Vol. 819
No. 130

Tuesday
8 March 2022

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2022-03-08

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 March 2022

2.30 pm

Prayers—read by the Lord Bishop of Leeds.

Prisoners: Imprisonment for Public Protection Sentences

Question

2.37 pm

Asked by ***Lord Moylan***

To ask Her Majesty's Government whether they intend to publish an action plan in respect of prisoners serving indefinite sentences for public protection; and if so, when.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, the Government will publish the imprisonment for public protection action plan following careful consideration of the findings and recommendations of the report of the Justice Select Committee on its inquiry into the IPP sentence, which is due later this spring. A version of the IPP action plan has previously been published and is in the House's Library.

Lord Moylan (Con): My Lords, on 15 December last year the Minister referred to his ministry's

"successful action plan dedicated to the rehabilitation and risk reduction of IPP offenders",—[*Official Report*, 15/12/22; col. 358.]

but he has politely declined to put the current version of the action plan in the public domain. Can he say whether the action plan includes the training given to probation officers in the effective supervision and support of IPP offenders?

Lord Wolfson of Tredegar (Con): My Lords, I think I made it clear in my first Answer that the current version of the action plan is in the Library. We are updating it but we will wait to see what the Justice Select Committee report says. I suggest to my noble friend that that is an appropriate way to proceed. As to the probation service, the action plan requires the direct involvement of the probation service and the IPP progression panels in each probation region. The panels support probation officers to manage offenders on licence and they assist in applications made to the Parole Board to suspend supervision requirements or terminate the licence.

Lord Blunkett (Lab): My Lords, on International Women's Day, it would be appropriate if the action plan took into account the very specific circumstances of women, given the Parole Board's remit to ensure that we remain safe when prisoners are released. Perhaps the Minister could tell us this afternoon how many women prisoners have never been released when sentenced to IPP and how many are currently on licence.

Lord Wolfson of Tredegar (Con): My Lords, I have those figures: as at the end of September 2021, there were 19 women in custody who had never been released and 115 women in the community on licence. A qualified psychologist has reviewed the sentence plan of every woman serving an IPP sentence in custody to ensure that the plan identifies the right courses and work she needs to complete in order to demonstrate a reduction in risk.

Lord Brown of Eaton-under-Heywood (CB): Responding recently to the Atkin Lecture of the noble and learned Lord, Lord Garnier, on prisons, Mr Raab referred to the growing proportion of unreleased IPP prisoners who had committed "more serious offences". May he perhaps have overlooked the 570 unreleased IPPs who have served more than 10 years beyond their tariff terms, fewer than 50 of whom had tariff terms of over four years, 200 of whom had tariff terms of less than two years—hardly sentences reflecting serious offences? Does the Minister think that they have been overlooked or merely forgotten?

Lord Wolfson of Tredegar (Con): My Lords, they have neither been overlooked nor forgotten. The vast majority of the IPP prisoners who have never been released received their IPP either for a serious sexual offence or for violence against the person. However, progress is being made. In December 2020, there were 1,849 IPP prisoners who had never been released. In December last year there were 1,602. That is a 13% fall in one year.

Lord Bradley (Lab): My Lords, I declare my interest as a trustee of the Prison Reform Trust. While we are waiting for the action plan, will the Minister say what steps the Government are taking to assist IPP prisoners with access to courses, to open conditions and to ROTL, which have been seriously affected by the pandemic but may be crucial to the IPP prisoner's release?

Lord Wolfson of Tredegar (Con): The noble Lord is absolutely right. It is imperative that prisoners get that sort of support to make sure that they are in the best position they can be to be released, if they have never been released before, or to have their licence terminated. We are working with each prisoner to make sure that they have a proper pathway. The House will recall that one of the government amendments to the Police, Crime, Sentencing and Courts Bill was to ensure the automatic referral of offenders on licence to help them terminate their licence as soon as possible after the 10-year period.

Baroness Burt of Solihull (LD): Will the Minister please confirm that the action plan will contain measures for IPP prisoners who have been recalled? Research from the Prison Reform Trust shows that recalled prisoners struggle to cope with the indefinite nature of recall and to find the motivation to engage in the never-ending cycle of prison, release, recall and prison. What special help will be included in the action plan for them?

Lord Wolfson of Tredegar (Con): My Lords, I cannot go now into details of the action plan which will be published. What I can say is that we are absolutely focused on the sword of Damocles nature of the licence hanging over the prisoner. That is why we brought in the automatic referral. What I can say, though, is that prisoners are recalled from licence only when they exhibit behaviour which makes their risk unmanageable in the community. Over 40% of recalls are in relation to fresh offences committed when on licence.

Lord Garnier (Con): My Lords, I, too, refer to my trusteeship of the Prison Reform Trust. Some years ago, Dame Anne Owers, the former prisons inspector, said that there was a link between humanity and effectiveness. Do the Government have their own view on the link between humanity and effectiveness in relation to the IPP regime? Why do we have to wait for them to be told what to say by the Justice Committee?

Lord Wolfson of Tredegar (Con): My Lords, I think the link between humanity and effectiveness might lie beyond a short answer to a question. What I can say is that quick fixes—such as retrospectively abolishing the IPP sentence or resentencing IPP offenders—would expose the public to unacceptable risk. We have to recognise that people were given IPP sentences because they were considered dangerous. Having said that, we are working towards making sure that all prisoners subject to an IPP sentence are properly reviewed and their sentences are progressed.

Baroness Jones of Moulsecoomb (GP): One cannot exactly call this a quick fix. The review was announced by the then Prime Minister in July 2011 and has taken until now—nearly 11 years. Why has it taken so long to even start to get to the point where we are righting this egregious injustice?

Lord Wolfson of Tredegar (Con): My Lords, "egregious injustice" is probably the right phrase. What came out in the debates on the police Bill was a recognition by those who proposed the IPP sentence in the first place that it was a mistake. I do not want to look back. We have made the first moves towards a proper automatic referral system. We will be publishing the action plan once we get the response of the Justice Committee. I hope that across the House we can work together to resolve this issue.

Lord Hunt of Wirral (Con): My Lords, improving the prospects for IPP offenders is important. Does my noble friend the Minister agree that this must be balanced with the overriding need to protect the public?

Lord Wolfson of Tredegar (Con): My noble friend raises a correct point, which I sought to make in the previous answer. We must recognise that as the number of IPP offenders in custody reduces, proportionally the cohort comprises more serious offenders. Therefore, we must recognise that the rate of release is likely to slow down, given that background.

Baroness Chapman of Darlington (Lab): One of the reasons we have got ourselves into this situation is lack of access to rehabilitation courses inside prison. The availability of those courses has declined by over 60% over the last 10 years. This not only harms IPP prisoners but is one of the reasons why reoffending rates are so stubbornly fixed. What will the Government do to improve access to these courses for prisoners, whether or not they are on an IPP?

Lord Wolfson of Tredegar (Con): I do not want to get too political about it but, picking the last 10 years and talking about why we are in this position, we are in it because the Labour Government came up with IPP sentences in the first place, which is now recognised to have been a mistake. Post pandemic, we are ensuring that prisoners have the support they need to ensure that they can exit the IPP sentence, whether from custody or on licence.

Lord McNally (LD): My Lords, 10 years ago I was the Minister who saw through the abolition of IPP in this House. I do not doubt the Minister's good intentions, but I had the same good intentions. I was told then that there were plans in place for retraining, for bringing courses through, et cetera. As for the danger to the public, what about the people who have been sentenced for serious offences since IPP was abolished? We manage them, and we manage them very effectively through the process. It is a *Daily Mail* canard to suggest that we will be sending out dangerous criminals on to the streets. The truth is that over 10 years, the Minister's department has not delivered what was promised in the LASPO Bill: an effective programme of rehabilitation.

Lord Wolfson of Tredegar (Con): My Lords, I think I am the first Minister to have made a real change in this area, in the government amendments to the police Bill. Regarding the noble Lord's other points, we have a cohort of prisoners under the IPP sentence. We must recognise that if they had not been given an IPP sentence, they might now be given a life sentence with a tariff. If you are given a life sentence with a tariff, you are on licence for the rest of your life. You never come off the licence.

Zimbabwe

Question

2.48 pm

Tabled by ***Baroness Hoey***

To ask Her Majesty's Government what assessment they have made of the political situation in Zimbabwe; and in particular, the ability of political parties to campaign freely in forthcoming by-elections in that country.

Lord Oates (LD): My Lords, on behalf of the noble Baroness, Lady Hoey, due to her leg being in plaster, and with her permission, I beg leave to ask the Question standing in her name on the Order Paper, and in doing so wish her a speedy recovery.

The Earl of Courtown (Con): My Lords, while we welcome the scheduling of by-elections, the UK remains concerned by the political situation in Zimbabwe, which includes efforts to frustrate the political opposition's right to free assembly and incidents of violence at political rallies over recent weeks. We regularly urge the Zimbabwean Government to live up to their own constitution, by ensuring that the opposition are allowed to operate without harassment, and to ensure accountability for perpetrators of violence. The Minister for Africa emphasised these messages when she met President Mnangagwa on 1 November.

Lord Oates (LD): I thank the Minister for his reply. Is he aware that, at a ZANU-PF rally on 27 February, Vice-president Chiwenga said of the opposition Citizens Coalition for Change,

"you see how we crush lice … You put it on a flat stone and then flatten it to the extent that even flies will not make a meal out of it. That is what we are going to do to CCC."

The following day, a CCC rally was attacked with iron bars, machetes and spears. One opposition supporter was killed and many more were hospitalised. Will the Government condemn the vice-president's violent incitement and work with the international community to hold the Zimbabwean Government accountable for the safety and security of all Zimbabweans, who should have the right to freely elect their leaders without fear of violence or intimidation?

The Earl of Courtown (Con): My Lords, I thank the noble Lord. I agree that such language, inciting political violence, has no place in any country, including Zimbabwe. We urge the Government of Zimbabwe to live up to their constitution in ensuring that all political parties are allowed to operate and campaign without harassment. As our ambassador publicly stated after the death of a CCC supporter at the rally on 27 February, we urge the police to fully investigate any acts of political violence and bring the perpetrators to justice.

Lord Bellingham (Con): My Lords, given that the Russian Government have been heavily investing in the Zimbabwean economy, and also bankrolling ZANU-PF, what assessment have Ministers made about the fact that Russia is now a pariah state?

The Earl of Courtown (Con): My Lords, I am glad my noble friend has brought that to the attention of the House. We were particularly disappointed to see that Zimbabwe abstained during the UNGA vote on Ukraine. We call all states to push for a ceasefire and urge de-escalation. It is also important that it is up to the Zimbabweans themselves to make many of these decisions.

Lord Trefgarne (Con): My Lords, is my noble friend aware that the Minister who originally agreed in your Lordships' House to the signature by the Patriotic Front, and announced it to your Lordships, was me, and that the senior official in the official Box on that occasion was the then Mr Charles Powell, now, of course, the noble Lord, Lord Powell?

The Earl of Courtown (Con): I must admit that I was not aware of that. My noble friend is, I think, referring to the Lancaster House Agreement, which was a very important agreement in the formation of Zimbabwe.

Lord Collins of Highbury (Lab): My Lords, the noble Earl will understand the importance I place on the words of the noble Lord, Lord Ahmad. Last week in Geneva, during the conclusions of the 40th universal periodic review, the noble Lord, Lord Ahmad, expressed concern about the harassment of civil society in Zimbabwe. Does the Minster agree that a free civil society must include trade unions, and what steps have the UK Government taken to ensure that the right to organise takes place in Zimbabwe?

The Earl of Courtown (Con): My Lords, the British embassy in Harare regularly engages with a wide range of stakeholders to improve our understanding of the political and economic issues in Zimbabwe. This of course includes trade unions, but the UK does not fund trade unions or involve itself in industrial disputes between the Government and civil servants. However, as the periodic review of human rights involving Zimbabwe shows, we are concerned by restrictions on freedom of assembly and the harassment of journalists, opposition supporters and civil society, and that the PVO amendment bill could be used to restrict civic space.

Lord St John of Bletso (CB): My Lords, with clear evidence of manipulation of the voters' roll and intimidation of CCC supporters by ZANU-PF militia, what measures can be taken in conjunction with the South African Government to encourage a compromise solution and the possibility of a Government of national unity in Zimbabwe?

The Earl of Courtown (Con): My Lords, the noble Lord mentioned South Africa. As he is perfectly aware from his deep knowledge on this area, there is a deep and long-standing partnership with South Africa; we speak often and candidly about a range of issues. One must realise that free elections without violence would be good for Zimbabwe, its people and its economy.

Lord Alderdice (LD): My Lords, noble Lords have mentioned elections. There will be by-elections shortly and major elections next year. A key element will be an electoral register with integrity and openness. In previous elections, whatever the integrity, the registers were not available until very close to the election and therefore were not available for scrutiny or use by the opposition. What are the Government doing to encourage the Government of Zimbabwe to have those registers available soon?

The Earl of Courtown (Con): My Lords, as I said, we engage with Zimbabwe on all these matters. We welcome the scheduling of these by-elections, but as I said, we are concerned with attempts to frustrate the political opposition's freedom of assembly, the use of roadblocks and the degrading of internet speed. We are working alongside our international partners to call on the Zimbabwe Government to live up to its constitution and commitment to electoral reform, including the recommendations from the 2018 electoral monitoring reports.

Baroness Sugg (Con): My Lords, even before the Covid-19 pandemic, Zimbabwe had one of the highest rates of violence against women, with one in two women reporting intimate partner violence. As we mark International Women's Day, can my noble friend tell me what assessment the Government have made of the impact of the pandemic on gender-based violence and what they are doing to help?

The Earl of Courtown (Con): My Lords, I thank my noble friend. Violence against women remains a serious issue, as she said, with gender-based violence prevalent across all parts of society and reports of it increasing during Covid-19, but Her Majesty's Government's support for women and civil society has amplified the voice of women's organisations within the national Covid-19 response. I should also say that the UK continues to lead the way on what works to prevent violence against women and girls through our flagship SAFE programme, which will test and generate learning on how to prevent gender-based violence, including domestic violence and child marriage.

Lord Alton of Liverpool (CB): My Lords, given what the noble Lord, Lord Oates, said to the House about the systematic and considerable attacks that have been made on CCC candidates, can the noble Earl tell us whether election monitors from the international community and the diplomatic corps will be on hand during the forthcoming by-elections but also in the 2023 general election in Zimbabwe? Will he also draw the House's attention to the admirable statement by the Government of Kenya, which the Government of Zimbabwe should take careful note of, with its condemnation of the occupation of Ukraine by Russian troops?

The Earl of Courtown (Con): My Lords, yes, we are concerned about the recent incidents of violence targeting CCC rallies. As I said, our ambassador in Harare tweeted to called on the Government to ensure that perpetrators of violence are brought to justice and that all parties can campaign freely without fear of violence. I am aware that two rallies took place peacefully last weekend. The noble Lord asked about election monitors. I am afraid I do not have that information to hand, but I will write to the noble Lord.

Viscount Goschen (Con): My Lords, it is universally accepted that the solution to the very serious human rights situation in Zimbabwe lies locally with regional leaders. Could my noble friend tell the House what assessment has been made of the economic benefits that would flow not just to Zimbabwe but to the wider SADC region from an improvement in human rights in Zimbabwe?

The Earl of Courtown (Con): My Lords, my noble friend makes some good points. We also have to recognise the important role of the African Union and SADC, as well as South Africa, in relation to Zimbabwe. We must continue to engage with all three, given our shared desire for a prosperous Zimbabwe that respects human rights. I was looking for something else to give to my noble friend, but it escapes me.

Lord McDonald of Salford (CB): My Lords, when the United Kingdom was a member of the European Union, the EU took its lead on Zimbabwe policy from the UK. In our absence, do Her Majesty's Government note any softening of the EU's line towards Zimbabwe?

The Earl of Courtown (Con): My Lords, the noble Lord asked about the relationship between the EU and its line on Zimbabwe. As I understand it, the EU is softening some of its sanctions, but the noble Lord will be aware that the largest amount of sanctions are made by the United States. We have a number of sanctions as well.

Bus Improvement Plans

Question

2.59 pm

Asked by ***Baroness Randerson***

To ask Her Majesty's Government what assessment they have made of the adequacy of the funding available for Bus Improvement Plans.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, our national bus strategy asks that all English local transport authorities outside London publish bus service improvement plans—BSIPs—setting out local visions for the step change in bus service that is needed, driven by what passengers and would-be passengers want. At the Budget, we announced £1.2 billion of new dedicated funding for BSIPs, part of over £3 billion of new spend on buses over this Parliament.

Baroness Randerson (LD): My Lords, of course, the amount of money already announced is welcome, but there is a yawning gap before we get to the £3 billion the Government announced. Applications for funding from local authorities have so far, I believe, totalled £7 billion. Is that more or less the correct figure? If it is, can she tell us exactly how the money was allocated for the first tranche of funding and what criteria it was based on, and reassure us that the process was fully objective? Can she also tell us when the money will be announced for the rest of the promised funding? As it is International Women's Day, I bring the House's attention to the fact that women are overly and disproportionately dependent on bus travel. It is very important that the Government support public transport at this time.

Baroness Vere of Norbiton (Con): I am trying to piece that all together. I think that what the noble Baroness refers to as the first wave is perhaps the places we mentioned in the levelling up White Paper. Those were just indications of the places we believed had strong enough BSIPs to merit investment allocation; further places for investment are still under consideration. We have been working very hard on reviewing and understanding the plans we have received. I have to be honest: some are absolutely excellent, and others need a bit of work. We are now approaching the stage

where the Minister will make the spending decision, and we anticipate that the places announced in the levelling up White Paper will be included, as will many other places.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, this Question is fundamental to the levelling up agenda. In certain areas of the north-east, for example, buses are so infrequent that they fail to meet the needs of the public and are therefore not used. This compares poorly with, say, London, where public buses are very frequent and obviously very well used. Does the Minister therefore agree with me that the provision of a more frequent bus service will increase usage by meeting the needs of the public and thereby increase revenue and mitigate the costs?

Baroness Vere of Norbiton (Con): How could I disagree with that? That is absolutely right, but there are lots of factors in terms of increasing frequency, and part of that involves local authorities putting in bus priority measures so that buses can make it through congested areas. The noble Lord mentioned the levelling up White Paper and the importance of buses in that regard. I have to agree. We did say that by 2030, local public transport connectivity across the country will be significantly closer to the standards of London. We mean that, and this is a good step along the way.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend update the House on the position of concessionary fares for buses, and will she join with me in saying how important they are to rural life, enabling people to go about their everyday activities such as shopping, visiting hospitals and attending doctors' appointments?

Baroness Vere of Norbiton (Con): I absolutely agree with my noble friend, and there is an awful lot that we will work together on with the local authorities, versus what they have in their BSIPs, to encourage those who do have concessionary passes to come back to bus, because we miss them terribly. Regarding concessionary payments, we published concessionary travel recovery guidance—late last year, I think, but definitely pre-omicron—that looked at how we are going to get concessionary fares matched up to passholders. At the moment, there is a discrepancy because we are paying concessionary amounts out in full. We are looking at that again to make sure it takes omicron into account, but I agree with my noble friend that concessionary passholders are welcome back to bus any day.

Lord Rosser (Lab): Last week I asked for confirmation that

"none of the emergency support or recovery grants for buses has been taken out of the £3 billion for buses and bus services by 2025 announced under the Bus Back Better strategy, and that all the emergency support and recovery grants are in addition to that £3 billion".

The reply was:

"The Government have committed to spend £3 billion over the course of this Parliament, so I suggest to the noble Lord that, when we get to the end of this Parliament, we do a totting up."—[*Official Report*, 1/3/22; col. 681.]

For the benefit of the less academically gifted, like me, did that answer mean that all the emergency support and recovery grants are or are not in addition to the £3 billion under the Bus Back Better strategy—or is that a question to which the Secretary of State also has no idea of the answer?

Baroness Vere of Norbiton (Con): My Lords, we committed to £3 billion of new spend over the course of this Parliament, and that is what we will deliver. In addition, the noble Lord will recall that my noble friend Lord McLoughlin asked a question about other parts of funding within the system. There will be a letter in the Library, which I will also share with noble Lords who have spoken in today's debate, setting out exactly all the different funding streams available for buses. They are significant. Some are very long standing, some came from Covid and others will be part of the funding from BSIPs and CRSTSs, et cetera.

Lord Watts (Lab): My Lords, noble Lords have asked about how the Government are to allocate resources to the different regions. Given that this seems to be done in some mysterious way that bears no resemblance to need or the levelling-up agenda, can the Minister say exactly how allocations will be made under this funding?

Baroness Vere of Norbiton (Con): Yes, I can. There will be probably three different tranches of funding. Some areas—those that produced the best BSIPs, matching all the stated outcomes set out in the national bus strategy—will get transformation funding. A second tranche of local authorities will go into the improvement category, whereby they are on their way to preparing the sort of BSIPs that take into account all the outcomes from the NBS. Other areas will probably need more support, in terms of capability and capacity, so that they can fully understand how buses can meet the needs of their communities. We understand that no place must be left behind. We hope to provide support to areas where the BSIPs are not fully developed but where there is huge potential to do so.

Lord Snape (Lab): My Lords, can we have a straight answer to this question? How much have local transport authorities asked for under the Government's bus service improvement plans? Is the noble Baroness, Lady Randerson, right that only £1.2 billion is available for these plans? Are we once again to put up with the Prime Minister's sloganising? "Bus Back Better" bears no resemblance to reality if the figures the noble Baroness gave are accurate.

Baroness Vere of Norbiton (Con): My Lords, we asked the local transport authorities to be ambitious and, goodness gracious, they were. That is absolutely right. Indeed, I am not sure I have ever done a competition in the Department for Transport that has not been significantly oversubscribed. In aligning the amount of money we have, we have to really look at how that money will be used and whether it meets the requirements in the national bus strategy. I will mention no names at all but, for example, one local authority bid to build a new road from the bus funding. That does not necessarily

[Baroness Vere of Norbiton]
strike me as exactly what we need out of the bus funding. My officials are making sure that the areas we fund with taxpayers' funding get the best bang for our buck.

Lord Foulkes of Cumnock (Lab Co-op): Is not all this bidding for money a bit demeaning for local authorities? Would it not be much better to give them powers over all transport in their areas to get on with the job, and give them the money to do it?

Baroness Vere of Norbiton (Con): To a certain extent, that is the direction of travel we are moving in—particularly for the large urban areas. For example, Manchester, Liverpool and West Yorkshire—the combined authorities—receive pots of funding that they can use in a very integrated way to establish their integrated transport networks. CRSTSs, which are part of the money we are giving to places such as Manchester, match up with funding from BSIPs, so there is a lot of interrelationship between the different pots of funding. I take the noble Lord's point, but we have to balance that with making sure we get really good value for money for the taxpayer.

Ukraine: Refugees

Question

3.09 pm

Asked by ***Lord Harries of Pentregarth***

To ask Her Majesty's Government what plans they have to allow a greater number of Ukrainians who do not have family in the United Kingdom to come to this country; and what assessment they have made of the number of UK citizens willing to offer rent-free accommodation to refugees from Ukraine.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government have announced that the UK will establish a humanitarian sponsorship pathway, which will open up a route to the UK for Ukrainians who may not have family ties with the UK but who are able to match with individuals, charities, businesses and community groups. There will be no numerical limit on this scheme; we will welcome as many Ukrainians as wish to come and have matched sponsors.

Lord Harries of Pentregarth (CB): I thank the Minister for her Answer, which is very welcome indeed. Rabbi Jonathan Romain in Maidenhead advertised locally for people willing to offer rooms to Ukrainian refugees and, within days, he had 240 offers. I believe that that could be replicated all over the country, so I am very glad that the Government have given that Answer. Will people with a named host and named accommodation who wish to come here be able to undertake the process in this country rather than having to go through a long and very unsatisfactory visa process via Paris or Brussels? Poland and Germany have shown very open hearts; I believe that the British people will do the same.

Baroness Williams of Trafford (Con): I totally agree with the noble and right reverend Lord that the British people will be very generous. In fact, just before we started Questions, the right reverend Prelate the Bishop of Durham told me about a Church-based organisation that had already had 891 pledges. These are fantastic figures; the noble and right reverend Lord is absolutely right: we need to have them in the country first, and we need to expedite that process as quickly as possible. I am very keen to capture that enthusiasm and help, and offer support as soon as we can.

Baroness Smith of Newnham (LD): My Lords, in light of that answer, can the Minister say whether there will be an opportunity for people to apply for visas in this country rather than being kept at Calais? Secondly, the Secretary of State for Defence was unable to answer a question on the radio this morning on whether the ACRS scheme for Afghan refugees has actually opened, saying that this is a matter for the Home Office which is rather busy with Ukraine. Can the Home Office not manage to deal with Afghan and Ukrainian refugees simultaneously?

Baroness Williams of Trafford (Con): I think it is fair to say that the Home Office is dealing with both Afghan and Ukrainian refugees simultaneously. Up to 9 o'clock this morning, 4,278 appointments had been made at VACs; that is across the world, but it is a lot of VAC appointments. I checked for myself where the main bulk of those appointments were being made and the vast majority—that is, half of the appointments—were, of course, unsurprisingly, made in Poland. We have two VACs in Poland. For people fleeing Ukraine to be able to go straight to a VAC in Poland is clearly the best and easiest thing for them to do, to avoid problems along the way, shall we say.

Baroness Fraser of Craigmaddie (Con): My Lords, the Minister has just told us about the vast majority of appointments being made at VACs in Poland. I know of a family who have been waiting in Warsaw for some time and the website has not changed; they cannot make an appointment. The helpline, which the website says will be manned 24/7, is not manned over the weekend. Yesterday, I asked a question and was told that a team of four experts was going to Poland to help build capacity. Can the Minister reassure me that this is being increased and that people in Poland will be able to get VAC appointments so that they can come back home?

Baroness Williams of Trafford (Con): It is very difficult to know from a short exchange on my noble friend's question when the family tried to make the appointment and all that sort of detail, but I know that 1,451 appointments have been made in Warsaw. I will keep her updated. We have extra capacity in our VACs and will have 100 extra people trained by the end of the week. I will certainly take back her point about Warsaw, and make sure that everything is running smoothly.

Lord Clark of Windermere (Lab): My Lords, is it true that the Government have issued more visas to Russian oligarchs than they currently plan to issue for

Ukrainian refugees? Does the Minister's announcement today mean categorically that there will be a vast increase in the number of Ukrainian refugees accepted?

Baroness Williams of Trafford (Con): As I said, the figures are uncapped: as many people who want to come here can come, whether or not they have family ties. It was estimated last week, I think, that under the family routes provisions we might see 200,000—there is no limit on the number of people who can come here through this humanitarian sponsorship pathway scheme.

The Lord Bishop of Leeds: My Lords, the Government have rightly praised the generosity of the people of the United Kingdom, but there seems to be a systemic problem in allowing that generosity to be exercised. Can the Minister say something about the systemic issues and address an associated matter: how can we guarantee that the information we are given is accurate, given what has happened in Calais, for example? We keep hearing from the Government that we are leading the way, but we are patently not.

Baroness Williams of Trafford (Con): I can say to the right reverend Prelate that this scheme is new—only a few days old. I think that I recognised, in my answer to a previous question, that we want people's generosity—the British people are very generous—to be captured, and I hope that this scheme will be up and running as soon as possible.

Baroness Finlay of Llandaff (CB): My Lords, last Wednesday we were told that the sponsorship scheme would start and were given a telephone number. That number was only for Ukrainians. If you phone in today you are referred to an 0300 number that does not work. Yesterday I was told in the Portcullis House information hub that the department for levelling up, rather than the Home Office, is taking a lead on this. Can the Minister tell the House when there will be a streamlined system of information whereby people who are sponsoring somebody can register that sponsorship and advise the people who are trying to get out of Kyiv?

Baroness Williams of Trafford (Con): The sponsorship scheme, as I have said, should be up and running very shortly, and DLUHC will indeed be the lead department on it. In response to the noble Baroness, I undertake, when there is a number and the scheme is up and running, to come back to the House and give details.

Lord Paddick (LD): My Lords, surely what is needed, as well as numbers, is speed. The UK has admitted only 300 Ukrainian refugees, while the Republic of Ireland has admitted 1,800. Why is the UK dragging its feet?

Baroness Williams of Trafford (Con): I wholeheartedly agree with the noble Lord that speed and numbers are vital. I understand that as of 9 o'clock this morning there were 526 grants under the family scheme. With regard to the sponsorship, however, the noble Lord is right: we need to do it quickly and efficiently.

Lord Hannan of Kingsclere (Con): Is it not clear from listening to interventions from all around the Chamber that—

Lord Skidelsky (CB): My Lords, in addition to the help that the Government are giving to Ukrainians to come to this country, will they consider offering humanitarian visas to those brave Russians—members of the clergy, members of civil society, academics, journalists and ordinary citizens—who face long prison sentences for exercising their democratic right to oppose this war?

Baroness Williams of Trafford (Con): I am very glad that the noble Lord asked that question because, at this point, we all need to stop and remember all of those Russian people who are so against, or do not even know, what is happening in Ukraine. I do not have many details of that, but it is certainly heartbreaking when you see Russian soldiers fighting in Ukraine who appear not to know what they are doing and why they are doing it.

Arrangement of Business

Announcement

3.20 pm

The Earl of Courtown (Con): My Lords, as noble Lords will be aware, the Ukrainian President will address the House of Commons at 5 pm today. This is a historic event for Parliament, and we are aware that many noble Lords will want to watch the address. There will be 270 seats in the Public Gallery of the House of Commons for any Member who wants to attend in person. Given the timing, these will be available on a first-come, first-served basis. Those wishing to attend should make their way to the Commons Members' Lobby, and the doorkeepers will direct them as needed. We will adjourn business in the Chamber and Grand Committee at 4.40 pm to enable Members who are participating in business to make their way across. Proceedings in both will resume at 5.15 pm, after the address concludes.

Economic Crime (Transparency and Enforcement) Bill

First Reading

3.21 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Arrangement of Business

Announcement

3.21 pm

The Earl of Courtown (Con): My Lords, I will update the House on the arrangements for the Economic Crime (Transparency and Enforcement) Bill, which has just had its First Reading. It went through all of its stages in the Commons yesterday and will have a

[The Earl of Courtown]
Second Reading in this House tomorrow afternoon. The remaining stages of the Bill will all be taken on Monday 14 March.

Given that this is a fast-tracked Bill, I thought that it would be helpful to the House to outline the arrangements for tabling amendments. The Public Bill Office is now accepting amendments to the Bill for Committee. The deadline for amendments to be included on the Marshalled List is 4 pm on Thursday 10 March. After the deadline, the amendments will be marshalled and grouped in the usual way. Amendments for Report will be accepted until 30 minutes after the conclusion of Committee. If the Bill is unamended at that point, we will update on the arrangements for any ping-pong in due course.

Nationality and Borders Bill

Report (3rd Day)

3.22 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

Amendment 64

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

64: After Clause 56, insert the following new Clause—

"Age assessments for age-disputed persons: initial assessments of undetermined age

(1) An age-disputed person must be treated as an adult where their physical appearance and demeanour strongly suggest that they are over the age of 18.

(2) Where the age-disputed person's physical appearance and demeanour do not meet that threshold, and doubt remains as to their claim to be a child, the person must be treated as being of undetermined age until a further age assessment is carried out.

(3) Those of undetermined age must not be placed alongside minors in schools or accommodation."

Member's explanatory statement

This amendment would place in primary legislation a rule for tighter initial age assessments for asylum seekers and would ensure that, where doubts about the person's age are raised by initial assessors, applicants will not be placed alongside children in schools or accommodation.

Lord Green of Deddington (CB): My Lords, I have retabled my amendment in the light of the Minister's reply in Committee. Judging by *Hansard*, there was a very good discussion, albeit at three in the morning. We need to be clear about what we are trying to achieve here. Surely it is, first, that adults should not easily claim to be children and get away with it, and, secondly, that where doubts about age remain, the claimants concerned should be kept separate from those who are clearly children.

One aspect which was not covered in Committee was the very considerable increase in claims from those who were falsely claiming to be children. The noble Lord, Lord Paddick, said that, in 2019, those found to be adults amounted to less than half the cases. I have in my pocket the Home Office table showing the outcome of these claims since 2006. The year which the noble Lord chose, 2019, was the lowest percentage in the last 10 years. We now have the percentage for adults in the last two years, and they were 43% and 66%, respectively. I will not provide more statistics, except to say that what is really important is the number of cases to which these percentages refer. In 2019, there were only 304 age-disputed cases; in 2021, there were 1,500—I repeat: 1,500. The whole scale is much greater and justifies the tightening of the criteria for which I am calling.

