti (Lab): I am grateful to the Minister for that, but will he answer my question a bit more specifically? Has he instructed parliamentary counsel to begin the drafting process for the Bill that will replace, repeal or reinterpret the Human Rights Act and/or the convention on human rights?

Lord Wolfson of Tredegar (Con): As a matter of policy, I am afraid I am not going to get into the discussions I have with government law officers and parliamentary counsel. The Government's legislative programme has been set out. The Lord Chancellor, the Deputy Prime Minister and I have given evidence on this. We have made it clear that we will be staying in the European Convention on Human Rights. In so far as the burden of the noble Baroness's challenge was that we have to be careful, because the Government are watering down rights, we are staying in the European Convention on Human Rights. Therefore—

Lord Anderson of Ipswich (CB): I was going to wait until the Minister had finished his sentence but, before he sits down, I revert to the question of the Government's legal case. The Minister is reticent to disclose government legal advice, which I entirely understand but, before the Committee and others can reach a fully formed opinion on this, they need a worked version of the Government's legal position. It may be that that takes the form of a position paper or submission, rather than the replication of advice already given. But, until we see in detail what Raza Husain and the UNHCR got wrong, and why these interpretations are fully consistent with the Vienna and refugee conventions, the evidence is all one way. I am sure that I speak for many other noble Lords when I say that I would be very much assisted by seeing something of that nature.

Lord Wolfson of Tredegar (Con): I hope the noble Lord does not take it amiss if I say, with respect, that he makes the same point as he made earlier. and I understood it. I need to be very careful that I do not get inadvertently drawn into disclosing legal advice, but I hear the point from the noble Lord that he and others would like to see a greater fleshing out of the Government's legal position. I have said that I will see what I can do to assist in that.

Lord Brown of Eaton-under-Heywood (CB): Very diffidently, am I entirely wrong in thinking that, under Article 35 of the convention, some heed is required to be paid to the UNHCR's expression of its approach to the convention? My recollection is that Lord Bingham said as much in one of the cases I mentioned last week, Asfaw. Is that not right?

Lord Wolfson of Tredegar (Con): Respectfully, what I said earlier is that it is not the arbiter of the interpretation of the convention. I do not think that is inconsistent with the point the noble and learned Lord just made.

I was proposing to sit down, after suggesting to the Committee that we should keep these various clauses in the Bill.

Lord Rosser (Lab): Before the noble Lord sits down, I was wondering whether he would explain some of the changes that are being made or cover them in a subsequent letter. As I understand it, Clause 33 replaces

[LORD ROSSER]

Regulation 4 in the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, which is repealed by Clause 29. The wording is largely the same but, as I understand it—and I may be wrong—the existing regulations reference

"protection from persecution or serious harm",

whereas Clause 33 references only "protection from persecution". Why has that change to the language been made and what will its practical effects be?

There are changes of language in other areas, such as from a "may" to a "must" in Clause 34. What problem is that intended to solve? Is it not the Government's intention to explain the reasons for the changes they have made where they have made them?

Lord Wolfson of Tredegar (Con): The "may" and "must" point, to which the noble Lord referred, will come up in a later group because, from memory, there is a specific amendment on it. I was proposing to deal with that when I respond to that amendment. I think we are going to come to the persecution and serious harm point later but, if I am wrong, I will write to the noble Lord and explain it. However, we are coming to "may" and "must" on a later group.

5.45 pm

Baroness Chakrabarti (Lab): I am grateful to all noble Lords who contributed to this group. I believe there was a great deal of consensus in the Committee, but I am sure the Minister was grateful for the support of his doughty and always agreeable noble friend the noble Lord, Lord Hodgson of Astley Abbotts.

I say to the Minister that asserting does not make it so. Asserting, reasserting, "We're in the convention" and "We will honour the convention" are not enough in the face of the very detailed analysis of these provisions by the UNHCR, the Bingham Centre, Raza Husain QC and, if I may say so, the noble and learned Lord, Lord Brown of Eaton-under-Heywood. The noble Lord, Lord Anderson of Ipswich, again in his always agreeable way, was trying to help the Minister out. The Minister might take his hand and shake it. It is not a hand, it is a lifeboat, but I will be told off again for using metaphors. Last week I was told of by the Minister for using the word "tawdry" too many times; I thought I was on "Just a Minute". Today, it is metaphors.

I will try one more metaphor with the noble Lord, Lord Hodgson of Astley Abbotts, who asked a very pertinent question of the Minister. Is this not a simplification, rather than a dilution or repudiation? I believe the noble Lord comes from a business background and has often referred to the Wharton school of business. We all draw on our experience and I think a basic contract is not a bad analogy to draw here. It is the equivalent of the chief executive of a company that has been in a contractual relationship with another company for many years getting a bit fed up with various provisions of this contract that has nevertheless been working. We are talking 50 or 70 years of this contract between the parties, when the chief executive thinks, "Maybe we need to reinterpret the various articles of this contract". He decides not just to repudiate it, because that would be embarrassing, illegal and unlawful, but he says to his board, "What we are going to do in the boardroom is reinterpret all the provisions in a way that is different from the way that we ourselves have honoured them in the past". "We ourselves" include learned judges such as Lord Bingham and others from all over the world. We are now going to year nought and are rewriting it. We are not just simplifying; we are making material differences, in some places to the convention and in others to decades of jurisprudence, by changing "or" to "and" and changing standards of proof. This is not insignificant.

Lord Hodgson of Astley Abbotts (Con): The noble Baroness's description of how business works, with an agreement that has lasted for a number of years, is far from the reality of any business in which I have ever worked. It is not a good analogy to use with my noble friend on the Front Bench. There may be all sorts of reasons, as we have heard, about international law, European law, UK law, UK primary legislation and UK secondary legislation, all of which cut across. They are completely different from a single arrangement in business, in which there is a contract, of one sort or another, between two firms. This is not a good analogy at all. I much prefer the complications, which my noble friend referred to, seeking to sort this out.

Baroness Chakrabarti (Lab): Forgive me; I stand corrected by the noble Lord, Lord Hodgson of Astley Abbotts—as always, certainly in matters of business. I was merely trying to suggest that we cannot repudiate a contract by pretending that we are reinterpreting it, when we are making material differences to the relationship between the contracting parties.

Finally on the UNHCR, it is set out in Article 35(1) of the refugee convention:

"The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention."

Clause 29 agreed.

Clause 30 agreed.

Clause 31: Article 1(A)(2): well-founded fear

Amendment 103

Moved by ***Lord Dubs***

103: Clause 31, page 34, line 45, leave out subsections (2) and (3)

Member's explanatory statement

This amendment would give effect to the recommendation of the Joint Committee on Human Rights that the standard of proof for an asylum seeker to establish a well-founded fear of persecution under the Refugee Convention should remain a composite standard of "reasonable likelihood".

Lord Dubs (Lab): My Lords, I shall speak to Amendments 103, 104 and 111 in particular, but before I do so, I want to say that, having listened to the Minister in the previous debate, it seems that he has

almost answered the points that I was going to make. I do not want to be repetitive, because the Chief Whip asked us to be brief. A lot of the key points of principle that were covered in the previous group of amendments are also covered in this group starting with Amendment 103, so I shall be brief.

I was a little surprised—and this has gone right through our debates on this Bill—at the Minister saying that we can interpret the Geneva convention as we wish, that we are quite free to do it and that the UNHCR does not have any authority to indicate what is right and what is wrong in terms of the convention. I had always been brought up to accept that the UNHRC was in fact the guardian of the Geneva convention, and that it is the authority rather than each country doing its own thing. If each country does its own thing by interpretation, we shall not have an international convention at all and achieving international agreement will be much more difficult. Having said that, I was dismayed at the Minister's view and equally dismayed when he said that the Bill would be even worse if it was his own Bill—I think that is what he said. I hope then that he does not have too much influence on things.

On Amendments 103 and 104, as I understand it from our deliberations in the Joint Committee on Human Rights and what it says in its report—I am still a member of that committee and contributed to the reports—the decision-maker need only be satisfied that there is a reasonable likelihood of persecution as defined by the refugee convention. That seems to be the present practice. However, the Bill seeks to change that—it talks about things like the "balance of probabilities"—by limiting the effect of the reasonable likelihood of persecution provision and making it harder to achieve an effective decision about asylum in favour of the applicant.

It seems to me that the Government do not like the Geneva convention and are seeking by a series of measures throughout the Bill to weaken it. That is clever if you want to get rid of the Geneva convention. The Government will say that they stick by the convention, but by being able to interpret it in all sorts of ways one can effectively weaken it to the point where it would be a different convention from the one which we have traditionally come to accept. I think that is what the Government are trying to do. I do not think the Minister will necessarily agree, but I suspect that is what it is.

Amendments 103 and 104 relate to the change from "reasonable likelihood" of persecution to a "balance of probabilities", which is defined in various ways which I shall not go through now. Amendment 111 is about criminality and serious crime. It has always been possible, even within the Geneva convention, for Governments to deny asylum to people who have committed a very serious crime. That has been the practice. It has not happened very often, but the Government are now seeking to redefine that provision so that a serious crime becomes something lesser than what we traditionally regarded as a serious crime—in other words, again weakening the Geneva convention. That is regrettable. I do not think that the Government had any need to weaken the convention in this way, by a process of interpretation, so I regret that, which is why I am keen on these and other amendments.

Baroness McIntosh of Pickering (Con): My Lords, I followed with great interest the noble Baroness, Lady Chakrabarti, in speaking eloquently to the clauses stand part in the last group. Like the noble Lord, Lord Dubs, I shall speak only to a particular amendment, that put forward by the noble Baroness, Lady Chakrabarti, to which I have lent my signature, as have others. Once again, I am grateful to the Law Society of Scotland for its background briefing, and I shall refer briefly to the report of the Constitution Committee in which its concerns were quoted.

I am grateful to the Law Society of Scotland for highlighting its concerns, which I share. This is a probing amendment to understand the background following on from my noble friend's summing-up in response to the previous group. I find myself half way between my noble friend Lord Hodgson, who is not a lawyer, and the noble Lord, Lord Anderson, who is a lawyer of some repute. I am a member of the Faculty of Advocates but have not practised for a considerable period. However, I enjoyed the one case on which I was a junior before the European Court of Human Rights—the proceedings were very similar to those enjoyed in our erstwhile proceedings when the House of Lords enjoyed the right of final appeal.

The reason why I believe that Clause 31 does not fit well with the Bill goes back to the standard of proof test set out in the leading case for asylum cases, Ravichandran v Secretary of State for the Home Department, as a "well-founded fear of persecution". In the Court of Appeal in 2000, it was confirmed that the standard of proof in civil proceedings—the balance of probabilities referred to in Clause 31(2)—was not suitable for immigration matters. Instead, what was important was making an assessment of all material considerations such that it

"must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur".

Lord Justice Sedley described the balance of probabilities as

"part of a pragmatic legal fiction. It has no logical bearing on the assessment of the likelihood of future events or (by parity of reasoning) the quality of past ones."

For the past 20 years, the approach taken in the Karanakaran case was consistently followed by the courts. In Scotland, the Outer House of the Court of Session reaffirmed that case as the correct standard of proof approach to be applied in the case in 2020 of MF (El Salvador) v Secretary of State for the Home Department. In that case, it was held that the First-tier Tribunal judge had erred in law by applying the wrong standard of proof in respect of an application for permission to appeal brought by an asylum seeker.

In Kaderli v Chief Public Prosecutor's Office of Gebeze, Turkey, in 2021, the High Court reaffirmed, while referencing the Karanakaran case, that the question as to determining a well-founded fear of persecution is that of an evaluative nature about the likelihood of future events. In that case, it was held that the judge erred in holding that it was for the appellant to prove on the balance of probabilities that the corruption alleged had occurred. The true test involved the application of a lower standard: whether there was a real risk that

[Baroness McIntosh of Pickering]

the appellant's conviction was based on a trial tainted by corruption. This was consistent with the approach to the fact-finding in the immigration context.

In the view of the Law Society of Scotland,

"the change in clause 31 appears to go against the intention of the New Plan for Immigration, and flies in the face of 25 years judicial scrutiny."

So my question to my noble friend the Minister, in summing up this evening, is: on what basis are the Government prepared to set aside the cases that I have set out this evening?

6 pm

I conclude by referring to the conclusions of the Constitution Committee in its report on the Bill of January 2022. It refers to the concerns of the Law Society of Scotland that I have set out today, as well as of the Law Society of England, which criticised the provision set out in Clause 31 in the following terms:

"the Bill changes the evidentiary threshold for asylum claims, in a way that will likely see genuine refugees barred from being granted asylum, as well as delays and an increase in litigation as the parameters of the new requirement are established."

Paragraph 53 of the Constitution Committee's report states:

"The House may consider that the new test in clause 31(2) is unclear and unduly complex. If the House takes the view that it is also a potential risk to justice it may be minded to replace it with a single test of, for example, reasonable likelihood."

In setting out the arguments this evening, this gives my noble friend the Minister the chance to set out precisely why the Government are seeking to change tack, as set out in Clause 31, setting aside the case law that has curried favour in the law courts on both sides of the border—in England and Scotland—for a considerable number of years.

Baroness Lister of Burtersett (Lab): My Lords, I will speak to Amendment 105 in my name and those of the noble Baroness, Lady Coussins, who cannot be here tonight, the right reverend Prelate the Bishop of Gloucester and the noble Lord, Lord Paddick, to whom I am grateful. I also thank Women for Refugee Women and ILPA for all their work on this amendment.

The amendment would remove the narrow restrictive and requirement in Clause 32 that, in order to qualify under the "particular social group" grounds of persecution for recognition as a refugee under the convention, two conditions must be met. The amendment would replace this with an either/or condition. As I will explain, this would be in line with international standards and UK case law.

This is a small amendment, but it is significant, as the UNHCR has made clear. The UNHCR explains that Clause 32 is one of a

"series of changes that would make it more difficult for refugees who are admitted to the UK to be recognised as such."

The case for the amendment is, in effect, set out in its detailed legal observations, which have been invaluable to our scrutiny of the Bill. The UNHCR warns that narrowing the definition of "particular social group" in the way that the clause does

"could exclude some refugees from the protection to which they are entitled … In the UK and other jurisdictions, the particular social group ground has proved critical in the protection of those with claims based on gender, sexual orientation, gender identity, status as former victims of trafficking, disability or mental-ill health, family and age."

This view is endorsed by the Bingham Centre, which warns:

"The result will inevitably be to refuse protection to people who, as a matter of international law, are refugees."

It picks out this clause as one of a number that are particularly troubling to it from a rule of law perspective.

The UNHCR explains the origins of the two conditions and why it has recommended that they should be treated as alternative, rather than cumulative, tests. The argument was endorsed by the late Lord Bingham, acting in his judicial capacity, when he ruled that the cumulative approach taken in Clause 32 was wrong because

"it propounds a test more stringent than is warranted by international authority."

Thus this approach, the UNHCR points out, has been affirmed in the UK courts over an EU interpretation. I cannot resist observing that it is rather odd that a Government committed to taking back control from the EU is so keen to apply an EU interpretation that has been rejected by the British courts. Indeed, on the previous group, the Minister said that our starting point should be that we had left the EU, so could he perhaps explain why that does not apply to this clause?

In their briefing, Women for Refugee Women—WRW—and ILPA include an example, taken from Garden Court Chambers barristers, of what this might mean:

"a trafficked woman would need to show not only that her status as a trafficked woman is an innate characteristic"—

one shared with other members of a group—

"but also that trafficked women as a group are perceived as having a distinct identity in her country of origin. The latter is of course much more difficult to establish than the former because this is judged by the perceptions of the society in her country, and it can be very challenging to find objective evidence on women as a distinct group."

WFW and ILPA also point out that there was "no pre-legislative consultation" on this clause because it was not included in the *New Plan for Immigration*. Can the Minister explain why this is the case? Moreover, the equality impact assessment on the Bill, which has been described as "superficial and inadequate" by barristers at Garden Court Chambers, fails adequately to assess the impact of the change on groups in vulnerable circumstances.

As I have already noted, the UNHCR has warned of the likely implications for a wide range of such groups. I particularly draw attention to how this clause is likely to have an adverse impact on women fleeing gender-based persecution—a group that the Government claim to care about. As I made clear on an earlier amendment, it is one of a number of such clauses that have to be viewed in the context of the failings that already exist. According to WRW and ILPA,

"Over the years, there has been substantial research on the failures of the Home Office in delivering a fair asylum process, and on the reasons why many women who flee gender-based persecution may be wrongly denied protection."

Most recently, as I noted last week and gave the Minister some weekend reading on, the British Red Cross has published research that details experiences that

"highlight the distrust and disbelief women can face when discussing traumatic experiences of violence",

especially, but not only, when interviewed by men. One survivor's words are recounted:

"you feel so low and you feel so degraded and you've been violated and you were [telling] your story, you were expecting to be heard and to have someone who shows you some form of sympathy."

In the Commons Public Bill Committee, the Government justified their position by asserting that the new clause was necessary to bring certainty to an area bedevilled by conflicting authority. But ILPA and WFW give that argument short shrift, pointing out:

"There is no conflicting authority: the UNHCR and the senior UK courts have a clear and constant interpretation. It is the Government that seeks to depart from this shared interpretation of the Refugee Convention, and it does so without warrant or proper justification."

So can the Minister provide a more convincing justification today of a clause that, in the words of Women for Refugee Women and ILPA

"reverses case law of senior UK courts, contravenes UNHCR standards, and reinstates an erroneous EU law standard"?

If not, will he agree to this amendment?

Baroness Ludford (LD): My Lords, all of these clauses seek to restrict access to the protection of the refugee convention. I will speak to Amendments 103 and 104 to Clause 31 and Amendment 111 to Clause 37, which are all in the name of the noble Lord, Lord Dubs, and which I have co-signed. However, I share the view of my noble friend Lady Hamwee and the noble Baroness, Lady Chakrabarti, that all of these clauses should in fact be removed.

The problem with Clause 31 is that it changes the standard of proof for the test of whether a person is a refugee. It creates two limbs of the test and changes the bar from "reasonable likelihood" to

"on the balance of probabilities".

Although the refugee convention does not prescribe the standard of proof, UNHCR's handbook says:

"The requirement of evidence should … not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself."

So, for 20 years, the UK courts, including the Supreme Court, have applied a "reasonable likelihood" standard of proof in a composite and holistic manner.

Clause 31 overturns this established interpretation of the law by dividing the overall test into a series of sub-questions and applying different standards of proof to different limbs of questioning, to require the person to prove on a balance of probabilities that they fear persecution and the decision-maker to revert to a test of reasonable likelihood in assessing whether the person would face persecution and lack state protection. It is quite a mishmash, and a complex and confusing one—not least for already burdened caseworkers. As we have heard so frequently in this Committee, if the Government really want to fix a broken asylum system, why are they making everything more complex and building in delay?

As the Bingham Centre points out, Clause 31

"allows for rejection of a person as a refugee because they failed one of the steps"

imposing that higher hurdle,

"whereas if the test was taken in its totality, the person may have been accepted as a refugee."

The process may well lead to exclusion from sheer error because of all these complex, different bits of the test. Either the JCHR Amendments 103 and 104 should be accepted, or Clause 31 should be deleted.

On Amendment 111 to Clause 37, as the noble Lord, Lord Dubs, has said, we object to the lowering of the threshold for regarding a crime as particularly serious such that a person can be expelled. It is designed to—and will—exclude many more people from the protection of the refugee convention. Not only is the threshold sentence reduced from two years to 12 months but it changes the rebuttable presumption of "particularly serious" into an unchallengeable assertion.

This is disproportionate; a blanket exclusion is incompatible with the refugee convention, which envisages a crime that is a major threat and expulsion as a last resort. Bear in mind that the Bill seeks to impose a four-year sentence for the mere act of arriving in the UK without permission, which most refugees have to do. That gives you a measure of the lack of proportion in what is supposed to be a serious crime under the remit of the Bill; I am not validating or endorsing any crime, but under the refugee convention it has to be "particularly serious", and the Government are departing from that.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I confine my brief comments on this group to Clauses 31 and 32, both of which have been touched on, respectively, by the noble Baronesses, Lady Ludford and Lady Lister.

Clause 31 is peculiarly objectionable. As has been described, it divides up what should be a single, holistic question into a series of sub-questions and compounds that error by the differentiation in some important respects of standards of proof. It imposes an objectionable higher standard of proof on one critical provision. As the Joint Committee on Human Rights says in its report HL Paper 143—pages 39 to 41—it raises the standard of proof from a "reasonable likelihood" to a "balance of probabilities".

The overall holistic approach to Article 31 was established as long ago as 1995 in a case called Ravichandran, 1996 Immigration Appeal Report, page 77. I confess that I wrote the lead judgment, but it has been consistently applied by the higher courts ever since. To quote one passage, the approach to Article 1A of the convention should be

"a single composite question … looked at in the round and all the relevant circumstances brought into account"

to see if there is a real risk.

Those promoting this clause should read a devastating critique of Clause 31 last month by Hugo Storey, the immediate past president of the International Association of Refugee and Migration Judges who has just retired from being an Upper Tribunal judge. He has no doubt that it will lead to "prodigious litigation"; in six compelling pages that those responsible for the Bill must read, he explains precisely why.

Clause 32, on the question of the particular social group, has been dealt with. It seeks to overturn Lord Bingham's judgment in the case of Fornah, in the Appellate Committee of this House back in 2006, which was all about a 15 year-old girl trying to avoid female genital mutilation in Sierra Leone. I was a

[Lord Brown of Eaton-under-Heywood]
junior member of that court, and this clause tries, contrary to that clear judgment, to introduce a conjunctive approach to the two relevant criteria. It would be a grave mistake and cause grave injustice.

6.15 pm

The Lord Bishop of Gloucester: My Lords, I have added my name to Amendment 105 and the intention to oppose Clause 31 standing part of the Bill. I too am grateful to Women for Refugee Women and others for their briefings and support.

In the *New Plan for Immigration* and the briefings for the Bill, the Government have argued repeatedly that the existing asylum and refugee system is weighted against vulnerable women. The Home Secretary has repeatedly made the point that the large majority of channel crossings are by men aged under 40, for example. Given this, there might be some expectation that the Bill would contain some good news or ambitions on the part of the Government for better reaching and helping the women and girls who make up 50% of the world's refugees and displaced people. Unfortunately, I do not see any such commitments. As a sting in the tail, in Clauses 31 and 32 we find proposals that seem to significantly disadvantage women further.

I will not repeat but endorse the arguments that it is already disproportionately difficult for women, particularly survivors of gender-based violence, to have their claims for refugee protection status correctly determined. Clause 31 can only exacerbate this situation, which is a disaster for many vulnerable women. That is also true of Clause 32, unfortunately, and I am very grateful to the noble Baroness, Lady Lister, for laying out the issue here so clearly. I am very pleased to add my name in support of her Amendment 105.

I have no wish to take up time repeating the arguments, but it is critical to reiterate the point that the "particular social group" reason is an essential lifeline for survivors of sexual and gender-based persecution not otherwise covered by

"race, religion, nationality or political opinion"

in the reasons set out in the 1951 convention, as we have heard from other noble Lords. I will listen closely to the Minister's response on this, but it is very difficult to see the justification for this move, which goes in the face of existing legal practice. It is so important for these survivors.

Many of my best memories of this place come from last year's excellent debates on the Domestic Abuse Bill, which really showed politics in its best light. I know that this cause is taken seriously by the Government, but it seems that there is a blind spot on migrant women. We will discuss this again on later amendments, including my right reverend friend the Bishop of London's forthcoming Amendment 140, but I end with a plea to the Minister to look again at these clauses and, if these amendments are not right, to present others that will ensure that vulnerable women are not further disadvantaged by this change.

Baroness Bennett of Manor Castle (GP): I offer the support of the Green group for all the amendments in this group and express horror at the whole nature of this part of the Bill. It is a great pleasure to follow the right reverend Prelate and to agree with everything that she said about the gender aspects of the Bill as it now stands, as also mentioned by the noble Baroness, Lady Lister.

I want to address Amendment 111 and make a simple observation: the average length of a prison sentence in England and Wales in 2021 was 18.6 months, compared with 11.4 months in 2000. Is this really something extraordinary? Is the UNHCR right in saying that this change in terminology is not right? I think that it clearly is.

I want to draw out what the noble Baronesses, Lady Lister and Lady McIntosh, said, both of them reflecting on different elements of how this law is throwing out 25 years of British legal tradition. I am not going to reopen the discussion on the last group about particular political labels, but I will note that this is happening in a country where only a couple of years ago we saw our most senior judges under attack on the front pages of certain newspapers. That is the context in which this is occurring.

I want to reflect—a number of people have talked about this but I shall boil it down—on what the Government's proposals are likely to do: produce a large number of people who are denied status but who cannot be sent home because it is clearly impossibly unsafe and dangerous to send them there. That leads to a situation of more chaos and more forced black-market employment, which surely no one could want.

Lord Sentamu (CB): My Lords, I want to give practical expression to what those who have spoken, including the noble Lord, Lord Dubs, and the noble Baroness, Lady Ludford, have said, and to the exposition of the noble and learned Lord, Lord Brown: if a law is going to be passed, it needs to be clear, simple and not confused, as in Clause 31.

I shall tell a story. A friend of mine was going to be best man at our wedding, but Amin's soldiers were hunting for him, so he left Uganda on the very day that we got married, dressed like a woman, and landed up in Kenya. That was the only way he could get away. He had nothing. Friends in Kenya managed to get him a ticket and he came to Oxford with nothing. There he studied law and did very well as a result, but if the test had been on the grounds of probability, he probably would not have done so. It comes down to the question of "reasonable likelihood". All he could do was describe how he left Uganda. If you are from Uganda, you know you do not go around dressed like that, but the people who listened to his case at Oxford could associate with it.

I ask this for the reasons that the noble and learned Lord, Lord Brown, has given: why in one clause do we have "reasonable likelihood" and in another "the balance of probabilities"? That confuses the legislation.

I have been able to represent some asylum seekers when they have come here. I think the Joint Committee on Human Rights is right that this is what should be incorporated in our law and we should not try to change it—unless of course we are following the analysis of the noble Baroness, Lady Chakrabarti, that instead of making it clear as we incorporate this into our legislation, we are saying, "Throw it out. We know

better and we are going to do it in our own way." I do not think that that makes for good law. It is not simple, straightforward or clear. In the old days, it was said that any good law must be understood by the woman or man on the Clapham omnibus—if they cannot understand it, your law is not very clear. The judgment of Lord Bingham is clear.

Why abandon our case law as we begin to incorporate this into our law? This time the Minister will have to give us reasons why that is the case, instead of—forgive me—what sounds like a bullish reaction to every reasonable thing that has been said. I plead with the Minister to use simple language and retain "reasonable likelihood", because that is much easier to deal with when people come here without papers or documents and their lives are in danger.

Lord Paddick (LD): My Lords, I could simply repeat what I said at the conclusion of the last group: the UK should not engage in the unilateral reinterpretation of the refugee convention—not that we are rewriting it, but we are reinterpreting it—but I shall go into a little more detail.

The JCHR, supported by Amnesty and Migrant Voice, believes that the standard of proof as to whether an asylum seeker has a well-founded fear should remain as "reasonable likelihood". Amnesty makes the additional point that, as well as raising the standard, Clause 31 makes the decision more complex and the Home Office is getting it wrong too many times already.

We support Amendments 103 and 104 but we also agree with the noble Baroness, Lady Chakrabarti, that Clause 31 should not stand part of the Bill. Amendment 105, to which I have added my name, attempts to bring the definition of "particular social group" into line with international standards and UK case law. Again, based on the principle that the Bill should not be unilaterally reinterpreting the refugee convention, as I said in the previous group, I agree with the noble Baroness, Lady Chakrabarti, that Clause 32 should not stand part of the Bill.

Amendment 111 seeks to prevent the definition of "particularly serious crime" from being reduced to 12 months' imprisonment. As my noble friend Lady Ludford said, bearing in mind that the Bill attempts to set the maximum penalty for entering the UK without authority at four years' imprisonment, the two changes could potentially exclude all asylum seekers who do not enter through resettlement schemes. As before, we support the assertion of the noble Baroness, Lady Chakrabarti, that Clause 37 should not stand part of the Bill.

Lord Rosser (Lab): My Lords, I will be brief. We support the intentions of the amendments. I thank my noble friends Lord Dubs, Lady Lister of Burtersett and Lady Chakrabarti, who have been leading on these amendments.

I found it interesting to hear from my noble friend Lady Lister that there was no pre-legislative consultation on the issues covered by Amendment 105. Normally if we want changes in the law, we are told that such things have to go through a lengthy and elaborate process, but these seem to have appeared with a certain degree of rapidity.

I really only want to ask the Government a couple of questions. First, in each of the three cases—that is, Clauses 31, 32 and 37—what is the problem that the Government claim to be fixing? What is it, particularly in relation to Clause 31, about the current standard of proof that they believe is failing?

Secondly, could the Government tell us where the pressure has come from to make these changes in the law? Clearly this is not simplification; it is changing the law, so let us not beat around the bush on that. Where has the pressure come from? Has it been intense? From what sources has it come? Who, or what organisation, has been after achieving these particular changes in the law? I do not recall—though I may be wrong—having heard people marching through the streets demanding these changes, which makes one wonder if some requests for change were made at a political fundraising dinner where no one else knew what was going on.

6.30 pm

Lord Wolfson of Tredegar (Con): My Lords, I am not sure whether it is the time of the evening that prompted that reference to dinner; otherwise, it is not immediately apparent to me what the relevance of it was. I will come back to that rather less substantive point—if I may say so, respectfully—at the end.