As to the test applied, the Minister said that our current threshold is that a person claiming asylum is declared to be an adult when

"their physical appearance and demeanour very strongly suggest that they are significantly over 18".—[*Official Report*, 8/2/22; col. 1568.]

That is a pretty tight restriction. My amendment would adjust that to when

"their physical appearance and demeanour strongly suggest that they are over the age of 18."

The change is to "strongly suggest". I believe that this falls well within the Supreme Court judgment to which the Minister referred in his speech: BF (Eritrea). That judgment found that claimants could be treated as adults if two Home Office officials considered that the person looked significantly over 18. My amendment tightens the criteria, but that is what we need to do in the face of the significant exploitation of the present scheme.

My last point concerns the important and related issue of safeguarding those who are found to be children. Surely it is common prudence that doubtful applicants should, until their cases are resolved, be kept separate from those known to be genuine children. I look forward to an assurance from the Minister that arrangements are now envisaged which will achieve this result. I beg to move.

Baroness Neuberger (CB): My Lords, I declare my interests as chair of University College London Hospitals NHS Foundation Trust and of Whittington Health NHS Trust, and as chair of the Schwab & Westheimer Trust, charitable trusts set up to provide education for young asylum seekers.

I am speaking to Amendment 64A. When we last debated age assessments for young asylum seekers, in Committee, it was in the small hours of the morning, and the issues to which we should have given real attention did not get enough scrutiny. The issue had had precious little scrutiny in another place, because these provisions were brought in so late by the Government in the passage of the Bill. I am very grateful to the Government for the amount of information which they have provided recently, but there is still more to tease out. I hope, therefore, that noble Lords will understand why I and my colleagues—the noble Baronesses, Lady Lister and Lady Hamwee, and the right reverend Prelate the Bishop of Durham—are putting forward this detailed amendment at Report. I am grateful to the Refugee and Migrant Children's Consortium, the Royal College of Paediatrics and Child Health, the British Dental Association, the British Red Cross, the UNHCR, the ADSS, the British Association of Social Workers and many others for their briefings and help.

There is widespread concern about age assessments among all the various voluntary and statutory agencies concerned with young asylum seekers, and among many medical, dental and scientific bodies. Because of the small family charity which I chair, I spend time with asylum-seeking young people who are desperate to get their lives back on track by getting an education. Most of those I meet are older than the children and young people presently under discussion and whose age might be disputed, but by no means all. From what they tell us, I know how traumatised they can be, and have been, not only by their experiences in their home countries and on their incredibly difficult journeys but by the processes they have been forced to go through once they have arrived in the UK, and the way in which they are often not believed—almost as if there is an assumption that they will not be telling the truth.

The fact that they might be asked for consent before they undergo an age- assessment process is neither here nor there. Refusing consent would undoubtedly be a black mark against them in a system which they already perceive as doubting their word. Many of them will not have paper evidence of their date of birth, precisely because of what they have been through. The idea that the Home Office will control these procedures, and insist on them, fills many of us with distinct unease as it almost certainly means that already traumatised young people who have been through terrible experiences to reach the UK will be forced to endure yet more traumatising experiences, possibly including intimate examinations which are hard, if not impossible, to justify.

3.30 pm

The way that Part 4 is framed means that there will be a considerable increase in the numbers of children who undergo traumatic age assessments. It will also undermine the role of local authority social workers as child protection experts, many of whom will already know these children and young people, and give the Government power to force children to undergo these so-called scientific processes that may be inaccurate or harmful, or both.

These amendments attempt to set out what an expert and fair age-assessment process would look like. The principles are clear: age assessments must be undertaken only if there is significant reason to doubt the age of the age-disputed person, unlike what is proposed in Amendment 64. The bar must be set high. It must not be used to intimidate and traumatise already-traumatised young people, and my colleagues will say more about that. Furthermore, the person conducting such age assessments under Clauses 49 or 50 must be a local authority social worker, following the guidance set out by the Association of Directors of Adult Social Services, and not someone appointed by the Home Office, who might seem frightening to the young person. All age assessments must follow that ADASS guidance, or its equivalent in the devolved jurisdictions.

When an age assessment is conducted, the process must allow for an impartial multiagency approach drawing on a range of expertise, including from health professionals, psychologists, teachers, foster parents, youth workers, advocates, guardians and social workers. These are the people who might reasonably be expected to have some knowledge of the young person and whom that young person will trust, or at least find less intimidating then a stranger appointed by the Home Office—to add to which, these people come from the right groups and professions. Independent professionalism in this area is essential, because only that independence and sense of reasonable trust will remove what young people feel is hostility and doubt towards them, an atmosphere hardly conducive to making them feel welcome in this country.

Most important of all, when making regulations under Clause 51, the Secretary of State must not specify the scientific methods unless she receives written approval from the relevant medical, dental and scientific professional bodies that the method is both ethical and accurate, beyond reasonable doubt, for assessing a person's age. Clause 51 allows the Government to introduce regulations specifying the scientific methods to be used to assess age, including

"examining or measuring parts of a person's body"

and

"the analysis of saliva, cell or other samples"

and the DNA within them. These so-called scientific methods to assess age have been the subject of debate for many years; professional medical bodies have been unequivocal in their rejection of the use of dental X-rays, bone age and genital examination, describing them as "extremely imprecise". The British Dental Association has voiced its opposition to the use of dental X-rays, as they are inaccurate and unethical. Research has shown epigenetics to have the same inaccuracies.

The Royal College of Paediatrics and Child Health does not support its members taking part in such age assessments precisely because the methods are imprecise and can, at best, provide only an estimated range for age. To add to which, as the royal college states, present methods used for bone age X-ray assessments use X-rays taken from average Caucasian children, while many of these young asylum seekers will not be Caucasian in background and may differ considerably in size and development. We need to ensure that any methods used stand up scientifically and have some serious basis of support among the relevant professional bodies. The Council of Europe has highlighted that

"physical and medical age assessment methods are not backed up by empirically sound medical science and that they cannot be assumed to result in a reliable determination of chronological age … several methods have been evidenced to have a harmful impact on … physical and mental health".

Almost everyone agrees that using radiation for non-clinical purposes is unethical. Indeed, the Care Quality Commission, which regulates everything that goes on in our NHS in this country, argues for justifying each exposure to ensure that the benefit outweighs the risks. I could go on—but we absolutely need to ensure that this is done properly, and we must see this safeguard in the Bill, so that it is clear in primary legislation that any new methods must be formally approved by the relevant professional medical body before being introduced.

We really should not be introducing methods that may add to the pressures on children and young people's already often fragile mental and physical health.

[Baroness Neuberger]

We already know that the age-assessment process could cause a lot of anxiety to vulnerable children and young people, and have a negative impact. It could prevent them from accessing school or college while the age is disputed, and it could isolate them from peers, preventing them from integrating and accessing educational opportunities.

The consequences of getting this wrong are severe. Recent media reports have highlighted hundreds of children being placed in hotels and forced to share rooms and even beds with adult men they do not know—and this is children we are talking about. Between July and September last year, the Refugee Council assisted more than 150 young people into local authority care who previously had been sent to adult accommodation following a decision by an immigration officer. This is a disgrace. We can do better than this, and we must do so, and this amendment attempts to do just that.

Baroness Lister of Burtersett (Lab): My Lords, I speak in support of Amendment 64A, to which I have added my name. The noble Baroness, Lady Neuberger, has made the case powerfully for the amendment, which aims to introduce protections designed to alleviate the main concerns raised by myriad organisations, as she said, as detailed in Committee.

I shall build on what the noble Baroness said by picking up some arguments that were not adequately addressed by the Minister in Committee. First, he repeatedly tried to justify the use of dental X-rays in age assessment on the ground that they are already

"used as a diagnostic tool in ordinary dentistry".—[*Official Report*, 8/2/22; col. 1566.]

He completely ignored my response that age assessment is not about diagnosing something that is wrong with a child—that is, there is no clinical justification for its use in this context. That he did not appear to get the distinction was described as a "cause of great concern" by the British Dental Association, which, as has been said, is totally opposed to the use of dental X-rays for the purpose of determining age.

Secondly, there is the related argument, put forward by the BDA and others, including the British Medical Association, that to use such methods in a non-clinical context is unethical. When I pressed the Minister on this point, he said that he would be going on to deal with the point I raised—but he did not. Nowhere in his response did he address the fundamental question of the unethical nature of such methods in this context. I know it was nearly three in the morning, but nevertheless I would have expected this most important point to have been considered. I am afraid that the subsequent defence of such methods in the factsheet published a couple of weeks ago did not do much to reassure me—nor did its suggestion that

"the UK is one of very few European countries that does not currently employ scientific methods of age assessment—such as X rays".

A survey by the BDA of European sister organisations found that two-fifths—a significant minority including Germany and the Netherlands—did not use any X-rays for age checks, and my understanding is that some of the others are looking to move away from this method.

Given this, and given the arguments from the noble Baroness, Lady Neuberger, about consent, can the Minister give us an assurance that refusal to undergo such scientific methods should not affect the credibility of a child seeking asylum? If not, according to the British Association of Social Workers, it will amount to what they describe as "grotesque coercion". Can he assure us that only methods specified in regulations should be used in age assessments? I urge him once again to close the loophole offered by Clause 51(9), which allows methods deemed either unethical or inaccurate by scientific advice nevertheless to be used for age-assessment practices.

I was also disappointed by the Minister's response to my request that the Age Estimation Science Advisory Committee should include all the relevant dental, medical and scientific national bodies. He simply said that the committee would include a broad range of experts, but he did not include in his list the bodies that oversee the ethical use of the kind of scientific methods that the Government say that they want to use.

One of the arguments used to justify this part of the Bill is the harm that will be done if adults are able to pass themselves off as children. However, according to the Refugee and Migrant Children's Consortium, in light of the supervision provided in children's placements, this creates a much lower risk than when children are incorrectly treated as adults. The latter might be placed in detention or alone in accommodation with adults, with no safeguarding measures and the risk of abuse. Indeed, BASW warns in opposition to Amendment 64 that by treating age-disputed persons as adults there is a large risk that we have endangered children.

I read a heart-breaking example of what can happen in such circumstances just recently in the *Guardian.* It was a piece about four young asylum seekers from Eritrea who killed themselves after fleeing to the UK. The inquest of one of them, Alex, concluded that he had been wrongly assessed as an adult and that, consequently, instead of being sent to live with a foster family, he was moved to accommodation for adults, where he was violently assaulted and began drinking heavily. Although the mistake was rectified, the inquest noted that it contributed to the "destructive spiral" that lead to his death.

Any reform of age assessment must make such a tragedy less, rather than more, likely. Ideally, I would like to delete this whole part of the Bill but that is not possible. Therefore, this amendment represents a crucial piece of damage limitation. I hope that the Minister will accept it or, failing that, it will receive the support of the House.

Baroness Neville-Rolfe (Con): My Lords, as the mover of the lead amendment in the middle of the night on 9 February, I will speak only briefly to support Amendment 64 in the name of the noble Lord, Lord Green. I do not support Amendment 64A, however well intentioned, because I worry about its perverse effects and the huge costs involved.

The background to my concern is that I have been utterly appalled by the number of asylum seekers pretending to be children—1,100 migrants in the 12 months to September 2021, as reported in the *Daily Mail*. I do not apologise for the fact that it first drew

my attention to this dreadful situation. The numbers are growing as the numbers crossing the channel in boats grow, allowing for seasonal variations, although the Home Office is trying to reduce the focus on this by scrapping regular figures. This is the subject of my later amendment.

The incentives to cheating on age are substantial in terms of treatment, housing and support. I am worried about the wider implications: mature boys put alongside vulnerable girls in school can wreck their progress and even lead to abuse. Mixed ages in social care are a recipe for disaster and it can be worse than that: remember the Parsons Green bomber pretending to be 16 when he was much older?

The Government are right, therefore, to introduce new processes for conducting age assessments and to set up a system in support in the Bill. There seems to be agreement on this but, as has been said, much is left for regulation.

I was very glad that my noble and learned friend Lord Stewart of Dirleton acknowledged on 9 February —in the middle of the night—that we had raised a valid safeguarding issue. I thank him for that. I was pleased to hear that the Government are planning to monitor and evaluate the impacts of the policy and to develop the evidence base further. Unfortunately, that does not solve the problem the House of Commons amendments sought to address. We will have missed the boat for clarifying the law and introducing the certainty that authorities need to run a fair and safe system.

I am clear that we must have an effective and rigorous system of age assessment, not one that gives the benefit of the doubt to those saying, without documentation, that they are minors and encouraging the traffickers. The noble Lord, Lord Green, has exposed the problems with the system proposed and I feel that we need a better response.

3.45 pm

Baroness Butler-Sloss (CB): I recognise the concerns that adults should not be able to be treated as children—that is a serious matter. None the less, I support not Amendment 64 but Amendment 64A for the following reason, in addition to what the noble Baronesses, Lady Neuberger and Lady Lister, said.

Thanks to Safe Passage I had the opportunity to visit one of its children's homes, where there were a number of young asylum seekers from Afghanistan. I talked to a group of half a dozen of them. All of them, aged 16, had moustaches, and several had incipient beards. To anyone who did not know that those from other countries are more advanced physically than those from this country, who are much less likely to have moustaches or beards at 16, they would automatically look like adults and would be treated as such. Safe Passage was absolutely certain that they were only 16 and it had a lot of evidence to support that. I am extremely concerned that the amendment of the noble Lord, Lord Green, together with the existing clause in the Bill, will in fact treat young people like those Afghan 16 year-olds as though they are adults.

The Lord Bishop of Durham: My Lords, I support Amendment 64A, in the name of the noble Baroness, Lady Neuberger, to which I have added my name. I declare my interests in relation to both RAMP and Reset as set out in the register. I am very grateful to the noble Baronesses, Lady Neuberger and Lady Lister, and the noble and learned Baroness, Lady Butler-Sloss, for outlining all the arguments for why this amendment is the right route to take. On Amendment 64, I hear the words about safeguarding but it is a dangerous route to take.

The needs of children have been starkly left unaddressed in so many areas of the Bill. The policies proposed to determine the age of the child are particularly concerning. The child and their best interests, rather than deterrence, must be the starting point in designing these policies. I support the amendment because it is imperative that such assessments are up to standard and based on scientific evidence. We should be seeing help for local authorities to improve their practice through multiagency working so that social workers conduct these assessments and that they are better supported with appropriate funding and training. Making the process stricter will lead to more children being treated as adults. This is extremely concerning given that they will then be placed alone in adult accommodation, with no support or safeguarding.

We have been assured that they will have the recourse of appeal at the tribunal. However, as we are hearing in other debates, the focus of the Home Office must be to get decisions right correctly at the first instance in a timely manner. We should not be introducing policies which will add to backlogs and lead to lengthy appeals. Our tribunal system does not need this, and neither do the children. I simply support this amendment, which sets out what an expert and fair age assessment should look like from the expertise of a coalition of more than 60 organisations, all of them professional, in this field.

Baroness Fox of Buckley (Non-Afl): My Lords, I veer between Amendments 64 and—unhelpfully—64A on age verification but what is important is that we have a trustworthy system. That is crucial; otherwise, we are in danger of fuelling cynicism and doubt about the whole system of refugee status.

We heard during Questions about the overwhelming generosity of UK citizens welcoming people from Ukraine. The broad public enthusiasm has been well noted, but I am afraid that the Home Office's seeming ability to act speedily and with urgency is rather doubted. People are frustrated when they hear about things such as visa offices in Warsaw shutting up shop at 5 pm and closing over the weekend as though this is a kind of normal situation. There is a broad concern that, potentially, behind the scenes we do not trust the processes or the bureaucracy, and I think that includes age checks just as much as it includes allowing people to come to the UK, such as in the Ukraine situation.

One of the things that worries me is the sources of cynicism about the whole refugee process. The public feel that there is no control, and that if people declare themselves to be refugees when they arrive by boat, or declare that they are children, this will be accepted at face value and in good faith. The public do not want to feel that they are being taken for a mug. Age assessment is valid. Of course, doing so cruelly or insensitively is not welcome and would be terrible. If it is not the case that dentistry is the right scientific

[Baroness Fox of Buckley]
method, fine, but the principle surely is that we check the age of those who say that they are children. That is an important principle. Use whatever scientific method you want and be as kind as you want, but do not just say to the British public that anybody who challenges this is being cruel to children, because that is unfair. The unintended consequence of creating an impression that the process is not fair is a backlash whereby people start saying that they do not trust any of it. We know that the age issue is of some concern.

This is not a blame game, by the way. I realise that if I was a 21-year-old Syrian lad trying to get into the UK, I would say that I was 16. I do not blame anyone for that, and I understand it. Why wouldn't you? I say good luck to them, in some ways, for trying. It is just that we as legislators are meant to be coming up with a system that the British public feel they can trust and that controls the borders. The inference that anyone who wants to tighten up the system does not care about children or does not care about people suffering in war zones is unfair and a misrepresentation.

Baroness Shackleton of Belgravia (Con): My Lords, I rise to speak in favour of Amendment 64A, tabled by the noble Baroness, Lady Neuberger, in relation to the testing of children who may or may not be of the correct age. I think that everybody is united in believing that illegitimate people holding themselves up as children is wrong. However, how that gets assessed needs careful consideration. Can the Government think again as to whether the correct people for doing this investigation and the methods that they use, so movingly put, should be deployed by the Home Office, when local authorities have the equipment and the expertise to do this in a sensitive way which protects both parties? It is not okay for a minor to undergo treatment that adds to trauma, any more than it is right for an adult child to abuse a minor.

We ought to find a system that is fair and age-appropriate, and which gives people the benefit of the doubt until it is proved. Without the proper expertise, more harm can be done than problems solved.

Baroness Jones of Moulsecoomb (GP): My Lords, I rise to support Amendment 64A. Any way that we can make our systems fairer is something we must aim for. The Home Secretary said yesterday in the other place that we have a "unique scheme" for accepting refugees. Yes, it is a unique scheme. It is uniquely complicated. It is mean spirited. It is slow compared with those of every other country in Europe. It is not something to brag about. Quite honestly, sometimes I hear things said in the other place and in this Chamber, and I am ashamed to be British.

Baroness Hamwee (LD): My Lords, my name, on behalf on these Benches, has been added to Amendment 64A. The House will be glad to have heard some very compassionate and rigorous speeches.

The noble Baroness, Lady Fox, talked about trust. Of course, that is hugely important. It may be the circles that I move in, but what young asylum seekers say—what many asylum seekers say—is not taken at face value; quite the contrary.

The noble and learned Baroness, Lady Butler-Sloss, talked of the young Afghanis whom she met. Amendment 64 refers to "demeanour"—I know that is not the term of the noble Lord, Lord Green, but it made me reflect on the fact that, as regards demeanour and appearance, we must be very careful how we regard people of a different culture from our own.

On Amendment 64A, so much of age assessment, as the Government present it, is about science. In Committee, the noble and learned Lord, Lord Stewart, acknowledged that there is no silver bullet, but the Bill itself and the Government's argument rely very heavily on scientific assessment, although the scientific methods specified in the Bill are only physical examination and measurement and analysis of saliva, cell, DNA and other samples. So, it is particularly worrying that the relevant professional bodies are so loudly and clearly opposed to these provisions on the basis of ethics and because of concerns about the accuracy of tests and measurements.

A lot of factors are—or should be—in play in assessing age, using a range of professional skills. The Home Office fact sheet also acknowledges that there is no single method, scientific or not, that can determine age with precision, but then makes a particular point of referring to the Home Office chief scientific adviser. I ask the Minister: what disciplines will be covered, and will it involve professionals in the psychiatry and psychology parts of the scientific/medical world with qualifications, expertise and experience in assessing and treating young people who have gone through the experiences that young asylum seekers have frequently gone through? They must also have experience in dealing with asylum seekers and others who have undergone traumatic experience, dealing with them in a trauma-informed way and avoiding retraumatising them. I refer noble Lords to my Amendment 84C, which will be the very last to be discussed in this debate, probably some time tomorrow morning.

Clause 51(7) provides that the decision-maker must

"take into account, as damaging the age-disputed person's credibility … the decision not to consent to the use of the specified scientific method."

Clause 52(1)(f) provides for regulations about

"the consequences of a lack of co-operation with the assessment by the age-disputed person, which may include damage to the person's credibility."

I leave it to noble Lords to assess for themselves where that is leading or where the Government would direct us. How all that works, with the standard proof being the balance of probabilities, I am really not expert enough to be sure, but, taken together, it all worries me. I commend the rounded approach of Amendment 64A.

Lord Carlile of Berriew (CB): My Lords, given that misrepresentation of age is a matter of concern, it is very important that the determination of age should be conducted in a way that is robust, certain in application, equitable and reliable. In my view, Amendment 64A, in the name of my noble friend Lady Neuberger, absolutely fulfils those criteria; indeed, it is a template for such criteria. I strongly support the amendment and adopt everything she said.

Age assessment techniques must be proportionate and fair. If any intrusive measures are to be taken—including dental X-rays, for example—that must be based on proven evidence of scientific reliability, not vague opinions that it might add something. It must be done in a service setting that is suitable for dealing with children, who are the vast majority of the customers under consideration in the cohort we are discussing. I commend proposed new subsection (5) to your Lordships, because it sets out the principles behind my noble friend's amendment concisely and correctly, in a way that I am sure is the envy of some parliamentary draftsmen who have tried to draft something along similar lines before.

4 pm

As to Amendment 64, I have a feeling that my noble friend Lord Green of Deddington is probably quite enthusiastic about that Latin proverb that appeared on my school's gymnasium wall: mens sana in corpore sano. I must say that it had little effect on me for about 50 years after I had seen it on the gymnasium wall, but later I began to appreciate its importance.

I take up the theme that my noble and learned friend Lady Butler-Sloss took up, concerning Afghan young men or boys with beards and moustaches. My noble friend Lord Green of Deddington's amendment would clearly affect unfairly the physically fit, the tall and the physically strong. For example, it would disadvantage a 16 year-old who had trained in the Dynamo Kyiv football academy or one of those many young Ukrainian men who become stars around the world in basketball, who have trained and become very fit at an early age. I understand what my noble friend is trying to do, but what he has produced is ill conceived and rather discriminatory. It should not trouble your Lordships' House very much.

Lord Kerr of Kinlochard (CB): I will add 60 seconds' worth on Amendment 64. I am a trustee of the Refugee Council, which provides legal advice in a number of age assessment cases. The overwhelming majority of the cases we take on are won: the initial assessment has been wrong and the child is a child. The effect of this amendment, if carried, would be to put these children in harm's way.

Lord Coaker (Lab): My Lords, I am pleased to support Amendment 64A in the names of the noble Baronesses, Lady Neuberger and Lady Hamwee, my noble friend Lady Lister and the right reverend Prelate the Bishop of Durham. I will not repeat all the concerns, but clearly there are safeguarding issues that a number of noble Lords have raised. I give one quote from the British Association of Social Workers, which warns that

"any age assessment proposals must recognise that although there is a risk when adults are wrongly assessed and treated as a child, there is a much greater risk when a child has been wrongly assessed and treated as an adult. It is predominately children who are wrongly sent and dispersed as adults, sometimes to unsafe accommodation and detention".

As a last comment on Amendment 64A, it does not seem to me that there is any dispute about the need for age assessment, but the noble Baroness, Lady Neuberger, has set out that, if we are to have age assessment, which is clearly needed at times, let us do it on the basis of science and not of subjective judgments, whoever is making them.

I quickly mention the amendment I put down, Amendment 84D, which has not been mentioned yet. It would provide that the age assessment provisions apply to England only, and is clearly a probing amendment. The Minister will know that, while we would rather these provisions did not apply anywhere, this amendment is to reflect the concerns raised by the Welsh and Scottish Governments that clauses in Part 4 require legislative consent.

Welsh Ministers and three separate cross-party Senedd committees have advised that the age assessment provisions are within the legislative competence of the Senedd. When put to a vote, the Senedd voted to withhold consent from the UK Government's intention to legislate on these matters. Its concerns were that the Bill creates a method of assessing age that is in "direct opposition" to existing practice in Wales; that the Bill

"does not recognise the devolved context of Wales"

and provides the Secretary of State with powers to impose conditions on Welsh local authorities; and, finally, that all unaccompanied asylum-seeking children are recognised as looked-after children in Wales. This will leave local authorities trying to navigate two "statutory but conflicting" approaches.

This is an important probing amendment about what engagement the Government have had with the devolved Administrations and the grounds on which they are disputing that legislative consent is necessary. What are the Government saying to the Welsh and Scottish Governments about this?

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I thank all contributors to this important debate. I acknowledge at the outset the feeling around the House as to the importance of these matters, so powerfully put forward by the noble Lord, Lord Coaker, just a moment ago.

The first amendment that your Lordships have had to consider is Amendment 64, so I will start with that. It is important to note that immigration officials already conduct initial age assessment on individuals whose age is doubted. This amendment seeks to lower the current threshold so that a more straightforward assessment of whether someone is under or over 18 is made, based on appearance. I will return to the matter raised by the noble Lord, Lord Carlile, as to the different rates at which people age, depending on their ethnicity and the social factors to which they have been exposed. We must acknowledge the difficulty in assessing age through a visual assessment of physical appearance and demeanour. Clear safeguarding issues arise if a child is treated inadvertently as an adult, but equally if an adult is wrongly accepted as a child.

Our current threshold, specifically deeming an individual to be adult where their physical appearance and demeanour very strongly suggest that they are significantly over 18, strikes the right balance. It has been tested in the Supreme Court in the case of BF (Eritrea), to which the noble Lord, Lord Green of Deddington, made reference, and has been found comprehensively to be lawful. Given that judgment,

[Lord Stewart of Dirleton]
and the fact that immigration officials already execute this function under guidance, the value of legislating to bring this into primary legislation is unclear. That said, I acknowledge the value of the work that the noble Lord, Lord Green of Deddington, has carried out, to which my noble friend Lady Neville-Rolfe referred, into the ingathering of data in such a way as to provide a basis on which our deliberations can proceed. However, in the light of what I said, I invite the noble Lord to withdraw his amendment.

I turn now to Amendment 64A. Again, I thank the noble Baronesses, Lady Neuberger, Lady Lister of Burtersett and Lady Hamwee, for their amendment. I make it clear to the House that there is no appetite to start conducting comprehensive age assessments of all, most or even many people who come before the system, because in most cases it will be possible to resolve doubts as to someone's claimed age without any such investigation. Indeed, the courts have made it clear that they are against any judicialisation of the procedure, and have overturned judicial reviews based on the idea that age assessments were carried out wrongly in circumstances where two social workers conducting the Merton assessment—which these measures seek only to augment, not replace—considered persons patently above the age of 18 who claimed to have been younger. The courts have supported the social workers in those assessments. To provide that there should be wider use of scientific age assessments would serve no purpose and take away significant resource from the main task of seeking to establish the age of those individuals whose age is in doubt.

Subsections (2), (3) and (4) of Amendment 64A are unnecessary additions. Our intention is that the statutory national age assessment board will consist predominantly of qualified social workers, who will be expected to follow existing case law in carrying out these holistic age assessments. The matter of scientific age assessment has quite properly concerned your Lordships. Clause 51 already contains safeguards for those who are asked to undergo a scientific method of age assessment, and in answer to the specific point raised by the noble Baroness, Lady Lister of Burtersett, I say that where a good reason emerges for declining to participate in age assessment there will be no adverse impact on credibility.

I reiterate the point made at the earlier stage. It is not considered that any of these scientific methods should replace the tried and tested method of assessment by social workers, known as the Merton assessment. The intention is merely to broaden the availability of evidence that might assist to provide more data, on which these professionals can carry out these exceptionally important tasks.

Decisions on this issue also have broad implications for the exercise of immigration functions and the provision of children's services to unaccompanied asylum-seeking children. Decision-making as to where and how such scientific methods should be used must, we say, remain within government, taking into account independent scientific advice. I reiterate that this measure does not provide that these scientific methods of age assessment will take place. It provides that the Government will be able to consult an expert board on what is suitable. The intention is not to undermine the role of social workers in carrying out these assessments, merely to provide additional data with which they might work.

We agree that the independent professionalism that such persons bring to bear is of the utmost importance. However, we question whether the amendment has value when it provides that scientific age assessments may take place only where their ethical approach and accuracy has been established beyond reasonable doubt: first, because that is to import the highest test of assessment of evidence from the criminal courts into an inappropriate category; and secondly, because we fully appreciate that these assessments are not of themselves accurate, as I sought to make clear at the earlier stage. They are intended not to replace but merely to augment, where thought desirable, the data available to social workers carrying out these assessments.

4.15 pm

My attention and that of the House was drawn by the noble Baronesses, Lady Neuberger and Lady Lister of Burtersett, to the opposition of the professional bodies in relation to the carrying out or use of these techniques. Again, the document of the British Dental Association seemed to me, from the text, to have been prepared on the understanding that what was intended was a replacement of Merton-type assessments by a scientific method that—we accept—will not accurately determine, within a suitable margin, a person's age in every case. That is why it is important to emphasise that we are not proposing some means by which data will be put into a system and an answer that we will assert to be correct will be provided. We accept that this is a holistic matter, for the interpretation of a broader range of data, much of which must necessarily be subjective, depending as it does on the assessment of social workers proceeding without documentary evidence against which to assess claims. Following the previous stage, we talked about the implications of using scientific techniques, which could include ionising radiation, if the committee were to recommend to the Government that this may be of value.

The Home Office has a statutory commitment in relation to safeguarding the welfare of children. These assessments are being introduced to help to better protect children from being treated as adults and to ensure that vulnerable children can swiftly access the support that they need. The United Kingdom is one of the few European countries that does not currently employ scientific methods of age assessment. Again, the noble Baroness, Lady Lister of Burtersett, drew to your Lordships' attention the fact that two in five European countries do not use X-rays. I have been given some figures that I shall happily commit to writing to her with, but the team in the Box advised me to say that they do not recognise these figures—which means that we collectively, as HM Government, do not recognise these figures. According to the European Asylum Support Office, 19 countries in Europe use dental X-rays and 23 use carpal—wrist—X-rays, because it appears that there is something to be observed in the fusion of certain bones.

I hear what the noble Baronesses, Lady Neuberger, Lady Lister of Burtersett and Lady Hamwee, said at this stage and at previous stages about countries moving

away from this form of testing; I am obliged to the noble Lord, Lord Paddick, for nodding his head. We propose not to introduce this but to devolve the matter to a committee that can then advise the Government on the usefulness of its introduction. If there is a move away from these practices, as noble Lords and noble Baronesses have asserted, we can expect to be advised on that by the committee that is being established.

To the noble Baroness, Lady Hamwee, who asked about the constituent professions of the body that was being set up, I regret to say that I do not have the full spectrum to hand. I think that I mentioned this fairly exhaustively in the last stage so it will be in *Hansard* but, if it is not, I am grateful that she will accept my writing on the topic, as I see from her nod.

Finally, I am also given to understand that the use of dental X-rays, techniques and observation is current in the Federal Republic of Germany—

Lord Harris of Haringey (Lab): My Lords, I refer to my interests in this matter in the register. In the event of the Government's having advice that they proceed with this, whom do they envisage will carry out these dental X-rays? If they are doing so without the consent of the person concerned, will that be a breach of the ethical guidelines? If they are being carried out by non-qualified people, is that not also an offence for those carrying out those X-rays?

Lord Stewart of Dirleton (Con): If I may, I will revert to the noble Lord's point in the course of my submission; the specific questions that he raised will need some detail, which I do not have to hand but hope to be supplied with before I sit down.

I was talking about the use of ionising radiation in these matters. As I have said previously, the use of ionising radiation in the United Kingdom is highly regulated, and we will ensure that methods used comply with all regulatory requirements and standards. The Age Estimation Science Advisory Committee will have been asked to advise on the ethical considerations for the use of medical imaging techniques. As I have said, the Home Office is exploring a number of potential methods that do not involve ionising radiation, but these may require further research and development to support their technical and commercial viability in assessing the ages of age-disputed persons.

It is important to recognise that techniques develop. In the forensic context, for example, it has been the practice when considering child pornography to employ professional persons—paediatricians and others—to make an assessment of the appearance of the unfortunate people recorded in these images, and to assess from appearance alone what age they were, for forensic purposes, in order that the appropriate criminal charges might be brought.

Also in the forensic context, we recognise that scientific techniques move on. When I was called to the Bar and started to look at criminal work, there was no DNA analysis. Blood testing was available, as was blood group analysis, to assist in drawing certain conclusions. It was not nearly as accurate as DNA testing, but it was available and could in some circumstances exclude a person from suspicion or bring a person into suspicion. Thus, although it did not purport to be able to answer questions with the degree of precision and accuracy that DNA analysis has, it was none the less a valuable technique. It may perhaps be useful for your Lordships to look at what the Government propose ultimately in that context, not as something that will provide a comprehensive answer to exclude all others but, rather, as an additional source of information, which might—I repeat, might—assist, or might be considered to have no value.

Amendment 64A calls for the establishment of a committee independent of the Home Office to consider these matters. It is, however, standard practice for the Home Office to convene its own scientific advisory committees as a forum for policy-making. The Home Office has announced the direct appointment of an interim committee of nine independent members, including the chair, to review the scientific methods of age assessment. The interim chair and committee members were appointed by the Home Office's chief scientific adviser for a period of not more than 12 months. I return to this point—it may be that I will not need to write to the noble Baroness, Lady Hamwee, but the current interim committee includes experts involved in medical statistics, children's social work, anthropology, psychiatry, paediatrics and radiology. The intention is that, from this broad range of disciplines, a holistic view of the issues involved in age assessment can be arrived at.

A submission was made, I think by the noble Baroness, Lady Neuberger, about the different appearances of persons coming for assessment. We acknowledge the contributing factors of ethnicity, diet and life experience that may have an effect on things like bone development, and therefore on the results of a scientific age assessment. We will be in a position to take into account all these factors, and I stress once again that the intention is not to present these scientific age assessments as a means of determining the question once and for all but rather, potentially, as available evidence, depending on the views of a committee.

It was my noble friend Lady Shackleton, I think, who questioned the fitness of the Home Office to assess such claims. The figures that I have been given are that the Home Office grants refugee status on humanitarian or humanitarian protection grounds in 90% of cases of unaccompanied asylum-seeking children.

The Government are embarking on this process so that more data is available to assist in what is, necessarily, a difficult area, and one where—as I pointed out to the House on a previous occasion—the Merton assessments undertaken by skilled and experienced social workers may throw up radically different conclusions from examinations of the very same persons. Anything that can be done to assist in that process, by providing additional data, ought to be welcome.

I turn briefly but gratefully to—

Noble Lords: No!

Lord Stewart of Dirleton (Con): My Lords, I am sorry: by "briefly" I did not intend to suggest that I was about to sit down, however welcome that may be to the House. I am, however, grateful to noble Lords for assisting me on the matter of the time allowed.

[Lord Stewart of Dirleton]

I am reminded that the right reverend Prelate, the Bishop of Durham, raised points about the manner in which assessments are carried out, and I again emphasise that the persons carrying them out are trained social workers, and it is not anticipated that that will change.

Amendment 84D, tabled by the noble Lord, Lord Coaker, deals with the manner in which these matters will be considered across the United Kingdom. The noble Lord wanted to know why it was being done on a national basis as opposed to within the devolved Administrations. We cannot do that, because these matters are reserved to the United Kingdom Government and apply across the UK. These age assessment measures will apply exclusively to those subject to immigration control, and immigration is a reserved matter. The overriding objective of the age assessment measures in the Bill is to ensure that there are appropriate arrangements in place to determine the ages of people coming to this country without evidence—usually in documentary form—of their claimed age. That is why it is the Government's view that these measures relate entirely to immigration and are therefore reserved to the UK Parliament.

The comprehensive reforms we are making to the age assessment system are designed to help and support the local authorities that will carry out these tasks. For example, the new age assessment board will carry out an age assessment where a local authority makes a referral. It is not quite all-imposing upon the local authorities, but rather, makes available something to assist should they consider it desirable.

4.30 pm

Where the new national age assessment board carries out an age assessment on referral by a local authority, it will defend that assessment in the court if challenged. This will reduce local authority costs and legal exposure, while improving the quality and consistency of decision-making. Referral would be entirely voluntary. If we were to follow the terms of the amendment—I appreciate that the noble Lord's amendment is a probing one to test the position—this would exclude local authorities in Wales, Northern Ireland and Scotland. By that means, we would be penalising those local authorities by removing the benefits of these reforms and taking away important support which local authorities in England would be able to utilise. From a practical point of view, this risks creating a confusing and complex system with significant differences in how age assessment disputes are handled, depending upon where in the United Kingdom these matters are being raised. We consider it unreasonable and undesirable to oblige local authorities and young people, irrespective of whether they are a child or a young adult, to navigate such complexity.

However, the Government recognise the very important role which local authorities will continue to play in age assessment, and we are committed to continuing to work with them to achieve our collective aims. We also welcome continued engagement with the devolved Administrations and look forward to how these measures will be implemented. But we bear in mind that this is a national system for a matter reserved to the national Government, and we consider it undesirable that even slight wrinkles should emerge between treatments across the United Kingdom.

I propose to conclude—

Noble Lords: Hear, hear!

Lord Stewart of Dirleton (Con): I propose to conclude by merely echoing the words of the noble Baroness, Lady Fox, opposite. She says that it is above all important that there should be confidence in the means by which these decisions are taken, and it is to augment that confidence that we propose these measures. On that basis, I respectfully invite the noble Lord to withdraw the amendment.

Lord Sharpe of Epsom (Con): My Lords, given the hour and the address by the President of Ukraine, I beg to move that the debate on Amendment 65 be now adjourned, and that further consideration on Report be adjourned until 5.15 pm.

Lord Carlile of Berriew (CB): My Lords, there may well be a Division on the second of the amendments in the group. In which case, can we take it that the House will not resume until we have had the opportunity to come back to your Lordships' House, even if it is a bit after 5.15 pm?

Lord Stewart of Dirleton (Con): My Lords, there was no attempt on my part to forestall any Division, and I apologise if ignorance of procedure perhaps led to the suggestion otherwise. [*Interruption.*] I am grateful to my noble friend for indicating that that was not his position.

The Lord Speaker (Lord McFall of Alcluith): I can assure noble Lords that it is about the timing of the address by President Zelensky, rather than anything else. All business continues.

4.34 pm

Consideration on Report adjourned until not before 5.15 pm.

5.21 pm

Lord Green of Deddington (CB): My Lords, we had a long debate and the House will be glad to know that I shall be extremely brief. I am grateful to the noble Baroness, Lady Neville-Rolfe, for her very powerful contribution to my case. To sum up: we need the support of professionals in this matter, as the noble Baroness, Lady Neuberger, said, but also the support of the public, a point raised rightly by the noble Baroness, Lady Fox. Very briefly, we face having asylum seekers arriving by the tens of thousands, as I mentioned. They are clearly briefed to destroy their documents—only 2% of them have them—and the number of those who claimed to be children but were found to be adults was 1,500 last year. That was five times any previous year, so there is a case there.

The Government are right to get on the case and I hope they will have a useful negotiation with those who think otherwise. This is clearly a difficult policy area, but I leave it to the Government to take matters further. Meanwhile, I beg to withdraw my amendment.

Amendment 64 withdrawn.

Amendment 64A

Moved by ***Baroness Neuberger***

64A: After Clause 56, insert the following new Clause—

"Age assessments: restrictions

(1) Age assessments under section 49 or 50 must only be undertaken if there is significant reason to doubt the age of the age-disputed person.

(2) A person conducting age assessments under section 49 or 50 must be a local authority social worker.

(3) Age assessments must be undertaken in accordance with the Association of Directors of Children's Services Age Assessment Guidance or equivalent guidance in Scotland, Wales and Northern Ireland.

(4) When an age assessment is conducted, a process must be used that allows for an impartial multi-agency approach, drawing on a range of expertise, including from—

(a) health professionals,

(b) psychologists,

(c) teachers,

(d) foster parents,

(e) youth workers,

(f) advocates,

(g) guardians, and

(h) social workers.

(5) When making regulations under section 51, the Secretary of State must not specify scientific methods unless the Secretary of State receives written approval from the relevant medical, dental and scientific professional bodies that the method is both ethical and accurate beyond reasonable doubt for assessing a person's age.

(6) Any organisation developed to oversee age assessments must be independent of the Home Office.

(7) The standard of proof for an age assessment is reasonable degree of likelihood."

Baroness Neuberger (CB): My Lords, we did not get reassurance on several issues. I wish to test the opinion of the House because we need to know more about the ethical response, which we did not get from the Minister.

5.23 pm

Division on Amendment 64A

Contents 232; Not-Contents 162.

Amendment 64A agreed.

Division No. 1

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Adonis, L.
Alderdice, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bakewell, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Boycott, B.
Bradley, L.
Bradshaw, L.
Bragg, L.
Brinton, B.
Bristol, Bp.
Brookeborough, V.
Brown of Eaton-under-Heywood, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Cameron of Dillington, L.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carlile of Berriew, L.
Carter of Coles, L.
Cashman, L.
Chandos, V.
Chapman of Darlington, B.
Chartres, L.
Chelmsford, Bp.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Coussins, B.
Craig of Radley, L.
Crawley, B.
Crisp, L.
Davies of Brixton, L.
Davies of Stamford, L.
Desai, L.
Dholakia, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Dubs, L.
Durham, Bp.
Eatwell, L.
Elder, L.
Etherton, L.
Falconer of Thoroton, L.
Falkner of Margravine, B.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
Glasgow, E.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Grantchester, L.
Greenway, L.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Hacking, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollick, L.
Hollins, B.
Hope of Craighead, L.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussein-Ece, B.
Hylton, L.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Judge, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Khan of Burnley, L.
Kidron, B.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Leeds, Bp.
Lennie, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Macdonald of River Glaven, L.
Mackenzie of Framwellgate, L.
Macpherson of Earl's Court, L.
Mallalieu, B.
Manchester, Bp.
Mann, L.
Manningham-Buller, B.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McDonald of Salford, L.
Meacher, B.
Merron, B.
Monks, L.
Morgan, L.
Murphy of Torfaen, L.
Murphy, B.
Neuberger, B.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Loan, B.
Paddick, L.
Palmer of Childs Hill, L.
Parekh, L.
Parminter, B.
Patel, L.
Patten of Barnes, L.
Pendry, L.

Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prosser, B.
Ramsbotham, L.
Randerson, B.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ricketts, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Russell of Liverpool, L.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Shackleton of Belgravia, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
St Albans, Bp.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Thurso, V.
Tope, L.
Tyler of Enfield, B.
Uddin, B.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Walmsley, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
Waverley, V.
Wellington, D.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Winston, L.
Wood of Anfield, L.
Woodley, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altrincham, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Attlee, E.
Balfe, L.
Barran, B.
Bellingham, L.
Benyon, L.
Berridge, B.
Bethell, L.
Blackwell, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Carrington, L.
Cathcart, E.
Choudrey, L.
Clarke of Nottingham, L.
Colgrain, L.
Colwyn, L.
Courtown, E.
Couttie, B.
Crathorne, L.
Cruddas, L.
Curry of Kirkharle, L.
Davies of Gower, L.
Dobbs, L.
Duncan of Springbank, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Farmer, L.
Fellowes of West Stafford, L.
Fleet, B.
Fookes, B.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Frost, L.
Gadhia, L.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Gold, L.
Goldie, B.
Goodlad, L.
Green of Deddington, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Keen of Elie, L.
Kilclooney, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Leigh of Hurley, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Manzoor, B.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Meyer, B.
Mobarik, B.
Morrow, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patten, L.
Penn, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Reay, L.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Thurlow, L.
True, L.
Vere of Norbiton, B.
Wakeham, L.
Wasserman, L.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Younger of Leckie, V.

5.39 pm

Clause 57: Provision of information relating to being a victim of slavery or human trafficking

Amendment 65

Moved by ***Lord Coaker***

65: Clause 57, leave out Clause 57

Lord Coaker (Lab): I start by declaring my interests in the register and my work in the Rights Lab at the University of Nottingham and as an unpaid trustee of the Human Trafficking Foundation. It is a privilege to follow what was a historic event. I think we all watched President Zelensky in one place or another and will wish him well in combating the illegal invasion of Ukraine.

If noble Lords will allow me, I will also take one minute to congratulate the noble Baroness, Lady Williams, on her elevation to the Privy Council. This is the first chance I have had to do so with the noble Baroness present. I think there is universal acclaim for that. Everybody across the House is pleased to see somebody who is decent and honest and has integrity—even if we sometimes clash on views and opinions—receive that honour.

Now back to normal. In speaking to Amendments 65 and 66 and agreeing with all the various amendments in this really important group on modern slavery, I will repeat a couple of general points and then move to something that has come to light since the debate in Committee. I know it is a great disappointment to everyone that this modern slavery part of the Bill is in an immigration Bill. That sets a really unhelpful context and inevitably conflates immigration and slavery in a way that even probably the Government, and certainly the Front Bench here, would not want to. That is to be regretted.

It is very helpful that the Government have produced a set of statistics that are relevant to the whole debate on this group. Sometimes the Government say they do not agree with figures that are used, but these are the Government's own figures, produced by the Home Office on 3 March—a few days ago. The document is titled *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary, 2021* and is really helpful to our debate.

I do not want to make a Second Reading or Committee speech, but these statistics have been introduced between our last debate and this Report stage, and they are of particular relevance. I do not understand one of the things the Government have done when there is a flagship Conservative government achievement—something of which we are all proud. I am a Labour politician, and I think the Modern Slavery Act that the Government passed was marvellous, so I do not understand why they are proceeding with Part 5, which undermines many of the principles on which the Act was established.

These statistics are so relevant to my Amendments 65 and 66, and indeed Amendment 69, which would leave out Clause 62, which other noble Lords have signed. They drive a coach and horses through the Government's reason for doing this. The Government are persuaded to pursue the measures in these clauses because they say that people being referred to the national referral mechanism are using it as a way of circumventing immigration law and as a backdoor way of getting into the UK and overcoming different regulations.

I point out for the Government—the Minister will no doubt want to point this out—that referrals to the national referral mechanism have increased by 20% in the last year. There has been a 20% rise in referrals—let us get that out there. If I were the Government—and you never know—I would, instead of saying that it is a problem, say that it is a sign of the Government's success in identifying more victims of modern slavery, bringing them forward to the system and offering them support. I would defend it and say, "Isn't it great that we are uncovering more examples of this?" Of course, if people are circumventing the system, you would expect the system to pick it up and deal with them in the appropriate way. But the Government have chosen, through Clauses 57, 58, 62 and other clauses that other noble Lords will speak to, to drive a coach and horses through that. Anyway, let us bear in mind that that is one of the statistics.

One of the big arguments against Clauses 57, 58 and 62 is that they fail to recognise the fear and intimidation that victims of modern slavery—even the ones that the state finds—feel. How do I know that? I will use the Government's own figures to prove the point. In the same figures from which I quoted what the Government will quote about the increase in referrals, let us also look at the fact that duty to notify—that is, the process by which adults do not consent to be referred to the mechanism but the first responders have a duty to tell the national referral mechanism that they have people and suspect slavery—has gone up by 47%. In other words, there is already a huge increase in the numbers before the implementation of Part 5 of the Bill. Before the implementation of Clauses 57, 58 and 62, we are already seeing a huge rise in the number of people who are too frightened and will not consent to being referred to the national referral mechanism.

5.45 pm

That is the figure the Government should be worried and concerned about, and I am sure they are. I am not saying that people do not care about it—of course they do—but I absolutely fail to understand why anybody who cares about that, as the Government do, would then proceed to introduce a law that will make it worse. The problem is not the increase in referrals of people who consent, or the circumvention of the system, but the failure of the system to generate confidence in people who may be the victims of slavery to come forward and seek the support and help they need. How do I know that? Because the Government's own figures, published last Friday, tell us that. It is not made up.

I will tell your Lordships what is going on in the Home Office. A debate will be going on between the immigration part of it and the modern slavery part. There will be a debate between Ministers, and they will be saying, "Noble Lords are going to raise this—or they may not notice it". Well, it is right on the Home Office website; it is the first thing there. If noble Lords have not seen them, it is worth looking at those statistics and seeing for themselves what they say. They drive a coach and horses through the Government's point of view. That is why there are all these amendments leaving out various clauses.

Amendments 65 and 66, in my name and those of the noble Baronesses, Lady Hamwee and Lady Meacher, and the right reverend Prelate the Bishop of Bristol, would remove Clauses 57 and 58. It is unclear to me what problems the Government are trying to fix with these changes. What is gained by these clauses? The cost of them is stark, as I have tried to lay out.

Clause 58 provides that decision-makers "must take account" of a missed deadline, which damages a victim's "credibility" unless there are "good reasons" not to. We had a huge debate about what "good reasons" means. Why is the NRM suddenly not to be trusted to make decisions and to give weight to what matters? Who are the NRM decision-makers? Do we not trust them to make these decisions and realise when there is a difficulty? I would have thought we do. Through all our discussions, there has been no guarantee at all from the Government on what would count as a good reason. In the provisions there is no recognition of the trauma, the exploitation and the fear of authorities. In those figures I quoted, your Lordships can see the fear,

[Lord Coaker]
the exploitation and the concern of victims—they will not come forward, because they are frightened of the consequences.

Clause 62 is a key part of the Bill and the part the Independent Anti-Slavery Commissioner told us would make it harder to prosecute human traffickers. There is hardly a sentence in the Bill about the prosecution of human traffickers—something we all wish to see. The Government turn around and say that it does not matter, because these are only serious offences. The Government cite terrorism ad nauseam and list it—I know the Government do not like lists, but they have lists when it suits them. Then they point to Schedule 4 to the Modern Slavery Act in the belief that we will not read Schedule 4 to the Modern Slavery Act, because that also refers to offences that can be designated as public order offences. If you read Schedule 4 to the Modern Slavery Act, which of course is not listed because it does not suit the Government's argument, you find out that included within that are minor crimes such as robbery or damage to property. Those are included with the sort of thing that can be taken into account as an affront to public order.

The Government's answer, of course, is that no sensible person would do that, or that it will be judged on a case-by-case basis. I say that we are passing primary legislation, and in primary legislation doing the right thing should not be left to chance. Primary legislation should be clear and concise.

I know that we do not like to quote previous Prime Ministers, but Theresa May herself pointed out that she was concerned about the impact of these clauses on public order. She said in the House of Commons that she was worried that it would put off victims from coming forward.

I strongly support Amendment 68A, which I know the noble and learned Baroness, Lady Butler-Sloss, will say more about; the noble Lord, Lord Randall, has unfortunately had to go home, so I will leave that to her. It would replace Clause 62 with a new version that focuses on situations where a person may pose a genuine threat and not on victims who may have a minor criminal history. I look forward to hearing the noble and learned Baroness when she moves that amendment, which I strongly support.

I also strongly support Amendment 70, in the name of the noble Lord, Lord McColl, which has significant cross-party support. It proposes what the Government should be doing, instead of some of the appalling clauses in the Bill. It seeks to guarantee support for confirmed victims of trafficking. I look forward to the noble Lord's introduction; I fully support what he is doing.

Turning to Amendment 70ZA, in my name and those of the noble Baroness, Lady Hamwee, and the right reverend Prelate the Bishop of Durham, I do not understand why something in the Bill would treat children in exactly the same way as adults. It is just beyond belief that the Government consider doing that. Indeed, in Committee, the Minister, the noble Lord, Lord Wolfson, said

"it would be wrong in principle to create a carve-out for any one group of individuals, and to create a two-tiered system based … on age".—[*Official Report*, 10/2/22; col. 1845.]

I do not often fundamentally disagree—well, I do—but on this issue, I cannot say how much I disagree with that comment. I just cannot understand it. The noble Lord is a distinguished lawyer and barrister. The law treats people differently on the basis of age; why? It does so for reasons that are well established, yet in this Bill, with respect to slavery we are treating people of any age in exactly the same way. It is nonsensical; it generates disbelief. I cannot understand why anybody would do it. Should the House divide, I hope that noble Lords will support it.

Despite the number of exploited child victims who are traumatised, the Government have brought forward provisions that have no specific recognition of children. That is not normal policy-making. The amendment would provide that the best interests of the child must always be the primary consideration, that a slavery or trafficking notice may not be served on child victims, and a number of other things. I will not go through the amendment, but noble Lords will see that for what it is.

I say once again that I cannot believe, in a legislature in 2022, when we are talking about modern slavery, that a child victim who turned up to a first responder would be subject to exactly the same provisions as an adult. I do not think that that is right. Maybe others will have great legal and logical opinions, but I think that you do not treat children in the same way as adults. It does not mean that you excuse illegality, but you do not treat them in the same way. Of all the amendments, that is the one that I feel most strongly about.

I very much support the amendments in the name of the noble Lord, Lord Alton. They cover many of the same issues that I have touched on in my amendment on children, ensuring that the burden of proof for a victim to enter the NRM is not heightened by the Bill.

To conclude on this group, I repeat, because it is so important, that I cannot believe a Conservative Government would drive a coach and horses through the principles on which one of the flagship policies of their tenure in office—however long that lasts—was based, which is globally recognised and seen as a torchbearer, and all in the name of an uncontrolled increase in the numbers being referred to the NRM of people who are using it as an excuse to circumvent the Immigration Rules. The Government should sort that out, rather than undermining their Modern Slavery Act.

Lord Alton of Liverpool (CB): My Lords, I refer to my interests in the register as a trustee of the Arise Foundation, a charity that works for victims of modern slavery and against human trafficking. It is a great pleasure to follow the noble Lord, Lord Coaker, and to endorse everything he said about this group of amendments. As he said, in my name are Amendments 67 and 68, and I have signed Amendment 70, in the name of the noble Lord, Lord McColl. I should say at the outset that my noble friend Lady Prashar is unwell, and we all wish her a speedy recovery to her usual place. I thank the right reverend Prelate the Bishop of St Albans for also being a signatory to these amendments.

Before I turn specifically to the amendments, I endorse what the noble Lord, Lord Coaker, said in congratulating the noble Baroness, Lady Williams, on

her elevation to the Privy Council; the whole House would agree with him. Also, what an extraordinary backdrop to today's debate and to this Bill it was for us all to have been privileged to sit in the Gallery and listen to President Zelensky. The UNHCR suggests that as many as 3 million people will be displaced and become refugees, joining the 82 million people who are displaced or are refugees worldwide at this time. What a backdrop to our consideration of how we can deal with people in a civilised and humane way, but also our consideration of the fundamental and root causes of this massive displacement of people, which we so regularly fail to address.

The points made so well by the noble Lord, Lord Coaker, about the national referral mechanism and the way we treat children are especially close to my heart. Without wishing to repeat either the points I made in Committee or anything said by the noble Lord, I will try to summarise the arguments relatively briefly.

The NRM is a vital mechanism for the recovery and safety of survivors of modern slavery. Since its introduction, with the work of successive Governments, including the introduction of the vitally important Modern Slavery Act by a past Conservative Government, as we have heard—described by the noble Lord as "flagship" policy—the UK has become a global leader in countering the evils of trafficking and modern slavery. It will be a lasting legacy to the right honourable Theresa May, who pioneered this when she was Home Secretary, with support from all quarters: it was bipartisan and bicameral legislation.

Many of us sitting on these Benches participated in those proceedings and helped to improve that legislation, which was not driven through in a pell-mell rush but given proper consideration with pre-legislative scrutiny at every stage. People were engaged and involved in these sensitive and complex issues. That contrasts somewhat with the speed with which we are driving forward quite a lot of legislation at the moment. It reminds me of the old saying: legislate at speed and repent at leisure. I feel that we may well end up doing that.

The NRM, like so many things, is not perfect, but I, along with many across the House, I am sure, would draw parallels between the NRM and the succour it offers to vulnerable people and the campaigns in another age, of people such as William Wilberforce. Both are drawn from a strength of will and compassion that makes our country unique, and we should not squander that. Although I do not believe that any of us here today would wish to diminish the achievements of all those who sat here in both Houses and strived to support some of the most vulnerable, we have to look at the practical application of what it is that we are being invited to do. Clause 59 will do that—it will diminish what we have set our hands to. With this clause, we would close the door for many to the safety of the NRM. The clause will, in effect, raise the bar that these people must meet to obtain a positive reasonable grounds decision and the safety and support of the national referral mechanism, leaving them with a stark choice between returning to their chains or etching out some half-existence.

6 pm

The House may ask why this is being debated at all. The Government believe that the NRM is being taken advantage of and that the threshold needs to be strengthened to prevent this. I am sure we will hear that argument from the Front Bench again, and the claim that the rise in the number of individuals—the noble Lord, Lord Coaker, referred to this earlier—some of whom are in detention or on remand, entering the NRM is a sure sign of an issue, and that the only explanation must be that criminals are somehow exploiting the national referral mechanism to prevent their deportation.

I asked the Minister when I last spoke here on this matter, in Committee, to share the Government's evidence with this House. I must say I have seen very little to support their argument. To argue, as they do, that the reason for an increase in referrals to the NRM must be a discrepancy reflects a leap of logic that is terrifying given the impact it would have on so many already traumatised individuals. While by the Government's own statistics there has been a rise of about 11% in the prevalence of NRM referrals for people detained for immigration offences, like the noble Lord, I deplore the fact that we have lumped together in the same Bill immigration issues and these much more sensitive questions around human trafficking and modern slavery. There does not seem to be a clear correlation with criminality to me.

Indeed, the Government themselves, in their 2019 annual report, highlighted key communication campaigns to raise awareness of slavery and support referrals, as well as their progress

"to simplify and speed up referrals of potential victims of modern slavery for government support".

Could these points raised in the annual report be reasons for the 11% rise, rather than a mark of rising abuse of the system? The evidence for this seems to increase when you consider that the vast majority of those who get a positive reasonable grounds decision go on to receive a positive conclusive grounds decision.

In their new plan for immigration, the Government made it clear that they believe that the threshold for a reasonable grounds decision is too low, but we are yet to see the evidence of this. Only this morning, the Salvation Army, which has been a principal adviser to the Government on these questions—as referred to by the noble Lord, Lord Coaker—said to me that, according to the most recent set of NRM statistics published by the Home Office, in the last quarter of 2021 89% of reasonable grounds decisions and 94% of conclusive grounds decisions were positive. This begs the question, once again, of why the Government feel the need to change the threshold. Their own data makes it overwhelmingly clear that concerns around individuals abusing the system are absolutely unfounded.

Many of those on the ground supporting vulnerable people every day, such as the Salvation Army, believe it is already harder today to get a positive decision than it was even a year ago. Moreover, many were already concerned that the NRM underrepresented the true number of victims, even without the threshold being raised. Increasing the threshold further would place too high an evidence burden on victims prior to them receiving specialist advice and support. This will

[Lord Alton of Liverpool]
block victims from accessing trafficking support. This will include child victims, as we have heard, and those who were children at the time of being exploited. This should not be undertaken unless we can prove beyond doubt that there has been a rise in criminality linked to false referrals to the NRM. Without that certainty, we risk only harming some of the most vulnerable in our society and reneging on our responsibility to support all who suffer.

Sadly, it seems clear to me that the Government's case is informed by neither the evidence nor the experience of people who the NRM is designed to save. The UK has committed itself to fighting the exploitative practices of slavery where it has influence. Essential to this commitment is the notion that all who suffer under the hands of traffickers and slavers are entitled to safety and support. That is why I have laid Amendments 67 and 68 before your Lordships' House.

To avoid a Division this evening, I simply ask for a commitment from the Government to engage and consult with the anti-trafficking sector in the coming months on the statutory guidance linked to this Bill. If the Government are prepared to do that, that would go at least some way to meeting some of the arguments I have advanced.

My name is also on the amendment to be moved later by the noble Lord, Lord McColl. It's proposal is the right thing to do and it makes policy sense; I spelled out my reasons in Committee. Let me just remind the House what the anti-slavery commissioner has said:

> "There is a powerful moral argument for granting leave for those whom the state has concluded are victims of trafficking or slavery but there is also a practical one. Without such leave survivors, who are not claiming asylum or who have not been granted EU settled status, are not entitled to accommodation and have limited access to benefits—they will either be unable to leave safe houses or left destitute on the streets."

We can put victims on the road to recovery with Amendment 70, and I shall be supporting the noble Lord if he decides to divide the House on that matter.

In saying those words, I commend to the House Amendments 67 and 68.

Baroness Butler-Sloss (CB): My Lords, I declare my interests, which include being a vice-chairman of the Human Trafficking Foundation.

I would like first to thank the Minister, the noble Lord, Lord Wolfson, for including me in the letter to the noble Lord, Lord Randall. Very unfortunately, the noble Lord, Lord Randall, has just tested positive for Covid, as a result of which I shall move Amendment 68A at the appropriate point on his behalf, as my name is down.

I would like to start by asking two questions of the Government. First, why do the Government, as they have for years and years, always see victims of modern slavery through the lens of immigration? It is extremely sad. In the years I have been in this House, I have fought against this, as many other noble Lords have, with absolutely no success. It remains not only in the Home Office but absolutely wedded to issues of immigration. No more stark an example of that could be seen than Part 5 of this Bill.

Secondly, why not listen to the whole modern slavery sector, opposed to the whole of Part 5, including, as we have already heard, the Salvation Army, the anti-slavery commissioner, the United Nations rapporteur and, perhaps most interestingly, Caroline Haughey QC, who has been advising the Government for many years on issues of modern slavery? The Government seem unable or unwilling to listen to a sector that knows what it is talking about. It really is extremely sad. The sector has been telling the Government this from the moment that the Bill came on the stocks.

I am also very concerned about the impact of Clauses 58 and 62, particularly in relation to the statutory guidance issued on modern slavery last month—in Committee, I read passages, which of course I will not do on Report. Throughout that statutory guidance, it is clear that those who will be dealing with potential victims of modern slavery will have to bear in mind the trauma of what they have gone through. Very careful advice is given, and particularly helpful parts are at pages 102 and 106, under Annex D, that set out the difficulties that victims of trauma have in giving appropriate and truthful answers at the very beginning. Then, for goodness' sake, one looks at Clauses 58 and 62 and sees that, if information is not given quickly, you are seen as someone who is not reliable and likely not to be a genuine victim. It is utterly contrary to the Home Office's own statutory guidance.

I find this absolutely astonishing, because, as all of us who have any interest in or knowledge of this area will know, it is very difficult for victims of trauma, in whatever situation, including modern slavery and human trafficking, to come clean about what really happened to them at an early stage. My goodness, Members of your Lordships' House have now heard about this over a number of years on various Acts of Parliament. This part of Part 5 will do irreparable damage to those sort of people, who are the majority.

I turn now to children. I vividly remember talking to a Minister in this Chamber—it was probably the noble Baroness, Lady Williams—when I suggested that it was wrong for children to go through the NRM. The Minister agreed that children should not go through the NRM. Part III of the Children Act 1989 places an obligation on local authorities to take children into voluntary care when they come to their area and need help. Most children generally go through this process. The local authorities look after these children and the Modern Slavery Act has provided what we now informally call "guardians". That is the right process.

Amendment 70ZA should not be necessary. The noble Lord, Lord Coaker, quite rightly tabled it because the Government refuse to exclude children from Clauses 58 and 62, but they should not be in Part 5 at all because children, from whichever country, should be dealt with through the care service. I find it very sad that the Minister did not say in Committee, or indeed in the letter to the noble Lord, Lord Randall, which I have been able to read, that these children will not go through the NRM. He assumes that they will and they will have to be dealt with like adults. Other noble Lords have spoken about that, so I will not repeat it.

Amendment 68A is intended to do what Clause 62 requires but without being as vicious. It would ameliorate the clause and it certainly deserves to be supported, but I also support the other amendments in the group.

Baroness Meacher (CB): My Lords, I have written a short speech but I will not deliver it in view of the time pressure. I have put my name to Amendments 65 and 66. I feel very strongly that Clauses 57 and 58 show a complete lack of any understanding about the impact of trauma. Three members of my family went through a terrible trauma 10 years ago. It is only now, 10 years later, in the safe context of trauma therapy, that each of them has been able to talk at length about what they went through. The idea that traumatised people—children or adults—are expected to talk to a complete stranger early on in the process about what they have been through is terrifying. They will not be able to do it. I ask the Minister to please listen in particular to the noble and learned Baroness, Lady Butler-Sloss, who really understands these things—I understand it on a personal level—the noble Lord, Lord Coaker, and others, and remove the whole of Part 5. I support all the amendments in the group. Noble Lords will be glad to know that I will certainly not talk to them, but I leave that request pleading, if you like, with the Minister.

6.15 pm

The Lord Bishop of Bristol: My Lords, I support the amendments in the name of the noble Lord, Lord Coaker, to remove Clauses 57, 58 and 62 from the Bill, to which I have added my name. I too congratulate the noble Baroness, Lady Williams, on her appointment and give thanks for all the work she does, even when we do not always entirely agree across these Benches.