Let me deal first with Clause 31. I am grateful to the noble Lord, Lord Dubs. He is right that there are points of principle that underlie these amendments; they underlay the last group as well. I too will try not to repeat the points that I have made. There are points of principle that are at issue between us, and we have set out our respective positions. We believe that the test set out in Clause 31 is compliant with our international obligations. More specifically, we believe that it will provide, and lead to, better decision-making, because it sets out a clear test, with steps for decision-makers, including the courts, to follow. That will lead to greater consistency.

Turning to Amendments 103 and 104, although I listened very carefully to the noble Lord, Lord Dubs, and I agree with the importance of us carefully assessing whether asylum seekers have a well-founded fear of persecution, as required under Article 1(A)(2) of the convention, we do not agree with these amendments because, taken together, they will essentially maintain the current standard of proof system. In so far as my noble friend Lady McIntosh of Pickering said that it was, to a certain extent, a probing amendment, let me try to explain.

First, this is not about setting aside decisions of the court. The courts are there to interpret the legislation as it stands—that is what they do. Parliament is entitled to change the legislative background, in so far as it is consistent with our treaty obligations. Clause 31 sets out a clear, step-by-step process. I hear the point made by the noble and right reverend Lord, Lord Sentamu, that it should be—so far as legislation can be—in simple language and a clear test. The problem at the moment is that there is no clearly outlined test as such. There is case law, there is policy and there is guidance in this area, but the current approach leads to a number of different elements being considered as part of one overall decision. What we seek to do here is to

[Lord Wolfson of Tredegar]
introduce distinct stages that a decision-maker must go through, with clearly articulated standards of proof for each. We believe that this will lead to better and more consistent decision-making.

At its core, in Clause 31(2) we are asking claimants to establish that they are who they say they are and that they fear what they say they fear to a balance of probabilities standard. That is the ordinary civil standard of proof for establishing facts, and those are facts in Clause 31(2); namely, more likely than not. It is reasonable, I suggest, that claimants who are asking the UK for protection are able to answer those questions. We have looked carefully, of course, at the often difficult situations that claimants might come from and the impact that might have on the kinds of evidence that they can provide. However, we consider that our overall approach to making decisions, which includes a detailed and sensitive approach to interviewing, allows all genuine claimants an opportunity to explain their story and satisfy the test.

There is international precedent that supports our decision to raise the threshold for assessing the facts that a claimant presents to us to the balance of probabilities standard. Both Canada and Switzerland—highly respected democratic countries, dare I say it—have systems which examine at least some elements of a claimant's claim to this higher standard. Respectfully and rhetorically, let me ask this of the noble Baronesses, Lady Ludford and Lady Bennett of Manor Castle. The noble Baroness, Lady Ludford, said that this was confusing and complex. The noble Baroness, Lady Bennett of Manor Castle, said that she had horror at it. The higher standard is used in Switzerland. Does the horror extend to Canada and Switzerland as well? There is nothing wrong in principle with adopting the higher test for some parts—I will come to it in more detail—of the decision-making tree.

Baroness Ludford (LD): Does the Minister recall that I did not just say that it is about the higher standard? It is about having different limbs and different requirements under those different limbs, and switching from "reasonable likelihood" to "balance of probabilities" as part of the composite test, which is not holistic but is in different parts. That is what is confusing, not just a change in the standard of proof.

Lord Wolfson of Tredegar (Con): My Lords, with the greatest respect, it is not confusing at all, because Clause 31(2) establishes the facts, and that is all a balance of probabilities. Then, in Clause 31(4), the decision-maker turns to questions of the future. It is at that stage that the reasonable likelihood test is the appropriate test, because the decision-maker is looking to assess what might happen in the future. That is why we have a lower test at that stage. It is quite usual in law to have different stages of a test and different levels of probability at each.

Lord Kerr of Kinlochard (CB): Could the Minister answer the question of the noble Lord, Lord Rosser? What is the problem that we are trying to solve here? Who is pressing for this change? The Law Societies have advised against it. It seems to me that the only purpose it serves is to make the task of determining whether the fear exists and is well-founded more complicated and more likely to result in the answer, "No, let's send him back." That seems to be what is driving this. I remind him that, in late July and early August, Hazaras from Afghanistan—asylum seekers here—were still receiving letters of rejection, telling them that they were not at risk if they were sent back to Kabul.

Lord Wolfson of Tredegar (Con): My Lords, I am grateful for the question. What is driving it, as I said a few moments ago, is the attempt to have a consistent and clear approach to decision-making. When you have a single test with different elements, and it is all under "a reasonable likelihood", it is then that you are more likely to have inconsistent decision-making—I will not use the word "mishmash". What you are doing here is really two things, and Clause 31 sets them out clearly. You are first saying, "Are you who you say you are?" and "Did you, in fact, fear such persecution?" Those are factual questions, decided on the balance of probabilities. Then the question is: "Is there a reasonable likelihood that, if you were returned, you would be persecuted?" That is a question of reasonable likelihood.

Baroness McIntosh of Pickering (Con): My noble friend is, in fact, rewriting the law. I am not an immigration lawyer, but if I were, I think I would be a little confused at the moment. In the case that was decided in 2021, Kaderli v Chief Public Prosecutors Office of Gebze in Turkey, it was clearly said that

"The true test involved the application of a lower standard"

than the balance of probabilities. So now no immigration lawyer could plead the application of the lower standard because my noble friend is raising the bar in this Bill.

Lord Wolfson of Tredegar (Con): I thought I made it absolutely clear when I said earlier that the court in that case made its decision against the legislative background at the time. Parliament is entitled to change the legislative background. We will want to make sure that we remain consistent with the refugee convention, and, as I said earlier, we believe that we are. There is nothing wrong with doing that. It is simply not the case that we are somehow bound as a Parliament by what the Court of Appeal said in the case referred to by my noble friend. Therefore, with great respect, I disagree with the noble and learned Lord, Lord Brown of Eaton-under-Heywood, where he said that a single holistic question was better and that the higher standard was objectionable. With respect, I disagree on both points.

Lord Brown of Eaton-under-Heywood (CB): Does the Minister agree that, if, under this clause in future, somebody were to fail—they could prove only 45% of the relevant limb of the clause—they nevertheless could not be refouled? Certainly, under Article 3 of the ECHR the test is "reasonable likelihood" and not "balance of probabilities".

Lord Wolfson of Tredegar (Con): With respect, refoulement is a separate issue and, with greater respect, I will deal with it separately. What we are establishing

here is what you need to do to establish your "well-founded fear". If you cannot establish, on the balance of probabilities, that you are who you say you are, then yes, under this test, you will not satisfy Clause 31(2)(a).

I will now turn to Clause 32, because otherwise I will start to repeat myself. Article 1(A)(2) of the refugee convention states that a refugee is an individual who has a

"well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion",

and Clause 32 lays out precisely what is meant by each of those characteristics, which are sometimes called "convention reasons". Again, the purpose here is to make sure that all decision-makers, including both the Home Office and the courts, understand and operate to the same definitions. That is, I suggest, a desirable law reform.

On Amendment 105, there is a mismatch between how the concept of a "particular social group" is defined in current legislation, government policy and some tribunal judgments, and also in how the definition has been interpreted by some courts. There is no authoritative or universally agreed definition of "particular social group" among state parties to the convention and, in particular, there is no universal agreement as to whether the test set out in Article 1(A)(2) of the refugee convention should be applied cumulatively. The UNHCR has issued guidance supporting the view that the cumulative approach is a misapplication of the refugee convention, but, as I said in the last group, that guidance is neither legally binding nor determinative as a matter of international law.

Article 1(A)(2) of the convention does not elaborate on what is meant by

"membership of a particular social group";

there is no supranational body with authority to give a determinative ruling and, therefore, each state party, including the UK, has to interpret it. We believe that the definition in Clause 32 captures what is meant in the convention by a "particular social group". We have looked at the broad wording in the convention, the travaux préparatoires—excuse my French—the approach of a number of other jurisdictions, and Article 31 of the Vienna convention, and we believe that setting it out in this way will make it clearer.

The amendment would mean that you would have to satisfy only one of the conditions to be considered a member of a "particular social group", and that would erode the concept that people deserve and need protection based on fundamental characteristics that go to the core of who they are, such as their faith or sexuality. It would broaden the definition to cover potentially transient factors that could perhaps be changed, such as an individual's occupation. That is the first point. The second is that our proposed definition accords with the widely used and accepted interpretation of the "particular social group" concept, as the noble Baroness, Lady Lister, noted. It is an EU interpretation; it comes from the approach in the EU qualification directive, which underpins the Common European Asylum System. We are very happy to look at EU interpretations; we do not have a closed mind—when they get it right, they get it right, and being independent means that we can look more broadly. However, with great respect, it is difficult to attack this as something utterly wrong if, in fact, this is the interpretation in that legislation.

6.45 pm

Baroness Lister of Burtersett (Lab): I am not a lawyer, so I rise with some trepidation, but it seems to me that it suits the Government's purpose to interpret it in this way, because it means that fewer vulnerable groups—particularly women—fleeing violence will receive refugee protection as a result. It is no clearer than the interpretation that it is overruling, and it seems odd. It is quite rare for the Government to pray in aid an EU interpretation over that of their own courts. Maybe one of the lawyers opposite will be able to give a better response than I can, but I am afraid I am not convinced, because it seems as though that is why this is being done—it is nothing to do with clarity. If this legislation had clearly put in law Lord Bingham's interpretation, that would be clear. So why the EU interpretation, which is, as numbers of authorities have said, likely to mean fewer vulnerable people—particularly women—receiving the refugee protection to which they are entitled under the convention?

Lord Wolfson of Tredegar (Con): My Lords, I set out why we think this interpretation is correct. I am certainly not saying that we are using this interpretation because it is the EU one; I was referring to the EU to make the point that, with respect, it is very difficult to challenge this as somehow an unfair, unworkable or inapt interpretation when it is actually reflected in the EU jurisprudence. I absolutely take, with respect, the noble Baroness's comments about the importance of the equality impact assessment for the policies being taken forward through the Bill. The public sector equality duty is not a one-off duty; it is ongoing, and I want to provide reassurance now that we will be monitoring equality impacts as we put the Bill into operation and as we evaluate its measures and, indeed, those in the wider new plan for immigration.

I assure the right reverend Prelate the Bishop of Gloucester that we are well aware of the particular issues facing women and survivors of gender-based persecution and, indeed, the asylum system is sensitive to them. The interview guidance contains clear instructions to interviewers in this area. We seek to offer a safe and supportive environment for individuals to establish their claims. Despite references to the decision of this House in its judicial capacity, in Fornah, those comments were obiter. I underline that there is no authoritative definition in case law of what is a "particular social group", and that is why it is absolutely right for this Parliament to define it in this clause.

Clause 37 amends the definition of a "particularly serious crime" from one which is punished by imprisonment of two years or more to one which is punished by imprisonment of 12 months or more. To be clear, imprisonment means an immediate custodial sentence—I am not sure that any noble Lord made that point, but it is important. Indeed, it is why I brought the handbook: if you receive a suspended sentence, you are not caught by its provisions—going back to the underlying legislation. Furthermore, not only does it have to be an immediate custodial sentence

[Lord Wolfson of Tredegar]
of 12 months or more but the second limb has to apply—namely, whether the individual is a danger to the community—and that is rebuttable.

We cannot accept Amendment 111 because it would potentially allow dangerous foreign national offenders to remain here, putting the public at risk. If somebody has been sentenced to a year or more in prison, we should not enable them to second guess the verdict of the jury or the decision of the court by allowing them to bring into play again whether they were such an offender. We seek to allow only the second bit of it to be rebuttable; namely, whether they pose the relevant danger.

I think I have answered all the questions that have been asked. On the last point put by the noble Lord, Lord Rosser, at the heart of this lies not some dinner party conversation but a lack of clarity in the current case law and standards, which make it harder for decision-makers to make accurate and efficient decisions; that is it.

Lord Rosser (Lab): That may be the case, but all I asked of the Minister was to tell the Committee who has been making representations for these changes.

Lord Wolfson of Tredegar (Con): I have not been here as long as the noble Lord, Lord Rosser, but, with respect, I do not think it fair to ask me that question as I stand here. The Government receive representations on this issue all the time. One might say that we receive representations from millions and millions of people who voted for this Government at the last election when immigration reform was full square in our manifesto. I say with great respect to noble Lord, Lord Rosser, that we are having a very interesting debate on some important legal points. If he wants to make political points, I am happy to respond in a political context.

Lord Rosser (Lab): Since when has it been making a political point to ask where the pressure has come from to make these changes? Since when has that been a political point?

Lord Wolfson of Tredegar (Con): The pressure has come from the people of the United Kingdom, who elected this Government with an overwhelming majority.

Lord Berkeley of Knighton (CB): In that case, will the Minister accept that, in a way, and given what we have heard from other noble Lords, particularly my noble and learned friend Lord Brown, it is part of the Government's strategy to toughen up on migration and immigration? That is really what this is about.

Lord Wolfson of Tredegar (Con): Absolutely, we want to toughen up on illegal migration. We want to make sure that people who have a right to come in are able to do so, and to make sure that people who do not have that right cannot come in. We want consistent and better decision-making. It is really as simple as that.

Baroness Chakrabarti (Lab): I am grateful to the Minister for giving way. In a previous group, the noble Baroness the Minister—I was very grateful to her—sought to make distinctions between immigration and asylum protection; I think that was quite important. To be now almost resiling from that and suggesting, in answer to a previous intervention, that we are going to reinterpret the refugee convention—to respond to the millions of people who voted for Mr Johnson's Government on the basis of controlling immigration—is a little troubling. I do not think I am alone in the Committee in being so troubled.

Lord Wolfson of Tredegar (Con): My Lords, I am surprised that anyone in a democracy is troubled by a Government listening to the people and putting forward legislation which, first, delivers on a manifesto commitment, and, secondly—as I have said and I repeat—is entirely consistent with our international law obligations. There is nothing wrong and everything right with each signatory to the refugee convention interpreting its obligations under it; we have now been around that point on several occasions.

Baroness Lister of Burtersett (Lab): I am sorry to keep bobbing up, and I appreciate what the Minister said about monitoring the equality impact of this legislation, but does he accept that Clause 32 means that a woman fleeing gender-based violence with good grounds for being accepted as a refugee is less likely to be so accepted? I do not believe that that is what the British people voted for.

Lord Wolfson of Tredegar (Con): My Lords, I am not trying to be difficult here. What it means is that a woman, like anybody else, who has a proper claim under the refugee convention will find refuge in the UK. That is what we are seeking to do. By having a clearer set of definitions, we are trying to make sure that it will not depend on the happenstance of who the decision-maker is and the way the test is applied.

Lord Paddick (LD): I do not wish to prolong the Minister's agony but can he clarify something for me? I think he said that, in the face of court judgments, the Government were entitled to change the legislative background. Does changing the legislative background mean that the Government are raising the standard of proof, thereby making it more difficult for claims for asylum to be accepted—this is in Clause 31—and in so doing, overturning the judgments of the UK's highest courts? That is the first question.

The second question relates to Clause 37. The Minister says that "particularly serious crime" is not defined in the refugee convention and that it is up to each country to define what it means. My understanding is that the definition is being changed from two years' imprisonment to 12 months. So, particularly serious crime was defined by this country as entailing two years' imprisonment and now the Government are changing it to 12 months. That is not about seeking to define or a lack of clarity but a deliberate change. Why is that?

Lord Wolfson of Tredegar (Con): On the first point, the position at the moment is that you have a reasonable likelihood test; what the noble and learned Lord, Lord Brown of Eaton-under-Heywood, called the holistic test. What is going on here—and what should be going on—is that we have sought to identify a number of discrete questions and we have applied the appropriate standard of proof to each of them. On the second point, the noble Lord is absolutely right in that a serious crime was defined as one that meant 24 months' imprisonment and we are now defining it as 12 months. We believe that that is appropriate and remains consistent with our refugee convention obligations.

I am not sure whether I should formally have said that I invite the noble Lord to withdraw the amendment.

Lord Dubs (Lab): I thought we were going to have more Q&A. I am grateful to the Minister for his fairly clear explanation of why the Government are doing what they are doing. I am not totally satisfied that we have heard the full reason. Over the years, we have not had any arguments put to us that the 1951 convention was not working; the arguments have been elsewhere. Suddenly, we are given these different considerations for why we should pass this. However, we will be back on Report, having listened to what the Minister has said. In the meantime, I beg leave to withdraw the amendment.

Amendment 103 withdrawn.

Amendment 104 not moved.

Clause 31 agreed.

Clause 32: Article 1(A)(2): reasons for persecution

Amendment 105 not moved.

Clause 32 agreed.

Clauses 33 to 35 agreed.

7 pm

Clause 36: Article 31(1): immunity from penalties

Amendment 106

Moved by ***Baroness Ludford***

106: Clause 36, page 37, line 18, leave out from "Kingdom" to "country" in line 20 and insert "for a substantial period and were given or could reasonably have expected to have been given protection under the Refugee Convention in that other"

Member's explanatory statement

This amendment would give effect to the Joint Committee on Human Rights' recommendation that clause 36 be amended to ensure that it does not contradict the protection Article 31 provides to asylum seekers who have passed through other countries on their way to the UK.

Baroness Ludford (LD): My Lords, in moving Amendment 106 in the name of, and at the invitation of, the noble Lord, Lord Dubs, I will speak also to Amendments 109 and 110.

If Clause 36 is not amended or deleted, it will contradict Article 31 of the refugee convention. It seeks to punish or penalise a refugee for arriving in the UK to make an asylum claim by a route that took them through other countries. The requirement in the refugee convention to come directly was intended only to prevent a person who had acquired refugee status and protection in one country deciding to switch to another. Excluding a person from asylum in the UK simply because they stopped in France, Germany or Belgium, perhaps for a night's rest, is completely unreasonable. The UK courts have confirmed that any merely short-term stopover en route to an intended sanctuary cannot forfeit the protection of Article 31 of the convention.

Any other interpretation, as the Government seek to impose in Clause 36, means, as in so much of this Bill, a shirking of the sharing of international responsibilities, such that looking after refugees falls overwhelmingly on countries neighbouring the countries of conflict from which the person is seeking to escape. Therefore, Amendment 106 would at least amend the clause, which, however, we might find later, needs to be deleted. I beg to move.

Lord Etherton (CB): My Lords, I will speak to Amendment 107 in my name, which relates to Clause 36 and provides that a refugee will have come directly to the United Kingdom for the purposes of Clause 11, notwithstanding that

"they have passed through the intermediate country on the refugee's way to the United Kingdom by way of short-term stopover".

Those words in the amendment reflect the reasoning and decision of the Administrative Court in Adimi, where my noble and learned friend Lord Brown presided. They also reflect the approval of Adimi by the Appellate Committee of this House in a case called Asfaw.

In this respect, Clause 36 is an important part of the Government's policy. The reason for that is that it provides a definition of "directly" for the purposes of Clause 11 that makes a distinction between group 1 and group 2 refugees. Under the provisions of Clause 11, if the refugee does not come directly from the place of persecution, they inevitably cannot be in group 1.

Secondly, it is important because, as I pointed out in a previous debate on this Bill, the provisions for describing coming to the United Kingdom directly, as defined in Clause 36, also reflect the provision in the admissibility provision in Clause 15. Your Lordships will recall that, in Clause 15, if there is a connection with another state, the refugee's claim is inadmissible; in fact, it is not recognised as a claim at all and there is no right of appeal. Clause 15 provides that, if you fall within one of the five conditions inserted in the Nationality, Immigration and Asylum Act 2002 by the clause, you have a connection. One of those conditions, condition 4, is that

"the claimant was previously present in, and eligible to make a relevant claim to, the safe third State … it would have been reasonable to expect them to make such a claim, and … they failed to do so."

So there are two essential elements of the policy behind the Government's provisions for asylum, where the question of the meaning of coming "directly" is extremely important. I pointed out to the Minister, the noble Baroness, Lady Williams, that there was a muddle here. If condition 4 in Clause 15, as I have described it, is satisfied, you never get to a distinction between group 1 and group 2 because your claim is inadmissible.

[Lord Etherton]
The noble Baroness was going to look at that and let me know the position from the Government's perspective, but I have not yet heard from her.

Before I address what coming "directly" means—as I said, my amendment reflects the reasoning and conclusion in Adimi, and the adoption of the decision in Adimi by the Appellate Committee of this House in Asfaw—I want to say a couple of things about what appears to be the approach of the noble Lord, Lord Wolfson, to interpretation. I do not think you need to be a lawyer to appreciate that if, under the aegis of the United Nations, you agree with other states in the world that you will conduct yourself in a particular way and that an agency of the United Nations has a responsibility for overseeing both the implementation of that agreement and that disputes between member states in relation to the meaning and the application of the agreement—here, the refugee convention—will be referred to an international court, there must be a point in time when one has to identify core values. If there are no core values, there is nothing to adjudicate.

The noble Baroness, Lady Chakrabarti, referred to Article 35, which requires member states to co-operate with the United Nations body responsible for oversight in relation to the implementation of the refugee convention. So what one has to do here is decide whether what the Government are doing in putting forward these proposals goes beyond the core principles in the refugee convention, which must be applicable generally to member states—otherwise, all the clauses I have referred to, Article 35, co-operation and adjudication by a court are totally meaningless and impracticable.

So I take issue with the broad statement of principle, as I understand it, put forward by the Minister. He said that it was perfectly acceptable for every member state signed up to the refugee convention to decide, from its perspective, what the convention meant. If that were correct and he was saying that it was for Parliament to decide what it meant for the United Kingdom, it would mean that changes could be made by each successive new Government as to what they felt would be appropriate to support their policy. Well, that is obviously nonsense, if I may respectfully say so.

What the courts have done—and this would be the approach of the all the courts of the countries signed up to the convention—is try to understand what the refugee convention was intended, by those who made it, to mean. The starting point is always the travaux préparatoires leading up to the convention—what was said and what was done—and then trying to understand whether there has been a deviation and, if so, why. That has been exactly the approach put forward and implemented in both Adimi and Asfaw.

The starting point, inevitably, for the interpretation of this particular convention is, as I think the Minister said, the Vienna convention on the interpretation of treaties. I do not think it has yet been said that we are entitled to change, and that we have changed, that treaty according to what we think it ought to say. It provides in Article 31.1:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

That phrase, as has been noted by the noble Lord, Lord Rosser, I think, was applied by the UK's highest court, the Supreme Court, in a case called ST (Eritrea) in 2012 as meaning that there is a duty to give the refugee convention

"a generous and purposive interpretation, bearing in mind its humanitarian objects and the broad aims reflected in its preamble".

I have to say as a starting point that I have seen nothing so far in this part of the Bill which is a "generous and purposive interpretation", having regard to humanitarian objects and the broad aims reflected in the preamble of the 1951 convention. Every provision that people have addressed appears to be, as it has been put, a mean-spirited approach to refugee applications.

It is against that background that I now turn to the meaning of "directly". I have already referred to the clear decision in Adimi on this point about stopping at intermediate countries by way of short-term stopover. Just to give this a bit of flesh, what the noble and learned Lord, Lord Brown, said then was:

"I am persuaded by the applicants' contrary submission, drawing as it does on the travaux préparatoires, various Conclusions adopted by UNHCR's executive committee … and the writings of well respected academics and commentators … that some element of choice is indeed open to refugees as to where they may properly claim asylum. I conclude that any merely short term stopover en route to such intended sanctuary cannot forfeit the protection of the Article, and that the main touchstones by which exclusion from protection should be judged are the length of stay in the intermediate country, the reasons for delaying there (even a substantial delay in an unsafe third country would be reasonable were the time spent trying to acquire the means of travelling on), and whether or not the refugee sought or found there protection de jure or de facto from the persecution they were fleeing."

Baroness Scott of Bybrook (Con): My Lords, can I remind the noble Lord of the Chief Whip's reminder of brevity please? We are running extremely late at the moment.

7.15 pm

Lord Etherton (CB): In Anwar, as I have said, the Supreme Court approved of that and in doing so again referred to the travaux préparatoires and the way in which those words came into the convention. They were put in at the last minute to appease the French representative because they were concerned about refugees claiming asylum in France who could have applied elsewhere. In 2001, an expert round-table conference was held in Geneva by different countries and disciplines which again upheld the interpretation of a short-term stopover not affecting coming directly from territories where there was persecution.

In a previous debate on this subject on Clause 11, the Minister relied on a provision in Section 31(3) of the Immigration and Asylum Act 1999 which had very similar wording to what we find in Section 36. What she did not say, and which comes out of the very detailed speeches of Lord Bingham and the noble and learned Lord, Lord Hope, is that when those provisions in Section 31 of the 1999 Act were being debated, the Attorney-General specifically said, in light of the view of the UNHCR, that there was flexibility in the concept of arriving directly. So, far from that Act being a precedent for a strict interpretation of those words, his elaboration meant that there was, in fact, a correspondence

with the meaning arrived at in the courts of this country in Adimi. For those reasons, I say that the definition of arriving directly in Clause 36 is incorrect. It does not meet the international standards of the UNHCR and is contrary to the convention.

Lord Hodgson of Astley Abbotts (Con): My Lords, I shall be very brief. I am trying to work out exactly what I am being asked to agree to here. Perhaps I may ask the noble Baroness, Lady Ludford—maybe not the noble Lord, Lord Dubs—and certainly my noble friend on the Front Bench: am I being asked to end or at least change the first safe country principle by accepting these amendments? If that is the case, I have grave concern about an increase in what is known as forum shopping. Perhaps I can say to the *Hansard* writers that forum is spelled "forum" and not "foreign", which is how it was reported last time. Foreign shopping is what you go to Paris to do; forum shopping is a rather more serious matter.

It is important because this country is an exceptionally attractive place for people seeking to find the best future for themselves. I explained last time that the very fact that debates are going on your Lordships' House shows how much concern we have to make sure that the rights of people are looked after. It is also an extremely flexible job market once you are here. Getting and maintaining a job is much easier than in some of the areas such as France, where there is a much more rigid job market. There is a non-contributory health and social security system. There is a diaspora from nearly every country in the world. Your mates are here, so you want to come here to join them. We would all want to join our mates. As a last point, you have learned the English language, which is the lingua franca of the world and, in particular, the lingua franca of technology.

I hope that, when my noble friend comes to answer the debate, he will bear in mind that, if we were to accept this, it will open up the borders for people who are seeking—I do not say that they should not seek—the best future for themselves and, as such, are not abiding by the first safe country principle. We are not in a position to provide the answer to a lot of these people.

Baroness Ludford (LD): I know the noble Lord has listened to a lot of the previous debate. He will know there is no such thing as a first safe country principle under the refugee convention. I tried to explain what the obligation was—namely, not to move on if you have refugee status or protection in a country. The UNHCR has made it clear that there would never have been a refugee convention if there had been a safe first country principle, because countries abutting the problematic countries—for example, Jordan, Iran and Pakistan—have had to accept everyone. No other countries like the UK would ever have had any refugees because we do not abut conflict zones. I am sorry, but this must be rebutted every time it is trotted out.

Lord Brown of Eaton-under-Heywood (CB): I will address Clause 36 very briefly, which I discussed last week in the context of Clause 11. I confine myself today to asking two questions.

First, do the Government accept, as I suggest they must, that Clause 36 would overrule the judgments of Lord Bingham and, among others, the noble and learned Lord, Lord Hope of Craighead, in Asfaw, fully affirming what had been said on the relevant issues in the judgment I gave in the Divisional Court in Adimi? This has all been elaborated on today by my noble and learned friend, Lord Etherton.

Secondly, if so, are the Government overturning Asfaw and Adimi because, disinterestedly, they genuinely think those decisions are clearly wrong—or because they think an alternative and more anti-asylum seeker interpretation may arguably be available to them?

Baroness Jones of Moulsecoomb (GP): The idea of people being able to arrive here without going through a third country has been debated before in the course of this Bill—I cannot remember whether it was last week or another time. When we queried how people could get here, the Minister explained that they could come by aeroplane. That might be possible for some, but it is not possible for everyone who might need to be here in Britain rather than somewhere in Germany or France. Perhaps the Minister could give us a better explanation about how people get here, if there are not enough safe routes or aeroplanes.

To me, this is a naked attempt to stop refugees. I do not understand why the Government cannot see this as well. We are taking advantage of our geography and saying, "We're too far away, you can't come". This is ridiculous. As I have pointed out before, we have a moral duty to many of these people. We have disrupted their politics, their climate and their lives—therefore, we owe them. It is not as simple as saying that they want to join their mates.

This Bill should be setting out safe routes and establishing ways to get people to the UK safely and legally. At the moment, we do not have that because the Government are pulling up the drawbridge.

Lord Green of Deddington (CB): My Lords, in a word, I see these issues from a policy point of view, not just a legal one. The fact is that our asylum system is in chaos, and very visibly so. Large numbers of claimants are turning up on our beaches. The Government are seeking to tighten the asylum system. That does not seem to be unreasonable, and I very much agree with the noble Lord, Lord Hodgson.

Lord Paddick (LD): I will very briefly address something that the noble Baroness, Lady Jones of Moulsecoomb, said about people arriving here directly by aeroplane. As we will see when we get on to the group substituting "arrives in" for "enters", even if someone came directly by aeroplane, they would not be legally arriving in the United Kingdom. This clause is central to many of the provisions contained in the rest of the Bill. I am extremely grateful to the noble and learned Lord, Lord Etherton, for his important, detailed and necessary exposition of his reasoning. Despite how long it took, it was absolutely essential.

Clause 36 seeks to redefine and undermine Article 31 of the refugee convention in UK law as a basis for penalties and prosecutions. As we discussed in previous groups, there is an accepted and settled interpretation

[LORD PADDICK]
of Article 31. As Amendments 106 and 107 seek to establish, passing through another country in order to get to the UK is not failing to enter the UK directly or without delay. This should, therefore, not allow the UK to impose penalties or treat asylum seekers less favourably as a result.

Amendment 108 highlights the particular difficulties some asylum seekers could face on account of their protected characteristics. Again, however, I agree with the noble Baroness, Lady Chakrabarti: there should be no reinterpretation of Article 31, no group 1 and group 2 refugees, and no four-year imprisonment because people had no choice but to travel through other countries to get to the UK, whether the UK considers those third countries safe or not.

Clause 36 is the sand upon which this Bill is built, and it needs to be washed away.

Lord Rosser (Lab): Article 31 of the convention exempts refugees "coming directly from" a country of persecution from being punished on account of their illegal presence in a state. Clause 36 of this Bill is the Government's attempt to reinterpret what Article 31 means by "coming directly from", and they are doing it to tighten up the rules to suit their policy that all asylum seekers should claim asylum in the first safe country they reach. The clause provides:

"A refugee is not to be taken to have come to the United Kingdom directly from a country where their life or freedom was threatened if, in coming from that country, they stopped in another country outside the United Kingdom, unless they can show that they could not reasonably be expected to have sought protection under the Refugee Convention in that country."

This is a very broad interpretation which would cover anyone who travels through, or briefly stops in, any safe country on the way to the UK. Frankly, this is in opposition to the established understanding of the convention and, indeed, UK case law. This goes against established interpretations of Article 31 made, as has been said, in the case of Adimi and others. This case sets out that stopping somewhere must be understood as referring to something more than a transitory stop en route to the country of intended sanctuary.

We support the amendments in this group and the opposition to Clause 36 standing part of the Bill. Clause 36 is a supportive measure for Clause 11, being about differential treatment of refugees, which we have discussed at some length. This clause underpins the Government's plans to base our treatment of refugees on their means of travel, rather than on their need and the realities of the violence or horror they have fled. It is on that basis that we oppose this clause.

If we interpret the convention, which is what we are now being asked to do, in such a way that it is unrecognisable to our international partners and our own courts, at what point can we still be considered to be complying with the convention? We are not opposed to arrangements for the safe return of refugees to another state where they have legitimately spent time and started an asylum application. There are established routes for doing this, as provided for under the Dublin III regulations, of which we ceased to be a part when we left the EU. That is not what this clause provides for, as a number of other noble Lords have made clear in their contributions.

On the basis that this clause unilaterally attempts to redraw what the convention means by stopping in a safe country, I ask the Government to think again, without any great hope of getting a favourable response.

7.30 pm

Lord Wolfson of Tredegar (Con): My Lords, I begin with Amendment 107, tabled by the noble and learned Lord, Lord Etherton, whose analysis I listened to very carefully. It seeks to reflect the position in the Adimi case by defining the requirement to "come direct" to include having passed through intermediate countries on the refugee's way to the UK. I assure the noble and learned Lord that this is something we have carefully considered. Where, for example, a person has taken a connecting flight to the UK, due regard will be paid to the individual's circumstances in determining whether they came direct. The powers in the Bill enable us to exercise that flexibility, which will be reflected in guidance provided to the caseworkers and decision-makers.

It follows that if a refugee cites a particular protected characteristic as a reason for being unable to comply with the standards set out in the Bill, including to come direct, that will be carefully considered by caseworkers in determining the entitlements attached to their leave. As I said on earlier groups, we will be sensitive to those cases. Flexible powers in the Bill allow it, and that will be set out in guidance in any event.

I will come back to Amendment 106 in a moment, but Amendment 108 links closely with Amendment 107 and seeks to ensure that determination of both "reasonably expected" and "reasonably practicable", which are relevant standards in determining "come direct" and "without delay" respectively, are interpreted with due regard to protected characteristics. Essentially, this point is answered by the point that I have just made: the Bill has flexibility built into it to take individual circumstances into account. A person may be deemed to have come direct if they could not have been reasonably expected to claim asylum in a first safe country. Similarly, they will be deemed to have claimed asylum without delay if it occurred as soon as was "reasonably practicable". Therefore, if a refugee cites a particular protected characteristic as a reason for being unable to comply with the standards in the Bill, that will be considered by the caseworker. The Bill is perfectly flexible enough to enable us to do so.

Turning to Amendments 106, 109 and 110, we again tread over the ground of interpreting obligations under the convention. I recognise the importance of taking a sensitive approach to how "come direct" is interpreted and I have already talked about the example of a connecting flight. However, I cannot accept that the definition should be amended as proposed, to enable a refugee to have been in another country "for a substantial period" and still be determined to have come directly. Those in need of protection must claim in the first safe country that they reach, because that is the fastest route to safety. That is an internationally recognised concept. It underpins, for example, the Common European Asylum System, and there are safeguards in the current provision in Clause 36(1). Even if a person stopped in another country outside the UK, they could still say that they came direct to the UK if they can show that they could not reasonably have been expected to seek

protection under the refugee convention—for example, because they were under the control of traffickers—although every case would have to be considered on its own merits. Therefore, with respect, and without opening up the wider issue, there are some good underlying points in what we heard from my noble friend Lord Hodgson of Astley Abbotts.

Amendment 109 requires a little unpacking. I should be clear that differentiation does not constitute a penalty for the purposes of Article 31. However, I disagree with the analysis that protection under Article 31 of the convention should extend to those who have tried to exit the UK without first seeking asylum, because we must interpret the "first safe country" principle consistently. Therefore, the defence under Section 31 of the Immigration and Asylum Act 1999 should no longer be available to those who transit out of the UK.

Finally, turning to Clause 36, the refugee convention is clear that refugees should be protected from penalties for their illegal entry or illegal presence when they have come directly from a territory where their life or freedom was threatened, they presented themselves without delay to the authorities, and they showed good cause for their illegal entry or presence. This will now be familiar ground. However, the refugee convention does not define what is meant by the terms

"coming directly from a territory where their life or freedom was threatened"

or

"present themselves without delay to the authorities".

This clause sets out how these phrases should be interpreted in the UK. This is the same point that I made in the previous two groups.

The noble and learned Lord, Lord Brown of Eaton-under-Heywood, asked me whether we were overturning the judgments in Adimi and Asfaw and, if so, why? I hope I have that question down fairly. With the greatest respect, the courts in Adimi and Asfaw interpreted "come directly" in Article 31(1) more generously than the original intention of Parliament. The Explanatory Note to Section 31 of the Immigration and Asylum Act 1999 says:

"This defence, which is modelled on Article 31(1) of the Refugee Convention, does not apply if the refugee stopped in a third country outside the United Kingdom unless he can show that he could not reasonably have been expected to be given protection under the Convention in that country."

What we are doing here is consistent with the refugee convention. There is sufficient flexibility in the proposed powers and the overall policy to enable an individual to demonstrate that during the stopover they could not reasonably have been expected to seek protection under the refugee convention or, where appropriate, to show good cause for their illegal entry or presence.

Turning finally to the point put to me by the noble Lord, Lord Paddick, who said that someone arriving by aeroplane would be arriving illegally, some joys await us in group 8, when we will come to this point. As a taster before the short dinner break, I point out that there is a statutory defence recourse under Section 31 of the 1999 Act if they are genuine refugees and used fraud or deception to get a forged or false entry clearance. We will no doubt come back to this in more detail in group 8.

Lord Paddick (LD): If every country interpreted Article 31 as the Government want it interpreted by means of the Bill, what would be the consequences for dealing with the refugee crisis that the world faces?

Lord Wolfson of Tredegar (Con): I really do not mean to be flippant. The consequence would be that every country would be interpreting the refugee convention in accordance with its terms. As a country, we are interpreting our legal obligations in the way that we ought to and are allowed to. We are going back—

Lord Sentamu (CB): The Joint Committee on Human Rights recommended that this be amended. There must be good reasons for explaining why the Government do not want it amended and I have not heard them.

This is a true story; I can meet the Minister in camera and show him the evidence. A young man aged 17, whom we found in Kenya—

Baroness Scott of Bybrook (Con): My Lords, this should just be a short question.

Lord Sentamu (CB): I am giving an example of why Article 31, without the amendment, does not work.

Lord Wolfson of Tredegar (Con): I am almost as new, I think, as the noble and right reverend Lord, but my understanding of procedure is that that is meant to be for questions. If the noble and right reverend Lord will write to me or meet me to discuss that particular case, I will certainly discuss it with him. If the case raises a point of principle, I will deal with it. If it raises a point of principle that I think will be helpful for the Committee to hear, I will write to him and provide a copy of the letter. I hope that is helpful for this evening.

Lord Paddick (LD): My Lords, may I just say that this is Committee? This is not Report. Any noble Lord is entitled to speak after the Minister in Committee.

Lord Wolfson of Tredegar (Con): My Lords, I really do not want to get into a procedural battle. I was trying to be both helpful to the Committee, given the time and pressure, and respectful, I hope, to the noble and right reverend Lord. I reiterate the offer, which I think is appropriate.

Lord Kerr of Kinlochard (CB): Could the Minister answer the question from the noble Lord, Lord Paddick? It was rather a flippant answer that he gave—that everybody would be interpreting the convention according to their rights. I think the noble Lord, Lord Paddick, meant: what would be the practical effect? What would happen to the 26 million refugees in the world, three-quarters of whom are in countries contiguous to the one in which they had their citizenship? Would all countries agree, if they introduced this "first safe country" rule, that all refugees had to stay in these contiguous countries—in these encampments in Jordan, Syria, Turkey and so on—and that nobody could move on, under the refugee convention, to another country?

Lord Wolfson of Tredegar (Con): I am certainly not trying to be flippant. What I am saying is that we have a refugee convention that sets out our international obligations. We are abiding by those international obligations. It may—I underline "may"—be that a convention entered into in 1951 is not absolutely suitable for the world of 2022. That might be the answer. At the moment, however, my focus as a Justice Minister is on making sure that this country abides by its international obligations, and that is what we are doing. I invite the noble Baroness to withdraw the amendment.

Baroness Ludford (LD): My answer to that last point is that if that is what the UK Government feel, they should convene a conference to renegotiate the refugee convention, but they are not doing that. A large number of noble Lords in this Committee believe that the Government are riding roughshod over the refugee convention in a way that demeans this country and sets an extremely poor example, not least to those countries on the front line, which are taking the overwhelming majority of people seeking protection. We have bandied around the statistics in the last few days in Committee, but we are not in the top category of countries in terms of the numbers, which are manageable. They would be particularly manageable if the Home Office got its act together in the way it decides asylum cases initially—if it invested in the initial consideration of the claims and did not make the law ever more complex, with ever more delays and ever more prospects of litigation. It seems we are banging our heads against a brick wall somewhat, but I beg leave to withdraw my amendment.

Amendment 106 withdrawn.

Amendments 107 to 110 not moved.

Clause 36 agreed.

Clause 37: Article 33(2): particularly serious crime

Amendment 111 not moved.

Clause 37 agreed.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I have just come into the Chamber but may I suggest, before the noble Lord moves to adjourn, that we have a usual channels discussion in the next 30 minutes? Regarding the point made by the noble and right reverend Lord, Lord Sentamu, Committee is a conversation; it is not Report. I think we need to clarify that. I want to make progress on the Bill, but we need to have a discussion on it. I think the intervention was right and, as the noble Lord, Lord Paddick, also said, this conversation in Committee is not bound by the rules of Report. I think we should use these 30 minutes to get this ironed out.

7.46 pm

Sitting suspended. Committee to begin again not before 8.15 pm.

8.15 pm

Amendment 112

Moved by ***Baroness Ludford***

112: After Clause 37, insert the following new Clause—

"Refugee family reunion

(1) The Secretary of State must, within 6 months of the date of the passing of this Act, lay before Parliament a statement of changes in the rules (the "immigration rules") under section 3(2) of the Immigration Act 1971 (general provisions for regulation and control) to make provision for refugee family reunion, in accordance with this section, to come into effect after 21 days.

(2) Before a statement of changes is laid under subsection (1), the Secretary of State must consult with persons he or she deems appropriate.

(3) The statement laid under subsection (1) must set out rules providing for leave to enter and remain in the United Kingdom for family members of a person granted refugee status or humanitarian protection.

(4) In this section, "refugee status" and "humanitarian protection" have the same meaning as in the immigration rules.

(5) In this section, "family members" include—

(a) a person's parent, including adoptive parent;

(b) a person's spouse, civil partner or unmarried partner;

(c) a person's child, including adopted child, who is either—

(i) under the age of 18, or

(ii) under the age of 25 but was either under the age of 18 or unmarried at the time the person granted asylum left their country of residence to seek asylum;

(d) a person's sibling, including adoptive sibling, who is either—

(i) under the age of 18, or

(ii) under the age of 25, but was either under the age of 18 or unmarried at the time the person granted asylum left their country of residence to seek asylum; and

(e) such other persons as the Secretary of State may determine, having regard to—

(i) the importance of maintaining family unity,

(ii) the best interests of a child,

(iii) the physical, emotional, psychological or financial dependency between a person granted refugee status or humanitarian protection and another person,

(iv) any risk to the physical, emotional or psychological wellbeing of a person who was granted refugee status or humanitarian protection, including from the circumstances in which the person is living in the United Kingdom, or

(v) such other matters as the Secretary of State considers appropriate.

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

(a) "adopted" and "adoptive" refer to a relationship resulting from adoption, including de facto adoption, as set out in the immigration rules;

(b) "best interests" of a child must be read in accordance with Article 3 of the 1989 UN Convention on the Rights of the Child."

Member's explanatory statement

This new Clause would make provision for leave to enter or remain in the UK to be granted to the family members of refugees and of people granted humanitarian protection.

Baroness Ludford (LD): On behalf of my noble friend Lord Paddick, I will move Amendment 112 and speak to Amendments 113 and 117, which I have co-signed. The reason I have been given the honour of moving Amendment 112 is that it reproduces my Private Member's Bill, which in fact has its origins with my noble friend Lady Hamwee and will have its Committee stage just after recess.

The Conservative Party likes to call itself the party of the family; I believe it needs to demonstrate this. Amendment 112 would build on existing safe routes for family reunion to enable a wider range of family members to reach the UK without undertaking unsafe journeys. This is the real way to stop most of the dangerous channel crossings and put the smugglers out of business.

In the letter and attached chart that the Minister sent to the noble Lord, Lord Dubs, and kindly made available to us all, the Government set out the current safe routes. Even under part 11 of the Immigration Rules, while adult refugees do not have to pay a fee for the visa they do have to pay for travel to the UK, and the integration loan cannot be used for that. Legal aid is also not available, at least not in England and Wales—I do not know about Scotland or Northern Ireland—and they can bring in only their spouse and their under-18 children.

As in my Private Member's Bill, Amendment 112 would permit dependent children up to the age of 25, as well as adopted children. Crucially, it would permit children recognised as refugees to sponsor their parents and siblings to join them. Although sibling reunion is in theory possible under paragraph 319X of the Immigration Rules, in practice the barriers are often insurmountable. Not only does the visa cost almost £400 but the young sponsor has to show that they can financially support and accommodate their sibling without recourse to public funds, and that the justification for reunion is "serious and compelling". All these are tough tests to fulfil. Paragraph 297, which governs whether children can join parents or non-parent relatives who have settlement status imposes a fee of £1,500, and then the same serious and compelling test.

Despite promising in a response to the consultation on the *New Plan for Immigration* to give creator clarity, no guidance has been forthcoming. Can the Minister tell us in her response when that guidance will be forthcoming, and how many visas have been issued under paragraphs 319X or 297 over the last five years?

I reaffirm my support for Amendment 113 from the noble Lord, Lord Coaker, and Amendment 117 from the noble Lord, Lord Dubs. These both aim to boost family reunion opportunities for unaccompanied minors and for entry to seek asylum, in part substituting for the loss of the Dublin regulation. I also support other amendments in this group. I beg to move.

Lord Hylton (CB): My Lords, I have added my name to three amendments in this group. I note that they are all new clauses. New clauses are necessary to improve this Bill, and they are essential to humanising our present systems, let alone what may emerge from the Bill once it becomes an Act.

Reuniting families split by wars and persecution brings huge benefits; I think we can all agree on that. Amendment 112 enfranchises both children and their parents. It also empowers the Secretary of State to add new kinds of relationships. Amendment 113 should, as the noble Baroness, Lady Ludford, has just mentioned, reduce dangerous crossings of the channel.

On Amendment 114, we all know that the neighbours of Syria and Iraq have been subjected to and have accepted huge influxes of people. The same is also true of southern European states. For these reasons, there is an urgent need for equitable burden sharing. This, in turn, will require much greater international co-operation. We can do our part in this country by using family reunion. Our neighbours and allies are entitled to know what our intentions and proposals are in this respect.

The wording of all three amendments can, I expect, be improved. Will the Government accept at least their principles, take them away and bring them back in pristine condition?

Baroness Jones of Moulsecoomb (GP): Going through the amendments this morning in preparation for this evening, I got quite tearful when I read these amendments because my family is incredibly important to me—every single one of them. I love them and I do not want to lose them or break up in any way from them. The thought that we in Britain could be the cause of families separating made me very upset.

I have signed two of these amendments, but they are all good amendments. The Government really ought to look into their own hearts and think about how they would feel if their families were broken up, through no fault of their own, because of despotic powers or other reasons. It is time to be a little bit kinder in this Bill, so please will the Government accept these amendments?

The Lord Bishop of Durham: My Lords, I specifically support Amendment 117, to which I have added my name, but I support all these amendments around family reunion. I declare my interests in the register around RAMP and Reset as before.

Acknowledging that when people are forcibly displaced they end up in different places, often having lost family members, UNHCR research has shown that families often set out together but become separated along the way. Reconnecting those families, or, where some family members are lost, reconnecting people with other relatives, really matters. In seeking protection, those seeking asylum want to do so alongside the family that they have. This is better for individuals—their well-being and their future prospects—and for the community as a whole. It is therefore also better for social integration.

In my conversations with refugees and people seeking asylum, the whereabouts and safety of family is generally the number one preoccupation that they raise. This concern overrides everything. When we speak about family, it is not purely spouses and children but aunts, uncles, cousins, nephews and nieces. Organisations working with refugees, such as Safe Passage, know from their work that, when people have no safe route to reach their families, they are more likely to risk their lives on dangerous journeys to reach loved ones. Many of these individuals are children and young people seeking to reunite, often with their closest surviving relatives.

[The Lord Bishop of Durham]

No doubt the Minister will give us the numbers again of how many families have been reunited under it, but existing refugee family reunion is narrow in scope. The threshold to be met under paragraphs 297 and 319X of the Immigration Rules for an adult non-parent to reunite with a child is "serious and compelling circumstances", which is extremely difficult to meet in practice.

I appreciate that we cannot offer protection to all extended family members, but we can do this for some out of kindness, and it would divert them from using criminal gangs. Once they arrived in the UK, they would enter the asylum system to have their claim for protection decided.

Of course, we would prefer people not to have to make the dangerous journeys as far as Europe, and I expect that the Minister will cite pull factors to Europe as a rebuttal. With an ambitious resettlement scheme—which we will come back to—a broader definition for family reunion, as well as an increasing commitment to aid and constructive engagement with our near neighbours, I believe that any such pull factor to one safe route will be mitigated. The alternative is that people come anyway but in an unplanned way, risking their lives and causing further trauma.

I urge the Minister to at last give way on one item: consider this proposal as a pragmatic response to the need to find durable solutions for desperate people dying on our borders in order to reach their family.

Lord Dubs (Lab): My Lords, I support all these amendments. I have signed three of them, and the only reason I did not sign the fourth was because my name did not get there in time; there were already four names on it.

Let me talk most particularly for the moment in favour of Amendment 117. In one sense, we are going back to the Dublin treaty, Dublin III and the discussions we have had in the past. At the risk of taking up an extra minute, I will go in for a little moment of history. We had an amendment—which passed in this House and the Commons—to the 2017 Act which said that the Government should negotiate to continue the Dublin III arrangements even after we left the EU. That passed in the 2017 Act.

We thought we were there—but along came the 2019 Act, and it was taken out again. We could not understand why. It was fairly innocuous in one sense, but it was pretty important in another. I was summoned to a room, I think here, and there were three Ministers: the noble Baroness; Brandon Lewis, who was the Immigration Minister; and one of the Ministers from the Commons. There were seven other officials there, one from the Cabinet Office, and just me arguing with them—I thought the odds were pretty fair. Anyway, I was assured that we would lose nothing by abolishing that provision in the 2019 Act. It was never explained to me why the Government wanted to abolish it. If it was going to make no difference, why abolish it? If it was going to make a difference, why take a step backwards?

By all standards, the Dublin III provisions for family reunion were working—not brilliantly, not fast enough and not for enough children, but they were working. I was assured that everything would be all right, but I am afraid that the evidence is not there. We cannot say often enough that where there are safe routes, the traffickers do not get any business. If we close the safe routes, the traffickers get business. It is logical, even for the Tory party. It is market economics, is it not? I do not understand how that can be contradicted.

I am worried about quite a number of the Government's provisions. The Minister wrote a letter, which I have here; it is slightly depressing, but very helpful. However, I am worried that, on the whole, children in particular who got to Europe fleeing for safety are going to be ignored. I have not been there recently because of the pandemic, but the last time I visited what remains of Calais, people were sleeping under tarpaulins in terrible conditions. It was very depressing, and there were very depressing scenes on the Greek islands. I went to Lesbos, to Moria camp, just before the big fire there. Again, I am out of date now, but I understand that it has not got better. There are young people there who are desperate to join family members in this country. There are not many of them altogether, but there are enough for it to be an important point of principle. Surely, our test of humanity must be whether we support family reunion and whether refugee children can join their families here.

Safe Passage—a small but brilliant NGO with which I am happy to work and be closely associated—suggests that the majority of the children who qualified under Dublin III in the past would not qualify now. For all the optimistic noises coming from the Home Office, the fact is that the situation has got much more difficult in terms of getting children here.

8.30 pm

The Minister sent me a letter that I think other Members of the Committee have seen. It was interesting and had all sorts of arguments and so on, but of course it fell short in that, among other things, it did not tell us what has happened in the last year and a half since the new provisions have come in and we have closed down Dublin III. It seems to me that the numbers are not as optimistic as the Minister suggested. If I am wrong, that is fine, but I would like to see that spelled out.

I happened to bump into an Afghan driver who was desperate to get his family from Kabul but cannot—I do not think that his parents qualify. He has managed to find a way to send them money, so they are better off than most. But he is desperate; he cannot get them here.

We have had the arguments over the years, and I think that the right of children to join family members in this country—there is a small number of them, but this is important—is surely a fundamental principle of human rights. We cannot readily slam the door on them and say, "No, that does not count."

I turn to Amendment 114, on international co-operation. I firmly believe that many of the issues around refugees—not just child refugees—will require better international co-operation and agreement than we have had up to now. For example, we were talking in earlier groups about redefining the 1951 Geneva convention. Surely the sensible thing would be for all countries to agree, rather than each country doing its

own thing and departing from the others, resulting in there being no basis for agreement at all. If we are going to send people back—I do not think that we can because no one is willing to take them—how can a person who is sent back, say from here to France, know how to make a claim if there is no agreement on the principles of the Geneva convention and the conditions are different?

I believe fundamentally that international co-operation on these issues is right, and that is why I am very keen on Amendment 114. But, above all, I argue that we must have a more generous humanitarian approach, particularly to child refugees seeking family reunion.

Lord Green of Deddington (CB): My Lords, I think that it is perhaps time for a different view from this side of the Committee. I will briefly deal with Amendments 112 and 113.

Amendment 112 refers to "Refugee family reunion". It is a wide-ranging amendment, and I suggest that it is unnecessary and not very wise. We already have provisions for the family members of refugees to come here. As others have mentioned, these allow partners and children under 18 of those granted refugee status or humanitarian protection to join them here, provided that they formed part of the family unit before they left their own country. That seems a reasonable basis for this provision. Of course, the family members do not receive refugee status themselves, so their leave will expire at the same time as that of the sponsor. But individuals on such visas are allowed to work, study and have recourse to public funds, which also seems entirely reasonable.

Indeed—I will save the Minister a task—we have granted visas to more than 60,000 family members of refugees since 2010. Since 2015, over half of those were to children. This is already a very substantial move in that direction. But widening the criteria still further would, of itself, massively increase those numbers and add still further to the pull factors drawing people to the English Channel, a route that has very little support among the public.

There is a very strong case for not widening these refugee routes. In the real world, we simply do not have the necessary infrastructure, service capacity, housing or school places. Many refugees are being put into the poorest parts of the UK. In this context, the Home Secretary said to a House of Lords committee on 27 October last year:

"We simply do not have the infrastructure or the accommodation."

A Member of the other House said of his area:

"The impact on housing pressure at local level could cause further tensions if there is resentment about refugees receiving housing assistance at a time of acute … housing shortage."—[*Official Report*, Commons, 27/4/21; col. 40WH.]

In setting our arrangements for refuges and their families, we must surely give due consideration to their impact on our own vulnerable communities.

Lord Dubs (Lab): I am grateful to the noble Lord for giving way. I just put this to him: if children are coming to join family members here, the norm would be that the family member has accommodation to provide for them, so the argument about housing does not apply to that group of people.

Lord Green of Deddington (CB): I shall go on to Amendment 113, which deals with unaccompanied minors. The main effect of this amendment would be to put a considerable number of children in serious danger. As drafted, it applies only to children already in the EEA, but it would obviously be a major incentive for families now outside the EEA to pack their children off to Europe in the expectation that they could go on to the UK. The amendment is also widely drawn to include nieces, nephews, grandchildren, siblings, spouses—all from families that are very large in any case.

We have seen how opening this route would encourage minors to make dangerous journeys. In 2016, when there was talk of the UK taking significant numbers of children, the numbers of unaccompanied children literally doubled overnight. That is according to evidence given to the relevant parliamentary committee by the Home Office director responsible in December 2021. We have to consider the wider consequences of this, to which may be added the difficulties already facing the authorities in correctly assessing the age of those claiming to be children. We have discussed this before in Committee and we know that, in the last available year, 1,100 persons claiming to be children were found to be adults. This amendment is dangerous and unwise, and should not be accepted.

Baroness Hamwee (LD): My Lords, I have been encouraged to say a word—it was only going to be a word, but it will be a few more now—in support of my noble friend Lady Ludford. I am pleased that she has taken on this cause. I am not seeking to analyse every one of these amendments, but they are about protection in every sense of the word, which is what the right reverend Prelate the Bishop of Durham was saying. I applaud the Government for enabling the reuniting of some families, but I am thinking about those who have not been reunited, where there are problems.

I had a similar experience to the noble Lord, Lord Dubs, in a meeting with Brandon Lewis and a battalion of officials, when I remember being told that the rules are quite adequate—but they are discretionary.

We have been asked by the noble Lord, Lord Green, to think about the real world. The real world is not just in the UK. One of the aspects of children being alone in the UK is the cost to local authorities, which can be very substantial when children are here by themselves. One needs to include a number of factors when balancing the question of costs.

I would like to echo whoever it was who pointed to the importance of siblings being able be together. A child or young person—frankly, anybody coping with the experience of being a refugee—needs the support of family. A sibling can be such a support to a child; I have heard siblings speak of this. These amendments have my support.

Lord Paddick (LD): My Lords, I pay tribute to the noble Lord, Lord Dubs, for his tireless work on family reunion, born out of his own personal experience. I also pay tribute to my noble friends: my noble friend Lady Hamwee, who ran the first leg with her Private Member's Bill, before handing over to my noble friend Lady Ludford.

[LORD PADDICK]

It is better for families to be together, not just for their own welfare but so that they can look after each other, as my noble friend Lady Hamwee had just said, rather than being looked after by the state. We strongly support Amendment 112. Amendment 113 would provide a mechanism for those unaccompanied refugee children who had reached an EEA country and who have a family member in the UK to be reunited with that family member. Amendment 114

"would require the Government to produce a negotiating mandate to seek reciprocal arrangements, with other states, on safe returns and safe legal routes."

I am guessing that would be something akin to Dublin III. Amendment 117 from the noble Lord, Lord Dubs, would change the Immigration Rules to allow people currently in Europe to come to the UK to seek asylum—effectively be given a visa—if they have a family member in the UK. This is a subset of my noble friend Lady Hamwee's Amendment 118 in the next group. We support all these amendments.

Lord Coaker (Lab): My Lords, it is a privilege to contribute again to the deliberations in Committee on this important Bill. We agree with all the amendments in this particular group, but I shall speak specifically to Amendment 114 and then Amendment 113.

On Amendment 114, I join the noble Lord, Lord Paddick, and I am sure all other Members of the Committee, in paying tribute to my noble friend Lord Dubs for the work he has done over so many years. He is an example and inspiration to us all, with respect to family reunion. The reason I want to highlight Amendment 114 is to lay out the importance of international action on this. That is why the refugee convention is so important to us. We saw the collapse of the world order, if you like, after the Second World War. As was mentioned by the noble Lord, Lord Alton, earlier, the world back then, of all political persuasions and ideologies, did not all split asunder and pull the drawbridge up on their own countries; they said that this was a common problem of such massive importance that they had to work together to achieve anything.