As we have heard, Clauses 57 and 58 would make it appreciably more difficult for people to be recognised as victims of modern slavery and receive support. In Committee, the Minister responded to my concerns about these clauses by saying that, far from deterring victims, this will

"encourage genuine victims to come forward".—[*Official Report*, 10/2/22; col. 1843.]

I query how that can be the case. More referrals are being made—I am grateful for the statistics from the noble Lord, Lord Coaker—but we know that is only a very small fraction of the likely number of victims to come forward and be identified. The Global Slavery Index 2018 estimated that there could be as many as 136,000 victims in the UK at the moment.

I therefore cannot fathom how raising the burden of evidence, making it harder to get a reasonable grounds decision, can possibly do anything other than further put people off, further delay the already lengthy backlog in making conclusive grounds decisions and end up excluding some genuine victims from support. Could the Minister say, after hearing some evidence earlier on, what evidence and planning suggest that these measures will make genuine victims more likely to come forward? Could he share that evidence with us? It seems markedly at odds with the evidence presented by the front-line agencies.

In his response in Committee, the Minister argued that these clauses were necessary to prevent misuse of the migration system. We have heard some suggestions of that already. Could Ministers share that evidence, as it again seems markedly at odds with the evidence presented to us by agencies? I find it a troubling approach, cutting across support for genuine victims. We already have a system that requires an assessment of potential victims. It is capable of identifying fraudulent or inappropriate claims, and I believe that it does so. Given this, it is not clear to me that the Government have produced an adequate rationale for this reform.

Finally and briefly on Clause 62, I have heard the Minister's reassurances, but I remain unclear about and uncomfortable with what could or would be classified as acting in "bad faith", and where the line is to be drawn on serious or minor criminality. I remain concerned that Clause 62 is a gift to those who force victims into illegal activity to entrap them. I have heard the Minister promise that future modern slavery legislation is a priority. As the Bishop with lead responsibility for combating modern slavery, I truly welcome this and look forward to engaging on that legislation when it arrives.

I am not entirely clear what this legislation will address. I echo a question from the noble Lord, Lord Alton, in Committee: if future positive legislation is in the pipeline, why are we being asked to push through Part 5, as others are saying, as an add-on to the Bill, which otherwise focuses overwhelmingly on the asylum system? For all those reasons, I remain of the view that these clauses would best be removed from the Bill and that the Government would do better to return with a new Bill that focuses squarely on modern slavery.

Lord McColl of Dulwich (Con): My Lords, the Ukraine crisis adds urgency to improve this legislation. Refugees fleeing Ukraine will create conditions ripe for exploitation by traffickers. In the coming months we should expect an increase in the number of victims of modern slavery in the United Kingdom. I will speak to Amendment 70, but I note the important issues raised by other amendments in the group to ensure that victims are not excluded from the support they need in the first place.

Amendment 70 would provide genuine victims with sufficient certainty to underpin their recovery, prevent their retrafficking and ensure that they have the security from which to engage with the police and prosecutors to bring the perpetrators to justice. These objectives alone would be reason enough to support Amendment 70, which has cross-party support—I thank the noble Lords, Lord Alton, Lord Paddick and Lord Coaker.

I make it clear that Amendment 70 would provide support and leave to remain only to individuals identified as genuine victims by the Government, through their own processes. These are not bad apples seeking to abuse modern slavery protection; they are confirmed victims—I cannot stress that enough. There are victims for whom the Government have recognised the need for ongoing support for at least 12 months. If, as the Minister said, the Government do not intend to wriggle out of this commitment, why have they not tabled their own amendment?

In Committee, the Minister responded with this extraordinary statement:

"We appreciate the push to put this into legislation at the earliest opportunity, but we do not agree that this Bill, with its focus on immigration is the most appropriate place to do so."—[*Official Report*, 10/2/22; col. 1890.]

[Lord McColl of Dulwich]
It was the Government who put modern slavery into an immigration Bill in the first place, and it is they who have already proposed adding a new section to the Modern Slavery Act, through Clause 63, providing statutory support during the national referral mechanism. Amendment 70 would complement Clause 63 and enhance the support provided to victims after the NRM by adding a second, new, section to the 2015 Act.

Statutory support for at least 12 months has been consistently recommended by organisations as essential for victims. Of course, support and leave to remain go hand in hand: victims who are not British nationals need leave to access that support. Victims also need leave to give them the security to engage with the police. The prosecution rate is unacceptable: prosecution figures are complicated, I agree, but, since 2015, only 88 offenders have been convicted for modern slavery as the principal offence. That tells enough of the story. Why is the prosecution rate so low? It is not the fault of the prosecutors; it is because the victims do not have the security to come forward. Many victims' loved ones are threatened with death at the hands of the traffickers. The Government say that they want the Bill to increase prosecutions, and Amendment 70 will help them to do just that. I quote again the Zulu exhortation: "Vukuzenzele"—just get on and do it.

I intend to test the will of the House, and I ask your Lordships to vote for Amendment 70 to get on with it, to provide confirmed victims with the support and leave to remain needed to give both current and future victims hope for the future.

Lord Morrow (DUP): My Lords, I will make a brief contribution to this debate—when I say "brief", I mean it. I commend those who have already spoken for their powerful speeches, and I trust that they will be enough to convince the Government that they should in fact adopt these amendments.

I started my speech in Committee by saying:

"For victims of modern slavery, escaping from their exploitation is only the beginning of their journey towards recovery."—[*Official Report*, 10/2/22; col. 1885.]

The noble Lord, Lord McColl, has known this for a long time and has consistently brought this message to your Lordships' House. I of course will support Amendment 70 today, and I trust that it will be pushed to a vote.

The Northern Ireland Assembly has also been debating longer-term support for victims, and, just yesterday, it agreed that it should be available for up to 12 months, or longer, if needed. But that recognition makes the inclusion of leave to remain for victims who get that support acutely relevant to victims in Northern Ireland. If they do not have the ability to remain in the UK, the option of support is just illusionary. We are snatching away hope for recovery and a different type of future, free from exploitation.

We need the Government to be an enabler of recovery for victims across the UK and to provide, through temporary leave to remain, an environment where victims can co-operate with prosecutors. We need to be clear that the UK is a very hostile place for traffickers. Amendment 70 builds on the success of the modern slavery legislation across the United Kingdom jurisdictions and puts the needs of genuine victims on the statute book. The UK has prided itself on being at the forefront of providing for victims of modern slavery; let us continue that tradition by voting in favour of Amendment 70, which I commend to your Lordships' House.

Baroness Hamwee (LD): My Lords, this is another occasion when, from and on behalf of these Benches, I can say that we agree and can edit my remarks down—although not completely. Between us, my noble friend Lord Paddick and I have put our names to all of the amendments, save that of the noble Lord, Lord Alton—nothing was meant by that except that it slipped past us—and we support them all.

The noble and learned Baroness referred to the combination of seeing victims of trafficking through the lens of immigration, as if this is all a single issue, ignoring the trauma and exploitation they have suffered as victims. I add that, of course, not all victims are immigrants. In fact, the minority are, so far as we know—there is a lot that we do not know yet. The Independent Anti-Slavery Commissioner has commented that the Bill creates

"a distinction between victims who are deserving of support and those who are not",

like deserving and undeserving refugees.

I will go back to trauma, which was referred to by the noble and learned Baroness. There seems to be an assumption that, if a story varies, even in a small detail, from one day to the next, the whole must be a lie. The noble Lord, Lord Alton, mentioned legislating in haste; I say that it is not us who repent at leisure but the victims who suffer hard at leisure.

I am no great fan of using domestic legislation to construe and apply an international treaty—I support Amendment 68A, but I simply pre-empt the point being made against me, referring back to previous amendments. It is a very neat way of not disqualifying victims from protection, other than in very limited circumstances. It is very difficult to see how the Government could oppose the amendment on the best interests of the child, if we are truly concerned about child victims. The noble and learned Lord, Lord Stewart, said in Committee that the Government do not consider that Clause 62 would prevent victims coming forward because of the "discretionary approach". He said:

"All of us ... want victims of modern slavery to continue to come forward for identification and support, irrespective of their personal circumstances or the circumstances in which they came to be exploited."—[*Official Report*, 10/2/22; col. 1877.]

6.30 pm

I have today seen the letter from the noble Lord, Lord Wolfson, to the noble Lord, Lord Randall, which says that he can be reassured that victims will be supported, regardless of their personal circumstances. However, the letter also says that

"the specific circumstances and vulnerabilities of each individual case will be carefully considered, including whether the crime"

committed by the victim

"was committed as part of their exploitation and whether the individual is supporting a prosecution"

of those exploiting him or her, "amongst other factors." I stress "supporting a prosecution". It continues:

"This will balance the need to safeguard exploited individuals against public protection concerns and also takes into account the critical need to prosecute modern slavery offenders."

It is not a matter of balance. Is it any wonder that victims do not have the confidence that they will be regarded as victims if one of the criteria for support is that they will co-operate with a prosecution? It is not a new point. We support all the amendments in this group. I would like to have longer to say so but we do, and we are not reassured.

The Lord Bishop of St Albans: My Lords, I will speak to Amendments 67 and 68 in the name of the noble Lord, Lord Alton. I spoke to these amendments in Committee because I was concerned that Clause 59 was effectively raising the reasonable grounds threshold for identifying a victim of modern slavery. With respect to the Government, I confess that I remain unconvinced by their desire to alter reasonable grounds thresholds, and was not adequately assuaged in my fears that this could erect an unnecessary barrier to victims accessing the national referral mechanism.

The noble Lord, Lord Alton, made the argument in Committee that reasonable grounds decisions on the standard of "suspect but cannot prove" would allow the Modern Slavery Act to be more in line with ECAT. I am not a legal expert so this may well be the case. However, I made the point that since we currently use "maybe" as it exists within the Modern Slavery Act, as opposed to "is" or "are" as proposed by the Government —indeed, rather than "has been" as appears in ECAT—in supposedly bringing ourselves in line with ECAT we would effectively raise the threshold for access to the NRM.

There are then two possibilities here. Either by opting not to have a "suspect but cannot prove" reasonable grounds, we are moving away from ECAT, or we are essentially raising our reasonable grounds threshold away from a standard of "suspect but cannot prove" to be in line with ECAT. If it is the former, the amendments presented by the noble Lord, Lord Alton, would better achieve the Government's stated aim. If it is the latter, it begs the question as to what the benefits are of aligning ourselves to ECAT if we are in effect raising the threshold and making it more difficult for victims to access the NRM.

I recognise that we have obligations under ECAT but, as the noble Lord, Lord Deben, previously pointed out, we do not break our international obligations by going further than them, and by seeking alignment via Clause 59 we would effectively withdraw to an obligation that is weaker than our existing legislation. It is slightly bizarre that Her Majesty's Government seem happy to diverge from Europe when it comes to regulation and standards, as was recently announced with regard to the prospective Brexit freedoms Bill, but when it comes to reducing a threshold for the victims of modern slavery it appears that they are rushing for alignment.

As far as I am aware, there is no evidence that the NRM is being abused. In 2020, the single competent authority made 10,608 reasonable grounds referrals, of which 92% were later confirmed as victims, and 81% of reconsidered claims were later positive. There is an obvious fear that, through this higher standard, a number of victims may not even enter the system at all and, furthermore, that exploiters and slavers will be able to lean on this increased threshold to further manipulate and control their victims and deter them from seeking help. Surely this cannot be the Government's intention.

I will listen with great interest and care to the Minister's response. I hope that rather than just talk about the need for legal clarity in relation to both the statutory guidance and ECAT, which I recognise is important, he will address the pressing problem about whether this increased reasonable grounds threshold would have a negative effect on people using the NRM or indeed on referrals being made. I believe that this is the central concern that many of us have in this whole group of amendments, which I support.

The Lord Bishop of Durham: My Lords, forgive us for having two Bishops in a row. We do not normally do this—it is the way the groupings have fallen out. I support Amendment 70ZA tabled by the noble Lord, Lord Coaker, to which I have added my name with the noble Baroness, Lady Hamwee, and I declare my interests in relation to both RAMP and Reset. My interest comes from my ongoing engagement in the House with issues concerning children and their well-being and safety, and ensuring that their best interests are central to legislation.

I am deeply concerned that the protection of children identified as victims of modern slavery or human trafficking is not of primary concern in the Bill. I note again that not all children who are in modern slavery or human trafficking are brought into this country from outside. Some are born and raised here but find themselves held in slavery. This is a safeguarding matter, not an immigration matter, and the legislation should recognise that children require special protection. They are covered by the Children Act 1989, as the noble and learned Baroness, Lady Butler-Sloss, pointed out earlier. Why on earth is there no specific provision for the greater protection of children despite all our international and domestic obligations? As with many other parts of the Bill, it is simply not satisfactory for a Minister to rely on unscrutinised guidance at a later date, applied on a case-by-case basis. Safeguards must be built into legislation so there is no doubt that children receive the protection they deserve and that this is not left to chance. Can the Minister say when the guidance will be produced so that it can be properly scrutinised, and how can he reassure us that children are properly protected?

Lord Berkeley of Knighton (CB): My Lords, I will make a few comments to amplify the remarks of my noble friend Lady Meacher. I have just been reading a most remarkable book by a doctor, who as an eight or nine year-old child escaped from Afghanistan to try to realise his vision of becoming a doctor and thus being able to support his family back in Afghanistan. In trying to secure a voyage here, the bureaucracy of our immigration system, which I am afraid is outrageously being demonstrated in Calais, meant that this child fell into the hands of traffickers. He arrived here with a forged passport, so was sent to Feltham young offender institution. My point is that unless we improve our ability to admit refugees—particularly at a time like

[Lord Berkeley of Knighton]
this, as we have heard today—we will play into the hands of these people. Like that child, so many of these refugees are just desperate for a better life; he wanted to support his family.

That child had experienced post-traumatic stress disorder of the most awful sort, having seen friends and relatives bombed and shelled and having walked among mutilated bodies. He had nightmares and flashbacks, but he did not know that he had post-traumatic stress disorder and could not understand why he was finding it so difficult to explain to the authorities that he had come from this troubled background. It was only years later, as the noble Baroness, Lady Meacher, mentioned, that he realised that it must be because of post-traumatic stress disorder.

This extraordinary person started the most wonderful foundation, Arian Teleheal, saluted by the Government, which does telemed work with children and victims all over the world. He is a wonderful example of everything which is great in this country and everything that we need to make better. He knew that if he could get here and get training as a doctor, he could change the circumstances of those he had left behind in Afghanistan—and my goodness, he did. However, we must make it easier for people such as him to come here and benefit from our education, and then do wonderful work, such as what he wanted to do, as a doctor.

Lord Wolfson of Tredegar (Con): My Lords, the debate has shown that the House is unanimous on two points. The first is that my noble friend Lady Williams of Trafford should be congratulated, and the second is that the House did not much like the Government's Bill. I associate myself wholly with the former, and I will seek to set out the Government's position on the latter. Let me go through the amendments in turn.

Amendments 65 and 66 seek to remove Clauses 57 and 58 from the Bill entirely. The effect would be to remove modern slavery from the one-stop process and would mean that modern slavery claims would be dealt with separately from the one-stop process that addresses human rights and protection claims. That does not make much sense, for either the victims or the national referral mechanism, for at least two reasons. First, treating the two types of claims as distinct means that a victim might have to describe the same traumatic events repeatedly, which nobody wants to see. Secondly, decisions would be made about their future and their right to protection and support in isolation from, and perhaps in ignorance of, the full facts, which might mean that people who would otherwise get protection are denied it.

Those amendments, and Amendment 70ZA, do not make sense from the point of view of making the NRM an efficient, transparent and fair process. They display a lack of understanding about how the NRM works, where, in line with the low threshold for referral—I will come back to the thresholds later—we simply require relevant information at an early stage, even of a limited nature, to enable key issues to be identified from the outset. That allows early access to support and gives decision-makers a clearer picture of the individual's experience, which in turn means a more comprehensive decision, to be taken in the round, including, crucially, the victim's age when the relevant exploitation took place.

Perhaps more than any other group, children will benefit from early identification and protection, and from having decisions made in respect of their status and their support with as full an awareness of relevant facts and context as possible. In response to the concerns of the noble Lord, Lord Coaker, echoed by the right reverend Prelate the Bishop of Durham, we see no benefit to child victims in them raising modern slavery issues after any asylum or protection decisions have been made. That would only delay their ability to access the support and protection that they need.

I have read widely the briefings which I and other noble Lords have received, and seen that critics have argued, as has been said, that the clause will stop victims from coming forward. We do not see how a clause that encourages early disclosure of information and early identification, where any negative credibility implications are non-determinative and apply only when there are no good reasons for delay, would discourage victims from coming forward. As to evidence, I say again that the measure will allow for early identification, and we do not want victims to have to describe the same events repeatedly.

6.45 pm

Underlying all of that seems to be a misapprehension that Clauses 57 and 58 are aimed at stopping or discouraging claims. That is not the case. This is about the timing of the disclosure, not the fact of the disclosure.

In response to the question put by the noble Lord, Lord Coaker, and the noble and learned Baroness, Lady Butler-Sloss, about why modern slavery is addressed in an immigration Bill, there will inevitably be a relationship between individuals who enter both the immigration system and the national referral mechanism. We want to ensure that the systems work efficiently together to identify victims of modern slavery at the earliest opportunity and provide them with support. This approach helps to ensure that the protections which our systems provide are not misused by those seeking to frustrate their removal from the UK.

These clauses do not create trauma deadlines and they do not stop genuine victims from accessing the protections of the NRM. In response to concerns that the clauses will prevent individuals being identified, the new one-stop process is designed to encourage victims to come forward, creating new opportunities for victims to present information and be identified. Individuals subject to immigration control will be proactively asked about modern slavery and trafficking experiences in a structured way, supported by access to legal aid. Enhanced legal aid provision will mean that individuals receiving a notice are supported in understanding its meaning and the importance of raising information at the earliest possible opportunity.

Some of the criticisms assume that "damage to credibility" in Clause 58 is determinative. If I heard her correctly, the noble and learned Baroness, Lady Butler-Sloss, said that it would mean that someone who gives information late would not be believed or that information provided after the notice date would

not be accepted. Again, respectfully, that is not the case. Clauses 57 and 58 do not affect the state's duty to identify victims and they do not prevent victims being referred into the NRM for identification. No matter when information is raised, all referrals will continue to be considered on a case-by-case basis, to ensure that those who need protection and support get it. More specifically, if an individual has a good reason for bringing a late claim, then the information will not be treated as late and the damage to credibility will not apply.

I have covered before how the good reasons test will encompass many of the standard counters to a negative credibility assessment; for example, results of coercion, trauma and mistrust of authority. In response to the noble Lord, Lord Coaker, that will include reasons connected to the age of the individual. How significant any damage to credibility is will be looked at in the wider factual and evidential context of the individual case.

Turning to Amendments 69 and 68A, as noble Lords have outlined, the Council of Europe Convention on Action against Trafficking in Human Beings—ECAT—envisages that recovery periods should be withheld on the grounds of public order and improper claims. The ongoing problem that the clause seeks to resolve is that ECAT does not define public order, and this has severely hindered our ability to disqualify dangerous individuals in practice. I was going to give the House a case study. I will not, as I do not want to delay the House, but there are cases where we simply are unable properly to use the public order exception because it has not been defined. The amendments, no doubt unintentionally, would mean that we would continue to be unable to remove dangerous individuals where it is lawful to do so and in line with our international obligations.

The best way to deliver what is set out in ECAT, and some operational clarity, is to introduce a definition of "public order" that includes serious criminality and risks to national security; that is what Clause 62 does. But let me be clear: the public order disqualification applies to individuals who have been convicted of the most serious offences, including, for example, terrorism-related offences. The noble Lord, Lord Coaker, spoke about Schedule 4 to the Modern Slavery Act. This covers crimes such as manslaughter, murder, violent acts, sexual offences and, as the noble Lord pointed out, burglary and robbery. We disagree with the characterisation of those offences as minor, as did Parliament back in 2015 when it passed the Modern Slavery Act with Schedule 4. We suggest that it is vital that the Government can withhold the protections of the NRM from such individuals. Even when an individual does fall within one of those categories, we have been clear that our approach to Clause 62 is discretionary; it is not a blanket exclusion. The specific circumstances of the individual case would none the less need to be, and would be, considered.

Amendment 68A also seeks to exclude children from the clause. I repeat the point that this would create a two-tier system, which could encourage those looking to misuse NRM protections to provide falsified information regarding their age. Of course, we recognise the specific vulnerabilities—

Baroness Butler-Sloss (CB): I am sorry to interrupt but will the Minister deal with why children are going through the NRM? The Home Office, through the Minister, told me that the NRM was not suitable for children, who should be dealt with under the Children Act.

Lord Wolfson of Tredegar (Con): I do not think I am saying anything inconsistent. I am saying that, for the reasons I have set out—I was just starting on the point and hope I will be able to develop it—we do not want to create a two-tier system. Of course, we recognise the vulnerabilities of children. The modern slavery statutory guidance, which I think the noble and learned Baroness referred to, provides for the specific vulnerabilities of children. This clause does not change that. It is also right that our domestic legislation should align with our international obligations, and that includes ECAT. Children get protection from the NRM because they are recognised as victims of modern slavery; that is why they get protection.

On Amendments 67 and 68, I want to reassure noble Lords that we are currently working with stakeholders and operational partners to develop the guidance in a way that is clear for decision-makers and victims. The reasonable grounds threshold is, and will remain, low, as intended by ECAT, to identify potential victims. The House will forgive me, but we need to be clear about this: ECAT sets out that signatories have certain duties when there are reasonable grounds to believe that a person has been a victim or "is a victim" of modern slavery or human trafficking. The right reverend Prelate the Bishop of St Albans raised concerns that Clause 59 was raising the threshold. Respectfully, it is not. Clause 59 aligns the Modern Slavery Act 2015 with ECAT, but it is already the language used in the modern slavery statutory guidance for England and Wales, under Section 49 of that Act.

Indeed—I have it on my iPad—paragraph 14.50 of the guidance sets out the test of

"whether the statement …'I suspect but cannot prove' the person is a victim of modern slavery … is true ... or whether a reasonable person having regard to the information in the mind of the decision maker would think there are Reasonable Grounds to believe the individual is a victim of modern slavery".

So, in the guidance, the two tests are each used; we are not raising the test at all but aligning it. Nothing will change in practice; we are aligning our domestic legislation to our international obligations. The guidance also uses the phrase "suspect but cannot prove" as part of the test. Both phrases that I have read out are used in the guidance as being indicative of when the threshold is met. We are not raising the threshold and have no intention of doing so, but it is right that we keep setting that out in guidance and not in primary legislation.

Turning to Amendment 70, I thank my noble friend Lord McColl of Dulwich for his continued engagement. We are of course committed to providing support to victims of modern slavery but we believe that this should be provided on a needs basis. We are committed to maintaining our international obligations under ECAT, and this Bill confirms that, where necessary, support and protections are provided from a positive reasonable grounds decision up to the conclusive grounds decision. Indeed, there is a five-year contract, currently

[Lord Wolfson of Tredegar]
valued at over £300 million, which demonstrates that commitment. Importantly, however, support for victims, including safehouse accommodation, financial support and access to a support worker are already available based on need. There is no time limit for that support.

Each individual victim will have different needs. The amendment, however, removes any needs-based assessment and treats all 12,727 victims who entered the NRM in 2021 as being one of a kind, assuming that they will all need the same level of support. We committed in the other place to providing, where necessary, appropriate and tailored support for a minimum of 12 months to all those who receive a "positive conclusive grounds decision", and I have just repeated that here.

Finally, Amendment 70 would also reduce clarity, because it refers to assisting the individual in their personal situation. There is no definition of "personal situation" within ECAT, and Clause 64 addresses this issue by setting out circumstances where leave will be granted to confirmed victims. However, Amendment 70 requires no link to the relevant exploitation, which means that a victim could be granted leave to pursue an entirely unrelated compensation claim or assist with an unrelated investigation, and that is not what ECAT was all about.

Before I sit down, I should respond to the noble Lord, Lord Alton of Liverpool, and the right reverend Prelate the Bishop of Durham, as well as the noble and learned Baroness, Lady Butler-Sloss, who all mentioned guidance in one form or another. I can confirm that officials would be very pleased to engage on the development of the guidance, to which I have referred on a number of occasions. It will be published over the coming months, but we welcome that engagement. I also assure them and the rest of the House that we will bring forward modern slavery legislation as soon as parliamentary time allows.

I apologise for the length of my response, but there were a number of amendments in this group. For the reasons I have set out, I invite noble Lords not to press their amendments.

Lord Coaker (Lab): My Lords, I shall just respond to the Minister briefly. I thank him for his reply and all noble Lords who have contributed to the debate.

The one fundamental point that I wish to make to the Minister is that, in all his responses, he failed to talk about the statistic referring to the dramatic increase of 47% in the number of victims, in the duty to notify process, who refused to consent to their names being put forward to the national referral mechanism. That is 3,190 reports of adult potential victims via that process who did not consent to their names being put forward. The Minister did not refer to that—and at its heart that is because people already, before the implementation of the Bill, are frightened to come forward and interact with the Government. That is the reality of the situation. For all the Minister's protestations and reassurances, and all the statements that it will be done on a case-by-case basis, it does not alter the fact that already people are frightened of coming forward and being identified.

All the amendments before us seek to do is to address some of that problem. For example, Amendment 66, on which I will wish to test the opinion of the House, addresses the legislation where it says that if the people who do interact are late in providing information, they will be penalised and it must be taken into account and their claim refused. We are told that it does not matter because, on a case-by-case basis, they can be reassured—yet we are going to pass primary legislation to say that that provision must be included.

7 pm

On public order, we are told that there will be no need to worry, because we are talking about serious offences—and Ministers say that I have suggested that robbery and burglary are serious offences. Of course, they are serious offences. However, the Minister knows and understands that that does not reflect the situation of many people who are the victims of modern slavery and have been coerced and forced into criminality. He says, "Don't worry about that—we'll sort it out." But in the primary legislation that we are going to pass, that is something that will have to be taken into account. That is why there is a worry about the legislation being drawn too widely.

On children, the Minister says, "Don't worry—we shouldn't have a twin-track approach." I do not know whether you would call it a twin-track approach, but I think—I am sure along with those who have signed the amendments on children—you can call it twin track if you want. I think children should be treated differently from adults; it is a fundamental principle of all our public policy, which is why we have infant, junior schools and secondary schools, juvenile courts and adult courts, juvenile accommodation centres and adult prisons—because we wish to treat them differently. We do not call that a twin track; we call it a humane society reflecting the differences between children and adults, and that is what we should do here.

It is disappointing that the Minister has not reflected on that. I should have thought that, at the very least, there were one or two points on which the Minister might have said that we perhaps need to reflect, to see whether the legislation could be improved. He might have thought, after the various comments made right across the Chamber, that one or two noble Lords might actually have a point, and that even if the legislation was not changed, there might be one or two ways in which it could be improved.

I shall move certain of the amendments in my name, including Amendment 66, and I am sure other noble Lords will wish to move theirs, too.

Amendment 65 withdrawn.

Clause 58: Late compliance with slavery or trafficking information notice: damage to credibility

Amendment 66

Moved by ***Lord Coaker***

66: Clause 58, leave out Clause 58

Lord Coaker (Lab): I wish to test the opinion of the House.

7.03 pm

Division on Amendment 66

Contents 213; Not-Contents 142.

Amendment 66 agreed.

Division No. 2

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Adonis, L.
Alderdice, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bakewell, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Blower, B.
Blunkett, L.
Boycott, B.
Bradley, L.
Bragg, L.
Brinton, B.
Bristol, Bp.
Brookeborough, V.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Cameron of Dillington, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chandos, V.
Chapman of Darlington, B.
Chelmsford, Bp.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Coussins, B.
Craig of Radley, L.
Crawley, B.
Curry of Kirkharle, L.
Davies of Brixton, L.
Davies of Stamford, L.
Desai, L.
Dodds of Duncairn, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Dubs, L.
Durham, Bp.
Eatwell, L.
Elder, L.
Falconer of Thoroton, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Greenway, L.
Grender, B.
Griffiths of Burry Port, L.
Hacking, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Hastings of Scarisbrick, L.
Hay of Ballyore, L.
Hayman of Ullock, B.
Hayman, B.
Healy of Primrose Hill, B.
Henig, B.
Hollins, B.
Hope of Craighead, L.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Khan of Burnley, L.
Kilclooney, L.
Kingsmill, B.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Leeds, Bp.
Lennie, L.
Liddell of Coatdyke, B.
Lipsey, L.
Lister of Burtersett, B.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Manchester, Bp.
Mann, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McCrea of Magherafelt and Cookstown, L.
McDonald of Salford, L.
Meacher, B.
Merron, B.
Morrow, L.
Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patten of Barnes, L.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Prosser, B.
Ramsbotham, L.
Randerson, B.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ricketts, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Russell of Liverpool, L.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
St Albans, Bp.
St John of Bletso, L.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Thurso, V.
Tope, L.
Triesman, L.
Tyler of Enfield, B.
Uddin, B.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Walmsley, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
Wellington, D.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Woodley, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altmann, B.
Altrincham, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashton of Hyde, L.
Balfe, L.
Barran, B.
Bellingham, L.
Benyon, L.
Berridge, B.
Black of Brentwood, L.
Blackwell, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brady, B.
Bridges of Headley, L.
Brougham and Vaux, L.
Brownlow of Shurlock Row, L.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Choudrey, L.
Clarke of Nottingham, L.
Colgrain, L.
Colwyn, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
Duncan of Springbank, L.
Dundee, E.
Eaton, B.
Eccles of Moulton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Farmer, L.
Fellowes of West Stafford, L.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fowler, L.
Fox of Buckley, B.
Framlingham, L.
Frost, L.
Godson, L.
Gold, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.

Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Haselhurst, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Keen of Elie, L.
Kinnoull, E.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Leicester, E.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Manzoor, B.
McInnes of Kilwinning, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Rolfe, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Penn, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Reay, L.
Risby, L.
Robathan, L.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Taylor of Holbeach, L.
Thurlow, L.
Trenchard, V.
True, L.
Vere of Norbiton, B.
Wakeham, L.
Wasserman, L.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Younger of Leckie, V.

7.15 pm

Clause 59: Identification of potential victims of slavery or human trafficking

Amendment 67

Tabled by ***Lord Alton of Liverpool***

67: Clause 59, page 63, line 1, at end insert—

"(1ZA) Guidance issued under subsection (1) must, in particular, provide that the determination mentioned in paragraph (c) is to be made on the standard of "suspect but cannot prove"."

Member's explanatory statement

This amendment would ensure that amendments made to the Modern Slavery Act 2015 do not raise the threshold for a Reasonable Grounds decision when accessing the National Referral Mechanism in line with Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland.

Lord Alton of Liverpool (CB): My Lords, I am grateful to the Minister for the assurance that he gave, and it is my decision now not to move this amendment.

Amendment 67 not moved.

Amendment 68 not moved.

Clause 62: Identified potential victims etc: disqualification from protection

Amendment 68A

Moved by ***Baroness Butler-Sloss***

68A: Clause 62, leave out Clause 62 and insert the following new Clause—

"Identified potential victims etc: disqualification from protection

(1) This section applies to the construction and application of Article 13 of the Trafficking Convention.

(2) A competent authority may determine that it is not bound to observe the minimum recovery period under section 60 of this Act in respect of a person in relation to whom a positive reasonable grounds decision has been made if the authority is satisfied that it is prevented from doing so—

(a) as a result of an immediate, genuine, present and serious threat to public order, or

(b) because the person is claiming to be a victim of modern slavery improperly.

(3) Any determination made under subsection (2) must only be made—

(a) in exceptional circumstances,

(b) where necessary and proportionate to the threat posed, and

(c) following an assessment of all the circumstances of the case.

(4) A determination made under subsection (2) must not be made where it would breach—

(a) a person's rights under the European Convention on Human Rights,

(b) the United Kingdom's obligations under the Trafficking Convention, or

(c) the United Kingdom's obligations under the Refugee Convention.

(5) For the purposes of a determination under subsection (2)(b) victim status is being claimed improperly if the person knowingly and dishonestly makes a false statement without good reason, and intends by making the false statement to make a gain for themselves.

(6) A good reason for making a false statement includes, but is not limited to, circumstance where—

(a) the false statement is attributable to the person being or having been a victim of modern slavery, or

(b) any means of trafficking were used to compel the person into making a false statement.

(7) This section does not apply where the person is under 18 years at the time of the referral.

(8) Nothing in this section affects the application of section 60(2)."