The 1951 refugee convention is not an old document but still speaks to us and is relevant today. It may have been written in 1951, 70-odd years ago, but it speaks as resoundingly to the people of the world today as it did then. Why do I say that? Like many Members of this Committee, I think Amendment 114 is important because it talks about the United Nations and it talks about international actions. It is a probing amendment—we are not asking the Government to accept it—but it is using the Committee to put pressure on the Government to say, as a senior global power, a member of the United Nations Security Council, a senior member of NATO, a power that has resonance across the world—notwithstanding some of the reputational damage that I think this Bill is causing—that we make a difference. What we say makes a difference.

In Syria, Iraq, Afghanistan—all of those countries—their refugee problems dwarf ours, let alone if we consider those in Africa. As I think I mentioned before, I went to Angola, where they had a refugee camp of a million people—some of the poorest people in the world dealing with some of the most difficult circumstances. On the border of Syria and Jordan, as I think I mentioned before, there is a huge refugee camp with people pouring across the border to escape war. Those countries—Jordan and Turkey—did not turn their back on those people; they worked to try to deal with it.

What I am saying about that international response, that international action, such is the difficulty that we are facing across the world—for all sorts of reasons, and we can debate why that is and why that is not—is that if we do not join together, we have got real problems in actually sorting this out. It is beyond the capacity and capability of one country to do that, notwithstanding the attempts. I say this: there will be a nationality and borders Bill 3 and a nationality and borders Bill 4 in trying to deal with this if the UK Government try to deal with it on their own.

8.45 pm

Lord Green of Deddington (CB): I entirely agree about the appalling conditions in these refugee camps and the huge number of refugees that are being dealt with. The question that I and others ask is: how can we best use the resources that we can give to the people who really need it? How much more effective would it be to get aid, food and medical attention into these terrible camps, rather than spending huge sums of money on children here who cost the same as a term at Eton?

Lord Coaker (Lab): Of course that is right. That is why there was such a row about the cut in the aid programme. It is why we all believe that of course we have to try to prevent war, famine and all those things. Not to do that would be ridiculous. The sources of many of our problems are war, famine and disease, and all of those things, so of course we have to prevent them.

However, it is also important in the debate we have in this country about asylum and refugees—not immigration—to stand up to the view that "We take the lot". The idea that it is this country that has to deal with the situation, no other decent country in the world does it, we are the country that has to take them all and we are the weak link in it all is just not true, however unpopular it is to say so. Sometimes the way that you change public opinion is by arguing with it.

People will say, as no doubt the Minister will, "We won the election and therefore this is what the public think", but on asylum and refugees there is an argument for saying, "Of course we don't want open borders but there is a need for us to act in a way that is compassionate and consistent with the values that we have always had". Sometimes that costs you, as I know, but that does not mean you should not do it. Public opinion can therefore be changed, and the subject is debated. Indeed, policy and opinion can change in this Chamber, which is the point of it. In the interests of time, I will stop there.

Amendment 114 is exceptionally important because of the need for international action. To apply it to our own situation here, we will not deal with the migrant crossing problem in the channel without co-operation from France and the rest of Europe.

I want to talk about the importance of Amendment 113, and I take issue with the noble Lord, Lord Green, on this. It is not an open invite to everybody to pile their children—I paraphrase, but if I get it wrong then no doubt the noble Lord will correct me—into the EEA because that means they can all then come to the UK. The amendment clearly lays out that it is about people who already have a family member present in the United Kingdom. It is about family reunion and trying to ensure that unaccompanied children in the EEA who have a family member in the UK get the opportunity to be reunited with them.

I will finish with this point, which I know the Minister will agree with. The problem we have is that sometimes Ministers have to speak to Governments, to the computer and to the Civil Service and say, "This bit of the Bill is wrong. It does not work." Both Ministers have done it before on other Bills in other places where the Bills were wrong. On this issue of family reunion, the Government have got it wrong; they are not right. Nobody thinks that children who are unaccompanied in other parts of the EEA, for example, should not be able to reunite with their families in a way that is consistent with the values of this country, and it beggars belief that the Government would stand against that. It is not about an open door; it says quite specifically who should deal with it. I think if that were explained to the people of this country, and debated and argued with them, they would support it, because they are compassionate and decent, and in the end the compassionate and decent side will win. I think the Ministers are compassionate and decent, so let us have a Bill—in this aspect of it—that reflects that.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken to this group of amendments. I hope in what I am about to say that there will be at least some acknowledgment of the compassion and decency that we have shown as a country in the last few years—actually, the last few decades. It is such a hallmark of us as a nation. I also pay tribute to the noble Lord, Lord Dubs. Believe it or not, we like each other very much—we just disagree on quite a lot. But we have worked together in a civilised and friendly manner over the last few years, and long may that continue.

On the point about decency and compassion, Amendment 112 aims to expand the scope of the refugee family reunion policy. Under that policy, we have granted visas to over 39,000 people since 2015, over half of them being children, as the noble Lord, Lord Green of Deddington, pointed out. So, to answer the noble Baroness, Lady Jones of Moulsecoomb, we have looked into our hearts. We already have several routes for refugees to bring family members to join them in the UK, and it is important to carefully consider the impact of further amending our policy.

Family unity is a key priority, but noble Lords will know that we have a range of aims further to this, including ensuring that we have reasonable control over immigration and that public services such as schools and hospitals—and I think that it was the noble Lord, Lord Green of Deddington, who talked about the infrastructure of this country—are not placed under unreasonable pressure. However, I recognise that in some cases there will be exceptional and compassionate circumstances which warrant a grant of leave. To answer the noble Baroness, Lady Ludford, the guidance on exceptional circumstances will be published in due course. That is why our policy ensures that there is always discretion to grant visas outside the Immigration Rules, which may cater for the sorts of cases that do not immediately fall within our legal framework.

In terms of allowing child refugees to sponsor family members under this proposed clause, noble Lords will at least grant that I have been consistent in opposing that sort of policy, because of its negative consequences. It is highly likely that this would create further incentives for more children to be encouraged—or even, sadly, forced—to leave their family and risk extremely dangerous journeys to the UK in order to sponsor relatives. Such an approach would open children up to a huge exploitation risk, which completely contradicts the hard work and commitment of the Home Office in protecting children from modern slavery and exploitation. We refuse to play into the hands of criminal gangs, and we cannot extend this policy to allow child refugees to sponsor family members into the UK.

Beyond this, many of the conditions set out in this new clause are already included in our current family reunion policy and are taken into consideration when decisions are made inside or outside the rules. All noble Lords in Committee should have a copy of the various routes. Our prime consideration in all cases is the best interest of the child in question—and so it should be. As the number of visas we have granted under this policy reflects, we are committed to maintaining family unity for refugees. Caseworkers are encouraged to use discretion in considering whether entry may be granted in family reunion cases. By setting out conditions in primary legislation, we would lose the individuality of consideration, and the discretion of caseworkers would be void. I can assure the Committee that all relevant elements of each case are thoroughly considered on their merits under this policy, and there is no need to set it out in statute.

I turn to Amendment 113, on family reunion for unaccompanied asylum-seeking minors. I cannot support this proposed new clause. It tries to recreate the EU's Dublin regulation in UK law with respect to unaccompanied children who have claimed asylum in an EEA state but have family members in the UK. When the UK sought to raise these matters with the EU, our proposals had very clear safeguards for children. This proposed new clause has none. It creates entitlements to come to the UK to claim asylum if the minor has specified relatives but it fails to consider the individual needs of the child. It does not consider whether the UK relative can actually take care of the child or whether the child would be better placed with a relative, potentially an even closer relative, in another safe EEA state.

The other point about this proposal is that it does not work unilaterally. I am sure the noble Lord will concur with that. It requires co-operation from EEA states. It is not possible to legislate through this Bill to take children out of other countries' care and support

[Baroness Williams of Trafford]
mechanisms or their asylum systems. That requires agreement between states, which might not be possible and is certainly unlikely in the timescale of six months set out in the clause.

I see that the noble Lord, Lord Dubs, is about to stand up. Might I finish this point about the EU before he does? As he knows, we sought to negotiate with the EU on UASC family reunion and continue to talk to it on this important issue. However, at this point I cannot comment further.

Lord Dubs (Lab): I am grateful to the Minister for giving way. I hate to go over the past, but the whole point of having the Dublin III treaty in the 2017 Act—which was taken out in the 2019 Act, as I said—is that it has to be based on reciprocity. That was a sensible way forward; it is why we wanted to go down that path. That was the path blocked by the Government in the 2019 Act.

Lord Hylton (CB): The noble Baroness has twice in my hearing given the figure of 39,000 humanitarian visas for family reunion. Between Second Reading and Committee, I asked a Written Question on how many of those had been taken up, because I foresaw that force majeure, poverty or some other reason would prevent many of them actually being used. I got one of those answers saying, "We really cannot find or give you any figures." Can the noble Baroness be a little more helpful on the real results of those visas?

Baroness Williams of Trafford (Con): Going back to the noble Lord, Lord Dubs, first, I did not disagree with his point about reciprocity but I made it clear at the time that we were of course leaving the European Union. I have consistently said, and repeat now, that we will try to negotiate with the EU on UASC family reunion, whether that is across the EU or bilaterally with states. I cannot go any further on the negotiations, but we continue to try to do that. I hope that answers his question.

On family reunion visas, we can grant them, but the noble Lord asked about tracking whether people use them or not. I assume people apply for the visas because they need them and want to reunite with family in the UK, and whether they use them or not—I have just received an answer: all 39,000 have been taken up, so I hope that satisfies the noble Lord. I was just wondering how we could track whether someone had used a visa or not, which might be quite difficult.

I move to Amendment 114, on returns. Once again, we have a number of safe and legal routes to the UK that did not require a negotiating mandate. Our resettlement schemes have provided safe and legal routes for tens of thousands of people to start new lives in the UK. In particular, the mandate resettlement scheme recognises refugees who have a close family member in the UK who is willing to accommodate them. This is a global scheme and there is no annual quota. These routes work alongside the UK Government's commitment to increasing co-operation internationally, and we continue to seek to negotiate on returns with EU member states, as I have just said to the noble Lord, Lord Dubs.

9 pm

Beyond this, the Government have been consistently clear that asylum seekers should claim asylum in the first safe country they arrive in—that is the fastest route to safety. We do not want policies that support, or even encourage, dangerous and unnecessary secondary movement. As I have said, we are seeking agreements to re-admit those who have travelled through or have a connection to safe countries and to whom our inadmissible policy therefore applies, and are working with our neighbours on preventing abuse and ensuring the security of our borders.

Amendment 117 relates to refugee family reunion for the purposes of claiming asylum. First, as it has been stated by your Lordships many times during the passage of this Bill, those who need international protection should claim asylum in the first safe country—that is the fastest route to safety.

EU countries together operate the Common European Asylum System, a framework of rules and procedures based on the full and inclusive application of the refugee convention, the aim of which is to ensure fair and humane treatment of applicants for international protection. There is no reason why an individual already in Europe who needs protection needs to or should make an onward journey to the UK, because that protection is already available to them.

A second important issue is the routes that the UK already has to reunite families. Where reasons for coming to the UK include family or economic considerations, applications should be made via the relevant route, either the new points-based immigration system or our various family reunion routes. There has been very little discussion through the passage of this Bill of the fact that there are people all over the world with the skills that mean they could apply for jobs here. It does not all have to be about asylum—although I am not decrying the fact that this debate is largely about asylum.

We support the principle of family unity and have several routes for families to be reunited safely. Data shows that our family reunion policy is already highly effective and there is simply no need to replicate Dublin, as this amendment suggests. Indeed, in 2019, the latest year for which figures are available, there were 714 transfers into the UK under the Dublin regulation. In the same year, we issued 7,456 visas under refugee family reunion, so more than 10 times that amount.

The mandate resettlement scheme resettles recognised refugees who have a close family member in the UK who is willing to accommodate them. As I have said, it is a global scheme and there is no annual quota. Beneficiaries must have been recognised as refugees by the UNHCR and judged by them to be in need of resettlement, and have a close family member in the UK who is willing to accommodate them.

The noble Baroness, Lady Ludford, asked me how many grants under part 8 and paragraphs 319X and 297 there had been. I am afraid that those figures are not provided in published statistics, but if I can get any more information on that, of course I will.

Afghan refugees were mentioned. Of course, we got 15,000 people out in Operation Pitting. Under the ACRS, we will resettle 20,000 people. I would argue that Afghans are probably one of the most vulnerable communities in the world at this point.

Amendment 117 would, without careful thought, be likely to lead to a significant increase in the numbers who could qualify to come here, not just from conflict regions but from any country from which someone can already be granted protection. It would mean extended family members being able to come here who could themselves easily claim protection in the country they are in, which risks reducing our capacity to assist the most vulnerable, as I said before.

I shall just deal with a point made by the noble Lord, Lord Dubs, on housing. Those with family reunion leave have access to public funds, including public housing. There is no maintenance and accommodation requirement for family reunion under Part 11 of the rules, so there may be an impact on social housing, for example. In addition, as is the case the world over, family relationships break down, so that might impact on housing.

The amendment could simply create further incentives for more adults and children to be encouraged, or even forced, to leave their family and risk hazardous journeys to the UK in order later to sponsor qualifying extended family. That plays into the hands of criminal gangs which exploit vulnerable people and goes against the main intention of the Bill. We must do everything in our power to stop this dangerous trend. I hope that, with that, the noble Baroness will be happy to withdraw her amendment.

Baroness Ludford (LD): My Lords, I thank the Minister, who has given us detailed responses. Some of her points do not really take account of what inspired this set of amendments, which is that people do better if they have the support of their family. It may not be quantifiable, but my noble friend Lady Hamwee mentioned the case of a sibling. I can imagine having that my brother or sister with me in a strange place would be an enormous support. The way the Minister replied—which is obviously in her brief—was all about the numbers: never mind the quality, feel the width. We are talking about quality of life, integration and the chances that the person who gets status would have to thrive in the UK. The Home Office is a bit blinkered on this matter.

The Minister told me that the promised guidance on paragraphs 319X and 297 would be coming "in due course". That is a phrase that always chills the spine; I hope it is not too far away. It would be interesting to know what constitutes "serious and compelling" circumstances, as people are finding that it is very difficult to get through that test. I also note that she said that there is no data in published statistics on how many applications are granted under either of those two routes, and I look forward to her successful efforts to find that. It is a bit surprising that there are no published statistics on that, but I hope she has success in locating some.

The Minister said that there is no need for statute. I obviously disagree, because I am promoting a Private Member's Bill that would put it into statute. A lot of the problem here is that there is too much discretion and moving of the goalposts, so people do not know what they can rely on. It is all just too difficult, and there are numerous hurdles.

I listened to the Minister. I am fairly disappointed with what she said, but, as of now, I cannot do other than beg leave to withdraw the amendment.

Amendment 112 withdrawn.

Amendments 113 and 114 not moved.

Amendment 115

Moved by ***Lord Dubs***

115: After Clause 37, insert the following new Clause—

"Unaccompanied refugee children: relocation and support

(1) The Secretary of State must, within six months of the day on which this Act is passed, make arrangements to relocate to the United Kingdom and support a specified number of unaccompanied refugee children from countries in Europe.

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

(3) The relocation of children under subsection (1) is in addition to the resettlement of children under any other resettlement scheme."

Member's explanatory statement

This new Clause introduces a safe route for unaccompanied children from countries in Europe to come to the UK.

Lord Dubs (Lab): My Lords, this amendment is also about children, but it is about children who are in Europe and do not have family anywhere. It is similar to an amendment that was passed by this House and became Section 67 of the Immigration Act 2016. There is a long story to that; I will not waste noble Lords' time on it now except to say that there was quite a lot of resistance then on the part of the Government but, eventually, the amendment was passed and Theresa May, the then Home Secretary, accepted it.

However, as I understand it, Mrs May did so under the pressure of public opinion because, at the time, people were horrified when they saw dinghies and people drowning in the Mediterranean. They saw a little Syrian boy, Alan Kurdi, drowned on a Mediterranean beach. I think that woke up public opinion. The public then came onside and decided that we as a country can do this for unaccompanied child refugees. That is a summary of the history there. Theresa May then summoned me again to see her and said that the Government were prepared to accept the amendment.

The Government then decided that they would cap the number; it was capped at 480, I think. The Government's argument was that they could not find more local authorities to provide foster families and foster parents to take in more children—a point that was disproved by Safe Passage, which contacted a number of local authorities and found around 1,500 places. Whether they are there today, I do not know, but they were certainly there at the time. There is a problem, of course: there is increasing financial pressure on local authorities, so local authorities are willing to do it but probably cannot afford to do it. There are difficulties; I can see that. Nevertheless, Amendment 115 says:

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

That is close to the wording of the earlier amendment some years ago.

[LORD DUBS]

The argument here is that, in principle, the Government should accept that we will take a few—only a few—unaccompanied child refugees in Europe, and they should settle on how many and the speed in conjunction with local authorities and with regard to local authorities' ability to provide foster places. It is a simple proposition. I believe that public opinion is still supportive of it. We have sought support across the political spectrum on this because that is, I am sure, the best way to be successful. Faith groups have been very supportive; altogether, we have a good coalition of people supporting the principle in this amendment and the earlier amendment on Dublin III that I spoke about.

This amendment makes a simple proposition. It would not be difficult for the Government to say that, where there are unaccompanied children who have nowhere else to go and are stuck, we could take at least some of them—not all of them, but some of them—in this country and repeat the small successes of a few years ago. I beg to move.

Lord Kirkhope of Harrogate (Con): My Lords, Amendment 116 is in my name. I thank my noble friends Lord Shinkwin, Lady Stroud and Lady Helic for their support. We propose a workable, sensible and impactful solution for the Government to meet their stated objective, as set out in Explanatory Notes,

"to enhance resettlement routes to continue to provide pathways for refugees to be granted protection in the UK."

Introducing a carefully designed, long-term global resettlement scheme with a numerical target will have the effect of meaningfully expanding safe routes for the world's most vulnerable refugees.

9.15 pm

Last week, as I am sure noble Lords have already acknowledged, we commemorated Holocaust Memorial Day. That included reflecting on Britain's role in admitting Jewish refugees fleeing Nazi persecution, and the success, as is well known here, of the Kindertransport, together with other initiatives implemented at the time. It is interesting to observe that today there is wide acceptance that the refugees back then were genuine: no one would deny that Jewish people faced an existential threat. They desperately needed safety, and the UK helped to bring them to safety. Of course, at the time, the questions of whether, and how many, refugees should be allowed into the UK were not without controversy. Decisions were not straightforward, but hindsight does wonders for perspective. Today, we look back on their plight in sympathy; we avow to have learned from history, but I regret to say that attitudes have not altogether moved on.

The Government have repeatedly stated that people in need of protection should come to the UK via organised, safe routes. These safe routes, however, are not always accessible for most people. The UK, of course, has a very sound record when it comes to responding to urgent crises. It did it very well for Syrians, with a world-leading scheme that transformed the lives of 20,000 people fleeing conflict. We did it too for Bosnians, when I was proud to be the Minister responsible for that scheme. We are doing it for Afghans. While the commitment to provide 5,000 resettlement places for Afghan refugees in 2021 through the Afghan citizens resettlement scheme was most welcome, the scheme was restricted to one geographical area.

My amendment proposes to include these numbers in a global scheme that is flexible and responsive, and offers the Home Office the time and space to plan capacity to deliver it properly. Our EU partners have resettled some 81,000 refugees since 2015, despite the disruptions caused by Covid-19.

I would like to say that creating more safe routes will, for a start, help make proper distinctions between economic migrants and asylum seekers, and between those who are legal and those who are not. This was debated earlier today by a number of noble Lords. Unfashionable though it is to commit to numbers, it is the only way to make resettlement viable. A resettlement target, as in my amendment, of 10,000 people per year is eminently achievable.

It is not just about helping more vulnerable people. A target will also ensure that the Government are accountable and will enable local authorities to plan ahead. It will allow the Home Office to present projected costs to HM Treasury as part of the spending review cycle. A target is a practical solution that will give the UK clarity, certainty and control.

Some might ask why 10,000 is an appropriate target. Why not double that or half of that? My response is that it is a good starting figure and a reasonable place to begin. In fact, a resettlement target of 10,000 a year would amount to around five families being accommodated for every local authority in the UK or around 15 refugees for each parliamentary constituency. This is a moderate and sensible proposition that is eminently achievable with the right approach.

Lord Alton of Liverpool (CB): My Lords, I will speak to my Amendment 119B and in support of Amendment 119A, in the names of the noble Baronesses, Lady Kennedy of the Shaws and Lady Chakrabarti. I should mention that the noble Baroness, Lady Kennedy, is overseas in Estonia at this moment and unable to be here. In speaking to these amendments, I draw attention to my entries in the register of interests. I am patron of the Coalition for Genocide Response and vice-chairman of the All-Party Parliamentary Groups on the Yazidis and on the Uyghurs. In introducing my amendment, I associate myself with the remarks of the noble Lords, Lord Dubs and Lord Kirkhope. I strongly support what has just been said.

I begin by referencing the play "Leopoldstadt" by Sir Tom Stoppard. It is a heart-breaking story of one Jewish family in the years before the Second World War and in the aftermath of the war. Among other issues, it highlights the challenges faced by people subjected to persecution and what we now know was genocide and the Holocaust—people who could not find a safe haven anywhere else. Strict quotas meant that only a few of them would find a safe haven. Long waiting lists meant that some people would never move to a safe country. That same challenge continues to this very day.

Amendment 119B, concerning those who are subject to genocide, returns to an issue that was also the subject of an amendment tabled by myself, the noble Lord, Lord Forsyth, my noble friend Lady Cox, and

the noble Baroness, Lady Kennedy, which I moved in 2016. We drew the attention of the House to the plight of the Yazidi, Christian and other minorities who were said to be facing genocide. We argued that our asylum procedures should create a specific category to help those judged to be at immediate risk of genocide. That was five years ago on 3 February 2016, as recorded in *Hansard* col. 1888; we moved Amendment 234A, which sought to offer help to those whose lives were so clearly at risk of genocide. Although at the conclusion of the debate, the then Home Office Minister, the noble Lord, Lord Bates, agreed to give the proposal further consideration, it was ultimately vetoed.

That amendment, like this one, followed the presumption that a person would be granted asylum when a senior judge determined that a group to which that person belongs is, in the place from which that person originates, subject to genocide. The presumption would operate in the United Kingdom but, in addition, applicants would be able to apply at British consular posts overseas—a point that I raised during earlier proceedings in Committee.

I remind the House that genocide is defined in Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide as follows:

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: … Killing members of the group; … Causing serious bodily or mental harm to members of the group; … Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; …Imposing measures intended to prevent births within the group; … Forcibly transferring children of the group to another group."

Although, in 2016, the Parliamentary Assembly of the Council of Europe had adopted a resolution stating that ISIS

"has perpetrated acts of genocide and other serious crimes punishable under international law"

—a view incidentally supported in a letter by 75 Members of your Lordships' House, including the former chief of staff of our Armed Forces and the former head of MI5—the Home Office refused to accept that a genocide was under way. There was clear evidence that the Yazidi genocide extended to religious minorities, with assassinations of church leaders, mass murders, torture, kidnapping of women, forcible conversion, the destruction of churches, monasteries, cemeteries and religious artefacts, and thefts of land and wealth from clergy and laity alike. ISIS made public statements taking credit for the mass murder of the Christians and Yazidis and expressing its intent to eliminate these minority communities and other groups such as homosexuals from its territory.

The government response was the usual one designed to avoid the duties set out in the 1948 convention:

"It is a long-standing government policy that any judgements on whether genocide has occurred are a matter for the international judicial system rather than Governments or other non-judicial bodies."

This continues to be a frustrating and circular argument. In 2016, a Foreign Office Minister told the House:

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

As for referring the matter to the International Criminal Court, we were told:

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

No one was willing to name this genocide for what it is or take forward the necessary responses.

As recently as this morning, in a debate in Westminster Hall in another place, Brendan O'Hara and members of the All-Party Group on the Yazidis raised these very issues and the continuing the atrocities that occur against the Yazidis. It has taken up until November of last year for a court—in this case, a German one, in Frankfurt—to convict one of those responsible for the crime of genocide. The UK still refuses to do the same. That member of ISIS was jailed for life, in November, for buying a five year-old Yazidi girl as a slave and then chaining her up in the hot sun, where she burnt to death.

Since our debate in 2016, I have pursued this circular argument in amendments to the Trade Act, the telecommunications Act, the Health and Care Bill and this Home Office Bill. I admit to having been deeply affected by visiting northern Iraq and taking first-hand accounts from Yazidi, Assyrian and Chaldean Christian survivors in 2019.

A United Nations report stated that ISIS held 3,500 slaves hostage, mainly women and children, and had committed acts that

"amount to war crimes, crimes against humanity and possibly genocide."

Murder has been accompanied by other horrors. An estimated 5,000 young Yazidi women and girls were abducted by ISIS, suffering horrific and prolonged sexual abuse. They were imprisoned for months on end, beaten, burnt and exposed to daily rape and torture. Horrifyingly, some of those victims were as young as nine. Sadly, some girls took their own lives in desperate attempts to escape the horrors of captivity.

Despite all this, we have failed to create a safe or legal route to enable safe passage for those who were so grievously at risk. At the time, the Weidenfeld fund, Mercury One and Operation Safe Havens said they were able to process asylum applications and do the necessary security clearances to a higher standard than the UNHCR and in a matter of weeks. Lord Weidenfeld's decision to create a special fund to assist endangered minorities at risk of genocide should have inspired us all to do more, but it did not.

My noble and learned friend Lord Hope of Craighead advised us on the formulation of Amendment 119B, and we have followed his advice. It would ask a judge of the High Court of England and Wales to examine the evidence and make a determination. It would provide a process and duty to act. It would then ensure that victims of genocide were given priority in asylum applications. This is not about numbers, nor about those who threaten the security and ideals for which this country stands. Many suffer, but this is about those who have been singled out and our duty under the genocide convention to protect them.

It is worth recalling that in 2016 the noble Lord, Lord Forsyth, said to the then Minister,

"I say to my noble friend the Minister: throw away the brief from the Home Office and go back to the department and tell it what has been said this evening. I am certain that, despite the media

[Lord Alton of Liverpool]

coverage and the information that is available, people in this country have no idea of the extent of the horrors that are being perpetrated".—[*Official Report*, 3/2/16; col. 1894.]

That rather echoes what the noble Lord, Lord Dubs, said a few moments ago about the true attitudes of people in this country. That amendment was supported by people such as the noble Lords, Lord Marlesford, Lord Dubs and Lord Wigley, the late Lord Judd, the noble Baroness, Lady Hamwee, and others. But despite the promise in 2016 of further thought, and a subsequent vote in the House of Commons declaring events against those minorities in northern Iraq to be a genocide, here we are five years later still failing to define when a genocide is under way and conveniently avoiding our responsibility to act under the terms of the convention. That convention was so brilliantly crafted by Raphael Lemkin, the Polish-Jewish lawyer who coined the word genocide and saw more than 40 of his own family killed during the Holocaust.

We now need a different approach to give a chance to the communities facing annihilation. Closing the door to them should not be an option. The Bill offers us an opportunity to create a safe and legal route for victims of genocide. By way of example, in January this year I asked the Government

"what plans they have to create a bespoke humanitarian visa scheme for Uyghurs",

another ethno-religious community facing annihilation, this time in Xinjiang in China—but they also live in other places. The response to this Question can be described only as negligent. I was told:

"While we sympathise with the many people facing difficult situations around the world, we have no plans to introduce a bespoke humanitarian visa scheme for Uyghurs."

However, there is a small glimmer of hope in that Uighurs from Afghanistan may be considered for resettlement under the Afghan citizens resettlement scheme as religious minorities at particular risk. The amendment could logically build on that.

On the downside, that resettlement route is unlikely to be even considered before 2023. If a person is facing an existential threat—a phrase used earlier by the noble Lord, Lord Kirkhope—whether in Afghanistan or at risk of being repatriated to China, where they would face existential threats with the rest of the Uighur community, is it reasonable to expect them to wait more than a year for their case to be considered?

9.30 pm

The same applies to the Hazara community in Afghanistan, referred to by the noble Lord, Lord Kerr. The community is being slaughtered both by the Taliban and ISK. Since August, I have received hundreds of messages from Hazaras who have been in hiding for weeks and months and are scared for their lives. The noble Baroness, Lady Williams of Trafford, has received copies of many of those emails, which I have sent her. Again, how realistic is it to tell them that they may have to wait a year—or maybe years—for their case to be considered?

We need to learn from the past and the failed responses to other genocidal atrocities. We need to analyse and learn from the failed responses to the Daesh genocide against Iraq's minorities: as the Yazidis and other minorities were slaughtered by Daesh, we did not open the door to them. Reports suggest that among those resettled to the United Kingdom, there have been no Yazidis whatever and no Christians from northern Iraq—none. I would be most grateful if the Minister could tell us what the numbers are, or, if she does not have them, perhaps she could arrange for us to receive them between now and Report.

It is quite extraordinary that no one from a religious minority facing Isis genocidal atrocities has been considered as being at particular risk or as particularly vulnerable, among those considered for resettlement in the United Kingdom. To this day, these communities face serious risks—from Daesh, still present in the region, but also from Turkish attacks that continue to bombard Yazidi homes in Sinjar in Iraq and northern Syria. They continue to be terrorised and are living in fear. Many young people cannot cope with this level of threat and pressure, and we hear of high rates of suicide among the minority communities at risk. That is why I believe that Amendment 119B is needed.

I will leave it to the noble Baroness, Lady Chakrabarti, to deal with Amendment 119A on emergency visas, but I say simply that I associate myself entirely with the motives that underlie it. I have accompanied the noble Baroness, Lady Kennedy of The Shaws, to a number of meetings with Afghan judges, journalists and other human rights defenders, and the case being made for that amendment—comparing it with what goes on already in countries such as Canada—is well worth examination. I certainly commend it to the Committee.

Baroness Hamwee (LD): My Lords, I am sure this was not at the top of his list, but the noble Lord, Lord Alton, has reminded us of the role of the arts in this area. Artists, playwrights and others could express better than the rest of us what they feel, and audiences could perhaps get a wider and deeper understanding of the issues involved. The area of arts and culture is hugely important in this.

Earlier this evening the noble Lord, Lord Wolfson, said that we will continue to grant humanitarian protection, and Amendment 118 seeks to extend that to a humanitarian visa. I will explain it as quickly as I can, because what is most important is that we hear what the Minister has to say. If it is a "Sorry, no", we need to understand why. I express my gratitude to Garden Court Chambers for drafting this amendment, which spells out the requirements and the process.

The amendment seeks to provide an exceptional route by which a person abroad—not in this country—can obtain a visa to come to the UK to seek asylum. At the moment, it is generally not possible to claim asylum in the UK unless one is already here. This visa could be applied for from anywhere in the world. The person would have to show that, if made in the UK, the claim

"would have a realistic prospect of success",

and also that

"there are serious and compelling reasons why"

it should be considered in the UK. In assessing that, the entry clearance officer would take into account the extent of the risk of persecution or serious harm—persecution having the meaning that it has in the UN

refugee convention, and serious harm meaning treatment that, if it occurred in the UK, would be contrary to Article 2, the right to life, or Article 3, the prohibition of torture and inhuman or degrading treatment or punishment, of the European Convention on Human Rights.

If a humanitarian visa is granted, the person will be granted a visa—I stress that—of at least six months' duration. The Home Secretary could set conditions such as restricting access to work. On coming to the UK, the person will be deemed to have made an asylum claim and will go through the normal asylum process like any other asylum seeker, so the normal processes would not be sidestepped. There would be a full right of appeal, which is Amendment 119.

I have written down the words "Controlled and organised process". Those working in the sector have long advocated humanitarian visas, which would be one of a suite of safe and legal routes. The humanitarian visa route would not be something that many could take advantage of, but it is significant and structured.

I will leave that there; as I say, the Minister's response is more important tonight. However, on Amendment 119A, I will say that I was not surprised to see it. The noble Baroness, Lady Kennedy, never misses an opportunity to buttonhole someone who might assist the women judges, other lawyers and others in Afghanistan. What she is seeking is only temporary, in the same way as a humanitarian visa would be. It is one thing to get people out of the country when they are at risk—she has had the most extraordinary success—but it is another to find somewhere for them to go.

Baroness Jones of Moulsecoomb (GP): I will not repeat myself—well, I am going to repeat myself just briefly. If the Government saw refugees as human beings, they would already have written these amendments into the Bill. We are pushing at a closed door at the moment. We should be taking more refugees and creating more safe routes.

I have a word of warning, which is that there will be many climate—ecological—emergencies over the next decade or so and, given that we have contributed a large part of the world's accumulated CO_2 emissions, we have to understand that we have a moral duty to take our share of climate refugees. It is already happening. There are parts of Africa that are now almost uninhabitable because of climate change, and other places will shortly follow. We have to understand that refugees are not a temporary problem but a permanent problem, and there will be a lot more. If we prepare well and put the programmes and the funding in place, we can cope and do it well. However, while the Government treat refugees as criminals and unwanted people, I am afraid that I see this simply as another reason why the Government have to go.

Lord Kerr of Kinlochard (CB): I think the noble Baroness's warning is very well taken.

I support Amendments 118, 119A and 119B, but I want particularly to speak in favour of Amendment 116 in the name of the noble Lord, Lord Kirkhope. The noble Lord and I have done business together for a long time—the past is another country, and it was in fact in another country—and it is a pleasure to be supporting his amendment. I should also say that I am very grateful to the Minister for the letter that she wrote to the noble Lord, Lord Dubs, with a number of useful factual points in it. I am very grateful for my copy today.

It seems to me that the amendment raises two questions: why should one set a number, and why 10,000? Why should one set a number? I am a trustee of the Refugee Council and I have spent some time trying to work out why so many of the Afghan refugees who came here last summer are still in temporary bridging accommodation. I have not quite got to the bottom of it, but it seems to me that the problem is not ill will or lack of intention. I do not criticise the Government. It is a problem with local authorities that arises from the squeeze on their budgets and lack of certainty over financing. The attraction of setting a minimum number is the certainty of having a number in the public expenditure survey—a number negotiated with the Treasury. The Treasury would need to ensure that local authorities were equipped with the money to pay for at least that level.

There seems to be no shortage of willingness in local authorities; it is a shortage of funding in local authorities. When you look at the huge number of local authorities—nearly 300—which came in under the Syrian refugee scheme, it seems to me that what is needed is the certainty that enables one to plan ahead for financing and finding accommodation. So I think setting a number is a good idea and I support the noble Lord, Lord Kirkhope, for that reason.

Is 10,000 the right number? There are 28 million refugees in the world; it does not seem a very high number. Canada is taking 35,000 Afghans in this calendar year. The population of Canada is just over half the population of the United Kingdom. Comparing us with Europeans, we are number 21 out of 42—bang in the middle of the pack. With our tradition of a presence around the world, that seems to be quite low.

On the other hand, it is probably more than the hotchpotch of present schemes will bring in. It probably would be an increase, but I cannot say for sure because, as the Minister says in the enclosure to her letter today, rather surprisingly, 11 months in, it is still too soon to produce any statistics on how many people are coming in under the resettlement scheme that started in March last year. We do not know how many we are taking now, so we do not know whether this would be an increase. I suspect it would be, but I suspect that overall refugee numbers coming to this country would drop over time. I think this is the answer to the channel problem; 26,000 people came across the channel last year. If there were safe routes—and here is a safe, reliable route—fewer people would try to come unofficially. Fewer people would get killed trying to come into the country.

So I think that, although the number of official refugees would probably go up if we set a 10,000 minimum, the total number of refugees coming here would probably go down. I cannot prove it but that is my instinct. It seems to me that so strong is the incentive to find safe routes that this is a very good way of going about it, so I support the amendment.

Baroness Meacher (CB): My Lords, I will speak extremely briefly in support of Amendment 116, which for more than 300 refugee organisations is apparently one of their two top priorities in terms of amendments to the Bill. I think it is really important, actually. We have heard powerful arguments for a whole lot of important amendments, but I think the Minister and the Government need to take seriously the views of more than 300 refugee organisations.

The Government have argued that people in need of protection should come to the UK via safe routes, but these organisations tell me that only 1,000 people came through these schemes last year. Does the Minister agree that that figure is unacceptably low and needs to grow substantially, as the noble Lord, Lord Kerr, has just said, if we are to reduce the number of desperate people risking their lives to cross the channel in small boats? I believe that the noble Lord, Lord Kerr, is absolutely right: this is the way to achieve that objective.

One of the strongest arguments for a resettlement target, as expressed by the noble Lord, Lord Kirkhope of Harrogate, is that only five families per local authority would achieve that target. With a little funding from the centre, at least, that seems incredibly straightforward. Does the Minister agree that this is a realistic target and that the certainty that this would provide for local authorities is absolutely crucial?

9.45 pm

Baroness Ludford (LD): My Lords, I am pleased to support Amendment 115, in the name of the noble Lord, Lord Dubs, which I have co-signed. Of course, it aims to provide a safe route for unaccompanied children from countries in Europe and broadly reproduces what we all know as the Dubs amendment to the Immigration Act 2016. There have been warm words, deservedly, about the role and record of the noble Lord, Lord Dubs; what better way to put that into something concrete than for the Government to accept Amendment 115?

I support all the amendments in this group, but I will just speak in support of Amendment 116, in the name of a noble quartet of Conservative Peers, which would provide for "at least 10,000" refugees to be resettled annually. The noble Lord, Lord Kerr, has discussed the ins and outs of that figure, but it is better than 1,000 a year, which we hear was the low achievement last year. This figure happens to be Liberal Democrat policy, so I very much agree that it is a moderate and sensible amendment. As I say, I support all of the other amendments in the group.

Lord Horam (Con): My Lords, I am not sure that I should support a Liberal Democrat policy this evening; none the less, I agree with what the noble Lord, Lord Kerr, said about the importance of targets. I am sure that one of the reasons that local authorities are reluctant to accept more people is the uncertainty that they have at the moment. They genuinely have a shortage but, inevitably, they hold back when they do not know exactly how many are expected.

I have long argued for targets in this area; I think they are an important part of it precisely because you need sensible planning, frankly, and this could be a way forward. Whatever the numbers may be, we ought to have a proper debate each year on refugees, asylum seekers and immigration as a whole, in which the Government's plans are set out and we can all make a contribution, in the Commons as well as here, and decide what should be the targets for the following year. This would give everyone, including local authorities, some confidence and certainty about what they are expected to do.

I am afraid I do not think that that will actually reduce the numbers of people coming across the channel—I am sorry to disagree with the noble Lord, Lord Kerr, on this point—for the reasons that I spelled out previously. Demand is so great that people would still try to cross the channel, even if we expanded the number, for certainty, of people coming across under safe schemes. None the less, the idea of having transparency and target setting is very valuable.

The Lord Bishop of Durham: I will try to edit my speech as I go. I support Amendment 118, to which I was pleased to add my name. We all agree that we do not want unsafe journeys, and there is no silver bullet: the situation is complex. If a deterrent was really the answer, securitising the Eurotunnel and the ferry ports has not worked; it has just created even more dangerous routes. So we must have more safe and legal routes.

The major reason I support the idea of a humanitarian visa is that it is a further safe and legal route. It also addresses the issue of people coming from the countries where there are smaller numbers who face persecution and so on, for whom bespoke schemes are never going to be created. Last year, only 93 people arrived from Iraq, five from Yemen, none from Iran and 36 from Sudan. That is all those who were resettled last year. The focus became so heavy last year on Afghanistan and Hong Kong, through the BNO scheme, that all other refugees appeared to be forgotten, so we need this kind of visa. I hope the Minister will not pick holes in the way the amendment is worded because the point is that this kind of visa needs to be looked at.

I also speak in favour of Amendment 116—it is very nice to speak with the noble Lord, Lord Horam, on one occasion. During the Syrian crisis of 2015, a target was set of 20,000 and it helped galvanise everybody with a vision of what could be done. It helped local authorities to understand what kind of numbers they might expect and so on. We also saw through that process the creation of the community sponsorship scheme, so we came up with a new thing through a targeted number. Ten thousand is a number widely supported, as the noble Baroness, Lady Meacher, noted, by huge numbers of refugee organisations because the UNHCR has identified that it is, roughly speaking, our fair share across the world. It is not a number plucked out of thin air but from looking at our fair share across the globe. I hope that we will hear positively the idea that it can happily include the Afghan citizens resettlement scheme. I shall stop there because we need to keep moving.

Baroness Chakrabarti (Lab): My Lords, this is the safe-route group and I associate myself with so much of what I have heard already, although I signed the amendments in the names of my noble friend Lord Dubs and the noble Baroness, Lady Kennedy of The Shaws,

who is absent. We have heard already about the many ways in which the Government try to have it both ways in the Bill. On a previous group, we heard from the Minister how, for example, European precedent is to be hugged if it is deleterious to the refugee but shunned if it means co-operation and burden-sharing. We have understood that the Government, essentially, want to make it harder with the Bill to get here but if you manage to get here, it will be harder to qualify for protection because we are rewriting the convention.

The Government tell us that they do not want people coming via unsafe routes, in little boats and so on, yet they do not provide adequate safe routes—or maybe they do, but if so they do not want it to be in statute because while it is important to fetter judicial discretion in statute, Home Office largesse should not be similarly constrained, structured or put in law. This group deals with the final two contradictions in particular: providing the safe routes and putting them in statute. For those two reasons I really hope that the Minister, who I know to be a compassionate and logical person, will see the need for something in statute to go with sentiment about safe routes.

Baroness Stroud (Con): My Lords, I speak in support of Amendment 116 in the name of my noble friend Lord Kirkhope, to which it was a pleasure to add my name. Listening to the noble Lord, Lord Alton, I was persuaded by his arguments as well on Amendment 119B. I too shall edit along the way, given the speeches already made.

As we debated last week, I have grave concerns about the creation of a two-tiered refugee system but was encouraged to hear my noble friend the Minister agree that creating a two-tiered system can make sense only if there are adequate and consistent safe and legal routes. As my noble friend set out in the debate last Tuesday and circulated in her note, the Government have taken steps in recent years to create some safe and legal routes, as we have heard, through the refugee family reunion scheme, the Afghan resettlement scheme and the vulnerable persons resettlement scheme.

I am encouraged that the *New Plan for Immigration* charts a road map for resettlement, albeit without setting an annual target. It states:

"The UK's commitment to resettling refugees will continue to be a multi-year commitment with numbers subject to ongoing review guided by circumstances and capacity at any given time."

It also confirms the Government's objectives that

"programmes are responsive to emerging international crises".

This amendment is not intended to say that there are currently no safe and legal routes; we have heard that there are some. Instead, it pushes for greater consistency in our approach to ensure that there are pathways for the most volatile situations in the world. If we want to be responsive to emerging international crises, we need the infrastructure in place to do so, as the noble Lord, Lord Kerr, pointed out.

One of our greatest challenges for Afghan arrivals has been that we do not have the capacity or infrastructure to take such a big influx so quickly. This is largely because we do not have that infrastructure for welcome and integration in place. The success of the Canadian approach to refugee resettlement lies in its consistency. There is strong integration infrastructure, well-resourced civil society groups and genuine expertise in local authorities. This is why the Government setting a baseline target of the number of refugees who will be resettled by safe and legal routes could help to build and maintain the infrastructure that is required.

If the response to Afghanistan proves one thing, it is that we need to guarantee consistency to both the local authorities and civil society groups which do so much to ensure smooth transitions for asylum seekers. A predictable but flexible global resettlement model in which the Government retain control over how many places are allocated enables the Home Office to react swiftly to international refugee crises in a co-ordinated fashion with local authorities to scale provision in line with demand if required.

My noble friend the Minister will observe that the four named supporters of this amendment sit on the Conservative Benches. This is not because other Members of this House were not supportive, but because the strength of support on the Conservative Benches meant that we got there first. A basic target of 10,000 would ensure that every year we are joining the international community in what needs to be a global response and ensures the Government can say with integrity that it is not only firm, but fair.

Lord Paddick (LD): My Lords, this is another group of positive measures that are intended to provide an antidote to the other measures in this Bill. As the noble Lord, Lord Dubs, explained, Amendment 115 would be akin to a replacement for the Dubs scheme that provided a safe route for unaccompanied children from countries in Europe to come to the UK.

Amendment 116, as we have heard, sets a minimum target for the number of refugees resettled in the UK of 10,000. There appears to be some logic and reasoning behind that. A number of organisations have suggested that number. We discussed before in Committee how an agreed number of refugees accepted by the UK each year could be arrived at, taking into account such matters as the number of claims per 10,000 population compared with other European countries. As the noble Lord, Lord Kerr, said, we are in the middle of the pack as far as Europe is concerned, at the moment.

We agree and, as my noble friend Lady Ludford said, the 10,000 number happens to be Lib Dem policy as well. Of course, that could be flexible on the basis of the capacity of the country to take refugees and the number of refugees being taken by our allies. It is a global problem that requires the UK to play its part, along with other countries both inside and outside Europe, one also addressed by Amendment 119E in the name of the noble Lord, Lord Rosser, which seeks to provide a statutory general UK resettlement scheme.

I have spoken before about the Government's ambition to

"break the business model of the people smugglers"

and how the unintended consequences of the measures in this Bill are reinforcing that business model, making it more and more difficult for genuine asylum seekers to get to the UK without people smugglers' help. Amendment 118 is a way to seriously damage the people smugglers' business model. As my noble friend

[LORD PADDICK]
Lady Hamwee said, the amendment seeks to pre-screen would-be UK asylum claimants and allow those with a realistic prospect of success, and who have serious and compelling reasons for coming to the United Kingdom, to come to make a claim for asylum and remain temporarily while their claim is considered.

10 pm

If those in northern France, for example, know there is no point in making the dangerous journey across the channel, because they have been told their claim is unlikely to be successful while still in France, they are likely to be deterred. While they still believe there is a chance, they may be tempted to risk their lives. The proposal is set out in detail in the amendment, as my noble friend explained, together with an appeals mechanism in Amendment 119, and we strongly support these amendments.

The noble Baroness, Lady Kennedy of The Shaws, seeks emergency visa provision in light of her work with those fleeing Afghanistan, and we support her Amendment 119A, which I believe would also cover the circumstances set out by the noble Lord, Lord Alton of Liverpool, allowing members of groups affected by the crime of genocide to apply for asylum at British overseas missions. We support all the amendments in this group, which are designed to balance the onslaught against allowing refugees to settle in the UK, which most of this Bill represents.

Lord Rosser (Lab): My Lords, our Amendment 119E, seeks to put a global resettlement scheme on a statutory footing. In that sense, it is very similar to the new Dubs scheme, if I can call it that, for unaccompanied children. I also speak to Amendment 116, which was tabled by the noble Lord, Lord Kirkhope of Harrogate.

The Government's stated intention through this Bill is to prevent people risking their lives taking dangerous journeys to the UK, but instead of talking about differential treatment, inadmissible claims, pushbacks, offshoring, reinterpreting the convention and other measures, we should be talking about safe and legal routes. If a person fleeing conflict, torture and persecution has a safe route by which to get here, they will take it. If they do not, they will take other, dangerous routes. Suggesting that other measures have or may have any deterrent effect is frankly not an answer when there is no international evidence, and the Home Office has recognised that asylum seekers often have no choice in how they travel and face exploitation by organised crime groups. If the Government want people to travel here by safe, alternative routes and break the business model of the people smugglers, their efforts need to be focused on providing those routes, which the three amendments I refer to do.

I will concentrate the rest of my remarks, which will be brief, on resettlement schemes. The argument for the Dubs scheme has been made before and was made very powerfully again tonight by my noble friend Lord Dubs. Initially, the Dubs scheme, passed into law by a Conservative Government, was envisaged to take 3,000 unaccompanied children who had fled unimaginable horrors and were travelling or in refugee camps on their own. It has been said tonight that, in reality, the scheme was capped at 480 children, and fewer children were actually resettled before the scheme was closed down. Where is the Government's commitment to taking unaccompanied children who are in desperate need of safety? Does the Minister accept that, without this route, some children will have turned, and will continue to turn, to people smugglers instead?

Our earlier Amendment 114, Amendment 116 tabled by the noble Lord, Lord Kirkhope of Harrogate, and my Amendment 119E all deal with a global resettlement scheme. Amendment 119E seeks to put the UK resettlement scheme on a statutory footing and would require the Secretary of State to report annually to Parliament on the operation of the scheme and the number of people resettled under it. For now, it does not include a target, unlike Amendment 116. As the Opposition, we have raised concerns that the 5,000 people due to be resettled under the Afghan resettlement scheme may not be enough of a commitment in response to that crisis.

So there are questions about how a target would be designed, but the aim is the same as Amendment 116. It is, first, to create an active global resettlement scheme that can respond flexibly and at speed to needs, as they emerge; and, secondly, to ensure some kind of mechanism to hold the Government to account. This is to ensure the scheme is actually resettling people at the rates and numbers expected and is not simply announced in a press release then left to lie dormant or underperform.

Announcing the UK resettlement scheme, which was launched after the closure of the Syrian scheme, the then Home Secretary confirmed that

"the UK plans to resettle in the region of 5,000 of the world's most vulnerable refugees in the first year of the new scheme".

Since that announcement, as I understand it, the scheme has settled less than a fifth of that number each year, with an annual average of 770 people. How do the Government expect the other 4,230 of the world's most vulnerable refugees each year to travel here? Do they expect them to go elsewhere or not go at all?

If we share the aim of ensuring people who are fleeing the worst can do so safely—and I am sure everyone in this House does—we need to work together to provide a reliable, active, responsive route to do so. Currently, the Bill is silent on this and, in answer to questions from the Commons, the Government gave no details about their plans. I hope the Minister is able to give more detail tonight.

The Government should, in this Bill or alongside it, commit to an expanded proactive resettlement route. The mechanism for doing that is provided in both Amendments 116 and 119E.

Baroness Williams of Trafford (Con): My Lords, I thank everyone who has taken part in what has been quite a full debate. Amendment 115 seeks to introduce a safe route for unaccompanied children from countries in Europe to come to the UK. We all want to stop dangerous journeys in small boats and avoid a repeat of the distressing events of 24 November last year in the channel, where 27 people tragically lost their lives. We all know that children were impacted by that event, and I am sure that every noble Lord in this Committee is concerned about vulnerable children.

I think we can also agree that European countries are safe countries. Together, EU countries operate the Common European Asylum System, which is a framework of rules and procedures based on the full and inclusive application of the refugee convention. Its aim is to ensure the fair and humane treatment of applicants for international protection. There is no need for an unaccompanied child in a European state who needs protection to make a perilous onward journey to the UK, because that protection is already available to them.

I therefore argue that these proposed clauses would put vulnerable children in more danger by encouraging them to make dangerous journeys from outside Europe into Europe to seek to benefit from the scheme. They would create a new pull factor, motivating people to again entrust themselves to smugglers. While they might avoid the danger of a small boat, we know that journeys over land—for example, in the back of lorries—can be equally perilous. We cannot and must not do anything that supports the trafficker's model. I am resolute on that. I know that is not what the noble Lord, Lord Dubs, intends, but it is the reality of this proposed new clause.

The UK does its fair share for unaccompanied children. According to the latest published statistics, there were 4,070 unaccompanied asylum-seeking children being cared for in England. In 2019, the UK had the most asylum applications from unaccompanied children of all EU+ countries and had the second highest in 2020. The Government met their one-off commitment to transfer 480 unaccompanied asylum-seeking children —we did meet that commitment—from Europe to the UK under Section 67 of the Immigration Act 2016, which is referred to as the Dubs scheme. This is essentially that scheme again in all but name.

The clause also fails to take into account the reality for unaccompanied children entering the UK domestic system right now. I am very grateful to the many local authorities who have been able to provide support on a voluntary basis to the national transfer scheme, introduced to enable the transfer of unaccompanied asylum-seeking children from one local authority to another, which aims to deliver a fairer distribution of unaccompanied children across the UK. Due to the extremely high intake of unaccompanied children over recent months, particularly as a result of small boat crossings on the south coast, and pressures of entry on local authorities, the national transfer scheme has been unable to keep up with demand. The unprecedented demand resulted in the exceptional decision to accommodate new arrivals of unaccompanied children in hotels to ensure that their immediate safeguarding and welfare needs could be met, pending their transfer to longer-term care placements. It is not ideal and it is not in the interests of those children who are currently waiting in hotels for local authority placements to agree to this clause. We need to prioritise finding long-term placements for those children already in the UK and ensure that we have a sustainable transfer scheme to deliver long-term solutions.

I must pick up the noble Lord, Lord Dubs, on one point. He talked about 1,500 places being pledged. He will know that, over the years, I have constantly challenged local authorities to come forward to the Home Office if they have places, and those numbers have not been forthcoming. Unfortunately, places pledged to a charity do not necessarily translate into places. His comments do not reflect our experience on the ground, given that we are using hotels for some newly arrived UASCs while urgently seeking care placements. The Government have mandated the national transfer scheme to ensure that we prioritise care placements for those unaccompanied asylum-seeking children who are in the UK.

Turning to Amendment 116, I understand the desire that Members of this Committee have to establish a minimum number of resettled refugees each year. Our current schemes are non-legislative, operating outside of the Immigration Rules and on a discretionary basis. Operating in this way has seen us resettle over 26,000 vulnerable people since 2015.

It is important that we take into account our capacity in the UK to support people, so that we can continue to resettle people safely and provide appropriate access to healthcare, education, housing, et cetera, without adding to the significant pressure that those services are already under. This amendment seeks to bring in a statutory minimum of 10,000 refugees each year within one month of Royal Assent. We already have over 12,000 refugees and people at risk who we are in the process of resettling permanently and integrating into society.

I turn now to Amendments 118 to 119B. I assure the Committee of my support for the humanitarian intentions behind these proposals and sympathise with the many people across the world who currently face danger and persecution. For resettlement, the UK works according to the humanitarian principles of impartiality and neutrality, which means that we do not take into consideration the ethno-religious origin of people requiring citizenship, as we resettle solely on the basis of need. That is not to in any way decry what the noble Lord, Lord Alton, has said, but we settle on the basis of need, as identified by the UNHCR.

10.15 pm

I might say as well that no one will be excluded from consideration for resettlement to the UK based on the membership of any minority group. I was trying to think back to the vulnerable persons resettlement scheme, through which we pledged 20,000 by 2020. In fact, we took 20,319 people recognised as vulnerable refugees by the UNHCR. One noble Lord—I think it might have been the noble Lord, Lord Kerr—talked about the UK resettlement scheme and us not having taken many last year. That is absolutely correct, in huge part due to the pandemic. But our commitment to that scheme remains.

Lord Alton of Liverpool (CB): I am very grateful to the Minister for responding to some of the points that I made earlier, but would she accept two things—first, that this is not about people who are vulnerable but about people who are subjected to genocide, and we have legal commitments in international law under the 1948 convention on the crime of genocide? I would be most appreciative if she could take that back to her officials so that we can look at it further. Secondly,

[Lord Alton of Liverpool]
I asked her specifically whether she could identify, under the existing arrangements, whether we had taken a single Yazidi or Assyrian from northern Iraq as a consequence of them not being able to enter through the existing routes. I would appreciate it if she could write to me on that.

Baroness Williams of Trafford (Con): I will probably refer to my colleagues in the FCDO for further information on that, but I shall certainly take those points back.

It is important at this stage to take into account our capacity in the UK to support people, as I have said, so that we can continue to resettle people safely and provide that appropriate access to healthcare, et cetera. Sorry, I have just gone back on my speech; I was talking to the noble Lord about the VPRS and the whole issue of genocide. I shall provide further information on all that—but I would add that we cannot support these amendments, which would create an uncapped route, whereby anyone anywhere could make an application to enter the UK for the purposes of making an asylum claim. The UN estimates there to be around 82.4 million displaced persons worldwide. Under these proposals, UK caseworkers, who already have a stretched workload, would be bound to undertake an in-depth examination of hundreds of thousands, if not millions, of individuals' circumstances to assess the likelihood of their protection claim being granted, as well as seeking to understand factors, including the individual's mental and physical health, their ties to the UK, and the dangers that they face. This suggestion is totally unworkable.

I remind my noble friend that the number of people we are able to support through safe and legal routes depends on a big variety of factors, including local authorities' capacity for supporting refugees. The noble Lord, Lord Kerr, acknowledged that, and acknowledged the extreme stress that they are under. An unlimited, uncontrolled scheme such as that which my noble friend proposes would overwhelm our already very strained asylum system, as well as our justice system, and put significant pressures on to our local authorities.

Finally, Amendment 119E seeks to bring the UK resettlement scheme into statute and produce a report on refugees resettled through the scheme annually. In a non-legislative way, we have already done resettlement schemes operating outside of the Immigration Rules and on a discretionary basis, providing the flexibility to respond to changing international events. As demonstrated through the VPRS, we have stuck to and exceeded our commitment, and we will continue to build on the success of previous schemes; the numbers resettled annually will depend on a variety of factors. I hope, with that, that the noble Lord, Lord Dubs, will feel happy to withdraw his amendment.

The Lord Bishop of Durham: At Second Reading, we were encouraged to come forward with proposals for new routes and so on. We have done so. It is not good enough for the Government to say that we need more safe and legal routes, and then knock down every idea that we present and not present alternatives themselves. Will the Minister undertake to give us some examples on Report of safe and legal routes that the Government will support? She knows what we will do otherwise.

Baroness Williams of Trafford (Con): What I encouraged noble Lords to come up with at Second Reading were solutions, not new routes. I have consistently said, and written to noble Lords on this, that we have a number of very good safe and legal routes.

Baroness Chakrabarti (Lab): Before the Minister sits down—to use the convention, although I am glad she is resting for a moment—she talked about this group being about uncapped routes and visas, but many, if not most, of these amendments are probing, as she will appreciate. She will also appreciate, because of her experience in the department, that visas do not have to be uncapped. For example, my noble friend Lady Kennedy's amendment about emergency visas for human rights defenders is probing that the Secretary of State must do something in the rules about human rights defenders; it is not saying that every human rights defender in trouble around the world must be allowed in as if it is a new human rights defenders convention—my noble friend is just probing and asking the Government whether we can do something in the rules or in some kind of statutory form. The Minister has this massive brief, and I sympathise with her. On the police Bill, she has taken special measures for front-line emergency workers to get extra protection—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): Will the noble Baroness ask a question? It is getting very late at night; can we please try to focus points? We absolutely accept that we need everyone—

Baroness Chakrabarti (Lab): It is always me.

Baroness Evans of Bowes Park (Con): It is genuinely not the noble Baroness, but we also need to work together —please—to get this Bill through. It is an important Bill. All noble Lords absolutely have the right to say what they want, but we also need to get this through. I am sorry, but can we please focus on that? We will let everyone speak, but please be aware of the time and what everyone else needs to be doing tonight.

Baroness Jones of Moulsecoomb (GP): Why do we need to get the Bill through? Why can we not leave it until after the recess? I do not understand. This is the Government's problem—they have created this problem for us.

Baroness Chakrabarti (Lab): The intervention was on me—

Baroness Evans of Bowes Park (Con): I am sorry; I did not mean it to be about the noble Baroness.