Member's explanatory statement

This new Clause is an alternative to clause 62. It ensures that the power currently provided for in Clause 62 is exercised in line with the UK's obligations under Article 13 of the Trafficking Convention. This amendment also protects child victims of modern slavery from disqualification from protection.

Baroness Butler-Sloss (CB): On behalf of the noble Lord, Lord Randall, I should like to test the opinion of the House.

7.16 pm

Division on Amendment 68A

Contents 210; Not-Contents 128.

Amendment 68A agreed.

Division No. 3

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Adonis, L.
Alderdice, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bakewell, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Blower, B.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Bragg, L.
Brinton, B.
Bristol, Bp.
Brookeborough, V.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Cameron of Dillington, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chapman of Darlington, B.
Chelmsford, Bp.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Coussins, B.
Craig of Radley, L.
Craigavon, V.
Crawley, B.
Cromwell, L.
Curry of Kirkharle, L.
Davies of Brixton, L.
Desai, L.
Dodds of Duncairn, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Dubs, L.
Durham, Bp.
Eatwell, L.
Elder, L.
Falconer of Thoroton, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Greenway, L.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Hacking, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Hastings of Scarisbrick, L.
Hay of Ballyore, L.
Hayman of Ullock, B.
Hayman, B.
Healy of Primrose Hill, B.
Henig, B.
Hollins, B.
Hope of Craighead, L.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Khan of Burnley, L.
Kilclooney, L.
Kingsmill, B.
Kinnoull, E.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Leeds, Bp.
Lennie, L.
Liddell of Coatdyke, B.
Lister of Burtersett, B.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Manchester, Bp.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McColl of Dulwich, L.
McConnell of Glenscorrodale, L.
McCrea of Magherafelt and Cookstown, L.
McDonald of Salford, L.
Meacher, B.
Merron, B.
Morrow, L.
Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patten of Barnes, L.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Prosser, B.
Ramsbotham, L.
Randerson, B.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
St Albans, Bp.
St John of Bletso, L.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Thurlow, L.
Thurso, V.
Tope, L.
Triesman, L.
Tyler of Enfield, B.
Uddin, B.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Walmsley, B.
Watson of Invergowrie, L.
Watts, L.
Wellington, D.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Woodley, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Balfe, L.
Barran, B.
Bellingham, L.
Benyon, L.
Black of Brentwood, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brady, B.
Bridges of Headley, L.
Brougham and Vaux, L.
Brownlow of Shurlock Row, L.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Choudrey, L.
Clarke of Nottingham, L.
Colgrain, L.
Colwyn, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
Duncan of Springbank, L.
Eaton, B.
Eccles of Moulton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Farmer, L.
Fellowes of West Stafford, L.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Frost, L.
Gilbert of Panteg, L.
Godson, L.
Gold, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Haselhurst, L.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kamall, L.
Keen of Elie, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Leicester, E.
Lexden, L.

Lindsay, E.
Lingfield, L.
Manzoor, B.
McInnes of Kilwinning, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Rolfe, B.
Noakes, B.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patel, L.
Penn, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Reay, L.
Risby, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
True, L.
Tyrie, L.
Vere of Norbiton, B.
Wakeham, L.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Younger of Leckie, V.

7.28 pm

Amendment 69 not moved.

Clause 64: Leave to remain for victims of slavery or human trafficking

Amendment 70

Moved by ***Lord McColl of Dulwich***

70: Clause 64, leave out Clause 64 and insert—

"Conclusive grounds: support and leave to remain for victims of slavery or human trafficking

After section 50A of the Modern Slavery Act 2015 insert—

"50B Confirmed victims etc: assistance, support and leave to remain

(1) This section applies if a positive conclusive grounds decision is made in respect of a person.

(2) This subsection applies if the person has received support under section 50A and in that case—

(a) the Secretary of State must continue to secure tailored assistance and support for that person at the end of the recovery period if they are in need of that assistance and support in accordance with subsection (2)(b);

(b) a person who receives a positive conclusive grounds decision must be considered in need of assistance and support under subsection (2)(a) for at least 12 months beginning on the day the recovery period ends;

(c) a reference in this subsection to assistance and support has the same meaning as in section 50A(6).

(3) If the person is not a British citizen—

(a) the Secretary of State must give the person leave to remain in the United Kingdom if subsection (2) or (4) or (5) applies;

(b) leave to remain provided under this subsection must be provided from the day on which the positive conclusive grounds decision is communicated to a person for either—

(i) the amount of time support and assistance will be provided under either subsection (2) or one of the measures listed in subsection (4), or

(ii) at least 12 months if the person meets one or more of the criteria in subsection (5).

(4) This subsection applies if the person receives support and assistance under one of the following—

(a) section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015,

(b) section 9(3)(c) of the Human Trafficking and Exploitation (Scotland) Act 2015, or

(c) regulation 3(4)(c) of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018 (S.S.I 2018/90).

(5) This subsection applies if the person meets one or more of the following criteria—

(a) leave is necessary due to the person's circumstances, including but not restricted to—

(i) the needs of that person for safety and protection from harm including protection from re-trafficking,

(ii) the needs of that person for medical and psychological treatment;

(b) the person is co-operating with a public authority in connection with an investigation or criminal proceedings;

(c) the person is seeking compensation.

(6) Where the person is receiving assistance from a support worker the recommendations of the support worker must be considered in assessing that person's circumstances under subsection (5)(a).

(7) The Secretary of State must provide for persons granted leave to remain in accordance with this section to have recourse to public funds for the duration of the period of leave.

(8) The Secretary of State must allow a grant of leave to remain under subsection (3) to be extended subject to the requirements of subsection (10).

(9) In determining whether to extend a grant of leave to remain under subsection (8), and the period of time for which such extended leave should be provided, the person's individual circumstances must be considered, and whether that person—

(a) is receiving on-going support and assistance under the measures set out in either subsection (2) or subsection (4), or

(b) meets one or more of the criteria in subsection (5).

(10) If the Secretary of State is satisfied that the person is a threat to public order—

(a) the Secretary of State is not required to give the person leave under this section, and

(b) if such leave has already been given to the person, it may be revoked.

(11) The best interests of the child must be a primary consideration when making decisions under this section in respect of a child.

(12) In this section—

"positive conclusive grounds decision" means a decision made by a competent authority that a person is a victim of slavery or human trafficking;

"threat to public order" has the same meaning as in subsections (3) to (7) of section 62 of the Nationality and Borders Act 2022 (identified potential victims etc: disqualification from protection).

(13) This section is to be treated for the purposes of section 3 of the Immigration Act 1971 as if it were provision made by that Act.""

Member's explanatory statement

This replacement clause would provide new statutory support for victims in England and Wales after a conclusive grounds decision for at least 12 months. It would also provide temporary

leave to remain for all victims receiving support after a positive conclusive grounds decision and for victims meeting the requirements of Article 14 of the Trafficking Convention. It specifies decisions for children should be made on the basis of their best interests.

Lord McColl of Dulwich (Con): My Lords, I wish to test the opinion of the House.

7.29 pm

Division on Amendment 70

Contents 207; Not-Contents 123.

Amendment 70 agreed.

Division No. 4

CONTENTS

Adams of Craigielea, B.
Addington, L.
Adonis, L.
Alderdice, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bakewell, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Blackwell, L.
Blower, B.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Bragg, L.
Brinton, B.
Bristol, Bp.
Brookeborough, V.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Cameron of Dillington, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chapman of Darlington, B.
Chelmsford, Bp.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Corston, B.
Coussins, B.
Craig of Radley, L.
Crawley, B.
Cromwell, L.
Davies of Brixton, L.
Davies of Stamford, L.
Desai, L.
Dodds of Duncairn, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Dubs, L.
Durham, Bp.
Eatwell, L.
Elder, L.
Falconer of Thoroton, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox of Buckley, B.
Fox, L.
Gale, B.
Garden of Frognal, B.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Green of Deddington, L.
Greenway, L.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Hacking, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Hastings of Scarisbrick, L.
Hay of Ballyore, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollins, B.
Hope of Craighead, L.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Khan of Burnley, L.
Kilclooney, L.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Leeds, Bp.
Lennie, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Mallalieu, B.
Manchester, Bp.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McColl of Dulwich, L.
McConnell of Glenscorrodale, L.
McCrea of Magherafelt and Cookstown, L.
McDonald of Salford, L.
Meacher, B.
Merron, B.
Morrow, L.
Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patten of Barnes, L.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Prosser, B.
Ramsbotham, L.
Randerson, B.
Razzall, L.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Sawyer, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shinkwin, L.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
St Albans, Bp.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stroud, B.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Winchester, B.
Thornton, B.
Thurlow, L.
Thurso, V.
Tope, L.
Triesman, L.
Tyler of Enfield, B.
Tyrie, L.
Uddin, B.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Walmsley, B.
Watson of Invergowrie, L.
Watts, L.
Wellington, D.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Wigley, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Woodley, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Barran, B.
Bellingham, L.
Benyon, L.
Black of Brentwood, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brady, B.
Bridges of Headley, L.
Brougham and Vaux, L.
Brownlow of Shurlock Row, L.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Choudrey, L.
Clarke of Nottingham, L.
Colgrain, L.
Colwyn, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Cruddas, L.
Davidson of Lundin Links, B.
Davies of Gower, L.
Duncan of Springbank, L.
Eaton, B.
Eccles of Moulton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fellowes of West Stafford, L.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Framlingham, L.
Frost, L.
Godson, L.
Gold, L.

Goldie, B.
Goodlad, L.
Goschen, V.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Haselhurst, L.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kamall, L.
Kinnoull, E.
Kirkham, L.
Kirkhope of Harrogate, L.
Leicester, E.
Lexden, L.
Lindsay, E.
Lingfield, L.
Manzoor, B.
McInnes of Kilwinning, L.
Meyer, B.
Montrose, D.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Rolfe, B.
Noakes, B.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patel, L.
Penn, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Reay, L.
Risby, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Vere of Norbiton, B.
Wakeham, L.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Younger of Leckie, V.

7.40 pm

Amendment 70ZA

Moved by ***Lord Coaker***

70ZA: After Clause 64, insert the following new Clause—

"Slavery and human trafficking: victims aged under 18 years

(1) Where a competent authority is making a decision in relation to a person who is aged under 18 years, the best interests of the child must be a primary consideration.

(2) The Secretary of State may not serve a slavery or trafficking information notice on a person in respect of an incident or incidents which occurred when the person was aged under 18 years.

(3) Section 61 of this Act does not apply in cases where either the first reasonable grounds decision or a further reasonable grounds decision made in relation to a person relates to an incident or incidents which occurred when the person was aged under 18 years.

(4) Section 62 of this Act does not apply in cases where a positive reasonable grounds decision has been made in respect of a person which relates to an incident or incidents which occurred when the person was aged under 18 years.

(5) The Secretary of State must grant a person leave to remain in the United Kingdom where a positive conclusive grounds decision is made in respect of a person who—

(a) is under 18 years, or

(b) was under 18 years at the time of the incident or incidents to which the positive reasonable grounds decision relates.

(6) Section 64 of this Act does not apply to a person who is eligible for leave to remain under subsection (5).

(7) Guidance issued under section 49(1)(c) of the Modern Slavery Act 2015 on determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking must provide that, where the determination relates to an incident or incidents which occurred when the person was aged under 18 years, the determination must be made on the standard of "suspect but not prove"."

Lord Coaker (Lab): I wish to test the opinion of the House.

7.41 pm

Division on Amendment 70ZA

Contents 194; Not-Contents 128.

Amendment 70ZA agreed.

Division No. 5

CONTENTS

Adams of Craigielea, B.
Addington, L.
Adonis, L.
Alderdice, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bakewell, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Blower, B.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Bragg, L.
Brinton, B.
Bristol, Bp.
Brookeborough, V.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Cameron of Dillington, L.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chandos, V.
Chapman of Darlington, B.
Chelmsford, Bp.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Corston, B.
Coussins, B.
Craig of Radley, L.
Curry of Kirkharle, L.
Davies of Brixton, L.
Desai, L.
Dodds of Duncairn, L.
Donaghy, B.
Drake, B.
D'Souza, B.
Dubs, L.
Durham, Bp.
Eatwell, L.
Elder, L.
Falconer of Thoroton, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Grantchester, L.
Greenway, L.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Hacking, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Hay of Ballyore, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollins, B.
Hope of Craighead, L.
Howarth of Newport, L.
Humphreys, B.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.

Jones, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Khan of Burnley, L.
Knight of Weymouth, L.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Leeds, Bp.
Lennie, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Mackenzie of Framwellgate, L.
Mallalieu, B.
Manchester, Bp.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McCrea of Magherafelt and Cookstown, L.
McDonald of Salford, L.
Merron, B.
Morrow, L.
Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patten of Barnes, L.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Ramsbotham, L.
Randerson, B.
Razzall, L.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
St Albans, Bp.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Winchester, B.
Thornton, B.
Thurlow, L.
Thurso, V.
Tope, L.
Triesman, L.
Tyler of Enfield, B.
Uddin, B.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Walmsley, B.
Watson of Invergowrie, L.
Watts, L.
Wellington, D.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Woodley, L.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Barran, B.
Bellingham, L.
Benyon, L.
Black of Brentwood, L.
Blackwell, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Brady, B.
Bridges of Headley, L.
Brougham and Vaux, L.
Brownlow of Shurlock Row, L.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Clarke of Nottingham, L.
Colgrain, L.
Colwyn, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Cruddas, L.
Davidson of Lundin Links, B.
Davies of Gower, L.
Duncan of Springbank, L.
Eaton, B.
Eccles of Moulton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Farmer, L.
Fellowes of West Stafford, L.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Frost, L.
Godson, L.
Gold, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Green of Deddington, L.
Greenhalgh, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Haselhurst, L.
Hayward, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kamall, L.
Kilclooney, L.
Kinnoull, E.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Leicester, E.
Lexden, L.
Lindsay, E.
Lingfield, L.
Manzoor, B.
McInnes of Kilwinning, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Moylan, L.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Rolfe, B.
Noakes, B.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patel, L.
Penn, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Reay, L.
Risby, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tyrie, L.
Vere of Norbiton, B.
Wakeham, L.
Wei, L.
Wharton of Yarm, L.
Wolfson of Tredegar, L.
Wyld, B.
Younger of Leckie, V.

7.53 pm

Amendment 70A

Moved by ***The Lord Bishop of Bristol***

70A: After Clause 67, insert the following new Clause—

"Migrant domestic workers

(1) The Secretary of State must amend the rules under section 3(2) of the Immigration Act 1971 to make provision for the matters mentioned in subsection (2).

(2) All holders of domestic worker or diplomatic domestic worker visas, including those working for staff of diplomatic missions, must be entitled to—

(a) change their employer (but not work sector) without restriction, but they must register such a change with the Home Office;

(b) renew their domestic worker or diplomatic domestic worker visa for a period of not less than 12 months, provided they are in employment at the date of application and able to support themselves without recourse to public funds, and to make successive applications;

(c) apply for leave to enter and remain for their spouse or partner and any child under the age of 18 for a period equivalent to the unexpired period of their visa and of any subsequent visa;

(d) be granted indefinite leave to remain after five continuous years of residence in the United Kingdom if at the date of application their employer proposes to continue their employment."

The Lord Bishop of Bristol: My Lords, Amendment 70A is in my name and I am grateful to the noble Baronesses, Lady Lister and Lady Hamwee, for their support, and to Kalayaan for its briefings and assistance. We debated this amendment in Committee but are bringing it back because the Government's response seemed a little unclear on the situation as it occurs on the ground, and we might push them a little further to take overdue action. I will be interested to hear if there is any progress tonight.

The situation faced by overseas domestic workers is a historic wrong which has been allowed to continue for a decade, despite consistent evidence from the sector on what is happening. We need to reiterate from the start that this amendment looks only to restore the previous status quo, from before 2012. We know from the data collected by Kalayaan that, since then, reported levels of abuse of domestic workers have increased significantly. We also know that the Government recognised this as a legitimate problem, which is why new measures were introduced in 2016, as referenced by the Minister in Committee. These included allowing domestic workers to change employer but not to extend their visa, except in the cases of those officially recognised as a victim of people trafficking or modern slavery. The fact that these measures were felt necessary in 2016 is evidence that the Government concede that the abuse and exploitation is real and needs confronting.

Sadly, the evidence of the last six years from Kalayaan shows that while the problem is real, the 2016 solution has not really succeeded in helping at all. Indeed, its evidence shows that abuse and exploitation have continued in exactly the same way as before. For many of the workers in question, the inability to extend their visas when they change employer in practice leaves them trapped. If workers have only a relatively short time remaining on their visa—weeks or a few months—their visa status makes them unattractive potential employees and so, in practice, makes leaving their abusive employer the only option on paper.

The Government, including the Minister in Committee, have also urged that exploited workers are best dealt with through referral to the NRM. However, the problem here is that while many of the workers in question may have a case under employment law, they often do not meet the criteria of victims of modern slavery. They are, however, by virtue of their status at risk of falling into slavery or other forms of exploitation and abuse, precisely because it is difficult for them to change job or receive support—and because many are simply unaware of their rights or in possession of their passport or visa.

This amendment is really about prevention rather than cure. By restoring the previous ability of domestic workers to change employer and extend their visa we would empower them to report abuse, confident in their ability to attract alternative employment. Instead of waiting for them to become victims of slavery, we would be providing them with their own productive agency to escape their situation and report their exploiters. In the context of the Bill, this is a very modest amendment which would make little difference to the overall migration picture in the UK, but a vast difference to the lives of those impacted. We now have 10 years of data and evidence built up on this issue and I hope that we might be able to right this historic wrong. I beg to move.

Lord Wallace of Saltaire (LD): My Lords, my Amendment 75 is in this group and I wish briefly to speak to it. Things have moved on a little with investor visas since Committee. The Government have at last moved to announce that they intend to suspend, or possibly abolish, the investor visa scheme. They have announced that they will replace it with a new scheme, about which we are not yet very well informed. I hope that, in replying, the Minister will be able to tell us a little more about it.

It is astonishing that the review of the scheme which was promised four years ago has not yet been published. It is difficult not to accept that there must have been some considerable embarrassment within the Government to account for the absence of its publication. I have now been told informally that it is well under way and in the last stages of preparation, and it will indeed be published not just in due course but, possibly, shortly. I would like to have a definite date for its publication if the Minister wishes to persuade us not to divide on this issue.

There are very good reasons for embarrassment here. One of the two chairmen of the Conservative Party at present has made his entire career out of servicing Russian oligarchs, Chinese people and others who have come in on the investor visa scheme. That ought to embarrass the Conservative Party deeply. The Intelligence and Security Committee's *Russia* report referred to evidence of foreign interference in British politics. The Government's response was to say that they knew of no evidence of successful interference in British politics, and they have therefore declined to publish what evidence there is. That also seems improper, and I hope the Minister will be able to say something about reconsidering whether the time has now come for the Government to accept the recommendation of the Intelligence and Security Committee to publish that evidence. There is a stain of potential corruption and foreign interference around investor visas, Russian oligarchs and others that affects this Government and the Conservative Party.

8 pm

What do we need now? First, we need a clear, definite and immediate date for publishing this report, and preferably some explanation as to why it has not been published in the last four years. The sort of excuses we were getting—"It is under way but not yet ready"—kept being repeated. Associated with that, we need a commitment now to publish information on what has happened since 2015 and in the four years since we were promised this report. For example, I understand that 200 investor visas have been extended to Russians entering the country since 2015. That is of some interest in the current circumstances. Therefore, a review ought to extend beyond the end date of 2015, which was announced in the original review.

Incidentally, it is not just Russians. The number of Chinese who have come in on investor visas has, throughout the life of the scheme, been larger than the

number of Russians. The Conservative press made quite a lot of noise about Chinese investor visas and Chinese influence on British politics because it was a Labour MP who had received a lot of money from the Chinese woman who was being fingered. That seems good partisan politics but not very good in terms of transparency or the probity of British politics as such.

Thirdly, I would like a public commitment to a consultation on the successor scheme, so that it is not simply jumped on us by the Government—as this Government like to do—but is one on which the Government consult widely with interested parties as to what the successor scheme, which I understand is intended to attract rich people who are prepared to invest in more productive enterprise in Britain, should look like, what form it will take and what those of us who for different reasons would want to be critical in the way we examine it might think.

Baroness Lister of Burtersett (Lab): My Lords, I support Amendment 70A. It is a happy coincidence that we return to this issue on International Women's Day, because it is very much a women's issue. It was good to meet with some of the women affected who were outside, opposite the Lords, for much of this afternoon. I thank them for coming to meet us.

I was disappointed by the Minister's response in Committee. She did not really address the fundamental issue I raised of how, by treating this as a trafficking issue rather than as an employment and immigration rights issue, the approach is failing many overseas domestic workers who are being exploited but not trafficked. Given that there is clear evidence that the 2016 changes are not working, as we have already heard, it is simply not good enough to say that reversion to the status quo ante is not the answer, particularly when so many organisations in the sector believe it is the answer. That was very much endorsed by the women I met outside this afternoon.

The Minister said she would not look again at it but would

"perhaps explore it further and see why what is happening is happening."—[*Official Report*, 10/2/22; col. 1922.]

I do not think the same Minister is replying, but I wonder whether she has any information to pass on to the Minister who is replying about what she has managed to find out since Committee.

I understand that Kalayaan and some other NGOs in the sector have, at short notice, been invited to a virtual round table tomorrow to discuss how the ODW route can "be shaped going forward"—I hate the term "going forward". That is welcome news, but, if the discussions are to be fruitful, Kalayaan is clear that the possibility of reverting to the pre-2016 route must be on the table. To rule out this option, or some form of it, in advance is not helpful, to say the least. Can the Minister give us an assurance that officials will approach the discussions with an open mind so that they and the sector can explore whether the answer does indeed lie in reverting to the pre-2016 policy or some form of it?

The Earl of Sandwich (CB): My Lords, my noble friend Lord Hylton very much regrets that he could not stay for this amendment because he had to leave early. He and I have been involved with the problems of domestic workers over decades, it seems—certainly since the 1990s. I should declare that I was once a council member of Anti-Slavery International, and I well remember meeting domestic workers through Kalayaan and being shocked at their predicament, which continues today in some cases.

This amendment has been very skilfully drafted by the right reverend Prelate. It includes domestic workers in diplomatic missions, where a few cases have come up, and, secondly, it allows workers to change their employer, within the same type of work—but they must register this change. They may renew their visas for 12 months at a time but without having recourse to public funds. Thirdly, they may bring in spouses and children while that visa still applies. After five years of continuous residence, they may apply for indefinite leave to remain, and, if their employer wants to continue that employment, that is all right. Thus the amendment is full of limitations, which should satisfy the Home Office. There is also subsection (2)(c), which favours family reunion and prevents the loneliness that often comes from separation.

In the public perception, the Home Office is moving backwards at the moment, and all I can say is that, as the noble Baroness, Lady Lister, said, this amendment is simple, and there seems to be no reason why Her Majesty's Government should not support it.

Lord Kerr of Kinlochard (CB): I will speak in support of my noble friend Lord Sandwich. This amendment would take us back to the pre-2012 situation. There is no doubt—there is overwhelming evidence—that not being able to change employer means that these luckless people get stuck with an abusive employer in some cases. This is easily remedied. I agree with the noble Earl that the amendment is skilfully drafted. It proposes a modest change that would undoubtedly do good, and I very much hope that the Minister will be able to accept it.

I detected a slight trace of politics coming into our debate on Amendment 75. I was a Sir Humphrey once, and I commend to the Minister "unripe time", which is very good, and "due consideration"—"shortly" is very dangerous. Seriously, I see no difficulty with an investor visa, provided that it is for a real investment that is actually invested in plants, machinery or jobs in this country. What worries me is that it is sufficient simply to hold some gilts for a short period and then sell them again—I do not think that that is good enough.

Baroness Hamwee (LD): My Lords, golden visas and gilts—exactly. I am pleased to have my name to the right reverend Prelate's amendment, which I moved in Committee as she was unable to speak to it—she had to leave part way through. The amendment from my noble friend Lord Wallace is very topical—sadly topical; having continued for far too long and being topical throughout the period, is the position of migrant domestic workers.

By definition, I failed to persuade the Minister in Committee. She cited James Ewins's report about the length of stay and the likelihood of exploitation. The report made two key recommendations. One was about

[Baroness Hamwee]
information meetings, which I understand have fallen into disuse, the other was the partial but significant relaxation of the visa tie, on which he said

"the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK".

I hope the right reverend Prelate has more success than I did on the previous occasion and if she does not, then I hope the group meeting with Home Office officials does.

Baroness Jones of Moulsecoomb (GP): My Lords, this is an odd group because it contains two important issues almost at opposite ends of the spectrum. On the one hand we have low-paid, migrant domestic workers with very little in the way of rights and at risk of exploitation because of their precarious visa status and at risk of destitution and deportation if they cease to work for their specific employer. On the other hand, we have this visa category designed for the super-rich. It is part of a global order where being rich entitles you to buy politicians, avoid taxes and be exempted from the normal visa rules that bind the rest of humanity. It is almost poetic for these contrasting issues to be joined together in the same debate.

I had a dream last night that we had a snap general election which would have meant that this Bill, along with the police Bill and others, would have fallen. I woke up very happy. However, the consequence of both these issues is the same. It is exploitation. The migrant domestic worker visa almost guarantees exploitation of the workers by the super-rich and the tier 1 investment visas almost guarantee exploitation by the super-rich. Suddenly, the Government care about oligarchs abusing the very rules that the Government put in place to help oligarchs gain access to our country. It should not have taken an illegal war for the Government to pay attention to these very obvious consequences.

There is an inevitable immorality to becoming super-rich, whether the wealth was acquired through underpaying workers, misappropriating assets during the dissolution of Soviet Russia or the theft of resources from developing countries. It is very hard to become super-rich with a clean conscience. It was obviously wrong to establish a golden visa system for the super-rich. It corrupted the immigration system and gave special rights to the global elite. The Government should never have done this and should end it completely.

I will vote for both these amendments. Could the Minister make my dream come true and accept all these amendments so that at least we have a Bill that we can possibly swallow?

Lord Alton of Liverpool (CB): My Lords, I join other noble Lords in supporting the right reverend Prelate the Bishop of Bristol in moving Amendment 70A. Like the noble Baroness, Lady Lister, I had the opportunity of meeting some of the people from Kalayaan in Palace Yard earlier today. It reminded me of the meeting I had with the group in 2015 when we were discussing the modern slavery legislation and the immigration Bill. With my noble friend Lord Hylton, whom my noble friend Lord Sandwich referred to earlier, we moved amendments at this time. I went back and took the trouble to have a look at what was said during the course of that debate. Indeed, everything that the right reverend Prelate said in her prescient and eloquent remarks was contained both in the amendment before the House tonight and in the amendments that were moved in the legislation that we divided the House on back in 2015 and 2016.

My noble friend Lord Kerr got it absolutely right, as often he does, when he said that this is about bringing the position back to the pre-2012 status. The noble Baroness, Lady Lister, referred to the request of Kalayaan that that should be one of issues on the table during the discussions that will be held, I presume with the noble Lord, Lord Sharpe, when they meet tomorrow at the Home Office. Like the noble Baroness, I would be grateful if we could have a bit more elucidation about what is going to be on the agenda for that discussion. Given that there is going to be new legislation not that far up the track, it would be wonderful if we could be assured that this will be on the agenda for proper consideration then and that what the right reverend Prelate has said to us tonight will be one of the things that will be considered.

8.15 pm

Kalayaan says:

"Ultimately, Kalayaan, workers themselves and the anti-trafficking sector remain firm that the restoration of the terms of the original overseas domestic workers visa is the best way to protect workers."

I entirely agree. I look back at those debates we had in 2015 and 2016—even, indeed, as far back as 2009, when the Home Affairs Select Committee, quoting Kalayaan, said in its inquiry into trafficking that the visa issue was

"the single most important issue in preventing the forced labour and trafficking of such workers."

The noble Baroness, Lady Hamwee, referred to what Mr Ewins said, and we spent a lot of time talking about Mr Ewins's report in those earlier debates. I will not the repeat the quotation that the noble Baroness gave, other than to add a sentence from Ewins's review, which was to recommend that

"all overseas domestic workers be granted the right to change employer … and apply for annual extensions, provided they are in work as domestic workers in a private home."

I hope that the right reverend Prelate's amendment is accepted by the Government tonight, but if they are unable to do that they should at least give the right reverend Prelate the assurance that this will be considered in whatever pre-legislative scrutiny takes place of proposals to go into the new legislation. I cannot help thinking—it is a thought that the noble Lord, Lord Coaker, and other noble Lords, expressed earlier today—that the cart has gone before the horse; how much better it would have been if Part 5 was not in this Bill at all but we had dealt with this when that new legislation came forward.

Lord Rosser (Lab): My Lords, I will be brief. It has been said that Amendment 70A would reinstate the rights that migrant domestic workers had under the pre-2012 visa regime. It would allow workers to change employer and, crucially, renew their visa—a fundamental

right that they do not currently have, leaving them either trapped with abusive employers or destitute and at risk of further harm.

We have reservations about proposed subsections (2)(c) and (d). Although they reflect the situation of a person who applied for a domestic worker visa before 2012, these proposals may be slightly more permissive for people who are currently here, for example, on a skilled worker visa.

However, as the noble Lord, Lord Alton of Liverpool, said, if the Government are not prepared to accept this amendment in full, they should at least agree to take it away and come back with a proposal to protect these workers, in particular by allowing them to change employer and renew their visa.

Amendment 75 would require the Government to publish their review of Tier 1 investor visas granted between June 2008 and April 2015 before any replacement scheme can be brought into operation. As has been said, in March 2018 the Government announced a review of golden visas issued between 2008 and 2015, following revelations that the Home Office and banks had made next to no diligence checks in that period. As I understand it, according to a freedom of information request in June last year, the Home Office is reviewing some 6,312 golden visas— half of all such visas ever issued—for a range of possible national security threats. We now know, almost four years after the Government announced the review, that the findings have not been reported, and, subject to what we may hear in response, no satisfactory explanation has been given for this unacceptable delay. One is left to one's own conclusions as to why the Government might be so interested in delaying the outcome of that review.

I note what the noble Lord, Lord Wallace of Saltaire, said had happened since 2015, and the reference to money from—I think—Chinese sources, and to a Labour MP. I would not like to disappoint the noble Lord, Lord Kerr of Kinlochard, who referred to party politics, but my recollection is that there was also a suggestion that a Mr Ed Davey may have received some money from the Chinese. I assume that, unfortunately, the noble Lord, Lord Wallace of Saltaire, just did not recall that, any more than Mr Ed Davey did.

I listened with interest to the comments of the noble Baroness, Lady Jones of Moulsecoomb. I think she said she had dreamt that there had been a general election—but she did not tell us what the result had been, and whether I would be happy with it or disappointed.

In conclusion, I hope we will hear something positive on Amendment 70A. The right reverend Prelate, the Bishop of Bristol, went through all the arguments for the amendment and the reasons it is needed, and I have no intention of repeating them. I also hope we hear something positive and more specific on Amendment 75. I asked the Government in Committee about the timescale. I said, "Is it this year?" and the reply was:

"Yes, I hope that it will be this year".—[*Official Report*, 10/2/22; col.1924]

Bearing in mind that a few weeks have passed since Committee, perhaps the Minister will be able to say something firmer and more specific than, "Yes, I hope that it will be this year."

Lord Sharpe of Epsom (Con): My Lords, I am grateful to the noble Baroness, Lady Lister, and the right reverend Prelate, the Bishop of Bristol, for tabling amendment 70A. I thank all noble Lords for participating in this short debate. I also express my sympathy to the noble Baroness, Lady Jones, for her nightmares.

It has been suggested by noble Lords that being able to change employer is of little use to those already close to their visa expiry date. We understand, of course, that it takes time to find work, but we must remind noble Lords that it is not the purpose of the domestic worker visa to enable migrant domestic workers to establish themselves in the labour market. This is about shifting the balance of power towards the worker by making it clear that their status in the UK is not exclusively dependent on the employer they arrived with.

A number of noble Lords asked why we had not changed things back to the pre-2016 arrangements. I remind noble Lords that we did take into account the Independent Anti-Slavery Commissioner's advice in 2016 that relaxing the visa tie and allowing ODWs to stay for another two years without reporting to the authorities could inadvertently create a market for traffickers.

I move now to the issue of visa validity for overseas domestic workers and the proposal to reinstate a system of annual renewals and a path to settlement. Although I fully support noble Lords' dedication to protections for migrant domestic workers, we do not believe this proposal would achieve what it purports to. The overseas domestic worker visa caters specifically for groups of visitors who, by definition, stay for short periods. Approximately 20,000 visas are issued every year on that basis, and we know the overwhelming majority leave well within the validity of their visa. A significant proportion of these workers are repeat customers who, for example, accompany their employer on their annual visit to the UK. They too leave before their visa expires, suggesting that, for the majority of those who use it, the visa serves its purpose.

That aside, the Government are not blind to the vulnerability of overseas domestic workers, which is why dedicated arrangements have been designed and delivered with these individuals in mind. This includes a standalone immigration route for victims of slavery who first entered the UK as domestic workers, which enables them to spend a further two years in the UK in that capacity. Unlike other visa holders, domestic workers who enter the national referral mechanism before their visa expires also benefit from continuing permission to work throughout the duration of their time in the NRM system. This is in addition to the support available via the modern slavery victim care contract.

Yes, these provisions are limited to those in the NRM system, but this package is designed to strike the right balance between ensuring that those who find themselves in an abusive employment situation are able to escape it by finding alternative employment, and encouraging them to report that abuse through the appropriate mechanism.

By attempting to rewind the clock, this amendment risks reintroducing features of the route that were removed for a good reason. This amendment gives no thought to how the route should be modernised, or

[Lord Sharpe of Epsom]
how better advantage could be taken of the infrastructure being introduced via the future borders and immigration system to improve the way we communicate with customers.

I respectfully contest the assertion that the system worked well in the past. We must not forget that abuse existed before the terms of the visa were changed in 2012. We must also be mindful that allowing ODWs to stay could inadvertently create a fresh cohort of recruits for traffickers, as the anti-slavery commissioner pointed out back then. That is obviously something we all wish to avoid.

However, none of this is to say that arrangements for domestic workers cannot be improved. It is important to keep routes such as this under continual review. It is important to look forward rather than backwards and to prioritise ending the importation of exploitative practices from overseas in the first place. We accept that not all exploited workers are victims of modern slavery. Following our previous commitment to explore this problem further, I am told, to confirm what the noble Baroness, Lady Lister, said, that Home Office policy officials will meet NGO practitioners tomorrow. They include Kalayaan and FLEX—Focus on Labour Exploitation. In answer to the noble Lord, Lord Alton, I am afraid I do not know what the agenda is, but the Government are keen to hear directly from those who encounter and support domestic workers, including those who may fall between the cracks of labour abuse and modern slavery. The Government have committed to consider all evidence. In the light of this renewed collaboration and for the wider reasons I have given, I invite the right reverend Prelate the Bishop of Bristol to withdraw his amendment.

I now turn to Amendment 75, tabled by the noble Lord, Lord Wallace of Saltaire. The tier 1 investor route was closed to new entrants on 17 February. I should remind the House that this was introduced in 2008, as mentioned by the noble Baroness, Lady Jones. The Home Secretary has been clear about the need to stop individuals who may be at high risk of threatening our national security or of being linked to corruption or illicit finance flows. The tier 1 investor route failed to offer sufficient protection against those outcomes, nor did it work to deliver significant economic benefit to the UK. The House can be assured that its concerns about this route, which were well articulated by a number of noble Lords during the debate in Committee, are shared by the Government, and we have taken action to address them.

The Home Secretary stated in her Written Statement of 21 February that the historical review is being finalised and will be published in the near future. I can upgrade that slightly. The noble Lord, Lord Wallace, said that it is well under way; I can upgrade it to imminent, without, I am afraid, giving him a specific date.

With regard to the proposed amendment, we have set out that we plan to make alternative provision for investment-related migration through an expansion of the scope of the existing innovator route. This will be a fundamentally different route of entry which, instead of linking residence to funds in the bank, will focus on applicants' skills and experience as investors in innovative businesses.

The Government's view is that this would be an entirely new arrangement, in both its objectives and operation, which would be supported by independent assessment through new endorsing bodies, and not just a replacement or successor scheme within the meaning of the noble Lord's amendment. Without dwelling on that point, the Government will publish the review of the historical operation of the route as well, although I am sorry to say that I am not sure when; I cannot give him that specific answer.

Without pre-empting what the review will have to say, the wider picture is that the Government are, in any event, committed to identifying ways in which to crack down on wider issues of economic crime. In particular, the Government, as noble Lords are well aware, have brought forward a number of measures in the Economic Crime (Transparency and Enforcement) Bill, including removing key barriers to using unexplained wealth orders and bringing in a new register requiring anonymous foreign owners of UK property to reveal their identities.

Given that the tier 1 investor route has now been closed, I question whether it is sensible to constrain the Government's ability to make improved provision for investment-related migration, which would be aimed at delivering real economic benefits, pending publication of a review of the previous arrangements. I can also confirm that my memory of the "Conservative" press article referenced by the noble Lord, Lord Wallace, is exactly the same as that of the noble Lord, Lord Rosser: I think it mentioned certain members of other parties. Having said all that, I hope that the noble Lord will not press his amendment.

8.30 pm

The Lord Bishop of Bristol: My Lords, having listened to the debates, I am very grateful for the contribution of noble Lords who have spoken on this issue and engaged with it carefully and over time. I have to say that I am disappointed that we do not seem to have made much progress. I would have wanted to hear much more, not just about the agenda of the meeting tomorrow but about the possibility of future legislation and where this clause might fit within it. It concerns me deeply that there has not been any obvious detail about that for the future.

However, mindful of the time and the great number of issues that everyone has before them tonight and in future, I very reluctantly withdraw the amendment at this time.

Amendment 70A withdrawn.

Amendment 70B

Moved by ***Baroness Williams of Trafford***

70B: Before Clause 69, insert the following new Clause—

"Visa penalty provision: general

(1) The immigration rules may make such visa penalty provision as the Secretary of State considers appropriate in relation to a country specified under section (Visa penalties for countries posing risk to international peace and security etc) or 69.

(2) "Visa penalty provision" is provision that does one or more of the following in relation to applications for entry clearance made by persons as nationals or citizens of a specified country—

(a) requires that entry clearance must not be granted pursuant to such an application before the end of a specified period;

(b) suspends the power to grant entry clearance pursuant to such an application;

(c) requires such an application to be treated as invalid for the purposes of the immigration rules;

(d) requires the applicant to pay £190 in connection with the making of such an application, in addition to any fee or other amount payable pursuant to any other enactment.

(3) The Secretary of State may by regulations substitute a different amount for the amount for the time being mentioned in subsection (2)(d).

(4) Before making visa penalty provision in relation to a specified country, the Secretary of State must give the government of that country reasonable notice of the proposal to do so.

(5) The immigration rules must secure that visa penalty provision does not apply in relation to an application made before the day on which the provision comes into force.

(6) Visa penalty provision may—

(a) make different provision for different purposes;

(b) provide for exceptions or exemptions, whether by conferring a discretion or otherwise;

(c) include incidental, supplementary, transitional, transitory or saving provision.

(7) Regulations under subsection (3)—

(a) are subject to affirmative resolution procedure if they increase the amount for the time being specified in subsection (2)(d);

(b) are subject to negative resolution procedure if they decrease that amount.

(8) Sums received by virtue of subsection (2)(d) must be paid into the Consolidated Fund.

(9) In this section—

"country" includes any territory outside the United Kingdom;

"entry clearance" has the same meaning as in the Immigration Act 1971 (see section 33(1) of that Act);

"immigration rules" means rules under section 3(2) of the Immigration Act 1971;

"specified" means specified in the immigration rules."

Member's explanatory statement

This new clause and new clause headed "Visa penalties for countries posing risk to international peace and security etc" provide that immigration rules may make provision penalising applicants for entry clearance from countries posing a risk to international peace and security or whose actions are likely to lead to armed conflict or a breach of humanitarian law.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, following Russia's invasion of Ukraine, I am bringing forward Amendments 70B to 70N and Amendment 84E to allow visa penalties to be extended to countries that present a risk to international peace and security, or whose actions lead or are likely to lead to armed conflict or a breach of humanitarian law.

The existing provision in Clause 69 will already give the Government the power to apply visa penalties to specified countries that are not co-operating in relation to the return of its nationals. We will be able to slow down the processing of applications, require applicants to pay a £190 surcharge or, critically, suspend the granting of entry clearance completely. These powers are scalable, and they are appropriate both in the context of improving returns co-operation and to take action against regimes waging war on the innocent.

In particular, the Government are minded to use these powers in respect of Russia. The ability to suspend the granting of entry clearance for Russian nationals will send a strong signal to the Putin regime that they cannot invade their peaceful neighbour and expect business as usual. Although we do not believe this war is in the name of the Russian people, disadvantaging Russian nationals in this way, as part of our wider package of sanctions, will contribute to the pressure on the Putin regime.

Specifically, Amendment 70B sets out the general visa penalties provisions from the original Clause 69, which will now apply in both contexts. This includes the detail on the types of penalties that may be applied and the provision to make exemptions. This has not substantively changed from the provisions that noble Lords have already considered.

Amendment 70C sets out when a country may be specified and provides for three possible conditions. The Secretary of State must be of the opinion that the Government of the country have taken action that gives or is likely to give rise to a threat to international peace and security; results or is likely to result in armed conflict; or gives or is likely to give rise to a breach of international humanitarian law. The Secretary of State must take into account the extent of, and the reasons for, the action taken, the likelihood of further action, and such other matters as the Secretary of State considers appropriate.

Amendment 70K broadly mirrors Clause 70, in that it requires the Secretary of State to review the application of visa penalties every two months. If the Secretary of State concludes that penalties are no longer necessary or expedient in connection with the factors in Amendment 70C, penalties must be revoked. This provision is a safeguard to ensure that any visa penalties applied do not remain in place by default.

I am also bringing forward Amendment 84E to ensure that these powers can be deployed in relation to the invasion of Ukraine as soon as the Bill receives Royal Assent, rather than waiting two months after commencement. The sooner that happens, the sooner this House and all Members can collectively act in response to this appalling crisis.

The United Kingdom stands firmly with the people of Ukraine in their struggle with Vladimir Putin's monstrous and unjustified war. Extending these powers is a crucial step to enabling the Government to respond to hostile actions, such as those by the Putin regime, in the toughest possible manner. I ask noble Lords to support Amendments 70B to 70N and Amendment 84E for the reasons already outlined. I beg to move.

Lord Paddick (LD): My Lords, my first reaction to these amendments was to wonder why they were necessary. Surely it is already possible to refuse to grant visas, or to slow the processing of visas to nationals of a hostile foreign state. The Government seem to be doing a good job of not granting visas to Ukrainian nationals fleeing war, so why can they not refuse to grant visas to Russians?

[Lord Paddick]

On that issue, I would like the Minister to explain why the Home Secretary told the other place yesterday:

"I confirm that we have set up a bespoke VAC en route to Calais but away from the port because we have to prevent that surge from taking place."

Later, when challenged, the Home Secretary said:

"I think the right hon. Lady did not hear what I said earlier. I said that I can confirm that we are setting up another VAC en route to Calais—I made that quite clear in my remarks earlier on."—[*Official Report*, Commons, 7/3/22; cols. 27, 40.]

Can the Minister explain why the Home Secretary gave inaccurate information and then blamed the shadow Home Secretary for mishearing?

Why have the Government accepted only 508 Ukrainian refugees—as I think the Minister said earlier in the House—while Ireland has accepted 1,800? What makes the UK so unique? Are these amendments not more of the Government saying that they are going to do something, instead of actually doing something?

I am also concerned about subsection (6), to be inserted by Amendment 70B, which would allow the Secretary of State to

"make different provision for different purposes … provide for exceptions or exemptions … include incidental, supplementary, transitional, transitory or saving provision."

In other words, the new clause seems to allow the Secretary of State to do whatever she wants—including to allow into the UK whoever she wants, despite a general ban on a particular country. Where is the parliamentary oversight?

Amendment 70C would allow the Secretary of State to specify that a country is posing a

"risk to international peace and security",

or a risk of "armed conflict", or a risk of breaching "international humanitarian law", if that is her opinion. There is no qualification that she should be satisfied on the balance of probabilities or beyond reasonable doubt, for example, but simply that she is of that opinion. Again, where is the parliamentary oversight?

These new amendments allow the Secretary of State to impose, or not impose, visa restrictions and penalties on countries which, in her opinion, pose a threat. This allows her to exempt whoever she thinks should be exempted, without any parliamentary scrutiny, oversight or involvement in the decision-making. Will the Minister consider withdrawing these amendments and bringing them back at Third Reading with the necessary safeguards in place?

The Lord Bishop of Chelmsford: My Lords, I am grateful to the noble Lord, Lord Paddick, for his comments and I will add a few further thoughts.

I appreciate that the intent of these proposed new clauses is to bring additional sanction pressure on Russia, and perhaps also other states which threaten peace and security. However, I ask whether there are any concerns that, in practice, this provision may make it more difficult for a critic of, for example, the Putin regime, to reach the UK in safety. Such a person—perhaps one of those involved in the courageous protests against the current war—might seek to reunite with family in the UK for their own safety. They would require a valid visa, not least since the Bill makes it so much harder for those arriving without a visa to apply for refugee status. Is the Minister at all concerned that additional costs and barriers to obtaining a visa may invertedly hurt people seeking to escape authoritarian regimes, and who would be eligible for a visa to come here, more than it would actually hurt the regime itself?

I note the provision in these amendments "for exceptions or exemptions", but I would appreciate a comment from the Minister on how these might work in a case such as I have outlined.

I arrived in this country seeking refuge and safety shortly after the Islamic Revolution swept through Iran, many years ago now. I was fortunate quickly to be given refugee status and to receive a welcome that, in time, has allowed me to begin contributing back to the society that provided me with a new home. However, I cannot help wondering what the impact might have been had these amendments been part of the law then. After all, I came from a country that was undoubtedly regarded as something of an international pariah, a risk to peace and security in the Middle East and, arguably, more widely. I look forward to hearing the Minister's response and I hope to receive some reassurances.

Lord Coaker (Lab): My Lords, we support the amendments, which are obviously in response to the Ukraine crisis. We support the way the powers could be used with respect to armed conflict, threatening international peace or breaching international humanitarian law. I say to the Minister, as I have said in many debates, that Her Majesty's Opposition stands firmly with the Government in tackling the illegal invasion of Ukraine. However, there are a number of questions that it would be helpful for the Minister to consider. I think it is right for us to ask them, as indeed other Lords, including the right reverend Prelate, have done.

To repeat a couple of questions that others have asked, what will the parliamentary oversight be of these wide-ranging powers for the Secretary of State? Will the Secretary of State be required to advise Parliament when a visa penalty provision is revoked or changed?

The Secretary of State is required to give the Government of a country "reasonable notice" before bringing in penalties. What counts as "reasonable notice"? Could the Minister say anything about that?

How quickly could the powers be used? Could they be used immediately on commencement? It would be interesting to know the answer to that.

As the noble Lord, Lord Paddick, raised, could the Government already act in this way? What extra powers does the legislation give the Government? What exemptions would be included and what will the arrangements be for vulnerable people, as the right reverend Prelate asked, or people who might themselves be fleeing persecution in a country that these particular visa penalties might apply to?

I appreciate that the Government are trying to respond to the current crisis. Notwithstanding that, and the general support that there will be for these amendments, there are some interesting and important questions that the Government need to answer.

Baroness Williams of Trafford (Con): My Lords, I thank noble Lords for some pretty sensible follow-up questions. The first question, about why we need the power, is absolutely reasonable. There are currently limited powers to apply penalties to applications for entry clearance under existing legislation. It might be possible to apply extra checks if a certain nationality is considered to pose an immigration risk that could lead to a slowing down of visa processing. However, that is as far as penalties can reasonably go under current powers.

The Secretary of State must exercise her powers consistently with the Immigration Acts. Neither the Immigration Act 1971 nor the Immigration Rules allows the Secretary of State to adopt measures such as additional charges or suspending visas in order to apply pressure on a foreign Government. By their nature, these powers mean that the penalties can be applied in a blanket way to a nationality. It is correct that the Secretary of State has express statutory authority if she is to take these significant steps.

8.45 pm

On parliamentary scrutiny, although the measures are intended to function as a stand-alone measure or in conjunction with a wider package of government measures, they are not directly comparable to the powers in SAMLA—the Sanctions and Anti-Money Laundering Act. The powers in that Act allow for much broader conditions of use, ranging from as broad as furthering

"a foreign policy objective of the government of the United Kingdom".

The new powers in the Nationality and Borders Bill are more tightly defined and relate only to the most serious and concerning international events: war or breaches of international humanitarian law.

In addition, the powers in the sanctions Act are both broad and deep. They allow for direct targeting of named individuals and freezing of their assets but also for sweeping powers to implement in multiple sectors of the domestic economy and the economy overseas. The visa penalty powers in the Nationality and Borders Bill are much more limited, affecting only the granting of visas. It would be disproportionate to apply a similar procedure to the sanctions Act to these more limited powers and could undermine their use where time is of the essence.

On broader use of the power, the visa penalties provisions explicitly set out a narrowly drafted set of conditions in the legislation under which these powers can be considered. They do not concern trivial matters. These powers will be able to be used only where the actions of a state give or are likely to give rise to a threat to international peace and security, results or is likely to result in armed conflict, or gives or is likely to give rise to a breach of international humanitarian law. Any action will be subject to cross-government agreement, which will take into account the UK's wider bilateral interests with the country in question.

On the question from the right reverend Prelate the Bishop of Chelmsford, many of the sanctions that the Government are imposing on Russia do not target specific individuals: for example, action against financial institutions. However, the aggregate impact on the Russian state and the ending of normal relations applies pressure to and imposes costs on the Putin regime in response to its abhorrent war in Ukraine. It cannot be business as usual, but I totally accept the right reverend Prelate's point about the impact on ordinary people.

On the question of the noble Lord, Lord Paddick, about the VAC, I understand that we are setting up a VAC in Lille. I think I went through the numbers of refugees earlier today—was it earlier today? Yes, it was. Obviously, that number has gone from 50 to over 500 in 24 hours and we expect an uptick in that number. I commend what Ireland has done, but I expect us in very short order to have a streamlined and up-and-running system which, I hope, should be providing similar sorts of numbers by the end of the week. It is not a competition, but I expect the system to be running a lot more smoothly. I beg to move.

Amendment 70B agreed.

Amendment 70C

Moved by ***Baroness Williams of Trafford***

70C: Before Clause 69, insert the following new Clause—

"Visa penalties for countries posing risk to international peace and security etc

(1) A country may be specified under this section if, in the opinion of the Secretary of State, the government of the country has taken action that—

(a) gives, or is likely to give, rise to a threat to international peace and security,

(b) results, or is likely to result, in armed conflict, or

(c) gives, or is likely to give, rise to a breach of international humanitarian law.

(2) In deciding whether to specify a country for the purposes of this section, the Secretary of State must take the following into account—

(a) the extent of the action taken;

(b) the likelihood of further action falling within subsection (1) being taken;

(c) the reasons for the action being taken;

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

(3) In this section—

"action" includes a failure to act;

"country" and "specified" have the same meanings as in section (Visa penalty provision: general)."

Member's explanatory statement

See the explanatory statement for the new clause headed "Visa penalty provision: general".

Amendment 70C agreed.

Clause 69: Removals from the UK: visa penalties for uncooperative countries

Amendments 70D to 70J

Moved by ***Baroness Williams of Trafford***

70D: Clause 69, page 71, line 38, leave out subsection (1)

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

70E: Clause 69, page 71, line 40, leave out "for the purposes of" and insert "under"

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

70F: Clause 69, page 72, line 23, leave out subsections (5) to (11)

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

70G: Clause 69, page 73, line 11, leave out "includes any territory outside the United Kingdom" and insert "and "specified" have the same meanings as in section (Visa penalty provision: general)"

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

70H: Clause 69, page 73, leave out lines 12 and 13

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

70J: Clause 69, page 73, leave out lines 16 to 18

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

Amendments 70D to 70J agreed.

Amendment 70K

Moved by ***Baroness Williams of Trafford***

70K: After Clause 69, insert the following new Clause—

"Visa penalties under section (Visa penalty provision: general): review and revocation

(1) This section applies where any visa penalty provision made pursuant to section (Visa penalties for countries posing risk to international peace and security etc) is in force in relation to a country.

(2) The Secretary of State must, before the end of each relevant period—

(a) review the extent to which the country's government is continuing to act in a way that, in the opinion of Secretary of State, has or is likely to have any of the consequences mentioned in section (Visa penalties for countries posing risk to international peace and security etc)(1), and

(b) in light of that review, determine whether it is appropriate to amend the visa penalty provision.

(3) If, at any time, the Secretary of State forms the opinion that, despite the fact that the country's government has taken or is taking action as mentioned in section (Visa penalties for countries posing risk to international peace and security etc)(1), the visa penalty provision is not necessary or expedient in connection with—

(a) the promotion of international peace and security,

(b) the resolution or prevention of armed conflict, or

(c) the promotion of compliance with international humanitarian law,

the Secretary of State must as soon as practicable revoke the visa penalty provision.

(4) Each of the following is a relevant period—

(a) the period of 2 months beginning with the day on which the visa penalty provision came into force;

(b) each subsequent period of 2 months.

(5) In this section, "visa penalty provision" has the same meaning as in section (Visa penalty provision: general)."

Member's explanatory statement

This clause provides for the review of the effectiveness of visa penalty provision made in relation to countries presenting a risk to international peace and security etc, and requires its revocation if the Secretary of State concludes that it is no longer necessary or expedient.

Amendment 70K agreed.

Clause 70: Visa penalties: review and revocation

Amendments 70L to 70N

Moved by ***Baroness Williams of Trafford***

70L: Clause 70, page 73, line 20, leave out from "provision" to end of line 21 and insert "made pursuant to section 69 is in force in relation to a country."

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

70M: Clause 70, page 73, line 35, leave out paragraph (a) and insert—

"(a) "visa penalty provision" has the same meaning as in section (Visa penalty provision: general);"

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

70N: Clause 70, page 73, line 38, leave out "subsection (2)(a) of that section" and insert "section 69(2)(a)"

Member's explanatory statement

This amendment is consequential on the two new clauses for insertion before clause 69 in the Minister's name.

Amendments 70L to 70N agreed.

Clause 71: Electronic travel authorisations

Amendment 71

Moved by ***Baroness Ritchie of Downpatrick***

71: Clause 71, page 74, line 16, at end insert—

"(c) the individual is travelling to Northern Ireland on a local journey from the Republic of Ireland."

Member's explanatory statement

Under this amendment, persons who are neither British nor Irish would nevertheless be able to make local journeys from the Republic of Ireland to Northern Ireland without the need for an Electronic Travel Authorisation.

Baroness Ritchie of Downpatrick (Lab): My Lords, Amendment 71 in my name and those of the noble Baroness, Lady Suttie, and my noble friend Lord Coaker was tabled in Committee and is brought back on Report because of the serious implications of Clause 71 for the cross-border economy between Northern Ireland and the Republic of Ireland. There are also social and health implications. With the utmost sincerity, I do not think that the Government have fully considered this issue. I am a member of the protocol scrutiny sub-committee in your Lordships' House, which has discussed this issue. We wrote to the right honourable and noble Baroness, Lady Williams, received a response which we were not happy with, and have written again.

Clause 71 amends the Immigration Act 1971 to introduce these electronic travel authorisations. This provides for a pre-entry clearance system that requires anyone who does not need a visa, entry clearance or other specified immigration status to obtain authorisation before travelling to the UK, including on journeys within the common travel area, which the UK and Ireland are part of. Indeed, the present clause has been expressly formulated to ensure that CTA journeys are captured.

Obviously, as I said earlier, this system does not apply to British or Irish citizens, and it appears that the UK Government intend the scheme to apply on the land border between Northern Ireland and the Republic of Ireland, of which there are about 300 crossings on a very tortuous line, but this looks to be in breach of the rights provisions of Article 2 of the protocol. It also shows a total lack of understanding of this border, which has many crossings. Home Office Minister Kevin Foster confirmed that the ETA will involve payment of a fee and an online application.

However, I am more concerned about the economic, social and health consequences of Clause 71 for the people who live along the border between Northern Ireland and the Republic of Ireland, particularly those who are not Irish or British citizens, of which there are many, and many of them contribute to the economy in the Republic of Ireland and Northern Ireland, and have family who reside on the other side of the border.

Concerns have been raised about the impact of ETA on business, health, tourism, and recreational issues, as non-visa nationals in the Republic of Ireland would be required to obtain an ETA before a visit to Northern Ireland, a fact that has been recognised and raised by the Irish Government because it would have an impact on tourism to Northern Ireland. Many people travelling to Dublin Airport and Shannon Airport journey north to examine the beauty and potential of our tourism in Northern Ireland. In the context of an invisible land border that British and Irish citizens can freely cross, it is eminently foreseeable that many other people who have hitherto been able to similarly cross the border without any prior permission will largely be unaware of this ETA requirement.

The written response from the noble Baroness, Lady Williams, to our committee some weeks ago, and the response from the noble Lord, Lord Sharpe, in Committee to me do not adequately address the situation. They do not provide for the exemption to the ETA requirement for non-Irish British citizens who enter Ireland legally or are legally resident in Ireland and who do not currently require permission to enter the UK for short-term cross-border travel from Ireland to Northern Ireland. The noble Baroness's points around enforcement in her letter, and the noble Lord's response in Committee some weeks ago, are unclear and apparently inconsistent. While the letter states that the Government will not criminalise those who are simply living their everyday lives, the scheme as has been outlined would do exactly that for large numbers of people who currently cross the border without restrictions to access essential services, support supply chains, for education or visiting family.

It is worth pointing out that the UK's ETA proposals would also undermine several core areas of north/south co-operation as set out in strand 2 of the Good Friday agreement. In this respect I, along with other noble Lords, have concerns on the areas of tourism and healthcare. Many of these were raised in Committee on this amendment. The ETA proposals threaten to undermine the mandate of Tourism Ireland as an all-island body set up under the framework of the Good Friday agreement, which exists to promote tourism on the island of Ireland, and disproportionately impact the sector in Northern Ireland. As I said before, most tourists enter the island via Ireland's ports and airports, and 70% of the £1 billion tourism spending in Northern Ireland comes from foreign visitors.

The ETA scheme would also undermine established cross-border healthcare service provision and the recently signed UK-Ireland CTA healthcare memorandum of understanding, which establishes entitlement on the basis of residency. Healthcare in border regions is highly integrated—I think of Newry and County Louth, Craigavon and Monaghan, Fermanagh and Cavan, Altnagelvin and Letterkenny in County Donegal—with the closest service often across the border, including jointly funded cancer and cardiac services based in Northern Ireland and vice versa.

In this context, I ask the Minister: what discussions have taken place with the Irish Government? I know that the Minister for European Affairs in the Republic of Ireland met Home Office Minister Kevin Foster last week here in London. What was the outcome of those discussions? What discussions have taken place with Ministers in the Northern Ireland Office. I note that a Minister from the Northern Ireland Office is sitting here in the Chamber tonight. I would like to know what discussions have taken place to highlight the issues and problems and the very practical economic, social and health implications that these will have throughout the island. Have there been discussions with civic society—with the businesses that will be impacted, which gain from the employment of many of these people on a cross-border basis? Will there be any exemptions or special arrangements for people crossing the land border frequently from the Republic of Ireland? It would be preferable if ETA requirements did not exist, or were not required from the Republic of Ireland into Northern Ireland.

I say to the Government Front Bench that we are discussing something with political, economic, social and health consequences. It would be preferable if this section did not relate to Northern Ireland and the Republic of Ireland, because it will have severe implications and impact on our day-to-day work and living. That is the important consideration. It is ridiculous nonsense for this to be included in this part of the Bill, because it does not take account of those economic, social or health consequences.

In such circumstances, I ask the Minister to declare tonight that the Government will withdraw this provision. If not, will they come back at Third Reading to do so? If I do not get those undertakings here tonight, I will definitely press this amendment to a vote. I beg to move.

9 pm

Baroness Suttie (LD): My Lords, I will keep my remarks brief as the case for this amendment has been made so very powerfully this evening by the noble Baroness, Lady Ritchie.

[Baroness Suttie]

When we debated this amendment in Committee, I raised several areas of concern regarding these proposals for the ETA requirements. In his response, the Minister confirmed that these proposals would not result in any kind of checks on the Irish land border, which is very much to be welcomed. But as the noble Baroness, Lady Ritchie, said, it remains far from clear how these ETAs will be enforced in practice. In the many thousands of border crossings that take place every day for work, leisure, family or educational purposes, there is currently no expectation or need to carry a passport. Given the very special circumstances of the land border on the island of Ireland, and further to his responses in Committee, I ask the Minister to expand this evening on how this scheme will work in practice.

Like the noble Baroness, Lady Ritchie, I remain concerned about the potential impact of these proposals on the Northern Ireland tourist industry. Does the Minister accept that these proposals may deter international visitors who have flown into the Republic of Ireland from visiting Northern Ireland during their stay because of the additional financial and bureaucratic requirements that they will entail? Have the Government carried out an impact assessment of the effect of these measures on the Northern Ireland tourist industry? I hope the Minister can respond to this this evening, as he did not when I asked the same question in Committee.

Given the special circumstances and potential negative impact of these proposals on Northern Ireland and Ireland, I believe they have not been properly thought through. I therefore urge the Government to think again and accept this amendment.

Viscount Brookeborough (CB): My Lords, I support this amendment. At this late hour I will not go into everything I said in Committee, but I live on the border and see it every day. I deal with and know people who cross the border every day. I know of many people who do not have Irish or British passports. They are not citizens of either country. Many of them are eastern Europeans who have remained and who work on both sides of the border, sometimes at the same time.

We heard about healthcare from the noble Baroness, Lady Ritchie. The whole healthcare drive has been an all-Ireland drive to provide services of the best quality in Ireland. Your Lordships will be well aware in GB that, because of the land mass, it is sometimes better to have centres of excellence. There are therefore health staff and, just as in Great Britain, many of them are not British—and we are now trying to inhibit their crossing the border.

Before I go any further and talk about other areas, I must declare my interests in that, first, I am involved in tourism and, secondly, my brother is chairman of the organisation mentioned, Tourism Ireland. Nobody has lobbied me on this at all, not even him. When I rang him about it, he was not quite able to give me the figures I wanted, so this is not an "I'm telling you what I've been told" scenario at all.

I want to look at what the Minister said in reply, because we have heard that a lot of it was perhaps slightly muddled. I think it is worse than that. It was contradictory. First, in talking about the costs in tourism the noble Lord, Lord Sharpe, ventured to say:

"I looked that up this morning in anticipation of this, and it is currently $14",

so to him it was "not overwhelming". People will be well aware that air passenger duty has been a bone of contention in this country and in Ireland, especially because in the Republic it was always lower than in the United Kingdom. I am aware that the Chancellor announced that because of the stress on tourism, he was going to lower it for internal travel throughout the United Kingdom but also, I believe, that it would be devolved to Northern Ireland for international travel.

If the Government attach so much importance to that and consider it significant—I think it was being lowered from something like £10 or £12 to £6 or £7—why did the Minister tell us that this is not significant? Is it or is it not? If it is not, why did they change it? I will tell the House why. In effect, the Government have just resurrected it by doubling it in order to bring this measure in. So, it does matter, which is not what the Minister said.

I then looked at the next paragraph. The Minister said:

"There will be no controls whatever on the Northern Ireland land border. Individuals will be able to continue to pass through border control at first point of entry to the common travel area."

In many cases, the first point of entry is in the Republic of Ireland, so is the Republic going to administer this visa? I suggest that it will not, so this does not tie up.

Next, the Minister said the following:

"As is currently the case, individuals arriving in the UK, including those crossing the land border into Northern Ireland".

I hesitate to say this, and correct me if I am wrong, as the Minister may have walked up and down our border many times without my noticing it, but I suggest that he would not have a clue where the border was. That is not me laughing at this. He would not have a clue, as there are no markings on the road. He might stop at a shop on either side, which takes euros or pounds. There is nothing else, but I will give him a lead: the telephone boxes in the Republic are yellow. If you see one of those, you know you have "crossed the border". However, there is no border, so who are these visas for? It is absolutely clear that there is nobody to inspect them, so what are the Government going to do?

The Minister also said that the Government are going to use

"a variety of communication channels".—[*Official Report*, 10/2/22; col. 1935.]

Excuse me, but it is almost laughable to say there would be communication in the Republic of Ireland to tell people that they cannot come north and vice versa if they do not have Irish passports.

I am sorry, but the reason for having legislation is to enforce it. This provision is not unenforceable because people refuse to have it enforced, but because it is totally unenforceable under those circumstances. This amendment is therefore not that logical—I think it is getting them out of a hole, but the Government are not prepared to look at the hole they are in. This may not be the most vital thing in the world, even if it is to us; it is a tiny thing.