Baroness Chakrabarti (Lab): I am sorry, but this is not the first time this has happened. I have been here all through Committee with the Minister. This is the second time the Leader of the House has done this when she has not been here—she has come in and it is beginning to feel a bit personal. I want that on the record. The Minister knows what I am getting at and I do not think she thinks I have been taking up too much time in this Committee this evening.

Baroness Evans of Bowes Park (Con): I am very sorry to the noble Baroness; that was not my intention at all and I am very sorry she feels that way. It is absolutely not the case. All I can say is that we have now reached the time we are at. We must try to make progress; we must all work together to do that. I say on the record that I am very sorry to the noble Baroness—it is nothing to do with her and I am very sorry she feels that way.

Lord Rosser (Lab): There are only five days scheduled in Committee on this Bill. This is by no means the longest Committee stage for a piece of legislation. Perhaps there ought to be a reflection on the Government's side as to whether they did not seriously underestimate the number of days that were needed for Committee stage.

Lord Paddick (LD): I will say from these Benches that, if the Government insist on bringing forward such controversial legislation, they cannot expect anything other than a number of noble Lords wanting to speak on these issues. If it were uncontroversial, noble Lords would not be queuing up to speak on the Bill. This is why we are in this situation, and we need more time so that we can adequately scrutinise this very controversial Bill.

Lord Dubs (Lab): My Lords, I am grateful to all Members who have contributed to the debate and to the Minister for her stamina in continuing and continuing. I am sure she will go on until the early hours with great strength.

I will comment very briefly, as is my right. First, we had a very unusual thing happen tonight—

Baroness Williams of Trafford (Con): I am sorry to the noble Lord, Lord Dubs, but I should respond to the noble Baroness, Lady Chakrabarti, because I think he is about to wind up. We have generally done specific schemes for specific purposes and in responding to specific crises. We have the VPRS, the VCRS, the UK resettlement scheme and the ARAP scheme, and we will be doing the ACRS. They have all been non-statutory and I was trying to explain that we will be continuing in that vein for specific purposes, so that we can accommodate the most vulnerable. I hope that partly answers her question.

Lord Dubs (Lab): I had already begun saying my thanks and praising the Minister for her stamina. I will comment very briefly that something amazing has happened this evening. Amendment 116, in the name of four Conversative Members of the Committee, is much more radical than anything produced by the Cross-Benchers, the Lib Dems, the Greens, the Labour Party or the Bishops' Bench. It is amazing and I wonder what is happening to the Conservative Party here. I welcome Amendment 116.

I will comment very briefly on my Amendment 115. It very clearly says, "in consultation with local authorities". There is no number set and no obligation, other than to consult with local authorities and set the number accordingly. Of course, I welcome the national transfer scheme. It should not be instead of the principles in Amendment 115, but it is very important that not all the pressure is on Kent and Croydon.

Lastly, the Minister mentioned the large number coming in lorries across the channel, but the figures will show—I am sorry that I do not have the full figures here—that, in recent years, the number coming in the back of lorries has been higher, but they have been replaced by the ones coming on boats. The total numbers are actually fewer, even though the ones in boats are more obvious.

I again thank Members of the Committee for the part they played in this debate, and I beg leave to withdraw my amendment.

Amendment 115 withdrawn.

Amendments 116 to 119B not moved.

10.30 pm

Amendment 119C

Moved by ***Baroness Hollins***

119C: After Clause 37, insert the following new Clause—

"Codes of practice

(1) The Secretary of State must prepare and issue one or more codes of practice for the guidance of immigration officers, medical inspectors and other persons assessing the mental and physical health needs of any asylum seeker in accordance with the United Kingdom's obligations under Article 12 of the International Covenant on Economic, Social and Cultural Rights 1966.

(2) The Secretary of State may from time to time revise a code.

(3) Before the end of each review period the Secretary of State must—

(a) review each code for the guidance of persons exercising functions under this section, and

(b) lay a report of the review before Parliament.

But this does not affect the Secretary of State's function under subsection (2).

(4) A review period is—

(a) in relation to the first review, the period of 3 years beginning with the day on which this subsection comes into force, and

(b) in relation to subsequent reviews, each period of 5 years beginning with the day on which the report of the previous review was laid before Parliament.

(5) The Secretary of State may delegate the preparation of the review or revision of the whole or any part of a code so far as he or she considers expedient.

(6) It is the duty of a person to have regard to any relevant code if acting in relation to a person seeking asylum in one or more of the following ways—

(a) in a professional capacity;

(b) for remuneration;

(c) for a charity or other not-for-profit body.

(7) If it appears to a court or tribunal conducting any criminal or civil proceedings that—

(a) a provision of a code, or

(b) a failure to comply with a code,

is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.

(8) In this section, "code" means a code prepared or revised under this section."

Member's explanatory statement

This amendment requires the Secretary of State to lay codes of practice before Parliament providing for guidance to assess the mental and physical health needs of any asylum seeker.

Baroness Hollins (CB): My Lords, Amendments 119C and 119D propose a code of practice for professionals involved in the assessment and care of people seeking asylum. Refugees and asylum seekers often have complex health needs influenced by experiences prior to leaving their home country, during transit or after arrival in the UK. Common examples include untreated communicable diseases, accidental injuries, hypothermia, malnutrition, poor maternity care and inadequately treated mental illness. These are made worse by the barriers to assessment and treatment that they face right from their arrival in the UK to the conclusion of the process and beyond. One common risk factor for poor health and well-being among this community is trauma. This may be the very trauma that they are fleeing from, the trauma of the journey or the psychological distress of overcrowding, the lack of privacy and the absence of culturally appropriate community support upon their arrival.

The World Health Organization reports double the rate of depression and anxiety in a humanitarian crisis; that is worth noting. Mental illness can influence the ability of asylum seekers to present their claims in a coherent way. The assessment of credibility is a fundamental aspect of the asylum decision-making process, and the decision-making immigration officer needs information to make their decision but they may be faced with a person with symptoms associated with a mental disorder and the psychological effects of trauma, such as memory loss, an inability to express or even feel emotions or profound guilt and shame at what they have experienced. Such trauma, which disproportionately affects women, may also lead to a reluctance or delay in disclosure that can negatively affect the application, as already highlighted in Amendment 40, moved by the noble Baroness, Lady Lister of Burtersett.

The current government policy, as set out in the guidance on adults at risk in immigration detention, centres on indicators of vulnerability, including persons suffering from a mental health condition or impairment; victims of torture; those who have been a victim of sexual or gender-based violence; those who have been a victim of human trafficking or modern slavery; and those suffering from post-traumatic stress disorder.

Once a person has been identified as having an indicator of risk, the "adults at risk" policy identifies levels of evidence for that risk. The level of evidence is used as a measure of the degree of risk, which is then weighed against a range of immigration factors when making decisions regarding the immigration process, particularly the detention of the person. However, the Royal College of Psychiatrists has raised concerns that people with significant mental illness may have difficulty in being effective self-advocates or may lack a full appreciation of the extent of their own vulnerability. They may lack the mental capacity to make decisions relating to their immigration situation. Many do not have access to a robust assessment process or, if identified as lacking relevant capacity, to a system designed to safeguard them or advocate for them in their best interest.

The Helen Bamber Foundation says that in its experience persons with significant mental illness, as well as those with evidence of past torture, sexual gender-based violence and those with PTSD, are being detained despite their mental-health-related vulnerability. The assessment and identification of mental health problems requires appropriately trained staff in a facilitative environment as well as close multidisciplinary working.

For some, the treatment of mental illness will require specialist trauma-focused therapeutic support. I am told that this is not happening in existing facilities, such as Napier Barracks. It is intended that through these amendments the mental health, mental capacity and physical health of asylum seekers would be assessed and considered properly on arrival and throughout the asylum claim processes, and that the treatment and care of asylum seekers would be sufficient to ensure their health and well-being by standardising and regulating a process that would apply to numerous agencies, public, independent and third sector.

The Secretary of State said in the other place that the Bill will increase the fairness of our system so we can better protect those who are in genuine need of asylum and continue to strengthen our proud record of supporting those in need. The amendments seek to support the Government in achieving just that. I beg to move.

Baroness Hamwee (LD): My Lords, my name is on this amendment. The noble Baroness, Lady Hollins, knows whereof she speaks, so I shall not attempt to do more than support her. To me, this is a matter of professional judgment, which she has brought, but also of common sense. What I hope is my common sense has been informed by what I have heard over quite some years, including, very significantly, in the debate that we had last week. It is clear that in the UK—it may in this context be England and Wales—the systems, if they can be called systems, for assessing the health needs of asylum seekers are patchy and often inadequate.

It is also common sense that assessment should start from a solid, informed base, incorporating the best, up-to-date understanding and experience, so a review is important. So is consultation with those who are expert in the field. I support the amendments.

Baroness Lister of Burtersett (Lab): My Lords, I support these amendments, to which I was pleased to add my name. I thank the Royal College of Psychiatrists and the Helen Bamber Foundation for their help.

Many of us have already highlighted how provisions in this Bill will seriously harm the mental and physical health of people seeking asylum, through, for example, leaving group 2 refugees living in limbo with uncertain status or by placing people in vulnerable circumstances in accommodation centres that function as quasi-detention and have been shown to have a terrible impact on health.

The amendments are a positive step that aims to ensure that the physical and mental health needs of people seeking asylum are prioritised and that there is a comprehensive, co-ordinated approach to addressing those needs in line with our obligations under Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966 to

"recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

Numerous reports and work by organisations such as the Helen Bamber Foundation, Freedom from Torture, the Royal College of Psychiatrists and the Equality and Human Rights Commission show that people seeking asylum face barriers in accessing services, including health services, throughout the asylum process, from their arrival in the UK to the conclusion of the process and beyond. They are also more likely to have specific healthcare needs caused by distressing experiences in their country of origin and traumatic experience during their journey seeking refuge.

As the noble Baroness, Lady Hollins, explained, there are numerous points in the asylum system where the physical and mental health of people seeking protection affects their ability to engage in the process or is worsened by the system we have in place. One particularly troubling example is the detention system, which the noble Baroness has talked about and is the subject of a later group of amendments—I shall scrub what I was going to say about that, given the lateness of the hour.

I am aware that the Home Office is currently engaging with the NHS, NGOs and other stakeholders through groups like its asylum seeker health steering group and associated subgroups. This is welcome, but much more is needed. The current guidance is inadequate and its implementation patchy. Codes of practice focused on the health and care of people seeking asylum and the responsibilities of all those engaging with them in the asylum system would not only increase the fairness and efficiency of the system but provide better protection and support to those in need of asylum.

I hope that the Minister will look kindly on these amendments, which I think are part of the solution.

Baroness Bennett of Manor Castle (GP): My Lords, I rise with great pleasure in following the three noble Baronesses who have proposed this amendment.

Outside Yarl's Wood detention centre, at the "Set Her Free" protest, I listened to some incredibly powerful and moving speeches from women who had been detained in that centre and had then come back to protest. They spoke about what the experience was like and what they had been through. They showed huge bravery. We talk a lot about trauma in your Lordships' House; you could hear the trauma in those women's voices.

I see that the noble Baroness the Minister will not be answering this question, and I do not necessarily expect her to remember this, but in June 2020 when I was still a new Member of your Lordships' House, she was kind enough to have a one-on-one call with me after I went with the South Yorkshire Migration and Asylum Action Group to Urban House in Wakefield, where the conditions were absolutely dreadful. We saw SYMAAG trying to pick up the pieces after the failure of government services to meet the most basic provisions.

That is why I want to make this particular point: much of the provision covered by the noble Baroness's amendment is currently being filled, patchily and inadequately but desperately bravely and with huge effort, by voluntary groups such as SYMAAG, as well as many others like them around the country. They cannot possibly do an adequate job, but they do an amazing job. The point I want to make to the Minister is that, with adequate government provision, those groups could do so many other positive things to build communities and be an active growth force instead of just trying to plug the Government's gaps.

There is a real long-term cost. If we look at the financial cost of the lack of provision that this amendment provides for, the long-term cost is far greater than the cost of providing care for desperate people who are in our society and are our responsibility.

Lord Paddick (LD): My Lords, as the noble Baroness, Lady Hollins, explained, these amendments seek to ensure that the mental and medical needs of asylum seekers are addressed. They would require the Secretary of State to issue codes of practice to ensure that

"the United Kingdom's obligations under Article 12 of the International Covenant on Economic, Social and Cultural Rights 1966"

are fulfilled in relation to asylum seekers.

Whether their claims are deemed to have merit or not, asylum seekers are entitled to be looked after while they are in the United Kingdom. For the reasons that the noble Baroness explained, they are likely to be more vulnerable and in need of greater care than the general population. God forbid we engage in offshoring —either exporting refugees to a third country while they application for asylum in the UK is considered or, even worse, doing so for them to pursue their asylum claim in that country. That should not absolve the United Kingdom of its obligations under the 1966 covenant. We support these amendments.

Lord Rosser (Lab): The two amendments in the name of the noble Baroness, Lady Hollins, would require the Secretary of State, first, to lay before Parliament codes of practice providing for guidance to assess the mental and physical health needs of any asylum seeker; and, secondly, to consult before preparing those codes.

Article 12 of the International Covenant on Economic, Social and Cultural Rights, to which reference has been made, provides that states recognise

"the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

I am sure that the Committee is grateful to the noble Baroness, Lady Hollins, for the opportunity to have this debate because the trauma experienced by people who have suffered violence, persecution, forced displacement and separation from loved ones has been a focal point of our debates on many clauses in this Bill. Recent experience has shown, to put it bluntly, a distinct failure by the Home Office to screen or properly care for the physical and mental health of people who arrive to seek asylum.

The figures showed, I think, that one in five people placed in Napier barracks had to be transferred out owing to vulnerabilities that the department should have screened for and responded to; these included people who had been trafficked and tortured. The Independent Chief Inspector of Borders and Immigration said:

"There was inadequate support for people who had self-harmed."

10.45 pm

The Government's policy at Napier resulted in people, including those with significant medical conditions, being housed 28 to a single dormitory and sharing limited toilet facilities and communal areas that were cleaned

[Lord Rosser]
only once a week during the pandemic. While there have been changes at Napier, since the inspector's findings, what is the breadth and effectiveness of current guidance on the assessment of the mental and physical health needs of asylum seekers? Is there specific guidance on how children should be assessed?

The amendment moved by the noble Baroness, Lady Hollins, seeks to address the assessing and addressing of the physical and mental health needs of asylum seekers. I hope the Government will find themselves able to respond positively to these amendments.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords who have taken part in this brief debate. I thank the noble Baroness, Lady Hollins, for her amendments, which would insert two new clauses concerning the introduction of codes of practice to underpin the Secretary of State's approach to identifying physical and mental health needs in the asylum system. It may assist if I clarify why the Government believe that these amendments are unnecessary.

Asylum seekers are already entitled to access medical services, including those related to mental health, that are provided by the NHS, in the same way as British citizens and other permanent residents. The Home Office provides accommodation and subsistence support to all asylum seekers who would otherwise be destitute, but medical services—including those related to mental health and trauma—medical assessment and treatment are provided by the NHS. At every stage in the process, from initial arrival to screening, and to the substantive asylum interview, our approach is to ensure that the healthcare needs and vulnerabilities of asylum seekers are identified and taken into consideration where it is appropriate to do so. We ask a broad range of questions —in answer to the noble Lord, Lord Rosser—in the screening interview to establish a claimant's needs, including any vulnerabilities or well-being needs. Claimants have signposted to them additional sources of support and advice as appropriate. Where any safeguarding concerns are identified, the Asylum Safeguarding Hub will look to make referrals to relevant bodies and signpost relevant organisations to the claimant.

As I say, where needs are identified we ensure that there is access to professional care, and assessments are conducted by professionally trained healthcare providers. While the Home Office clearly considers it vital to safeguard all aspects of asylum seekers' health, the responsibility for assessing health issues rests with the statutory agencies of the NHS and social services. Therefore, we do not believe there is any need for further regulation in this area. Asylum seekers have every opportunity for their needs to be identified. The standard of care they would receive as a result of those needs is identical to that received by a British citizen—we should all, at this point, pay tribute to the work of the NHS. Therefore, I ask the noble Baroness, Lady Hollins, to withdraw her amendment.

Baroness Hamwee (LD): Before the noble Baroness responds, it may be that this amendment could be worded to put more emphasis on the guidance of those who come into contact with asylum seekers, rather than just assessment. Does the Minister accept that this is a very specialised area? Without for a moment being critical of the NHS, I suggest that that specialism needs to be recognised and learning from it made available to those who come into contact with the cohort we are discussing.

Baroness Hollins (CB): My Lords, I cut my speech rather, because of the time, and I feel that maybe I did not manage to explain adequately. These are people with complex health needs. They are not just like any other patient in the NHS. They have had very difficult experiences and have difficult mental health needs. It is difficult for them to try to explain about their trauma to the first interpreter or the first person assessing them that they meet. This is something where it often takes years for people to trust sufficiently to be able to explain the impact on their situation, their circumstances, and their life chances. This is not just having an assessment and a conversation. It is about building a relationship of trust when people have experienced the most terrible circumstances. That is the difficulty.

I will give one quick example. One still very troubled lady, whose asylum claim was successful, described her claim and subsequent requests for ongoing support as "seriously retraumatising". The paperwork that she received was confusing and negative in tone, with any success hidden somewhere in the small print. She asked, "Why do they do that to me? Why can't they communicate with me? Why should I struggle so much? I feel like I've been through another fight". This lady feels like giving up, despite the fact that her claim was eventually successful.

These amendments seek to see people treated fairly, compassionately and with more skill and understanding, so that they have the best hope of healing and settling in the UK. I thank noble Lords who have supported these amendments. I hope that the Minister will think again and accept the spirit of what I have proposed; otherwise, I and others will bring these amendments back on Report.

I beg leave to withdraw my amendment.

Amendment 119C withdrawn.

Amendments 119D and 119E not moved.

Clause 38 agreed.

Clause 39: Illegal entry and similar offences

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): My Lords, if Amendment 120 is agreed, I cannot call Amendment 121 because of pre-emption.

Amendment 120

Moved by ***Baroness Ludford***

120: Clause 39, page 40, leave out lines 5 to 9

Member's explanatory statement

This would give effect to the recommendation of the Joint Committee on Human Rights to prevent "arrival" in the United Kingdom without a valid entry clearance, rather than "entry" into the United Kingdom without a valid entry clearance, becoming an offence.

Baroness Ludford (LD): My Lords, the effect of Clause 39 is to criminalise the act of seeking asylum in the UK, even if the person has no option but to flee. Clause 39 makes arriving in the UK without leave, without ever actually entering the UK, a criminal offence. I am therefore moving Amendment 120, with the invitation of the noble Lord, Lord Dubs, which would remove the relevant part of Clause 39.

I note that whereas a person violating Clause 39 could get a sentence of four years in prison, I recently saw in the media a case of modern slavery which attracted a suspended sentence. So having the temerity to arrive to claim asylum is considered multiple times more serious than enslaving and exploiting someone.

Clause 39 criminalising arrival would cover people intercepted in UK territorial waters and brought into the UK, and presenting themselves to an immigration official to claim asylum. They would arrive, even if they do not enter. Note that this is not targeted at traffickers and smugglers but at the sorry individuals being smuggled and seeking asylum. Why should they be criminalised? Remember that no visa exists for the purpose of claiming asylum—the noble Lord's amendment wants to rectify that—and it is impossible to claim asylum without coming to the UK. It is a classic Catch-22 situation.

The clause is inconsistent with Article 31 of the refugee convention, which obliges signatories to

"not impose penalties, on account of their illegal entry or presence, on refugees … present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

This non-penalisation is at the core of the refugee convention—even Australia has never considered criminalising irregular entry.

Of course, if an asylum seeker becomes a criminal as soon as they arrive, this can have implications for their future as a refugee. They will have a criminal record and be deemed to be not of good character, and this will impact on their ability to integrate, to settle and, down the line, to acquire British citizenship.

As we discussed on an earlier group, the definition of "particularly serious crime" is being lowered to a 12-month sentence. Since they could get a four-year sentence under Clause 39, or 12 months on a summary conviction, the person could lose their protection against expulsion and refoulement simply as a result of arriving in the UK to claim asylum. It is pernicious to criminalise someone who simply arrives in, not enters, a country—there has always been a distinction between the two. I am afraid that it is somewhat Kafkaesque—I maybe overuse that phrase—as well as pernicious and unnecessary. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I rise to speak to Amendments 121 and 122. I thank the noble Baroness, Lady Hamwee, for lending her support in signing Amendment 122. As the noble Baroness set out, and as we heard from the Deputy Chairman, if Amendment 120 carries favour with the Committee, Amendments 121 and 122 could obviously not be moved.

I intend these amendments to probe my noble friend the Minister. The thinking behind this is that it represents the concerns expressed to me by Law Society of Scotland, to which I am grateful for drafting the amendments and the wording that it has used. Rather than just deleting the offending wording in new subsections (D1) and (E1), I am proposing to delete "arrives in" from the relevant sections of Clause 39 and insert "enters" instead.

Clause 39 of the Bill adds a new component to the existing offence of illegal entry, and subsection (2) thereof adds new subsections to Section 24 of the Immigration Act 1971. New subsection (D1) makes it an offence for someone who "requires entry clearance" to arrive in the UK without "a valid entry clearance". An entry clearance is a visa issued before travel, because it becomes leave to enter when the person enters the UK. The burden of proving that a person holds valid entry clearance lies on that person. This is of concern, given that EU citizens are not routinely given any physical evidence of their entry clearance if they apply using the UK Immigration: ID Check app—no visa vignette is placed in their passport. So the key addition to the offence provision is to make arrival an offence.

The Explanatory Notes clearly state:

"The concept of 'entering the UK without leave' has caused difficulties about precisely what 'entering' means in the context of the current section 24(1)(a) of the 1971 Act."

Entering is defined in Section 11(1) of the Immigration Act 1971, which I recall studying at the University of Edinburgh some time ago, as disembarking and subsequently leaving the immigration control area. Arrival is not given any technical legal definition, so it will simply mean reaching a place at the end of a journey or a stage in a journey. So it is unclear whether a person needs to reach the mainland in order to arrive in the United Kingdom.

My first question to my noble friend is: can she clarify at what point a person arrives in the United Kingdom? The Explanatory Notes and the separate definitions of the United Kingdom and United Kingdom waters seem to suggest that arrival on the mainland is necessary. The new provisions will allow prosecutions of individuals intercepted in UK territorial waters and brought into the UK, who arrive in but do not technically enter the UK, as set out in paragraph 388 of the Explanatory Notes.

11 pm

Although entering UK territorial waters itself has not been criminalised, the status of migrants in UK waters appears unlikely to be significantly altered by the new power to regulate work in territorial waters. The current maximum sentence for illegal entry is six months' imprisonment. As set out before us this evening, this is being increased to four years—or five years for entering in breach of a deportation order.

I conclude by again asking, to be absolutely clear, what the purpose of these provisions is. Does an individual have to physically enter the United Kingdom on land and disembark, or are the Government now entitled to prosecute purely for entering UK territorial waters? This would be a significant change, and one that I believe needs to be clarified to the Committee this evening.

Baroness Lister of Burtersett (Lab): My Lords, I strongly support the noble Baroness, Lady Ludford, in what she had to say, but I would like some clarification.

[Baroness Lister of Burtersett]
She said clearly that the effect of this clause is to criminalise the act of seeking asylum in the UK, which was the conclusion reached by the JCHR, of which she is a member. Does the Minister agree with the conclusion that this is what Clause 39 means? If she does not agree, what does it mean? If she does agree, I have a conundrum that is a variation of what the noble and learned Lord, Lord Etherton, has twice rehearsed now. He made the point that if an asylum seeker is deemed inadmissible, how do they even get to Clause 11 to be affected by the differential?

I have the same conundrum around criminalisation. If the very act of seeking asylum makes someone a criminal, how do they even get to Clause 11? I do not understand how Clause 11, inadmissibility and criminalisation interact with each other. It is rather late to go into this but, if the Minister cannot do it now, a letter to all the members of the Committee would be very helpful to clarify this interaction.

Baroness Hamwee (LD): My Lords, the fact that I am going to say that I could not agree more with my noble friend Lady Ludford and will not add to that should not be taken to reduce the strength of that view.

I added my name to Amendment 122 from the noble Baroness, Lady McIntosh, for the reasons she explained. After I did, I realised that there is a question to be asked about new subsection (E1), which makes it an offence for someone knowingly to arrive in the UK without an ETA, an electronic travel authorisation; I would say that it would be the same to enter, but I am not sure it would be possible to enter the UK without an ETA.

I feel very uncomfortable about new subsection (E1) which makes it an offence to do something under the ETA rules when we do not have those rules. The ETA is not in effect yet. Your Lordships may think it right, when we see what the scheme is, that an offence be created—but not at this stage.

Baroness Bennett of Manor Castle (GP): My Lords, like others, I entirely agree with the noble Baroness, Lady Ludford. I have to put it on the record that it is now 11.04 pm and we are debating major legal innovations with massive consequences.

I want to ask the Minister just one question. Let us imagine a person caught in these circumstances, who has gone on a small boat, been intercepted by the Royal Navy and brought to shore, arrived in the UK and put in jail for four years. That person is very likely from a country in a state of turmoil to which it is utterly impossible to return them for any conceivable time in the future after their four-year jail term. How does the Minister imagine the fate—the life—of that person proceeding from the point they walk out of the jail doors?

11.05 pm

[The remainder of today's proceedings will be published tomorrow.]

[Continued in column 1509]

Grand Committee

Tuesday 8 February 2022

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, Members are encouraged to leave some distance between themselves and others and to wear a face covering when not speaking. If there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Divorce, Dissolution and Separation Act 2020 (Consequential Amendments) Regulations 2022

Considered in Grand Committee

3.45 pm

Moved by ***Lord Stewart of Dirleton***

That the Grand Committee do consider the Divorce, Dissolution and Separation Act 2020 (Consequential amendments) Regulations 2022.

Relevant document: 27th Report from the Secondary Legislation Scrutiny Committee

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, the draft instrument before us makes consequential amendments to primary and secondary legislation relevant to the Divorce, Dissolution and Separation Act 2020, ahead of its planned commencement on 6 April this year. The purpose of these measures is twofold: first, to introduce a new jurisdiction ground for joint applications for divorce—namely, either applicant's habitual residence; secondly, to update the terminology relating to divorce proceedings consequential on the language changes made by the aforementioned divorce Act.

I will speak first to the amendments in paragraphs 1, 4, and 8 of the schedule to the regulations pertaining to the introduction of a jurisdiction ground for joint applications for divorce: namely, the habitual residence of either applicant. Jurisdiction grounds, in this context, are the grounds on which a divorce can be applied for and/or granted in the jurisdiction of England and Wales. The ground we are discussing sets out that, provided either applicant is habitually resident in England or Wales, a joint application can be made by both applicants within this jurisdiction.

This instrument amends a number of measures, including the Domicile and Matrimonial Proceedings Act 1973, the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 and the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014. To each of these pieces of legislation, it brings in the same ground to which I have just referred.

An equivalent jurisdiction ground appears in article 3 of EU Regulation 2201/2003, known as Brussels IIa. Until the end of the transition period, the Brussels IIa regulation jurisdiction ground applied to all cases of opposite sex divorce, legal separation and annulment in England and Wales. The United Kingdom is no longer governed by Brussels IIa, which was revoked by Statutory Instrument 519 of 2019. However, the choice was then made to replicate the applicable Brussels IIa jurisdiction grounds into domestic law by amendment to the Domicile and Matrimonial Proceedings Act 1973.

All the jurisdiction grounds in article 3 of Brussels IIa were replicated save for the ground that we are now discussing, that of habitual residence in joint applications. The sole reason why this ground was not replicated upon exit from the EU was because at that time it was not possible to make a joint application for divorce in England and Wales. With the commencement of the divorce Act, this will now be an option for the first time, so it would be remiss not to replicate this final ground now that the opportunity presents itself.

The same ground is also being introduced into the following measures: the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 and the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014. This ensures equality in all legislation relating to ending a partnership or marriage, regardless of whether these are between same or opposite sex couples.

The other amendments in this instrument amend language in the Domicile and Matrimonial Proceedings Act 1973, the Civil Partnership (Registration Provisions) Regulations 2005, the Pension Protection Fund (Provision of Information) Regulations 2005, the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005, the Civil Legal Aid (Merits Criteria) Regulations 2013, and the Civil Legal Aid (Remuneration) Regulations 2013.

The amendments update the terminology in relation to divorce consequential upon the language changes made by the divorce Act. The divorce Act amended terminology in the Matrimonial Causes Act 1973—for example, by the replacement of terms such as "decree nisi", "decree absolute" and "petitioner" with "conditional order", "final order" and "applicant". This means that the same terms will now be used in legislation relating to both divorce and dissolution. It simplifies language too, making terms more recognisable and readily accessible to members of the public. This supports the aim of the divorce Act in supporting citizens representing themselves in divorce proceedings. This instrument consequentially replicates those language changes across relevant legislation.

By making the amendments I have outlined today, the intention is that we will standardise and update language across all relevant pieces of legislation and amend jurisdiction grounds to add a specific relevant ground for joint divorce applications. This instrument is consequential on the divorce Act, reflective of the ultimate aims of the divorce Act, to reduce conflict between couples and families. I beg to move.

Lord Thomas of Gresford (LD): My Lords, we support this instrument. I have just a couple of questions. I am surprised that the question of jurisdiction was not

[Lord Thomas of Gresford]
dealt with in the Act itself. Perhaps the Minister has some explanation for that, which I have not perceived.

My second question relates to paragraph 7.7 of the Explanatory Memorandum, which says:

"The Government's policy intention behind the reformed law",

which in turn has resulted in the consequential amendments contained in this instrument,

"is that the decision to divorce should be a considered one, and that separating couples should not be put through legal requirements which do not serve their or the state's interests".

I find that a bit puzzling, and I wonder whether the Minister can help me with what it is directed to. However, as I say, we support the amendments.

Baroness Chapman of Darlington (Lab): My Lords, we, too, support the regulations. The provisions are primarily to reflect the new terminology associated with the reformed divorce, dissolution and separation proceedings in the Act, as well as to add a jurisdictional ground for the newly created joint applications.

The Act has not yet come into effect, but we hope that it will soon and that there is no further delay. I think I heard the Minister confirm that the date will be 6 April 2022—he is nodding, so I take that as an indication that that is correct—which is very pleasing. My party fully supports that Act and the changes to divorce, dissolution and separation that it will introduce. As a result of this Act, it will be much easier for couples to divorce in cases where the relationship has irretrievably broken down.

We hope that this will end some of the adversarial system currently in place. A spouse will no longer be able to object to or oppose a divorce, and couples will no longer have to apportion blame for the breakdown, leading, we hope, to less conflict and acrimony for all involved. A simple statement that the marriage has irretrievably broken down should be sufficient for proceedings to commence. I am very pleased to welcome the measures that the Minister has outlined today.

Lord Stewart of Dirleton (Con): My Lords, I am grateful to participating Peers for their contributions to the debate. The noble Baroness on the Labour Front Bench acknowledged that I had tacitly confirmed that 6 April was the commencement date—so I was able to answer that question without saying anything.

As to the two questions raised by the noble Lord, Lord Thomas of Gresford, on behalf of the Liberal Democrat Benches, I regret to say that I do not have ready answers to either—I beg the Committee's pardon. I undertake to provide answers in writing to the noble Lord as soon as I am able.

Beyond that, I think I have registered agreement from both noble Lords who spoke that these merely consequential amendments are not contentious and bring about changes to standardise the approach to language and to jurisdiction grounds for divorce—ensuring, I hope, that legislation surrounding divorce is clear, simple and consistent across the board. I commend this instrument to the Committee.

Motion agreed.

Money Laundering and Terrorist Financing (Amendment) Regulations 2022

Considered in Grand Committee

3.57 pm

Moved by ***Baroness Penn***

That the Grand Committee do consider the Money Laundering and Terrorist Financing (Amendment) Regulations 2022.

Baroness Penn (Con): My Lords, illicit finance not only risks damaging our reputation as a fair and open economy, it threatens our national security by undermining the integrity and stability of our financial markets and institutions. Illicit finance also causes significant social and economic costs through its links to serious and organised crime, and it can reduce opportunities for legitimate business in the UK. That is why the Government are focused on making the UK an inhospitable place for illicit finance. The Government recognise the threat that economic crime poses to the UK and are committed to tackling money laundering and terrorist financing. We have taken significant action to combat money laundering and terrorist financing and to strengthen the response of the whole financial system to economic crime.

Central to these efforts are the money-laundering regulations. They are a key part of our legislative framework and set out a number of requirements that businesses and trusts must comply with to make the UK an inhospitable place for money laundering and terrorist financing. These measures include the requirement for trusts to register with HMRC's trust registration service. Trusts are an integral feature of the UK's legal system and are used for a wide range of legitimate purposes. However, they can also be used to conceal the true beneficial ownership of assets and therefore impede law enforcement as it investigates money laundering and terrorist financing. The trust registration service addresses this risk by providing law enforcement with a key source of up-to-date information on the beneficial ownership of assets held in trust.

As a result of the changes introduced in 2020, the trust registration service has been expanded so that most types of UK express trusts are now required to register. In addition, overseas trusts with certain connections to the UK, including the acquisition of land or property in the UK, are now for the first time required to register.

4 pm

The statutory instrument under discussion today amends the money laundering regulations to ensure that the trust registration service operates as effectively as possible as an anti-money laundering tool, striking the right balance between the public interest in tackling money laundering and the right to privacy for those who use trusts for legitimate purposes.

First, to ensure that trustees have sufficient time to gather the necessary information and complete the registration process, this instrument extends the registration deadline for those types of trusts newly required to register until 1 September 2022. Secondly, this instrument

extends the time limits for reporting changes to the information held on the register. Trustees are required to update the register within certain time limits if the information held on the register relating to individuals involved in the trust changes. In recognition of the fact that such changes are often triggered by traumatic life events—for example, bereavements—this instrument extends the time limits so that trustees will have 90 days to report such changes to the HMRC.

Lastly, this instrument makes changes to the categories of trusts that are excluded from registration. Certain types of trusts that pose an inherently low risk of money laundering are excluded from registration. This instrument makes some small changes to the existing categories of excluded trusts to ensure that the burden of registration is proportionate to the money-laundering risk that particular types of trusts pose.

In summary, this instrument will amend the money-laundering regulations as they relate to trust registration, to ensure that the regulations strike the appropriate balance between providing an effective anti-money laundering tool for law enforcement and minimising the administrative burden on those who use trusts for legitimate purposes. This amendment will enable the money-laundering regulations to continue to work as effectively as possible, to protect the UK financial system and allow the UK to continue to play its role in leading the fight against economic crime. I hope therefore that noble Lords today will join me in supporting this legislation. I beg to move.

Lord Tunnicliffe (Lab): My Lords, I am grateful to the Minister for introducing this measure. It is good to have her back covering Treasury business again, albeit in somewhat intimate surroundings.

This SI has come at an interesting time, with ever-increasing interest in these matters. Its scope is relatively narrow, but that will not stop us from raising wider issues. The Explanatory Memorandum states that crime enabled by money laundering costs the UK at least £37 billion per year. I fear that the real cost is likely to be far higher. Costs for the financial services sector are also significant. Research published last summer put the annual cost of anti-money laundering compliance at almost £30 billion. That is generally money well spent, yet we still see examples of high-profile financial institutions failing to uphold their duties. The Financial Conduct Authority has acted in some cases, but funnelling dirty money into the UK still appears to be too easy.

It was interesting to see that the Explanatory Memorandum asserts that the UK is

"a leading member of the FATF"—

the Financial Action Task Force. We are, of course, a global financial centre but we are not immune from criticism, and the FATF has outlined a range of reforms that in its opinion need to be enacted. Is the Minister in a position to provide a progress report?

One of the concerns raised by the FATF—an organisation included in the OECD—relates to the potential for trusts to be used as a disguise for foreign or illicit ownership of assets. We welcome the requirements to register with HMRC's trust registration service, the TRS, from 1 September this year, although we regret that it has been delayed due to IT complications. Can the Minister say a little more about this?

The regulations propose an extension of the 30-day deadline for submitting updates to information to the TRS to 90 days. While that makes some sense at first glance, we have some concerns. The change is justified on the grounds that some changes may arise from life events, such as bereavement, which involve processes that take far longer than 30 days. Of course, people should be afforded more time in certain situations, but the Government's own 2020 consultation concluded that 30 days was ample time in the majority of cases. Can the Minister outline what percentage of cases are likely to require more than 30 days? Why did the Treasury not choose to retain that limit while introducing a degree of flexibility in certain defined cases?

Another concern returns us to the issue debated in your Lordships' House only yesterday—that is, the extent to which information on the beneficial ownership of firms operating in freeports areas should be publicly available. In theory, information contained within this register is accessible to some members of the public. If that is genuinely the case, it is an improvement over the Treasury's usual approach. However, concerns have been raised by a range of civil society organisations that the barriers to accessing the register are far too high, potentially freezing out some of the country's leading independent experts. Can the Minister set out in detail the criteria for access to the register? Furthermore, I would be grateful if she could provide examples of the types of people who can access the register, and exactly how they would demonstrate their worthiness. We do not want to see frivolous requests but, surely, we should facilitate appropriate non-governmental investigations of illicit financial activity.

We shall not oppose the SI today; as the noble Baroness knows, I am rarely in the mood for causing constitutional crises. However, these regulations seem to be a half-baked response to a very serious problem. The register is late, it is not fully transparent, and the Government have ignored some of the outcomes of their own consultations. Following the resignation of the noble Lord, Lord Agnew, the Government said that they treated tackling economic crime as an urgent priority. I hope that urgency will be more apparent in future.

Baroness Penn (Con): My Lords, I thank the noble Lord for his welcome to my return to Treasury matters—it is good to be back. I also thank him for the constructive approach that he takes in these debates. As such, I shall do my best to answer the questions that he posed to me on this statutory instrument.

The noble Lord asked about the progress that we had made on reforms outlined by the FATF. The recommendations in the Financial Action Task Force mutual evaluation have been taken forward through the landmark economic crime plan, which ran from 2019 to this year. We have strengthened our fight against economic crime through the publication of that plan in 2019, which brought together government, law enforcement and the private sector in close co-operation to deliver a response to economic crime. Significant progress has been made, with 24 out of the 52 actions now complete—and I understand that a higher number than that are on course to be complete within their aimed-for timetable.

[Baroness Penn]

The noble Lord asked for more detail on the IT complications and the reasons for the delay in the expansion of the register. We recognise that they IT service went live six months later than originally planned. The service needed significant development work to implement the required changes at a time when there was extraordinary pressure on public services and, in particular, on HMRC's IT development resources. Between March and September, checks and tests by external users were completed to ensure that the service could be open to all users from September.

The noble Lord also asked about the extension of the period in which to notify changes to trusts from 30 days, and why we should not retain that limit and introduce some other form of flexibility. The expansion of the register of beneficial owners of trusts has brought a significant number of additional trusts into the scope of this work. We recognise that a very large number of trustees are private individuals with no professional expertise in managing trusts and, as the noble Lord recognised, many changes will be triggered by life events such as bereavement, where it is not necessarily realistic to expect individuals to update the register within 30 days. Continuing with this requirement would likely mean that a large number of individuals would find themselves in breach of the regulations without realising that fact. This change ensures that those who wish to comply will have sufficient time to do so. We do not have specific figures to estimate how many changes may be triggered by life events such as bereavement but, due to the way that trusts are used in the UK, this will be a common trigger for changes that need to be reported to the TRS.

On the question of retaining the 30-day limit but with an element of flexibility, I fear that this would still place affected individuals in a difficult and stressful position, as they would have to apply to HMRC for such flexibility with no guarantee that such a request would be accepted.

The noble Lord also asked, importantly, about the criteria for access to the register. We believe that placing the information held on the trust register in the public domain would infringe the privacy rights of individual beneficial owners, the vast majority of whom are not involved in money laundering activities. However, we recognise that, for the register to be an effective anti-money laundering tool, the information must be made available to those who are at the forefront of anti-money laundering investigations.

To that end, the information held on the register is available on request to law enforcement agencies. From 1 September 2022, it will also be available to any third party who can demonstrate a legitimate interest in the information held on the register. The regulations set out the criteria that HMRC must assess to determine whether a requester has a legitimate interest in the information held on the register. These include: whether the requester is involved in anti-money laundering; whether the request is being made for the purpose of furthering such an investigation; and whether the requester has reasonable suspicion that the information being sought relates to a trust being used for money laundering.

The Government will set out the detail of how those criteria will be applied in due course, but each request will be considered on its merits, and there is no desire on the part of the Government to prevent access to the information held on the register by those who are genuinely involved in anti-money laundering investigations.

Lord Tunnicliffe (Lab): Will the noble Baroness commit to sending me a copy of those regulations as they emerge?

4.15 pm

Baroness Penn (Con): Absolutely: that is a very reasonable request. I shall write to the noble Lord when the information is available, and also ensure that a copy is placed in the Library, if that is the appropriate place.

I hope that, in answering some of those questions, I have given the noble Lord a little more reassurance on the thought that has gone into this work so far. In summary, as I said, it is the Government's view that the amendments contained within the regulations will assist in ensuring that the money laundering regulations operate as effectively as possible and continue to protect the financial system from the threat posed by money laundering and terrorist financing. They will also allow the UK to continue to play its part in the fight against economic crime, which, as the noble Lord noted, has been in the spotlight in recent weeks, and on which the Government have an ambitious agenda.

I hope that my responses have been informative and I commend the regulations to the Committee.

Motion agreed.

Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2022

Considered in Grand Committee

4.31 pm

Moved by ***Lord Kamall***

That the Grand Committee do consider the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2022.

Relevant document: 25th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): My Lords, this statutory instrument will amend the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. The 2014 regulations are currently due to expire after 31 March this year, and this statutory instrument will amend the expiry date to 31 March 2025. This is the only change this statutory instrument makes; it does not change any existing policy. The 2014 regulations set out the activities that are regulated by the Care Quality Commission and the fundamental standards that all CQC-registered providers need to comply with. These activities and standards will not be amended by this instrument.

The extension of the 2014 regulations to 31 March 2025 will ensure that the current regulations relating to CQC-registered providers, including which activities are regulated by the CQC, will continue to apply. There will be no change to how the CQC carries out its regulatory functions. The Government see the CQC's role as critical in ensuring that the care received by patients is of high quality and delivered to standards that promote patient safety.

I should highlight that if we do not extend the expiry date, the 2014 regulations will automatically expire and there will be no regulated activities for the CQC to regulate, so providers who are currently required to register with the CQC will no longer be required to do so. Providers that are currently required to register with the CQC will also no longer be required to comply with the fundamental standards set out in the 2014 regulations, which help to ensure that services are carried out safely and to a high quality. The impact of not extending the regulations would be a risk to patient safety, as it would compromise the CQC's ability to monitor providers against those fundamental standards.

In short, this SI will amend the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 by extending the expiry date by a further three years to 31 March 2025. This means that health and care providers in England that carry out any of the regulated activities set out in the 2014 regulations will continue to be required to register with the CQC and will be bound by the obligations and standards set out in the 2014 regulations. This will help to ensure that patients continue to receive safe and good-quality care.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, the noble Baroness, Lady Brinton, is taking part remotely. I invite her to speak.

Baroness Brinton (LD) [V]: My Lords, first, I thank the technical wizards who have mended the problem with the link to the Grand Committee so that I can contribute remotely. This sort of thing happens only very occasionally, and the smoothness with which most of the business goes on is extremely helpful. I am very grateful to them.

The Explanatory Memorandum says that these regulations are to ensure protection from Covid, and the Minister has explained why there is a requirement to extend the deadline for the department to carry out a review of the CQC regulations. However, why are a further three years needed? Perhaps he can explain how there will be accountability between now and then to enable the House and Parliament to see the progress. Given that we are talking about three years, will he undertake to provide your Lordships' House with an interim report on progress? If it takes the full three years, can that be on an annual basis?

Finally, and perhaps most importantly, can the Minister outline how the review fits in with ongoing reforms such as the Health and Care Bill, which will come to the end of Committee tomorrow, and other social care reforms? Will it keep pace with all those new developments?

I want to add one other item. The Minister knows that, when we had the Statement in the Chamber last Thursday, I asked him why care homes had not yet received the details of the change of rules about the compulsory vaccination of staff. He kindly said at the Dispatch Box that he did not have the answers to hand but would write to me and my noble friend Lord Scriven, who also asked questions about this that day. I do not appear to have had anything. Given that this covers care homes and keeping patients safe, I wonder whether I can ask again.

On Wednesday afternoon, the director-general for adult social care wrote to providers of CQC-regulated adult social care activities about the removal of vaccination as a condition of deployment. Unfortunately, the problem is that it specifically excludes care homes. I believe we know that the problem exists in regulations that need to be revoked, but can the Minister explain to the Grand Committee exactly what the problem is? Clearly, reading that letter from the director-general at face value, care homes are sitting in a limbo which no other parts of the NHS or the wider settings for care are in, in that they should be applying compulsory vaccination.

The Minister said on Wednesday that the intention was quite clear. Unfortunately, this affects care homes, because it is to do with employment law. I know that some care homes have already been approached by staff they had to sack, asking whether they can have their jobs back, while they are still waiting to hear formally from government about when the revoking of the regulations will come into force. I hope the Minister can answer my question on this.

Baroness Wheeler (Lab): My Lords, I thank the Minister for introducing this SI on Care Quality Commission registration, somewhat at the 11th hour before the current 2014 regulations run out on 31 March 2022. Of course, we fully support their extension beyond that date so that all providers of health and social care in England will continue to be required to register with the commission and to comply with the high patient safety and care quality standards it sets.

The SI is very brief and to the point, with the proposed extension to 31 March 2025 the only amendment to the 2014 regulations, and the activities regulated by the CQC and the fundamental standards with which all CQC-registered providers must comply all unamended and unchanged.

Like the noble Baroness, Lady Brinton, I fully understand the impact of the pandemic on the CQC's capacity to undertake the full range of its work, but the Minister needs to explain why the extension of the regulations is for another three years, to 31 March 2025. Why so long? The Explanatory Memorandum says the extension is to

"allow the Government to review the 2014 Regulations to determine"

whether the scope of its current regulated activities

"is still proportionate to ensure that regulated activities are delivered safely to a high standard."

The CQC's role as regulator and the fundamental standards that it sets to ensure high-quality care are crucial. According to the Minister proposing the SI in the Commons on 26 January, time is needed

"to reform and consider the regulations more fully".—[*Official Report*, Commons, 26/1/22; col. 8.]

This is a major review being undertaken by government, and we need to know much more about its extent and purpose. Why are three more years necessary to undertake

[Baroness Wheeler]
this review? Can the Minister explain why, given its vital importance, the review cannot be undertaken in a shorter timeframe? What are the timescale, scope and terms of reference of the review? How are all stakeholders, including providers and patient organisations, to be consulted and involved?

As the Minister knows, under the Health and Care Bill currently in your Lordships' House, the CQC is to take on the not inconsiderable additional duties of reviewing and assessing ICBs and the performance of local authorities in the delivery of adult social care. To what extent will consideration of the impact of this extended role be included in the review, including the significant additional resources that the CQC will need to undertake these new areas of responsibility?

We are less than two months away from when the current regulations expire, and we fully recognise the urgent necessity of this SI to ensure that the CQC's vital role and that work will continue. I also look forward to the update that the noble Lord will provide on the questions raised by the noble Baroness, Lady Brinton, about care homes and last week's decision on the mandatory vaccination of staff.

Lord Kamall (Con): My Lords, I thank both noble Baronesses for their questions and I must say how grateful I am that we were able to find a way for the noble Baroness, Lady Brinton, to join us after a technical fault. I turn now to the questions asked and, if I do not have the answers, I will commit to writing to the noble Baronesses.

The noble Baroness, Lady Brinton, asked why it had taken time to lay these amending regulations to extend the date of expiry of the regulations. They came into force in 2014 and a further amendment was made in 2015 to include an expiry date for them. Once it was identified that the 2014 regulations needed to be amended to extend the expiry date, the department took the appropriate action to make the necessary change. However, to make that change there was a long lead-in time, involving a consultation process and securing parliamentary dates to debate the amendment. The department is aware that, since the 2014 regulations came into force, there have been a number of changes in the health and care sector, and any wider review will be subject to a public consultation.

The noble Baroness, Lady Brinton, also asked about vaccination as a condition of deployment policy in adult social care settings. Let me turn, first, to her specific question. After the debate the other day, the noble Lord, Lord Scriven, told me that he needed to clarify a question he asked of me. He very kindly emailed me, clarifying that what he had said in the Chamber was not necessarily absolutely correct, and I sent his email on to my officials. I am sorry, I had not realised that a response had not been given. All I can do is apologise, go back to the department and make sure that we get an answer to him as soon as possible. That is why, to be perfectly frank, I am not in a good position here, because I really did think that this had been dealt with, and I apologise for that.

The noble Baroness, Lady Wheeler, asked several questions about the department's intention to carry out a post-implementation review of the 2014 regulations. The department intends to carry out such a review and is currently working with the CQC to develop the review questionnaire, which will be shared with health and social care providers. The department is in the early stages of undertaking work to carry out the review, and we have already started working with the CQC. Once we have the responses to the questionnaire, we will publish a post-implementation report setting out the department's findings.

The noble Baroness, Lady Brinton, also asked about VCOD. One of things we should stress—I know all noble Lords agree on this—is that patient safety is key. We always put the safety of vulnerable people first. I am very grateful to noble Lords for their support for the VCOD policy.

4.45 pm

We felt it was right when we brought it in for care homes, and then extended it to the wider care sector. Given that delta has been replaced by omicron, it was only right that we reviewed the data and the evidence, and also reviewed the policy. As I said, I am afraid I do not have a detailed answer to the question at the moment. All I can say on why we have asked for three years is that I did ask the officials why three years, why not a year or two years, given the Health and Care Bill and the additional responsibilities that will fall on the CQC when it comes to that Bill, and they said generally that they needed three years for the long process, the lead-in and the consultation, and also to take account of the wider review. Next time it will not simply be an extension of the current regulations; the wider review will take account of what new duties are placed on the CQC, as a result of the Health and Care Bill.

I am afraid—and I really apologise for this—that I do not have the best answers for this at the moment. I will have to write in more detail to the noble Lords who asked questions.

Baroness Wheeler (Lab): My Lords, I thank the Minister for his response. Specifically on the review into the CQC's work, I did ask for the terms of reference. I know there is going to be a consultation and a questionnaire, et cetera, and I would like to know what the terms of reference are: the timeframes and the scope of the review, and how stakeholders will be involved—I hope it will be not just by a questionnaire.

Lord Kamall (Con): The noble Baroness asks a very reasonable question. I think what I will have to do is look at *Hansard* and respond to her detailed questions, and also share a copy with the Library, because I do not have the detailed answers with me today.

Motion agreed.

Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022

Considered in Grand Committee

4.48 pm

Moved by ***Lord True***

That the Grand Committee do consider the Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022.

Relevant document: 27th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument by the Joint Committee on Statutory Instruments, 22nd Report)

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the instrument brought forward today makes a practical provision to continue support of the effective administration of elections. It does this by extending the Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021 for a further 12 months. These temporary regulations were first introduced ahead of the May 2021 elections. They allowed electors to appoint an emergency proxy, or change their existing proxy arrangement, up until 5 pm on the day of the poll where they were, or in fact their previously appointed proxy was, unable to attend a polling station due to Covid. This was without any form of attestation, which is normally required for a standard emergency proxy. It was part of a range of measures that helped ensure elections have been able to take place safely over the course of the last year.

While much has changed in the intervening 12 months, and is changing, extending this measure is prudent. While we have been able to remove a great many of the restrictions that Covid has made necessary, it is still the case that those who test positive for Covid are legally required to isolate—as some of their close contacts may be. While that is the case, and as the situation and exact nature of any isolation requirements going forward remain difficult to predict, we must ensure that those required to isolate are not, in the process of doing so, deprived of the ability to participate in the vital democratic process. So this is a tested and appropriate way to continue to protect that process during the pandemic. Now is not the right time to abandon this necessary temporary measure.

I will now move on to the specific details of the statutory instrument. The key purpose is to extend for a further 12 months the regulations brought into effect by the 2021 instrument, which is due to expire on 28 February 2022, so that instead it expires at the end of February 2023. We will keep this under review, and we will also consider repealing the regulations early, should they no longer remain necessary and proportionate.

The instrument will also remove the existing reference to the "clinically extremely vulnerable" and people who are

"at the highest risk of severe illness from coronavirus"

from the 2021 regulations. This terminology was used in England and Scotland respectively and its removal will bring the wording into line with the latest respective government guidance. Anyone following advice from a registered medical practitioner or a registered nurse to isolate will still be able to apply for an emergency proxy under these rules. This ensures that electors unable to attend the polling station for Covid-related health reasons will not be adversely affected.

The instrument applies to UK parliamentary elections in Great Britain, police and crime commissioner elections in England and Wales and local elections in England. The Scottish and Welsh Governments have also either extended their equivalent arrangements for their respective devolved elections or are in the process of doing so.

It is essential to our democracy that people are able to cast their vote. The 2021 regulations brought into effect a temporary measure to ensure that those required to isolate shortly before a poll could still vote, or that a proxy arrangement could be amended where the appointed proxy was unable to attend a polling station for Covid-related reasons. This instrument is a simple, yet vital, extension of that measure. It will cover local and mayoral elections in England scheduled for May 2022, as well as any applicable by-elections or unscheduled polls that occur before the May 2023 polls. However, as I outlined earlier, we will keep these measures under review and we will consider repealing them early, should they no longer remain necessary and proportionate.

I can assure noble Lords that we have consulted with the Electoral Commission and that it is supportive of this measure. I note also, and am grateful for, the cross-party support that the 2021 regulations received when brought forward last spring, and I hope very much that there will be support for their sensible and necessary extension. I hope that colleagues will join me in supporting the draft regulations. I commend them to the Committee and beg to move.

Lord Shipley (LD): My Lords, this proposal to extend the rules governing late proxy vote applications as a consequence of coronavirus medical advice, including self-isolation, is appropriate and, as the Minister has just said, prudent. The consultation on the measures with the Parliamentary Parties Panel elicited no comments and the Electoral Commission seems content as well, so there is no reason, in my view, for this Committee to take a different view. It is anyway a sensible measure that is time-limited to a further 12 months.

I understand the comments of the Joint Committee on Statutory Instruments on the clarity of the territorial and temporal limitations imposed by Regulations 1 and 2, but I also understand the complexities of drafting these regulations. The commitment of the Department for Levelling Up, Housing and Communities to bear in mind the comments made about clarity should suffice, since this is in effect a one-year extension to an existing set of regulations.

Lord Hayward (Con): The noble Lord in his opening comments made reference to the previous SIs, which were debated in the Chamber on 4 March last year and which included a number of changes, as he indicated. One of them was in relation to the number of signatures that could be required for nominations for local elections: it was previously 10 and was reduced to two in the circumstances relating to coronavirus.

At the time the subject was debated, I indicated that I regretted that the change was time-limited to end in February 2022. Since then, consultations have taken place. I know that I speak in support of the views of the LGA and that this matter has been discussed informally at the Parliamentary Parties Panel in the presence of the Electoral Commission. There is therefore general all-party support—although I say this without having consulted the Green Party; I know that the noble Baroness, Lady Bennett, is due to speak in a moment so she may express a view. But there is a general all-party view that the one, time-limited exemption to the end of February 2022 should now be lifted and

[LORD HAYWARD]
that there should be an ongoing exemption. That would fit in with the spirit of the SI to which we are referring today.

I failed to say at the start of my comments that I had given the Minister and his office notice that I was intending to cover this point. Given that we are nearing the local elections, I hope that the Minister will be able to indicate that something which has all-party support can be expedited, that the time limit should be removed and that we can go on using two signatures, which is more than is required now in Wales and Scotland.

Baroness Bennett of Manor Castle (GP): My Lords, as is evident, the noble Lord, Lord Hayward, and I have not consulted in advance on this. I very much agree with his comments, and indeed I offer further cross-party support to this amendment. I also wanted to raise a question about why this is only for 12 months and to look at the practical situation that we are in now.

The Minister in introducing this SI focused rightly—I have absolutely no disagreement on the democracy side of this SI—on the obvious public health element here. You do not want people with a contagious illness, very keen to vote, trailing into the polling station, with all the obvious risks of spreading that disease further. If we look back over recent history—SARS, MERS, swine flu, the threat of bird flu—we are in a new age where contagious illness is becoming more of a threat and a problem. We also have a big problem with antibiotic resistance to a variety of diseases.

To preserve both democracy and public health, the department, parties and everyone should think about the fact that contagious illness is a threat to us all. I do not necessarily expect a sudden big announcement today, but I want to put that on the agenda. People want to do the right thing both for democracy and not to spread an illness. Obviously, illnesses come on quite quickly—it is not something that you can predict—so it would make sense to have a measure like this for all relevant illnesses, both for democracy and for public health.

Baroness Hayman of Ullock (Lab): My Lords, as we heard from the Minister, this instrument extends the legislation which allows late proxy vote applications for those who are required to self-isolate. As the Minister and others have said, we fully supported the measures when they were first introduced and continue to support them, so I will be brief. At that time, we warned the Government that they may well need to extend the measures, which unfortunately they have now had to do.

Allowing for late urgent applications to vote by proxy when an individual is required to self-isolate, in response to other coronavirus-related medical advice or if things change for a proxy who goes through the same thing is, we believe, an important part of maintaining our democracy during these uncertain times. Unfortunately, the reality is that it looks like we will be dealing with the pandemic for some time to come as we learn to live with it. We believe that this instrument is a sensible adjustment to support democracy during this time.

The Explanatory Note states that the amendments to the regulations

"remove the ground for applying late where an applicant or their previously appointed long-term proxy has received notification that they are clinically extremely vulnerable or that they are at the highest risk of severe illness from coronavirus."

I understand from the Minister's introduction that this is to ensure that the regulations align with current medical guidance. However, just for clarification, can the Minister provide assurance that those individuals would still have access to a proxy in the way that they did, provided that that is in line with what their medical practitioner advises?

5 pm

The noble Baroness, Lady Bennett, talked about this, but one thing that I was going to suggest from the Opposition was that these provisions could well be made permanent for all medical reasons, given that there will always be examples of people who find themselves unable to vote in person at a late stage, due to illness. I also express my support for the noble Lord, Lord Hayward, regarding his proposals on two signatures for candidate nominations. I just draw attention to the fact that I was in fact a signatory to his letter on this matter.

My final point is an important one, and I hope that the noble Lord would agree with me on this, because it is around potential electoral fraud. We know that the Government have expressed clear concerns in the Elections Bill around electoral fraud, and proxy votes are being looked at as part of that. While we consider the SI before us today, what steps are the Government taking to ensure that emergency proxy votes still have the right kind of safeguards against electoral fraud?