The noble Baroness also mentioned the protocol. I am not talking about the protocol, because clearly, the Government have not used it as the excuse for not doing this. This is therefore basically outside the protocol, which has no bearing.

However, on the protocol, we all know, and we agree with them, that the Government put in place an incredibly bad arrangement, depending on which way you look at it. They are trying to alleviate it on the one hand, and they have brought out something to dump on top of it on the other. We have a saying in Lough Erne in Fermanagh: "I didn't come up Lough Erne in a bubble." It looks as if the Government did, because it seriously is unworkable.

That is all I am going to say, except perhaps ask the Minister to define the hard border. He says in his script: "There is no hard border; there is no hard border; there will never be a hard border." What is a hard border? I do not know what the definition is, but it is where documents are checked or people have to stop. He is absolutely right that there is no hard border. Therefore, there is no border to make these checks. I suggest that the Government agree to this amendment.

Lord Hain (Lab): My Lords, I appeal to the Minister, especially as I hope he has received some expert advice from his colleague, the noble Lord, Lord Caine, who, as a Northern Ireland Minister, is respected on all sides of the House. He knows his stuff, and that is a big plus. The noble Viscount has explained in practical detail why it is essential either to accept this amendment or to withdraw the provision and come back at Third Reading without it. My noble friend Lady Ritchie has underlined that with an eloquent speech, which I really hope the Minister has listened to carefully.

This is not a party issue or an Opposition versus Government issue; this is a Northern Ireland issue. I worry that in the construction of this Bill and this particular provision, Ministers have been thinking about everybody except Northern Ireland. That, I am afraid, is far too often the case. Their whole approach to Brexit has neglected Northern Ireland and deeply offended unionists for reasons I completely understand, including the former Government supporters who kept the Conservatives in power for a couple of years—the DUP. In Whitehall, there seems to be a default position in which Northern Ireland does not register when Bills are framed. I am afraid this is a very good example.

May I underline the points of my noble friend Lady Ritchie and the noble Viscount, made with a great deal of practical advice, about the operation across the border? The border, in everyday life for those who live either side, does not exist. People cross the border all the time and work, receive healthcare, get blood transfusions and receive educational opportunities and provision from either jurisdiction. I could go on, but time is short. It is terribly important to keep momentum going following the Belfast/Good Friday agreement, knowing that is the case. These unhappy residents, who are entitled to all these provisions by their residency rather than their nationality—they may be Polish, Lithuanian or all sorts of nationalities—and who provide essential services to people on both sides of the island of Ireland could be caught by this. This is a practical issue.

As surveys have shown, most Northern Ireland tourists who leave Northern Ireland to go to Europe, America or the rest of the world go via Dublin. Equally, most incoming tourists to Northern Ireland come via Dublin. If, in addition to the other issues involved, they will have to pay a fee—nominal, you may argue, but it is an additional hurdle—to benefit from Northern Ireland's beauty and opportunities and bring much-needed income to Northern Ireland, especially to businesses suffering from an absence of tourists because of Covid, this is really damaging.

Can I also bring to the Minister's attention the proposal, with cross-party support, to have Rally Ireland, which crosses the border, in the international FIA calendar for the world rally championships? The proposal put this year did not succeed but it is being strongly and widely backed for next year. This will affect Rally Ireland and the practical implications have not been thought through.

I refer to the detailed 1,000-word letter of the noble Lord, Lord Jay, who is chair of the Lords protocol committee, on which I sit, along with my noble friend Lady Ritchie. I have it in front of me, but I will not read it out this evening because the hour is late. It asks all sorts of questions about the reply from the noble Baroness, Lady Williams, to the series of questions that our committee asked. I am afraid that, given her normal standards, it was a very unsatisfactory reply, which reinforces my concern that Northern Ireland has not really been thought of.

9.15 pm

The letter asks a series of detailed questions. For example, it asks for an estimate of the number of people crossing the border who will have to get ETAs, possibly for every crossing that they make—this could conceivably be a number of times every day. There does not seem to be any estimate of the number of people caught. The letter also refers to the detailed briefing on the Bill given by the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, which have made a series of recommendations for very important amendments to the Bill to avoid damage being done to the policy agenda in Northern Ireland to take the process of peace and reconciliation forward.

I strongly appeal to the Minister to reconsider and give an undertaking either to come back with a reframed provision or, preferably, to delete this; otherwise, I will certainly vote in favour of my noble friend Lady Ritchie's amendment.

Lord Dodds of Duncairn (DUP): My Lords, I did not intend to take part in this debate, but, given the description of life in County Fermanagh of the noble Viscount, Lord Brookeborough, I have been tempted to participate, because I too was brought up there, just a few miles from the border. As someone who now lives about 20 miles from the border, I am always interested in hearing descriptions of life on the border from those who are not often in Northern Ireland or, indeed, the Irish Republic. But we should take very seriously indeed those who comment with real experience of living there—I am talking about not just myself but the noble Viscount, Lord Brookeborough, and the noble Baroness, Lady Ritchie, who also does not live very far from the border.

Noble Lords have raised a number of practical issues that affect the common travel area. We need to remember that this has been of immense value and benefit to the

[Lord Dodds of Duncairn]
people of the United Kingdom and the Irish Republic over many years, predating the European Union. It has existed for many decades, and we should cherish it and do everything possible to remove any travel friction within it, regardless of our position on Brexit—certainly that was always our view.

It is also clear that there should not be any kind of barrier or checks along the border with the Irish Republic in relation to the movement of people—or goods, for that matter. That has always been very clear from the standpoint of my party and those who come from Northern Ireland.

Some people have said that there cannot be checks on the border for the practical reason of the 300 crossings, and all the rest of it—that has always been clear. Never mind the principle; the reality is that you cannot have that kind of checking along the border. No one wants that, and it cannot be done. For that reason, no one was ever advocating that there should be any kind of checks along the frontier between Northern Ireland and the Irish Republic.

There is of course a border; sometimes there is not a visible sign of it, but in other parts of the Province there are visible signs of the border. I recently noticed that, on the road from Dublin up to Belfast, as you cross the border, there is now a sign saying, "Welcome to Northern Ireland". It has thankfully not been defaced—many years ago such signs were constantly defaced. Maybe after reading this debate somebody might decide to go out and do that, but I hope not. Indeed, there is a camera at that part of the border. We were told at one stage there could not be any infrastructure along the border, but there has been a security camera there for many years, without any controversy.

We have a different fiscal regime, excise regime and currency, as well as different tax laws. There is a whole range of differences between north and south, and they are all managed not by checking anything at the border but by intelligence-led investigation at the destination that people or goods are travelling to. That has been the case for decades. For instance, when it comes to the investigation of fuel laundering, the authorities on both sides of the border co-operate very well and share intelligence. They do not do that along the border but they do investigate these matters. That is the way these things should be done.

The only thing I want to say to the House tonight is that all that having been said and accepted, we would say that exactly the same principles should apply between Great Britain and Northern Ireland. If all of this is correct about checks and there being no friction between north and south, that should equally apply between Northern Ireland and Great Britain, and vice versa—east-west. You cannot have one principle for the north-south relationship and a completely different set of principles for the east-west relationship.

For instance, if the protocol was being properly and fully implemented today, and we did not have the grace periods—that were opposed by some Members of this House and the other House—people would be getting their luggage checked when they travelled between Northern Ireland and Great Britain or Great Britain and Northern Ireland in relation to some SPS and customs regulations. Pets cannot be brought from Great Britain to Northern Ireland and Northern Ireland to Great Britain under EU laws—this is for British citizens travelling from one part of the United Kingdom to the other.

Therefore, all I say in relation to this matter is that of course we need to keep the border open and frictionless, with free movement and the rest, but let the same principles and passion for freedom of movement and no checks apply east-west as well as north-south. That is what is in the Belfast agreement, which the noble Baroness, Lady Ritchie, referred to. It is a three-stranded approach. The first strand is the internal Northern Ireland arrangement and strand 2 is the north-south arrangement. But we also have strand 3, which deals with east-west, and that has to be protected and preserved. The fact that it is not is at the root of the problems we are having with devolution in Northern Ireland at the current time.

I want to put that matter of principle, as it were, on the record, because it is important. I do not disagree with what has been said about the matter under consideration in this amendment but we must also consider ensuring that the principles of the Belfast agreement, as amended by the St Andrews agreement, are preserved and upheld in their entirety.

Lord Murphy of Torfaen (Lab): My Lords, it is always a tremendous pleasure to follow the noble Lord, Lord Dodds—I have been doing so for 20 years. I do not always agree with him but we agree on lots of things, and I agreed with much of what he said this evening: there is a special difference between dealing with these issues about Northern Ireland and dealing with things generally in the Bill.

The proposal by the Government is daft and it could be dangerous, and it is also utterly unnecessary. It has clearly been drawn up by people who know nothing about Northern Ireland—that is the difficulty. If only the architects of this proposal had talked to the Governments in Belfast or Dublin, or even to the Northern Ireland Office. And I absolutely agree, with great respect to the Minister who is winding up, that it should have been the noble Lord, Lord Caine, doing so—he is the one who knows a huge amount about Northern Ireland and presumably he would have been able to answer these questions with the experience of someone who has spent many years dealing with these issues.

The practical problems have been outlined well by my noble friends, such as the problem with tourism. One of the very first north-south bodies to be established was an all-Ireland tourist body. People come from all over the world to Ireland and want to see both ends. To impose this unnecessary restriction on them will jeopardise an industry that has been severely hit because of Covid over the last number of years. There are thousands of Lithuanians working in the Republic of Ireland, and probably a number in Northern Ireland, whose lives could easily be overturned by this—particularly those who work near the border, of course. They rely on common health facilities, as well as common shopping facilities.

As the noble Lord, Lord Dodds, and my noble friends have said, the border does not exist in the ordinary sense. It is not like a border anywhere else. One of the

great issues which has been ignored in drawing up this silly proposal is that it ignores entirely what has been agreed for the last quarter of a century. In drawing up the Good Friday agreement, in which I played some part a long time ago, we believed that the border was crucial to the success of our talks. The border has hundreds of crossings; there is no apparatus checking on people going back and forth. The principle lying behind that lack of the border being a border, if you see what I mean, and the fact that it is invisible in many ways, was an integral part of the agreement. I shall not talk this evening about the protocol but that is another disaster, in the sense that it has caused difficulties in Northern Ireland, and we will come to it on another occasion. The resolution on the border was a hugely important and significant factor in the success of the Good Friday agreement, and this provision strikes at the heart of it.

The problem is not simply what is in this particular proposal—it is how the proposal was arrived at, how it was structured, and how people drew it up. That has been disastrous, because it has been done with no knowledge of how it could affect the Good Friday agreement or future proposals on the border itself.

The relations between the Republic of Ireland and our Government are at rock bottom at the moment, and this does not help; it makes it worse—and I bet your bottom dollar that there have been no real discussions between the two Governments, in the way that there should be.

This should be dealt with in the British–Irish Intergovernmental Conference—the agreement set that up. The noble Lord, Lord Dodds referred to strand 3 of the agreement—that is to say, the relationship between east and west. I chaired the talks, along with the Irish Minister, on setting that up, and one result of it was the British–Irish Intergovernmental Conference: a body including both Governments to deal with tricky issues. If this is not a tricky issue, I do not know what is. I bet your bottom dollar, too, that there has not been much discussion with the parties in Northern Ireland either, or with the Northern Ireland Executive or the Northern Ireland Assembly. No—it is a disaster.

The sooner that this provision is removed from this Bill, the better. I doubt that the Government will do it but, if they do not, it will just fall into a pattern, whereby Northern Ireland is put on the side and seen as a peripheral business. It will come back to bite them, and I urge the Government to withdraw the provision or accept this amendment.

9.30 pm

Lord Coaker (Lab): My Lords, it is a pleasure to follow my noble friend Lord Murphy, who articulated what I would think is the majority opinion in this House. This is one of those policy proposals from the Government in the Bill that defies belief. We have heard from the noble Viscount, Lord Brookeborough, the noble Lord, Lord Dodds, and my noble friend Lady Ritchie about living on the border. The three people who live closer to the border than the rest of us say that what is before us is an absolute nonsense. It does not make sense. All I say to the Minister who will respond is: why would the Government resist something that everybody says is a nonsense?

How is it going to work? Who will enforce it? Has the Home Office agreed this with the Northern Ireland Office? What discussions have taken place? They may not be able to say it here, but we have a Minister from the Northern Ireland Office and Ministers from other parts of the Government. I cannot believe that the Northern Ireland Office thinks that this is a good or sensible idea.

What reaction has there been from the British Government to the Irish Government telling them that it is a nonsense? The Irish embassy has been on to many of us, in a very reasonable way, saying that it just will not work. It feeds into a belief that the Government somehow do not properly understand Northern Ireland. As the noble Lord, Lord Dodds, whatever the rights and wrongs of what people think about him—not about the noble Lord, Lord Dodds, but about what he said; I apologise. It is a good job he and I know each other well. It feeds into the narrative that the Government do not understand Northern Ireland, do not understand the architecture that has led over many years to the peace that we have had, and take many things there for granted. This is the latest example.

Clause 71 will require people who are not British or Irish citizens to have electronic travel authorisation to move from Ireland into Northern Ireland. I just reread it to make sure. I showed it to my noble friend Lady Smith and said, "Have we got this right?" How is it going to work? There are hundreds of crossings a day. Let us start to be practical about this. I live in Ireland. I am an Irish citizen. I have an American wife who works in Northern Ireland. What happens? Is she supposed to have an electronic travel authorisation every day, every week or once a year? If she does not have it, who enforces that? Who checks it? What arrangements take place for that? There has to be some arrangement, otherwise it is not worth it being in the Bill. There has to be something that happens, otherwise why is there a requirement to do it.

The practical arrangements are of real concern to people because they want to know what happens, so businesses in Northern Ireland and Tourism Ireland are raising concerns about it. The Government's reaction is simply to ignore it or, without any proper explanation, say that there is not a problem.

What is the answer to people concerned about visiting family, accessing childcare and accessing the cross-border healthcare that we heard about from my noble friend Lord Hain? What is going on and why are the Government not listening to what people are saying? Specifically, have parts of the Government talked? Has the Home Office spoken to the Northern Ireland Office? Is there agreement between them? What have they said to the Irish Government? What are the answers to the practical questions that I have raised and particularly those raised by the noble Viscount, Lord Brookeborough? How on earth is this going to work?

I very much support what my noble friend Lady Ritchie and the noble Baroness, Lady Suttie, said. This matter raises serious questions and the Government have to do more than say that it will be fine—it will be all right and do not worry about it. We have seen the consequences of that in other areas of life in Northern Ireland. The Government need to get a grip on this. It is absolutely ridiculous and the Government need to sort it out.

Lord Sharpe of Epsom (Con): My Lords, I thank the noble Baroness, Lady Ritchie, for explaining her amendment so powerfully. I appreciate the intention behind it but the amendment would undermine the Government's efforts to strengthen UK border control. The Government are clear: there will continue to be no routine immigration controls on journeys to the UK from within the common travel area and none at all on the land border between Ireland and Northern Ireland. I am very familiar with the land border between Northern Ireland and Ireland, and I appreciate that you often do not know whether you have crossed it. Individuals will not be required to carry or present any documents when crossing the land border, nor will British or Irish citizens require an ETA.

To protect both the UK immigration system and the common travel area from abuse it is important that, as now, all individuals arriving in the UK, including those crossing the land border into Northern Ireland, continue to enter in line with the UK's immigration framework. This is a well-established principle of the operation of the common travel area, and it applies when travelling in all directions. Visa nationals are required to obtain a visa for the UK when travelling via Ireland, including when they are crossing the land border. Otherwise, they are entering illegally. That includes UK visa nationals resident in Ireland. This is a well-established requirement and we are simply extending the same principle to individuals requiring an ETA.

The amendment would result in an unacceptable gap in UK border security that would allow persons of interest or risk, who would be refused an ETA, to enter the UK legally, undermining the very purpose of the ETA scheme, which is to prevent the travel of those who pose a threat to the UK. It would also provide an opening for those looking to abuse our current CTA arrangements, which is obviously in no one's interests.

Some noble Lords are concerned about the impact on tourism and the economy. The Government are committed to developing a clear communications strategy to tackle any misunderstandings about the requirements to travel to Northern Ireland. As has been pointed out, over the last decade Northern Ireland has been transformed and is now very much considered a "must see" tourism destination. We will continue to support tourism in Northern Ireland and to Northern Ireland by ensuring that the process for obtaining an ETA is quick and light touch. Successful applications will be approved within minutes of submission.

Regarding the impact on frequent cross-border travel, I want to first make clear that those with any form of existing UK immigration status, such as frontier worker permit holders, will not be required to obtain an ETA. For those who do require an ETA, the application process will be quick and, as I said, light touch, and the majority of applications will be approved within minutes. Once granted, an ETA will be valid for multiple journeys over an extended period, minimising the burden on those making frequent trips, including those across the Ireland-Northern Ireland border. As now, it will not require those crossing the land border to hold any particular physical documentation, as ETAs will be issued electronically.

In answer to the noble Viscount, Lord Brookeborough, I was not comparing this with other forms of charge when I spoke on this previously at the Dispatch Box, and I certainly did not say that it did not matter. It obviously does matter, and I hope I did not sound as though I thought it was a trivial amount of money, because I do not.

The Government consider the scheme compliant with our commitments under the Belfast/Good Friday agreement and the protocol on Ireland and Northern Ireland.

I have been talking to my noble friend Lord Caine; I entirely agree with the noble Lord, Lord Murphy, that he would have been much better at doing this than me. We have been having discussions with the Irish Government, as he is well aware. The UK has a close exchange with Ireland on all matters of bilateral interest, including this one, and we will continue to engage with Ireland as we develop this scheme. My noble friend assures me that he has been in contact with the Home Office. Having said all that, I appreciate that I will probably not have satisfied anybody in this House, but I nevertheless ask the noble Baroness to withdraw her amendment.

Lord Hain (Lab): Before the noble Lord sits down, could I ask him about the potential impact on Rally Ireland, which is competing with other countries where this requirement will not be present? About 20 teams compete, with lots of non-British and non-Irish nationals in them, and they will each require multiple applications.

Lord Sharpe of Epsom (Con): I asked my noble friend whether he was familiar with Rally Ireland, and he is not either. I will come back to the noble Lord with a specific answer. I had not heard of Rally Ireland before.

Baroness Ritchie of Downpatrick (Lab): My Lords, this has been a very interesting debate. The noble Lords representing the Government should look to the Good Friday agreement, because that will provide the solutions to this issue. The North/South Ministerial Council, the British-Irish Council and the British-Irish Intergovernmental Conference deal with those east-west issues.

I have not heard anything from the Government that provides me with any consolation. I still ask them to come back at Third Reading with a possible amendment, but in this instance, I seek to test the opinion of the House.

9.40 pm

Division on Amendment 71

Contents 141; Not-Contents 107.

Amendment 71 agreed.

Division No. 6

CONTENTS

Adams of Craigielea, B.	Anderson of Swansea, L.
Addington, L.	Andrews, B.
Adonis, L.	Armstrong of Hill Top, B.
Alderdice, L.	Barker, B.
Alton of Liverpool, L.	Bassam of Brighton, L.

Beith, L.
Bennett of Manor Castle, B.
Berkeley, L.
Blower, B.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Brinton, B.
Bristol, Bp.
Brookeborough, V.
Browne of Ladyton, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Chandos, V.
Chapman of Darlington, B.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Coussins, B.
Craig of Radley, L.
Davies of Brixton, L.
Drake, B.
Durham, Bp.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox of Buckley, B.
Fox, L.
Gale, B.
Garden of Frognal, B.
Glasgow, E.
Golding, B.
Grantchester, L.
Grender, B.
Grey-Thompson, B.
Hacking, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Harris of Haringey, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Healy of Primrose Hill, B.
Henig, B.
Hollins, B.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kerslake, L.
Khan of Burnley, L.
Kingsmill, B.
Kinnoull, E.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lennie, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Mackenzie of Framwellgate, L.
Manchester, Bp.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
McAvoy, L.
Merron, B.
Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Parminter, B.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Ramsbotham, L.
Randerson, B.
Razzall, L.
Redesdale, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Newnham, B.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Bolton, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thurso, V.
Tope, L.
Wallace of Saltaire, L.
Walmsley, B.
Watson of Invergowrie, L.
Watts, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Woodley, L.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altrincham, L.
Anelay of St Johns, B.
Ashton of Hyde, L.
Barran, B.
Bellingham, L.
Benyon, L.
Bethell, L.
Black of Brentwood, L.
Blackwell, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Brady, B.
Browne of Belmont, L.
Brownlow of Shurlock Row, L.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Choudrey, L.
Clarke of Nottingham, L.
Colgrain, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Davidson of Lundin Links, B.
Davies of Gower, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Eaton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Frost, L.
Godson, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Green of Deddington, L.
Greenhalgh, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Haselhurst, L.
Hayward, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howe, E.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kamall, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Leicester, E.
Lingfield, L.
Manzoor, B.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Morrow, L.
Neville-Jones, B.
Neville-Rolfe, B.
Noakes, B.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patten of Barnes, L.
Penn, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Reay, L.
Risby, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Vere of Norbiton, B.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wyld, B.
Younger of Leckie, V.

9.53 pm

Clause 76: Tribunal charging power in respect of wasted resources

Amendment 72

Moved by ***Baroness McIntosh of Pickering***

72: Clause 76, leave out Clause 76

Baroness McIntosh of Pickering (Con): I am grateful for this opportunity to speak to Amendments 72 and 74, and I congratulate my noble friend on the honour of being appointed a privy counsellor. It is richly deserved, and we can all bathe, I hope, in reflected glory. I look forward very much to hearing from my noble friend how her Amendment 73 will impact, and possibly supersede, my Amendments 72 and 74.

Before that, however, I want to raise my concerns about the new powers included in Clauses 76 and 77, which raise a tribunal charging power in respect of wasted resources. I do not disagree that there may be circumstances in which unnecessary costs arise, but it

[Baroness McIntosh of Pickering]
is a very dangerous precedent to set that a First-tier Tribunal or Upper Tribunal may—as I understand it, for the first time ever—charge the participant. Without going into the details, which I am sure the House is familiar with, I will briefly set out my concerns, those raised by the Law Society of Scotland, and those of the Select Committee on the Constitution in its report published as House of Lords Paper 149.

In the view of the Law Society of Scotland, the reason that Clause 76 is "problematic, unnecessary and unacceptable" is that:

"The First-tier or Upper Tribunal is to be given powers to charge a person exercising rights of audience or rights to conduct litigation if that person is found to have acted improperly, unreasonably or negligently. Under current statutory"

law—for example, the Solicitors (Scotland) Act 1980—

"and common law powers professional regulators have sufficient powers to deal with matters of professional discipline such as improper or unreasonable conduct. It is inappropriate that the determination of negligence should be included in the clause when that is properly the province of the civil courts. Furthermore, we note that any amounts charged under this clause for negligence are to be paid to the Consolidated Fund rather than to the client who may have suffered as a result of any alleged negligence. This appears to be a form of"

backdoor

"taxation rather than compensation for negligence."

Through these two small amendments, I would like to understand better the thinking with which the Government have drafted these two clauses. Amendment 74 is consequential on Amendment 72, simply leaving out Clause 77 if the House was minded to remove Clause 76.

I am delighted to say that the House of Lords Constitution Committee, in its report of January this year, also quoted the Law Society of Scotland and said in paragraph 94:

"There is at least the potential that these new rules could discourage legal representatives and immigration advisers regulated by the office of the Immigration Services Commissioner, as well as applicants, from raising or engaging in legitimate proceedings."

I would like to think that this was not the intention behind the government thinking, but I would very much like to hear reassurance from my noble friend the Minister that this is indeed the case.

To conclude, in the view of the Law Society of Scotland this clause is "unnecessary"; there are already existing statutory and common law powers for the appropriate regulators to deal with such issues as "matters of professional discipline" following existing complaints procedures; and it is therefore

"inappropriate that the determination of negligence should be included in the clause when that is properly the province of the civil courts."

I also set out the Law Society of Scotland's and my objection to the fact that this would be

"paid to the Consolidated Fund rather than"

towards reimbursing

"the client who may have suffered as a result of any alleged negligence."

With these few remarks, I beg to move. I look forward to hearing the Government's response.

Lord Paddick (LD): My Lords, Amendments 72 and 74 are about First-tier and Upper Tribunals being given the ability to order a party to pay a charge in respect of wasted or unnecessary tribunal costs when

"a relevant participant has acted improperly, unreasonably or negligently, and … as a result, the Tribunal's resources have been wasted".

Why does such a charge not apply in civil or criminal cases? Is this yet another example of trying to deter asylum seekers from accessing justice and/or to deter lawyers from representing them, as the noble Baroness suggested? I can understand an order requiring one side to pay the other side's costs, but not the court's costs. If the Home Office has acted "improperly, unreasonably or negligently", can the Minister confirm that it will be charged for the tribunal's time, or is it just the applicants?

This change seems to set a dangerous precedent for the UK judicial system. If the Government were to maintain that they have no plans to extend this principle to other courts and tribunals, they must accept that this is a deliberate attempt to deter asylum seekers from seeking justice and/or to deter lawyers from representing them.

10 pm

I understand from the Minister's response in Committee that the Government believe that tribunals are not using existing powers enough to order costs against applicants, so they have included these clauses to compel tribunals to consider imposing costs orders, and potentially, these new court costs orders.

This looks like another attempt to interfere with the independence of the judiciary, as previous clauses have sought to do, by unduly influencing tribunals as to the weight they should place on certain types of evidence and the assumptions they are to make about the character of the applicant. They are now trying to urge the judiciary to impose costs orders.

We support these amendments. Clauses 76 and 77 should not stand part of the Bill.

Lord Rosser (Lab): We also think that the provisions in Clauses 76 and 77 are unnecessary and in fact ought to be removed from the Bill.

The Bill requires the Tribunal Procedure Committee to give the tribunals the power to fine individuals exercising a right of audience or a right to conduct litigation, or an employee of such a person, for "improper, unreasonable or negligent" behaviour. There are issues about wasted costs. As has been said, this change could certainly affect the willingness of lawyers and solicitors to take on difficult cases for fear of risking personal financial liability. As far as we are concerned, the immigration tribunals already have all the case management costs and referral powers that they need to control their own procedure.

In Committee I asked how many of the cases dealt with by the immigration tribunal over the last 12 months fall within the category of unreasonable behaviour, for which the Government would expect these costs orders measures to be activated. I thank the Minister for his letter in response, which states in the second paragraph that:

"It is not, however, possible to say how many cases dealt with by the Tribunal within this period fell within the category of unreasonable behaviour. This is because we do not hold data on

the number of cases where behaviour or circumstances *could* have been considered unreasonable, but where no costs order was sought, or considered by the tribunal of its own initiative."

I have to say that that letter simply confirms that the Government have no hard evidence to support their assertion that the provisions of Clauses 76 and 77 are necessary, because of the reasons set out in the letter, which I quoted and which indicate a certain paucity of hard evidence to support the Government's position.

I will be interested in the Government's reply to see whether they challenge my interpretation of the content of the letter of 3 March which the Minister was good enough to send to me. However, certainly, in the absence of a government response saying that their letter did provide the hard evidence to back up their view that the provisions of Clauses 76 and 77 are necessary, I must say that it is very difficult to understand why they are bringing forward the provisions outlined in those clauses.

Lord Sharpe of Epsom (Con): My Lords, I thank my noble friend Baroness McIntosh of Pickering for explaining her amendment. Government Amendment 73 is a technical amendment to Clause 77. It does not change the policy; it makes a minor revision to the drafting of subsection (1) of Clause 77 to ensure that it matches the rest of the clause in only making provision in relation to the Immigration and Asylum Chamber. This change will prevent any uncertainty arising about the jurisdictions in which this clause should be applied, and it gives the Tribunal Procedure Committee complete clarity about how to approach drafting the rules to enact these measures.

I turn now to Amendments 72 and 73. The Government are committed to making the immigration and asylum system more efficient, while also maintaining fairness, ensuring access to justice and upholding the rule of law. To achieve this, we need all representatives involved in these proceedings—whether they are acting for the appellant or for the Home Office—to play their part in ensuring that appeals run smoothly. Representatives do not just have a duty to act in the best interests of their client; they also owe duties to the courts and to the public interest, which include acting with integrity, upholding the rule of law and supporting the proper administration of justice. We are aware that there are concerns about the behaviour of some representatives in immigration proceedings, which can waste judicial and tribunal resource and lead to delays in the tribunal process. Existing case law identifies the types of circumstances and behaviours which have led to costs orders being made or considered, and the principles applied by the courts. These have included showing a complete disregard for procedural rules through, for example, abusing court processes in relation to evidence or the timing of applications. As with the current costs orders regime, the policy will apply equally to the representatives of both parties—in answer to the question of the noble Lord, Lord Paddick. This will include the Home Secretary when represented by presenting officers. To further ensure fairness, the paying party will be able to make representations before any order is made, and the tribunal retains absolute discretion as to whether a charge should be made in each case.

As I explained in Committee, tribunals can currently make wasted and unreasonable costs orders which relate to the legal costs of the parties. However, these mechanisms are generally only considered at the request of the other party and are infrequently employed. Clause 76 creates a new power for tribunals to order a party to pay an amount which represents a portion of the tribunal's costs which have been wasted as a direct result of that party acting unreasonably, improperly or negligently. This power applies across all tribunal jurisdictions and is subject to the Tribunal Procedure Committee making rules for its application in a particular tribunal. It will allow the tribunal to make an order in relation to wasted tribunal resources in the same types of circumstances which would currently warrant a wasted or unreasonable costs order. An order can be made against "relevant participants": this means legal and other representatives exercising rights of audience, and the Secretary of State where they are a party and do not have legal representatives. I hope that this goes some way to reassuring my noble friend.

To encourage increased consideration of whether to make costs orders, Clause 77 provides a duty on the Tribunal Procedure Committee to introduce tribunal procedure rules in the Immigration and Asylum Chamber. This will lead to judges more regularly considering whether to make a wasted costs order, an unreasonable costs order or a tribunal costs order under the new Clause 76 provision. This will ensure that circumstances and behaviours which have warranted the making of costs orders previously will more often give rise to judicial attention. While the requirement in Clause 77 is for the TPC to make rules in the Immigration and Asylum Chamber, it is at the committee's discretion to create similar rules in other jurisdictions if it considers it appropriate. Specifically, Clause 77 requires procedural rules which identify circumstances or behaviours which, absent of reasonable explanation, the tribunal will treat as warranting consideration of the making of a costs order. The rules thereby introduce a presumption that requires the representative, or other relevant party responsible for such circumstances or behaviour, to explain themselves and why such a costs order should not be made. This will ensure the regular consideration of costs orders by the tribunal. More importantly, however, the tribunal will retain absolute discretion as to whether to make an order in all cases.

Noble Lords have asked whether this will mean fewer representatives willing to take on immigration work. The Government think it right that representatives should explain themselves if they are responsible for circumstances to be set out in the rules as warranting consideration of a costs order. However, where there is a reasonable explanation, no order would be expected. The tribunal continues to have full discretion as to whether to make the order. Therefore, these changes should not impact legal representatives who fulfil their duties to the court, remain committed to their work and ensure justice for their clients.

The noble Lord, Lord Paddick, asked why these changes are being made in the Immigration and Asylum Chamber and not in other jurisdictions. Obviously, the Nationality and Borders Bill as whole is focused on reforming the asylum system. Clauses 76 and 77 are part of a programme of reforms designed to streamline immigration and asylum appeals. There has been judicial concern, and a recognition that a problem exists with the behaviour of some legal representatives and other

[Lord Sharpe of Epsom]
relevant parties in immigration proceedings. It is at the discretion of the Tribunal Procedure Committee to create similar rules in other jurisdictions if it considers it appropriate.

For the reasons I have outlined, I hope that my noble friend Lady McIntosh of Pickering feels able to withdraw her amendment.

Baroness McIntosh of Pickering (Con): Before my noble friend sits down: I asked a specific question as to why the money raised will be paid into a consolidated fund. I listened carefully and I do not think I heard him respond on that point.

Lord Sharpe of Epsom (Con): I am afraid that I will have to come back to the noble Baroness on that point.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful to all those who have spoken. I detect the mood of the House is not to support these provisions but the hour is late, and we have a lot more business to come, so am reluctant to test the opinion of the House. At this stage—

Lord Sharpe of Epsom (Con): I am sorry for interrupting, but I have just been informed that the answer to the noble Baroness's question is that it is standard practice.

Baroness McIntosh of Pickering (Con): I am most grateful. If that is the case, I am surprised that the Law Society of Scotland is not aware of that, because it certainly did not respond in that regard.