Lord True (Con): My Lords, I thank all those who have taken part in this short debate, and I particularly welcome the general support given on behalf of all parties, starting with the noble Lord, Lord Shipley, and for the recognition that the timely completion of this instrument is crucial in ensuring successful running of polls throughout 2022 while Covid regulations remain in place.

The immediate assurance that I can certainly give to the noble Baroness, Lady Hayman, is that there is absolutely no question of reducing the extent of protection for those in what was originally defined as the shielding groups. Under the extended regulations, electors will be able to appoint an emergency proxy to vote on their behalf without attestation when they are legally required to isolate and when attending a polling station would be contrary to advice provided by their medical professional—the kind of group that she described—and, indeed, when they believe that attendance at a polling station could lead to transmission of coronavirus. For example, they may be displaying symptoms but awaiting a test result. That picks up on what the noble Baroness, Lady Bennett, was saying. Electors are also able to amend their existing proxy arrangements at very short notice, when the proxy is unable to vote on their behalf, due to the reasons above. So the technical change in wording does not reduce to any degree the availability or accessibility of arrangements, and I am very glad that the noble Baroness raised it. If I had been in her place, and seeing these words disappearing,

I would have wanted to ask that question, which is why I anticipated it to some degree and mentioned it in my opening remarks.

My noble friend Lord Hayward, with support, raised the question of correspondence between him and my department, and indeed, DLUHC on this matter. As he knows, as part of our consultation on the Elections Bill this morning, we also discussed the matter. The statutory instruments here—this one and others—were made in the context of the height of the original Covid pandemic, when the Government were encouraging absolutely minimal social interaction and there was legislation in place restricting such activity. That is no longer the case, and therefore we judge that the measure is no longer necessary on Covid grounds. The Government are clear that it is important that the democratic process is as accessible as possible, and making that change permanent for specific polls, for which my noble friend asks, would need consideration in the context of wider electoral policy and legislation.

However, I welcome the point raised by my noble friend and by the noble Baroness opposite, and the Elections Bill is coming before your Lordships' House very shortly. The Government are certainly open to further discussion on this topic. The existing arrangements have been useful. It may interest the House to know that in the May 2021 PCC, mayoral and local elections, there were 2,800 instances in which the facilities afforded by these regulations were made use of. That is not a phenomenal number of people, but they were used by certain people at the height of the pandemic, so they have been useful. We consider that while the pandemic continues, it is worth extending the provision allowing electors to appoint a proxy or change their existing proxy up until 5 pm on polling day on various grounds relating to Covid. That is sensible, but there is a point on the other side, fairly made by the noble Baroness, that there is a balance in these things when making permanent procedures which might make it easy to circumvent the normal controls. This is a specific measure introduced to help people during the course of the pandemic. However, the Government are considering very carefully that balance, and I look forward to discussing it during the course of the Elections Bill.

I hope I have responded to—

Lord Hayward (Con): I seek clarification in the light of what I understand my noble friend to have just said. We had previously written, seeking on behalf of all parties and organisations such as the Local Government Association—which supports the proposal—and the intention was quite clear in the correspondence that I wrote, originally almost a month ago, that there would not be the opportunity for an SI to be brought forward now and that, therefore, we would have to wait for the Elections Bill for such a change to be implemented. If that is the case, I regret, given that the conversations have been ongoing, that I and others—including the LGA and others, not only political parties but organisations representing interested parties—could have been told or received some indication previously.

Lord True (Con): My Lords, I am disappointed by my noble friend's comment. I regret that he is disappointed. The regulations we put in place were clearly time-limited and intended to be so. I indicated to him, as he well knows, in correspondence that took place and my response to the noble Baroness opposite, that the Government are open to discussion on this particular point, but the Government believe that careful consideration must be given to it in view of some of the implications. No doubt, my noble friend will have the opportunity on the Elections Bill to raise the matter again.

I can assure my noble friend that no personal discourtesy was intended by me or, I am sure, by any Minister in the responsible department in failing to deal with this matter in the timescale he asked for. If he has been offended, of course I regret that, but I stand by the position that I put before your Lordships, which I thought was fair. I think I said that I welcomed the point that he and the noble Baroness opposite had raised and that we are open to further discussions on this topic. I made the same point to my noble friend this morning in the exchanges we had on the Elections Bill, and I have nothing further to add.

Motion agreed.

Non-Domestic Rating (Levy and Safety Net) (Amendment) Regulations 2022

Considered in Grand Committee

5.11 pm

Moved by ***Lord Greenhalgh***

That the Grand Committee do consider the Non-Domestic Rating (Levy and Safety Net) (Amendment) Regulations 2022.

Relevant document: 28th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, these regulations make changes to the way in which we calculate levy and safety net payments as part of the business rates retention scheme. The changes are necessary to ensure that the calculations reflect the current circumstances of local government and that individual authorities receive or pay no more or less than they should.

Under the business rates retention scheme, authorities that see their business rates income fall significantly in any year can receive a safety net payment. The cost of the safety net is paid for by recovering, through a levy on growth, a percentage of the business rates income of authorities that, in any year, have seen their business rates income significantly increase. The detailed rules about the calculation of levy and safety net payments are set out in the Non-Domestic Rating (Levy and Safety Net) Regulations 2013.

The regulations before the Committee make a number of changes to the 2013 regulations. They do four things. First, they update the 2013 regulations for 100% retention authorities. The Committee will recall that, since 2017-18, the Greater Manchester, Liverpool City Region, West of England, West Midlands and Cornwall authorities have retained not 50% but 100% of the business rates

[Lord Greenhalgh]
they collect. As a result, we made changes to the levy and safety net calculations to reflect authorities' higher business rates income. These changes have been reconfirmed periodically in regulations as and when the Government have extended the 100% arrangements.

As things currently stand, the changes to levy and safety net calculations for 100% retention authorities apply in every year up to and including 2020-21. However, because the Government have now confirmed that the 100% arrangements will stay in place in 2021-22 and 2022-23, we need to extend the timeframe over which the changes to levy and safety net calculations apply. This is provided for in regulations.

Secondly, in Regulation 6 we amend the levy rate of the Greater Manchester authorities. Until recently, the Greater Manchester authorities were part of a pool with an authority that was not involved in the 100% arrangements, so the levy rate was calculated for the pool as a whole. The pool arrangements finished at the end of 2021. From 2021-22 onwards, therefore, these regulations will ensure that the levy rate that applies to the Greater Manchester authorities will be zero, bringing it into line with the levy rate in other 100% retention authorities.

Thirdly, the regulations make a number of changes to deal with the consequences of local government restructuring. When the structure of local government changes, some of the values in the levy and safety net calculations need to change so that they reflect the business rates bases and revenue needs of the new authorities. For the current year, 2021-22, amendments are needed in respect of the newly created authorities of North Northamptonshire and West Northamptonshire, and for the creation of the Hampshire and Isle of Wight Fire and Rescue Authority. These changes are made in Regulations 3, 5, 6, 7 and 8, with the updated figures set out in new Schedule 6.

Lastly, the regulations make changes to reflect the exceptional financial support that was made available to authorities in 2020-21 and 2021-22 following Covid. Noble Lords will recall that, in response to Covid, the Government exceptionally waived the business rates bills of the occupiers of eligible retail, hospitality and leisure properties and of eligible childcare providers, thereby helping those ratepayers to cope with the financial impact of the lockdowns and restrictions that were put in place to tackle the pandemic. Ratepayers' bills were reduced by over £11 billion in 2020-21.

We have continued to provide support to retail, hospitality and leisure businesses and childcare providers, with an estimated £5.8 billion of relief to be given this financial year. Furthermore, we have recognised the strain on other businesses and have announced an extra £1.5 billion of Covid additional relief funding, to be allocated by local authorities in line with the needs in their local areas.

Of course, this unprecedented reduction in bills, although welcome to ratepayers, has deprived local authorities of a commensurate amount of business rates income. To support the delivery of local services, the Government have therefore compensated local authorities for every pound of business rates income that they have lost as a result of awarding additional reliefs to ratepayers. The compensation, via a grant from central government under Section 31 of the Local Government Act, has been paid up front to authorities to ensure that they had the cash they needed to deliver local services in 2020-21 and 2021-22. The further support, in the form of the £1.5 billion of Covid additional relief fund, will be paid to authorities as soon as possible.

If we did nothing to the 2013 levy and safety net regulations, the loss of income caused by the reduction of ratepayers' bills and the additional reliefs awarded by authorities would mean that in some cases authorities would receive substantial safety net payments, even though they have already been compensated by means of a Section 31 grant. Therefore, in Regulation 7 we make changes to the 2020-21 and 2021-22 levy and safety net calculations to strip out the impact of income reductions that have been, or will be, compensated via a Section 31 grant. This means that those authorities will not be compensated twice for the same loss of income.

As well as compensating authorities pound for pound for the estimated £18.5 billion of support that we are providing to ratepayers over two years, we have taken further steps to help authorities through a tax income guarantee. Under that guarantee we are providing additional compensation to authorities for losses of business rates or council tax income in 2020-21. For business rates losses over and above those resulting from the reduction in ratepayers' bills, authorities are being compensated for 75% of the additional loss. But, of course, in the same way as for the Section 31 grants paid to major precepting authorities, we need to change the regulations in 2020-21 to ensure that authorities are not compensated twice for the same loss of income. Regulation 8 and new Schedule 1B change the basis of the calculation of levy and safety net payments to ensure that losses of business rates income do not generate safety net payments if the authority is receiving support through the tax income guarantee.

In conclusion, these regulations make a series of very technical changes to the calculation of levy and safety net payments to ensure that they reflect current circumstances and that authorities will pay or receive the correct levy and safety net payments. I commend them to the Committee.

Lord Shipley (LD): My Lords, I should first remind the Committee that I am a vice-president of the Local Government Association.

In the House of Commons, these amended regulations took just 15 minutes to be explained and approved, and that seems to be because they are appropriate in the circumstances. The revised levy rate for Greater Manchester looks right, since the pool arrangements, as the Minister said, have ceased. It is also right that the restructuring of a few local authorities has been reflected in new, updated figures.

We should support financial relief from business rates for businesses impacted by Covid being fully compensated to local authorities, in line with previous decisions earlier in the pandemic. It is, however, clearly important that the businesses rates retention scheme works as it was intended to. I think it would be wrong

to give safety-net payments to some local authorities when they are already compensated by the Government directly, and the proposals on proxy figures for the limited number of 100%-retention authorities seems appropriate.

All the amendments in this statutory instrument today are technical and sensible. But the context is one of a system of business rates that is no longer fit for purpose. It does, however, generate a huge amount of income. I am left wondering what the Government are now thinking about the future of business rates—so anything the Minister can tell us on that would be most welcome.

Finally, I read the comments of the Secondary Legislation Scrutiny Committee published on 3 February, and I think the committee was right to raise the issue of whether the public are adequately protected against fraud, given public concern about false claims in other areas of Covid support payments. This is, of course, a relief scheme, and relief schemes are part of normal local authority systems and subject to normal audit systems. However, the Minister might wish to confirm that the Government feel adequately protected, given that it is their money that is helping to fund the cost.

Baroness Hayman of Ullock (Lab): My Lords, I thank the Minister for his introduction to this instrument, which, as we have heard, makes various changes to the business rates retention scheme. As we also heard from the Minister, each change is very technical, including amendments to levy and safety-net payments, the restructuring of certain local government areas and the payment by central government of specific grants to local authorities. I will not cover any of the technical detail: the noble Lord, Lord Shipley, amply covered that and asked the questions in these areas that needed to be asked of the Minister, so I will not repeat them.

I will briefly say that Labour supports these changes. However, in the other place when the matter was discussed, some important points were raised about business rates and our high streets. The Minister may remember that yesterday, in the Statement on levelling up, I talked of the need to completely reform and replace the current system of business rates. I appreciate that the terms of the SI before us today are very narrow and that this is not the place to debate that, but I ask the Minister to take our concerns about the current system back to his department. The Government have spoken already about the need to reform the business rates system and have conducted a review, but we have seen little progress to date beyond narrow technical legislation such as that before us today. I encourage the Minister to give his department a nudge. Having said that, we are very happy to support the regulations.

Lord Greenhalgh (Con): My Lords, I thank the noble Baroness, Lady Hayman, and the noble Lord, Lord Shipley, for their contributions. I thank them both for raising similar issues. While this is a very narrow statutory instrument, it is probably worth saying, thinking about the future business rates is very much a matter for the Treasury. There is a recognition that future business rates need to be thought through. Obviously, there is a review and, self-evidently, there needs to be reform.

Equally, there is the issue alluded to by the noble Lord, Lord Shipley, on what we do about local government in the context of the income for local authorities being council tax and business rates, and business rates fundamentally needing to change to reflect the changing dynamics of our high streets. There is an intellectual debate that can be had about whether we continue to resource equalise, or whether we think about life as a race, whereby we ensure the start line is level and fair and then you get places essentially to compete and, through competition, raise the game. That is an intellectual debate that is entirely proper, not for this statutory instrument, but it one that I like engaging in with people who have a very deep knowledge of local government and care about its future. It is really hard to be fair if you have officials working formulae that only they seem to understand to determine whether a place gets x money or y money. It is job of work that, necessarily, the Secretary of State will be looking at—it is far above my pay grade—but I have been a huge advocate of ensuring that local authorities can be set free to be able to determine their own destinies, rather than being necessarily being always funded from the centre, in the relationship we have today. That is how it has always been, for over 20 years, in my time in local government—but that is not really a matter for today's debate. I am sure that we will have many debates about this in the Chamber over the coming years.

I have something else on this as well. Local authorities are responsible for the administration of release and provide us with assurance on the use of release. These are not grants but reflect a discount on the liability of a business. Local authorities can take action against any relief that is fraudulent. Does that help the noble Lord, Lord Shipley?

Lord Shipley (LD): My Lords, that is what it says in the Explanatory Notes. This issue is whether everybody is auditing it very carefully. That was my question really.

Lord Greenhalgh (Con): Clearly, we need to ensure there are proper controls in place, both at the local authority level and the Government need to look at it as well. I think that is very wise advice, and we will take that away from this debate.

In conclusion, these regulations are necessary to ensure that the rates retention scheme continues to operate as was intended and that authorities receive the safety-net payments to which they are entitled or make the levy payments due from them. Without these regulations, the amounts paid or received by authorities will be wrong and will impose additional costs on local government as a whole. The regulations ensure that this does not happen, and I hope the Committee will join with me in supporting them.

Motion agreed.

Waste and Agriculture (Legislative Functions) Regulations 2022

Considered in Grand Committee

5.28 pm

Moved by ***Lord Goldsmith of Richmond Park***

That the Grand Committee do consider the Waste and Agriculture (Legislative Functions) Regulations 2022

Relevant document: 27th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, the instrument before us was laid before the House on 13 January. It makes small but crucial changes to repatriate powers to the UK and correct an error in a previous agriculture SI by restoring an accidentally omitted definition of an appropriate authority. This instrument covers two subject areas: waste management and agriculture. I shall take them in turn.

First, for waste management, this instrument transfers powers relating to several directives concerning waste from the European Commission to the Secretary of State. Where appropriate, these powers are also transferred to the devolved Administrations. The powers will largely give the Secretary of State and, where appropriate, the DAs, the ability to make regulations to set various technical standards, criteria, thresholds, and conditions. All these standards are currently operational, and we do not anticipate the need to alter them soon. However, there may be a need to amend them in future. For instance, should a superior waste treatment method be developed, without the amendments made by this SI we would not be able to make regulations to take account of the new method, which may weaken our high environmental standards.

I shall briefly outline the power, or powers, being transferred from each EU directive. Regulation 5 transfers the power to set standards for the sampling of waste going to landfill from the landfill directive. Regulations 6 to 9 transfer powers from the end-of-life vehicles directive to update and modify exemptions covering the use of certain heavy metals in vehicles based on scientific or technical progress; to specify minimum requirements for the certificate of destruction for waste motor vehicles; to modify conditions for storage and treatment for waste motor vehicles in line with scientific or technical progress; and to specify material and component coding standards for vehicles.

Regulations 10 to 11 transfer powers from the mining waste directive to modify non-essential elements such as guidelines for inspecting waste facilities and sampling methods, and to update regulations in line with scientific and technical progress. Regulations 12 to 13 transfer powers from the batteries directive to specify export criteria and to grant exemptions from labelling requirements for batteries and accumulators.

Regulations 14 to 17 transfer powers from the waste framework directive: first, powers to prescribe detailed criteria for what substances may be considered a by-product of a manufacturing process rather than a waste product, whereupon it can be sold or treated differently; secondly, powers to prescribe detailed criteria for when waste may no longer be considered waste, such as if the substance can be put to a more useful purpose elsewhere; and, finally, powers to specify the application of the formula for incineration facilities.

Regulations 18 to 20 transfer powers from the waste electricals and electronic equipment directive to update selective minimum treatment technologies for waste electrical and electronic equipment, or WEEE; to update the technical requirements for WEEE treatment and storage operations and the non-exhaustive list of products listed as falling into each of the categories specified in the WEEE directive; and to update the crossed-out wheeled bin symbol. These powers could, for example, be used to tighten treatment requirements of substances in WEEE found to be hazardous to health and the environment. The powers, apart from those relating to the batteries directive and the mining waste directive, will apply in England, Wales, Scotland, and Northern Ireland. The powers relating to the batteries directive and the mining waste directive will apply in England, Wales, and Scotland but not in Northern Ireland.

I shall now cover this instrument's effect on agriculture-related legislation. This instrument amends Regulation (EU) No 1306/2013 of the European Parliament and of the Council as it relates to the organisation of common markets and rural development measures. Regulation-making powers from that regulation were previously transferred to the Secretary of State and their counterparts in the devolved Administrations by three EU exit SIs. However, the effect of the interactions between these three SIs has resulted in Regulation (EU) No 1306/2013 no longer containing a definition of "appropriate authority" in relation to the financing, management and monitoring of the organisation of common markets and rural development measures. Therefore, this instrument reinserts the definition of appropriate authority into Article 2 of Regulation (EU) No 1306/2013 and revokes the ineffective definition in a previous EU exit SI, the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020, to correct this deficiency.

No impact assessment has been prepared for this instrument, because this instrument only repatriates powers to the UK and corrects an accidental omission in a previous EU exit SI. The impacts will be considered if regulations are made using the repatriated powers.

Safeguards are provided through a requirement, in relation to the waste-related powers, to consult appropriate authorities and such other persons as the Secretary of State or the devolved Administrations consider appropriate, before making regulations under these powers. Any regulations made under these powers would receive Parliamentary scrutiny through the negative procedure, except one agriculture-related power to make regulations in the event of an emergency to make payments to beneficiaries. This allows use of the urgent affirmative procedure where it is both necessary and justifiable to ensure that beneficiaries can be paid.

I commend these regulations to the Committee and I beg to move.

The Duke of Montrose (Con): My Lords, I am most grateful to my noble friend for such a full explanation of the impact of this measure. Did I hear him say that this will allow the Government and the devolved Administrations powers to amend the waste regulations, presumably in their area? Does he expect the powers to vary between the different areas? On the disposal of cars, one can see that a devolved Administration could perhaps make the regulations less onerous and thereby attract cars for disposal to set up a bit of industry or activity in their area. Have the Government considered that? Is it likely to be beneficial in these areas?

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his full introduction to this relatively straightforward instrument dealing mainly with waste. The Explanatory Memorandum claims that without this SI it would be "cumbersome" and difficult to make any necessary changes to take account of new methods of sampling and waste treatment in future.

Paragraph 7.2 of the EM sets out the functions already in place and working well but does not mention those that are perhaps not working well. Is the Minister able to say whether any of the functions under the EU directives concerning waste that have transferred are not working as expected?

I am afraid I have some somewhat detailed questions. The various categories of waste covered by this SI are wide. In Chapter 5, Regulations 12 and 13 deal with the retention of functions from the batteries directive. This includes powers to specify criteria relating to the export of waste batteries. Regulation 12(1) states that an

"appropriate authority may, by regulations, make provision specifying criteria for the assessment of equivalent conditions where treatment and recycling of waste batteries takes place outside the United Kingdom."

The Minister will know that all households are now aware that they cannot just throw their expired batteries into the waste bin but have to dispose of them safely. Having disposed of my batteries in the relevant safe way, I am sure I am not alone in not expecting them to be exported for their final resting place. Can the Minister say just what percentage of the

"batteries, accumulators and battery packs"

referred to in Regulation 13 is disposed of within the United Kingdom and what percentage is exported for disposal, and which countries take our batteries for disposal?

While I have not read all the directives covered by this SI, I have done some investigation on the mining waste directive, 2006/21/EC. This covers extractive waste from land-based extractive industries and the relevant regulatory procedures required for England and Wales under the Environmental Permitting (England and Wales) Regulations 2010. This relates to unpolluted soil, non-hazardous waste from prospecting of mineral resources, except oil and evaporates, and waste from peat extraction. The definition of extractive waste is unpolluted soil and waste arising from prospecting for mineral resources and from peat workings. I am sure the Minister can see which way I am going.

Article 3(15) further states that for a site to be considered as a mining waste facility, the extractive waste would have to be kept in it for differing periods of time depending on the category of waste. For

"unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste",

this is specified as

"a period of more than three years".

Can the Minister say what the average time period of storage is for extractive peat waste and what the quantities are currently likely to be?

The section in the instrument relating to agriculture is at the end under Part 4 and relates solely to the financing, management and monitoring of the common agriculture policy, in so far as it relates to CMO markets and rural development measures, and corrects errors in previous SIs on the subject. Given the number of SIs in the past on this subject, although they were before the Minister was in post, can he give reassurances that this SI is a catch-all and corrects all previous errors, or are there likely to be more? As I said, this is something of a tidying-up SI, and I am happy to support it.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction to this SI, and the Secondary Legislation Scrutiny Committee for drawing this SI to our attention. As the Minister said, the SI proposes to transfer several technical powers relating to waste from the European Commission to the Secretary of State, as well as correcting an error. In this regard, I have a number of questions.

First, can the Minister say when the error was first identified and why it has taken so long to bring the correction before us? This partly echoes the point made by the noble Baroness, Lady Bakewell, that a lot of water has gone under the bridge since the SI was first drafted. We have dealt with a number of corrections over the years, so why has this one taken so long? Perhaps he could address that point.

Could the Minister also say whether there have been any adverse consequences resulting from this drafting error? If there was no definition of the appropriate authority, I would have thought it undermined the whole legislation and that the legislation had no standing if it did not say who had the authority to carry it out. I would like to have a better understanding of what has been happening in the intervening period since the original wording was agreed by us. Perhaps he could also explain how that error came to light and why that took so long.

Secondly, referring to the various waste management standards, which the Minister said are all currently operational, can I double check whether all those standards were approved by Parliament in the first place? In other words, have they been signed off in the normal way?

Thirdly, paragraph 6.1 of the Explanatory Memorandum says that

"if this SI were to fail and the powers were not transferred to the Secretary of State",

it would not be possible to make regulations to take account of improved scientific techniques in the future. In other words, this is the only way to do that. I take slight issue with that, because surely there remains the option of bringing forward new regulations to take account of improved scientific knowledge, an option that would exist at any time, without necessarily giving all those powers to the Secretary of State. We are being asked to give up our involvement in those decisions. That matters because, as we all know, having debated so many SIs in the past, the definition of improved scientific knowledge is a bit of a movable feast, and we might have a different view in Parliament from the Secretary of State.

The Explanatory Memorandum says that this is to allow more flexibility for the Secretary of State in responding

"to scientific and technical changes".

[Baroness Jones of Whitchurch]

But given the Government's current excitement about the forthcoming Brexit freedoms Bill, how can we be sure that the freedoms for the Secretary of State set out in this SI will not be used to reduce standards in the name of technical advance? For example, there are several references in the SI to the Secretary of State being able to exercise this power only if it is considered

"appropriate to do so as a result of scientific and technical progress".

This phrase is used in Schedule 6(3) relating to end-of-life vehicles, in Schedule 11(2)(a) relating to mining waste, and in Schedule 20(2) relating to the WEEE directive.

5.45 pm

However, there is no definition of scientific and technical progress. Only in Regulation 11(2)(b) does it add the extra provision—the extra safeguard, if you like—that the power should be exercised only

"with a view to achieving a high level of environmental protection."

Why is not the extra protection of that phrase used in all the other categories: on end-of-life vehicles, the WEEE directive, and so on? I should have thought that that would have given us greater assurance.

Finally, is this a one-off set of measures or is Defra carrying out a wider review of the European Union (Withdrawal) Act 2018, as set out in paragraph 7.6 of the Explanatory Memorandum? Are these new freedoms and flexibility for the Secretary of State now part of a process to review all the withdrawal legislation? I should like an answer to that point, particularly, but also to my other questions. Perhaps if the Minister does not feel able to reply today, he could write to me on those matters. I look forward to his reply.

Lord Goldsmith of Richmond Park (Con): I thank noble Lords who have contributed to this debate today. Now that we have left the EU, it is essential that our legislation reflects this new reality, and I shall try to address the questions that were put to me. On the first, put to me by the noble Duke, the Duke of Montrose, I simply emphasise that there is and has been very close co-operation between the Government and the devolved Administrations, and between the devolved Administrations themselves. Waste policy is devolved, but the current UK approach on, for example, ELVs, gives no indication so far that the DAs have any intention of diverging. If there are exceptions to that, I shall come back to the noble Lord, but I am unaware of them. It is also the case that some elements are regulated at the UK level—for example, end-of-life vehicles, which therefore applies across the board.

The noble Baroness, Lady Bakewell, asked some quite detailed questions about the percentage of batteries disposed of, where they are exported to, and so on. I shall not be able to answer all her questions, but I shall do my best to answer some of them. As she knows, there are certain labelling requirements for batteries. The powers here would enable exemptions from labelling to be put in place if necessary, but currently there are no exemptions in place. There are numerous portables exported to major EU destinations, including Belgium. However, to provide the noble Baroness with a comprehensive list we need to get data from the Environment Agency, and we will do so on the back of this debate.

The noble Baroness also asked about agricultural waste. The amendments in this SI effectively reinstate the definition of an appropriate authority; that is what it is about. It amends EU 2013/1306, the horizontal or cross-cutting regulations underpinning the CAP schemes, in so far as they relate to the organisation of common markets and rural development measures. Defra previously transferred secondary legislation-making powers in this regulation to the appropriate authority—that is, the Secretary of State and the devolved Administrations. The noble Baroness, Lady Jones, asked the same question. Through the unintended effect of three interacting statutory instruments, the definition of the appropriate authority was deleted, so the amendment will allow the Secretary of State and the devolved Administrations to use these already transferred secondary legislation powers to develop and refine the technical details required to operate rural development schemes and marketing measures. The Scottish Government have told us that they wish to use these powers to make a Covid-related derogation in inspection rates for new Scottish domestic agricultural support schemes early this year.

The noble Baroness, Lady Jones, pressed me in this area and asked whether it was a one-off. I think it is; I would like to say so. I cannot absolutely guarantee that I will not come back with more, but my understanding is that we are done now—this is the end. The error was identified in summer last year, and we have taken steps to make the correction that we are dealing with now at the earliest opportunity. I am reassured that there were no adverse steps that we are aware of. Neither Defra nor the devolved Administrations have sought to use the particular powers that we are legislating for today since we left the European Union, so this has not cost us in any way. It was an error, but the error is being corrected. The human explanation is simply that there has been a flurry of activity since we left the European Union, as the noble Baroness knows as she and I have dealt with much of it. I think it is inevitable that some errors were going to be made.

I know that the noble Baronesses, Lady Jones and Lady Bakewell, asked other questions, but I will have to go through *Hansard* and find them and give the specific answers they are looking for, rather than waste time now, because I did not catch all the questions while I was going through my papers. In any case, I will need to consult the experts. I hope I have covered at least the most serious questions that have been put to me by Members.

To conclude, I am grateful to noble Lords for both understanding and accepting the need for this instrument. It is small but crucial. The changes it makes to repatriate powers to the UK correct an accidental omission in a previous SI, and it is clearly something that has to be done. This instrument makes it possible to swiftly update many technical standards, criteria, thresholds and conditions in the field of waste management to reflect the latest developments and to ensure that our high environmental standards are maintained. It will also enable our agricultural legislation regarding the organisation of common markets and rural development measures to function as intended. Once again, I thank noble Lords for their contribution and support today.

Baroness Jones of Whitchurch (Lab): My Lords, I appreciate that the Minister said he will go through *Hansard* and perhaps give us a more detailed reply, but I suspect he already knows the answer to the last question I asked him. Partly on the back of the Brexit freedoms Bill, is there a wider review of the powers of the Secretary of State arising from the withdrawal Act, as set out in paragraph 7.6 of the Explanatory Memorandum? Is this a one-off, devolved to the Secretary of State, or are the Government going back and looking at all the provisions in the withdrawal Act? Is that a bigger process that Defra is involved in?

Lord Goldsmith of Richmond Park (Con): No, it is not. Defra is one of the busiest departments of government at the moment, not least because we have an enormous amount of follow-up to do following the passing of the Environment Act. An enormous amount of secondary legislation and work will follow. One area of the work we are looking at is how we can refine, and potentially improve, the habitats directive. That is also taking up a lot of bandwidth. What we are talking about here today is not the thin end of any kind of wedge. There is no overall Defra review that is happening. In the context of what we are talking about today, I can say that this is a one-off, as opposed to part of an overall review.

Motion agreed.

Committee adjourned at 5.53 pm.