I am grateful for the opportunity to raise my concerns. I would like another opportunity at some future date to pursue this further, but for the moment I beg leave to withdraw the amendment.

Amendment 72 withdrawn.

Clause 77: Tribunal Procedure Rules to be made in respect of costs orders etc

Amendment 73

Moved by ***Baroness Williams of Trafford***

73: Clause 77, page 80, line 35, after "Rules" insert "governing proceedings before the Tribunal (see subsection (4))"

Member's explanatory statement

This is a drafting amendment that clarifies that, like the requirement in Clause 77(2), the requirement for Tribunal Procedure Rules to prescribe conduct of the kind mentioned in clause 77(1) applies only in relation to the Immigration and Asylum Chamber of the First-Tier Tribunal and the Upper Tribunal.

Amendment 73 agreed.

Amendment 74 not moved.

Amendment 75

Moved by ***Lord Wallace of Saltaire***

75: After Clause 78, insert the following new Clause—

"Tier 1 (investor) visas: review report

Any replacement, successor or alternative visa scheme to the Tier 1 (investor) visa scheme must not come into operation until the Secretary of State has published and made publicly available the review of Tier 1 (investor) visas granted between June 2008 and April 2015."

Member's explanatory statement

This new Clause would require the Government to publish its review into Tier 1 (investor) visas granted between June 2008 and April 2015 before any replacement scheme can be brought into operation.

Lord Wallace of Saltaire (LD): My Lords, I was not satisfied by the answer, and I would like to test the opinion of the House.

10.12 pm

Division on Amendment 75

Contents 96; Not-Contents 101.

Amendment 75 disagreed.

Division No. 7

CONTENTS

Addington, L.
Adonis, L.
Alton of Liverpool, L.
Barker, B.
Beith, L.
Bennett of Manor Castle, B.
Berkeley, L.
Blower, B.
Bonham-Carter of Yarnbury, B.
Bradley, L.
Brinton, B.
Browne of Ladyton, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Chandos, V.
Clancarty, E.
Clement-Jones, L.
Coaker, L.
Coussins, B.
Craig of Radley, L.
Davies of Brixton, L.
Dholakia, L.
D'Souza, B.
Foster of Bath, L.
Fox, L.
Garden of Frognal, B.
Glasgow, E.
Grantchester, L.
Grender, B.
Grey-Thompson, B.
Hacking, L.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Hollins, B.
Howarth of Newport, L.
Humphreys, B.
Hussain, L.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones, L.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kramer, B.
Lea of Crondall, L.
Liddle, L.
Lister of Burtersett, B.
Marks of Henley-on-Thames, L.
McAvoy, L.
Merron, B.
Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Oates, L.
Osamor, B.
Paddick, L.
Pendry, L.
Pinnock, B.
Ramsbotham, L.
Randerson, B.
Razzall, L.
Redesdale, L.
Robertson of Port Ellen, L.
Rosser, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Smith of Basildon, B.
Smith of Newnham, B.
Stansgate, V.
Stoneham of Droxford, L.
Storey, L.

Strasburger, L.
Stunell, L.
Suttie, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thurso, V.
Tope, L.
Wallace of Saltaire, L.
Walmsley, B.
Watson of Invergowrie, L.
Watts, L.
Wheatcroft, B.
Wilcox of Newport, B.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altrincham, L.
Ashton of Hyde, L.
Barran, B.
Bellingham, L.
Benyon, L.
Bethell, L.
Black of Brentwood, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Brady, B.
Brookeborough, V.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Choudrey, L.
Clarke of Nottingham, L.
Colgrain, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Davidson of Lundin Links, B.
Davies of Gower, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Eaton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fox of Buckley, B.
Godson, L.
Goldie, B.
Goschen, V.
Greenhalgh, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Haselhurst, L.
Hayward, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Horam, L.
Howard of Lympne, L.
Howe, E.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Kamall, L.
Kinnoull, E.
Kirkham, L.
Lamont of Lerwick, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lingfield, L.
Manzoor, B.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
Meyer, B.
Montrose, D.
Moylan, L.
Neville-Jones, B.
Neville-Rolfe, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
O'Loan, B.
Parkinson of Whitley Bay, L.
Patten of Barnes, L.
Penn, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Reay, L.
Risby, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Vere of Norbiton, B.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Younger of Leckie, V.

10.24 pm

Amendment 76

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

76: After Clause 78, insert the following new Clause—

"British National (Overseas) visas: eligibility

(1) Within two months of this Act being passed, the Secretary of State must amend the immigration rules to ensure that all persons meeting all the conditions set out in subsection (2) are eligible to apply for the British National (Overseas) visa.

(2) The conditions in this subsection are that—

(a) the person has at least one parent who is a British national (overseas),

(b) the person was born on or after 1 July 1997,

(c) the person is aged 18 or over on the date of application, and

(d) the person is—

(i) if applying to enter the United Kingdom, ordinarily resident in Hong Kong, or

(ii) if applying for permission to remain, ordinarily resident in the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey, the Isle of Man or Hong Kong."

Lord Alton of Liverpool (CB): My Lords, it is a great pleasure to introduce Amendment 76, whose equivalent was moved in Committee but had its inception in the House of Commons. The amendment stands in my name and those of the noble Lord, Lord Patten of Barnes, the right reverend Prelate the Bishop of St Albans and the noble and learned Lord, Lord Falconer of Thoroton, so it is an all-party amendment. It affects BNO eligibility for visas for young people; that is, those who were born after 1997, whose parents qualify but they themselves do not. This was in many respects an omission from the original scheme. I declare my interests as a patron of Hong Kong Watch and as vice-chair of the All-Party Parliamentary Group on Hong Kong.

The original plan was launched on 31 January as a bespoke immigration route for BNO status holders and their family members. It was something that we could all welcome, reflecting our moral and historic commitment; and, indeed, it has been a great success, with over 100,000 applications made to date. However, some 18 to 24 year-olds were unable to access this route. as your Lordships know, this amendment would enable individuals born on or after 1 July 1997 who have at least one BNO parent to apply to the route. As I said, the amendment had its genesis in the House of Commons. I pay particular tribute to the right honourable Damian Green for the work that he put into it, but also to the support of Lady May and other notable members of the Conservative Party, as well as the support of the Commons from all Benches on all sides, so this is bipartisan, and bicameral as well.

I pay a special tribute to and thank the noble Baroness, Lady Williams, who has already been congratulated quite a lot today on her notable elevation to the Privy Council—perhaps because of what she did on this amendment. She and her noble friend Lord Sharpe have engaged very much with those who have signed this amendment. He has significant experience in Hong Kong, so this was close to his heart.

The noble Lord, Lord Patten of Barnes, made a very memorable speech in Committee, which was followed by many people in Hong Kong, let alone in this country, and it says an awful lot that someone who has held such high office in the past is willing to commit so strongly to this, to show that his affection and commitment to the people of Hong Kong remain completely unchanged. Like me, he continues to be concerned about those who will not qualify for this scheme, but that is not the point of the amendment. It is something that others must step up to the plate to do something

[Lord Alton of Liverpool]
about, but I hope especially that those living in other Commonwealth countries can follow the example that the British Government have set in issuing a Written Statement which was the upshot of conversations that we had in Committee; the Government

"intend to lay the changes to the Immigration Rules in September with the changes expected to go live in October".

The Written Statement also details the welcome programme led by the Department for Levelling Up, Housing and Communities. Its tone and what it says at the end I particularly welcome:

"We look forward to welcoming applications from those individuals who wish to make the UK their home".

The Government have taken a positive approach. They have engaged constructively, and this decision is worthy of this country and its special relationship with Hong Kong. It will allow young Hong Kongers who were not eligible for a BNO visa to avoid languishing in the asylum system, unable to work or study. This change of policy will allow these young people to settle more quickly and enrich British society.

I do not need to say very much more, other than to comment on one development in Hong Kong this week which underlines why life has become so difficult for people such as Joshua Wong, Nathan Law and others to whom we referred in Committee. Paul Harris, the former chair of the Hong Kong Bar Association and a veteran human rights barrister, and a man of great standing, has had to leave Hong Kong after police questioned him. It marks another dark day for human rights and the rule of law in Hong Kong. His steadfast defence of Hong Kong's beleaguered democracy and his opposition to the draconian national security law provoked the ire of the Chinese Communist Party and made him a marked man. For those young people who joined many of the protests and demonstrations, this scheme will literally be a lifeline. I hope that we will then use our standing to convince other countries to follow our example and do the same by extending these lifeboat provisions to enable settlement—other Commonwealth countries especially, such as Australia, New Zealand and Canada, which already have significant communities of people drawn from Hong Kong.

I hope that I have been relatively brief, since the House has a lot of other business to accomplish. I beg to move Amendment 76.

10.30 pm

Lord Patten of Barnes (Con): I support the noble Lord, Lord Alton, and I will be even more brief. It may have been obvious that I have been able to contain my enthusiasm during much of the discussion of this Bill to within the bounds of public decorum, but on this occasion I want to say without any reservation how strongly I support what the Government have done.

We have a continuing moral responsibility to the people of Hong Kong. Hong Kong has been hit by a mendacious Government in Beijing—including Mr Putin's best friend, we are now told—who have set about comprehensively and vindictively destroying the freedoms of a great and open society. It is particularly appropriate that we have recognised some of those who have been more affected, particularly with the charges that have been levelled at them in recent weeks around civil disobedience and freedom of speech. This amendment and the proposals of the Government will help those who have been most affected: the younger Hong Kongers who are the children of people already able to get a BNO passport but who unfortunately are in the group born after 1997. It is a very important amendment. I am delighted that the Government have accepted it and that they continue to assert our continuing moral responsibility for Hong Kong.

I expect, as the noble Lord, Lord Alton, said in our earlier debate, that the young people who come here will make a really significant contribution to this country. One day, I hope, they will be able to return to Hong Kong as a free society. That is not entirely in our hands, though the more we behave like a liberal democracy that believes in liberal democracy, the more likely it is to happen.

I am delighted that I am able on this occasion to say how much I support what the Government have done, and I look forward to doing so on many future occasions—there have not been quite enough in the past. Maybe that has been my fault or maybe the fault has lain elsewhere, but that is a subjective judgment. I thank the Government very much and hope they will continue to be as open-minded and gracious in the way they respond to good arguments.

Baroness Bennett of Manor Castle (GP): My Lords, I declare my position as the co-chair of the All-Party Parliamentary Group on Hong Kong. I am in the rare position of congratulating the Government very warmly and thanking them for listening to campaigners, including on their own Benches, in taking this step for the younger people of Hong Kong who have at least one BNO passport-holding parent. I also join the noble Lord, Lord Alton, in congratulating the Government on the welcome programme for the BNO passport holders coming here. The APPG heard from the noble Lord, Lord Greenhalgh, this week and we appreciated his enthusiastic words on that programme.

I will make one extra point. The all-party group held an inquiry into the treatment of young medics and humanitarian workers in Hong Kong during protests. Those young people had to have their voices disguised to testify to us. I remember one of them, who as he was talking to us on the Zoom call was glancing at the door, saying, "I don't know if the police will come through that door at this moment." I have no doubt that some of those young people speaking to us had parents who were BNO passport holders, but some of them did not, yet they were young people who had made similar contributions to that society. My simple question to the Government is: will they in future, as the noble Lord, Lord Alton said, work with Commonwealth countries to see that all of those young people who have made brave contributions to democracy and the rule of law in Hong Kong are able to find a route out if they need to?

Lord Green of Deddington (CB): My Lords, I will even more briefly strike a slightly different note. This proposal—I know it has virtually gone through—is very unwise. We have a scheme which already applies to rather more than 5 million people. That is surely enough, and we should leave it at that.

Baroness Smith of Newnham (LD): My Lords, I give the Liberal Democrats' support for this amendment and pay tribute to the noble Lords, Lord Alton and Lord Patten of Barnes, for their repeated campaigns to support Hong Kong and in particular young Hong Kongers.

It is perhaps right that the noble Baroness, Lady Williams of Trafford, is on the Front Bench when, for once, we are saying, "Actually, you've got this right". So often, we seem to give her such a hard time, although we say, "We think that she is probably with us but having to give the government line". The fact that the Government have now acknowledged the importance of supporting young Hong Kongers is very welcome. Alongside the privy counsellorship, we are very keen to welcome that.

I am afraid that these Benches disagree with the noble Lord, Lord Green of Deddington—actually, this is the right thing to do. It is not about to open the floodgates to mass immigration, but it does give an opportunity for young Hong Kongers who feel the need to come here to do so.

Lord Rosser (Lab): I express our wholehearted support for the amendment and the extension of the BNO scheme to young Hong Kongers. I congratulate all noble Lords around this Chamber, from all parties and no party, who have campaigned on this issue. I thank the Government for their decision and the progress that has been made, which has led to agreement all around the House.

Lord Sharpe of Epsom (Con): I thank noble Lords and pay particular tribute to the noble Lord, Lord Alton of Liverpool, who tirelessly campaigns on this and other issues. I thank him for his kind words, and I thank all noble Lords who have contributed to this short debate on Amendment 76.

We recognise that the BNO route is creating unfair outcomes for the families of BNO status holders, with some children able to access the route independently because they were old enough to be registered for BNO status, while their younger siblings, aged between 18 and 24, are unable to do so. That is why, on 24 February, the Government announced a change to the BNO route to enable individuals aged 18 or over who were born on or after 1 July 1997 and who have at least one BNO parent to apply to the route independently of their parents.

The policy change addresses the concerns raised by the noble Lord, Lord Alton, and other Members of both Houses. It will ensure that we are addressing potentially unfair outcomes for families of BNO status holders and ensure that the UK meets its ongoing commitment to BNO status holders.

In answer to the noble Baroness, Lady Bennett, I say that there are of course other routes for those who are not eligible under this particular scheme. We intend to lay the changes to the Immigration Rules in September, and they are expected to take effect from October.

In the light of these assurances, I ask the noble Lord to withdraw the amendment.

Lord Alton of Liverpool (CB): My Lords, in the light of what the Minister has been able to say to the House, and of the debate and the excellent contributions from all who have spoken—including my noble friend Lord Green, with whom I have a good friendship but often disagree—I think that young Hong Kongers who come to this country will enrich our lives. I have seen for myself, in my own city of Liverpool, the great contribution that Hong Kong people have made over many generations. I know that these will be patriotic and loyal citizens, who will care for this country and enliven our society.

I beg leave to withdraw the amendment, and I am grateful to all who have spoken in tonight's debate.

Amendment 76 withdrawn.

Amendment 77

Moved by ***Lord Coaker***

77: After Clause 78, insert the following new Clause—

"Indefinite leave to remain payments by Commonwealth, Hong Kong and Gurkha members of armed forces

(1) The Immigration Act 2014 is amended as follows.

(2) In section 68(10), after "regulations" insert "must make exceptions in respect of any person with citizenship of a Commonwealth country (other than the United Kingdom) who has served at least four years in the armed forces of the United Kingdom, or any person who has served at least four years in the Royal Navy Hong Kong Squadron, the Hong Kong Military Service Corps or the Brigade of Gurkhas, such exceptions to include capping the fee for any such person and their dependents applying for indefinite leave to remain at no more than the actual administrative cost of processing that application, and"."

Lord Coaker (Lab): My Lords, I will leave Amendment 78, in the names of the noble and gallant Lord, Lord Craig, and others, to them. I will speak to Amendment 77 in my name and that of the noble Baroness, Lady Smith.

We have been trying for some time to rectify the issue where those who have served our country are charged extortionate fees to settle here, among the communities that they have served. Since we debated this in Committee, the Government have moved a small way and announced that veterans who have served six years will no longer be required to pay visa fees for leave to remain. That is welcome but, frankly, not enough, and it is not what has been called for by the Armed Forces community and Members of both Houses, including some from the Government Benches.

The Royal British Legion said:

"Whilst we welcome the news that these fees will be waived for some Commonwealth Service personnel, this proposal still leaves many Armed Forces families facing severe hardship. We strongly urge the Government to go further and scrap these unfair charges for everyone who has served for at least four years and their immediate family members."

Currently, a veteran who wishes to settle here with their partner and two children will be charged around £10,000, the vast majority of which is profit for the Home Office. The Government's policy change amounts to a 25% discount, when a veteran has served over six years. Even in these cases, it will cost more than £7,000 for a family of four to settle in the country for which a veteran has risked their lives in service, and we ask the Government to look yet again at this—because I do not believe that they have got this right, and nor do many others.

[Lord Coaker]

It is not right for the Home Office to make a profit from veterans who are exercising their right to settle here with their children. This is not a party-political issue, and it is not an immigration issue; it is an issue of how we treat those who have served this country and how we fulfil our pledges in the Armed Forces covenant. I beg to move.

Lord Craig of Radley (CB): I support Amendment 77, and I speak to Amendment 78 in my name and that of the noble Baroness, Lady Smith of Newnham, and the noble Lords, Lord Alton of Liverpool and Lord Coaker. I am very grateful for their support.

When I returned in Committee to this issue of fixing a date, the noble Lord, Lord Sharpe of Epsom, spelt out a bit more fully than had the noble Baroness, Lady Williams of Trafford, at Second Reading the Government's position on this long-standing issue. He said:

"I can confirm that the Government will update Parliament … with the aim of implementing any changes by the end of this calendar year."—[*Official Report*, 10/2/2022; col. 1965.]

He went on to say that this was not an "in due course" response, which as noble Lords will recognise is the way favoured by Governments avoiding a firm commitment. But is "with the aim of" any more convincing than "with a view to", as expressed by the noble Baroness, Lady Williams, at Second Reading? Neither formulation is definitive; both are woolly.

I recognise that the Government seem at last to be willing to do more than give this issue active consideration, which has been their stated position and what they have been doing for the past six years. Noble Lords will recall that the issue has been raised by Members of both Houses, including by me in meetings with successive Home Secretaries and other Ministers, through Oral Questions and Questions for Written Answer, as well as by some of the veterans themselves over the past six years or more. Against that background, it seemed reasonable to require the statutory time for this finally to be settled and for the loyal veterans who have waited for so long to know by when they will receive the answer to their request.

I had hoped that this Government would not resist this straightforward and simple amendment. However, following helpful discussions with the noble Lord, Lord Sharpe of Epsom, I sense that the Government are really on the side of these loyal veterans, some of whom are watching on the Parliamentlive channel as I speak. If the Minister responds to indicate a firm commitment to them and gives a Dispatch Box assurance that the House will be kept informed of that progress, I think that the House will feel that at last there is a positive light starting to glimmer at the end of this long tunnel. If such an assurance comes from the Minister, I shall not divide on Amendment 78 this evening.

Baroness Smith of Newnham (LD): My Lords, I rise to support both amendments, and again pay tribute to the noble and gallant Lord, Lord Craig of Radley, for bringing the issue of veterans who have served in her Majesty's Armed Forces Hong Kong. There are some issues that come back to the Chamber again and again, and they come in different pieces of legislation and are responded to by different Ministers at different times. This is a case in point.

If the Minister is able to give reassurance to the noble and gallant Lord, then so much the better. I hope that even the noble Lord, Lord Green of Deddington, does not think that granting citizenship or indefinite leave to remain to those who have served with Her Majesty's Armed Forces in Hong Kong will be a dangerous route to go down, and that the Government really will give a sufficient response to Amendment 78.

10.45 pm

On Amendment 77, again, we have talked about this issue on so many occasions. We have heard from the Government Front Benches some words of comfort in the past, but not really enough. Surely it is not acceptable to say that veterans who have worked with the British Armed Forces and been willing to put their lives on the line for us should have to pay. The change regarding people who have served for six years is welcome but, as the noble Lord, Lord Coaker, said, it does not really go far enough. If it could be reduced to four, so much the better.

However, surely it ought to include service families as well because it is not only the service man or woman who is putting their life on the line and serving this country. Their families are also giving up a lot. Surely, the appropriate amount for anybody to pay when they seek to live here after their service personnel relative—mother, father or whatever family member—is only the cost of processing the application, just as we do with passports. A cost of thousands of pounds is not appropriate. Surely, the Home Office can find out how much it actually costs to process, and that should be the fee.

Lord Alton of Liverpool (CB): My Lords, it is a great pleasure to add my voice, albeit briefly, in support of both these amendments, particularly Amendment 78 in the name of my noble and gallant friend Lord Craig of Radley. Although his amendment is prescriptive in asking the Government to respond

"Within three months of the passing of this Act",

I think he told the Minister that if an assurance can be given that, within a reasonable time of the Bill's enactment, the Government will move on this issue, he would be happy not to divide the House. I agree with him about that and if that assurance can be given, it will surely meet the terms of his amendment.

We are not talking about large numbers—it not 5 million people—but people who have served the Crown. If anybody is vulnerable today as a result of the passing of the national security law in Hong Kong, it is surely people who have served the Crown. There is no question in my mind about the justice of what my noble and gallant friend is arguing for, but this is not the first time of asking; he has urged us to do something about this year in, year out—in good times and bad. I hope that the Government will take this opportunity to deliver in the Bill what my noble and gallant friend has asked for.

Lord Green of Deddington (CB): My Lords, as a retired second lieutenant who served in Borneo alongside Gurkha regiments, I am very happy to support these proposals.

Lord Sharpe of Epsom (Con): My Lords, I thank all noble Lords who have participated in this relatively brief debate. I will start by addressing Amendment 77, tabled by the noble Lord, Lord Coaker, regarding settlement fees for non-UK members of our Armed Forces.

The Government highly value the service of all members of the Armed Forces, including Commonwealth nationals and Gurkhas from Nepal, who have a long and distinguished history of service to the UK here and overseas. That is why there are special immigration rules in place for our Armed Forces personnel that put them in a favourable position compared to other migrants, as I detailed last month during Committee. However, we recognise that the fees attached to settlement applications place a financial burden on our non-UK personnel, should they choose to remain in the UK after leaving the Armed Forces. That is why, last year, the Government consulted on waiving these fees altogether in some circumstances.

Following this, the Home Secretary and Defence Secretary announced on 23 February this year that the Government have decided to waive settlement fees, including administrative costs, for non-UK personnel in our Armed Forces who have served for six years or more, or are discharged due to an illness or injury attributable to their service, regardless of length of service. We are also extending the settlement fee waiver to undocumented veterans currently living in the UK who meet these criteria.

The noble Lord, Lord Coaker, asked me why it is six years, not four. I hope he will forgive the lengthy digression. Careful consideration was given to the number of years that should be used for the eligibility criteria. The initial policy proposal was for those who had served at least 12 years at the point of discharge, as the noble Lord acknowledged, but following the public consultation Ministers agreed that the eligibility criteria should be reduced to six years.

When considering the number of years' service for the fee waiver, a balance rightly has to be made between value for money for the taxpayer and acknowledgement of the service of the individual. For example, it costs approximately £92,000 to train a soldier. Those costs cannot be discounted. Therefore, it was considered appropriate to set the eligibility criteria to those non-UK service personnel who have served for at least six years and wish to settle in the UK following service, given the significant outlay already invested by the taxpayer.

Four years is the minimum term of service that personnel must serve before applying for a discharge. It is important to note that there is no intention to change the option available to non-UK service personnel to make a paid application for settlement in the UK on discharge, as long as they have served a minimum of four years.

We recognise the strength of feeling from parliamentarians, service charities and the public about this issue, which is why it was decided to reduce the required length of service to be eligible, as I just said. It is estimated that the fee waiver may affect around 80% of non-UK service personnel. The Home Office is rightly focused on implementing this new policy at the earliest opportunity, the aim being for it to come into effect on 6 April this year.

I will digress again, because noble Lords also raised the issue of dependants. The Government believe that it is right and fair that fees and policies for non-UK family members of Armed Forces personnel are not more generous than those for dependants of British citizens and are applied consistently. Any decision to relax the fees or policies for non-UK family members of Armed Forces personnel could undermine current fees and the rules would be discriminatory.

Non-UK family members of Armed Forces personnel can apply for settlement once they have spent an initial five-year period in the UK with limited leave. The fees and policies that apply to the dependants of non-UK members of the UK Armed Forces are closely aligned with those that apply to dependants of British citizens and other settled persons under the standard family rules. Furthermore, reducing the fees for dependants of both non-UK and British Armed Forces personnel would be similarly discriminatory and unfair to those in other professions, many of whom face similar concerns and are contributing to the UK in other ways.

There is additional support for families in planning for the cost of visa fees. That is provided by things such as the Joining Forces credit union service for the Armed Forces. That was launched under the Armed Forces covenant in 2015, and it offers savings and loans schemes at fair rates through the payroll scheme. The issue raised by this amendment has largely been addressed by the recently announced government policy, which is due to be implemented in the near future.

I turn next to Amendment 78, tabled by the noble and gallant Lord, Lord Craig, regarding citizenship and settlement rights for British-Hong Kong veterans. I know he will listen to me extremely carefully, as indeed will those Hong Kong veterans watching live.

The Government remain extremely grateful for the contribution made by former British-Hong Kong service personnel. That is why the Minister for Safe and Legal Migration announced to the House of Commons on 7 December last year that the Home Secretary has identified an option that will enable our Government to treat this group of personnel in a similar way to other non-UK service personnel who were based in Hong Kong before the handover.

I appreciate that the noble and gallant Lord wants reassurance that the Government are taking concrete steps to further support British-Hong Kong veterans where possible. I can confirm that the Government will update Parliament by the end of June and implement any changes by the end of this calendar year. The Government remain committed to implementing a solution to the issue of British Hong-Kong veterans before the end of this calendar year, but I respectfully ask the House to give us the necessary space to do so.

Lord Coaker (Lab): My Lords, I will let the noble and gallant Lord, Lord Craig, talk about Amendment 78 when we come to it, but, as one of the signatories, it would be churlish not to recognise the way the Government have moved on that issue.

[Lord Coaker]

With respect to Amendment 77, I appreciate that the Government again have made some movement on this but I do not think it is enough. It should be four years; that is what the demand is. I do not understand or accept the point the Minister made about the exclusion of dependants. Dependants should be included in any scheme we take forward. As such, I wish to test the opinion of the House.

10.54 pm

Division on Amendment 77

Contents 80; Not-Contents 88.

Amendment 77 disagreed.

Division No. 8

CONTENTS

Adonis, L.
Alton of Liverpool, L.
Beith, L.
Bennett of Manor Castle, B.
Blower, B.
Bradley, L.
Brinton, B.
Browne of Ladyton, L.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Chandos, V.
Clancarty, E.
Coaker, L.
Corston, B.
Coussins, B.
Craig of Radley, L.
Davies of Brixton, L.
Dholakia, L.
D'Souza, B.
Durham, Bp.
Fox of Buckley, B.
Garden of Frognal, B.
Green of Deddington, L.
Grender, B.
Grey-Thompson, B.
Hamwee, B.
Hannay of Chiswick, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Hollins, B.
Howarth of Newport, L.
Humphreys, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kingsmill, B.
Kinnoull, E.
Kramer, B.
Lea of Crondall, L.
Liddle, L.
Lister of Burtersett, B.
Manchester, Bp.
Merron, B.
Neuberger, B.
Newby, L.
Northover, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Patten of Barnes, L.
Pendry, L.
Pinnock, B.
Ramsbotham, L.
Randerson, B.
Robertson of Port Ellen, L.
Rosser, L.
Scriven, L.
Sheehan, B.
Shipley, L.
Smith of Basildon, B.
Smith of Newnham, B.
Stansgate, V.
Stoneham of Droxford, L.
Strasburger, L.
Stunell, L.
Taylor of Warwick, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thurso, V.
Tope, L.
Wallace of Saltaire, L.
Walmsley, B.
Watson of Invergowrie, L.
Wheatcroft, B.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altrincham, L.
Ashton of Hyde, L.
Barran, B.
Bellingham, L.
Benyon, L.
Bethell, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Brady, B.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Choudrey, L.
Colgrain, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Davidson of Lundin Links, B.
Davies of Gower, L.
Duncan of Springbank, L.
Eaton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Godson, L.
Goldie, B.
Greenhalgh, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Haselhurst, L.
Hayward, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Kamall, L.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lingfield, L.
Manzoor, B.
McInnes of Kilwinning, L.
Meyer, B.
Mobarik, B.
Moylan, L.
Neville-Jones, B.
Neville-Rolfe, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Penn, B.
Pidding, B.
Porter of Spalding, L.
Reay, L.
Risby, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Vere of Norbiton, B.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Younger of Leckie, V.

11.06 pm

Amendment 78 not moved.

Amendment 79

Moved by ***Lord Oates***

79: After Clause 78, insert the following new Clause—

"UK immigration status: certification

(1) The Secretary of State must issue physical proof confirming immigration status to anyone who has been granted such status under the immigration laws of the United Kingdom and who requests such proof.

(2) No fee may be charged for issuing physical proof under this section.

(3) The certificate mentioned in subsection (1) must confirm that the relevant person has the relevant status.

(4) The certificate mentioned in subsection (1) is valid for right to work checks, right to rent checks and all other checks that may be undertaken by agents within and without the United Kingdom to confirm the relevant person's UK immigration status including permission to travel to and enter the United Kingdom."

Member's explanatory statement

This new Clause would require the Government to issue a physical certificate to all people with a UK immigration status, allowing all those with such status to provide documentary proof.

Lord Oates (LD): My Lords, Amendment 79 would require the Secretary of State to provide physical proof of immigration status to anyone who has been granted such status and requests such proof. The arguments for providing physical proof alongside digital status have been aired extensively in this House, most recently in the debates on the then Immigration and Social Security Co-ordination (EU Withdrawal) Bill,

when your Lordships overwhelmingly supported a cross-party amendment to this effect for EEA citizens with settled or pre-settled status. I am heartened that this amendment has also received support from across the House, and I am grateful to all the signatories of it.

This amendment differs a little from my 2020 amendment in that it covers not just EEA citizens with settled and pre-settled status but also non-EEA citizens who have immigration status. That is because, despite the huge difficulties and anxieties caused by digital-only status, the Government have decided to extend it to non-EEA citizens who previously were able to use biometric residence permits, biometric residence cards or frontier worker permits.

Whatever the merits or otherwise of a digital-only system, one would imagine that before introducing such a radical change the Government would have undertaken extensive trials to check that the system worked and could be easily operated by those who had to use it. In fact, the Government conducted only one such trial in 2018, which concluded:

"There is a clearly identified user need for the physical card at present, and without strong evidence that this need can be mitigated for vulnerable, low-digital skill users, it should be retained."

The Government ignored that finding and ploughed on.

A comprehensive document setting out many of the difficulties users have encountered was submitted to the independent monitoring authority by the3million in November last year, and I raised a number of specific concerns when we debated this amendment in Committee. These included problems with updating status when a person received a new passport, multiple errors in the view and prove system, and even immigration officials demanding physical proof of settled status.

The Government set up a settled status resolution centre, which, confusingly to everyone, works alongside the UKVI resolution centre. At the outset, those who received a letter telling them they had received settled or pre-settled status were not provided with any contact number at all if something went wrong. Subsequently, the letters included the number of the EU settlement resolution centre for people to contact—but many cannot even get through. Despite the Home Office asserting in meetings with stakeholders that callers who did get through to the resolution centre had to wait an average of 14 minutes, it could not or would not say how many did not get through, although it acknowledged that demand was managed. That seems to mean that callers were simply disconnected to keep waiting times down. For example, the transcript of a call made on 12 November 2021 and included in the submission to the independent monitoring authority showed that the call had been automatically disconnected regardless of the options chosen.

The full scale of the problem has come to light only recently, because until then the Home Office resolutely refused to provide detailed information on the performance of the resolution centre. In 2019, an FoI request to obtain this information was refused, on the grounds that the data was already planned for publication. However, as no such publication subsequently took place, a new FoI request was submitted in July 2021. After repeated follow-up requests, an internal review and a referral to the Information Commissioner's Office, the information was finally published on 1 December last year. It immediately became clear why the Government had been so reluctant to publish the data, because it showed that, over the 12 months to October 2021, just 44% of the calls to the EU settlement resolution centre were successfully connected.

In response to all these difficulties and to the Government's rejection of biometric residence cards for EU and EEA citizens with settled and pre-settled status, the3million made the constructive alternative proposal of a barcode system similar to the one we had for Covid vaccination status. The Minister responded to this suggestion in Committee by saying:

"He mentioned the QR code, and I totally agree; the QR code has worked brilliantly throughout the pandemic for certain things such as updating your Covid vaccination status. I will take that back to the Home Office and report back on any progress … but I support the whole principle of being able to use a QR code".—[*Official Report*, 10/2/22; cols. 1981-82.]

At last, after so many years debating this issue, there seemed to be a glimmer of hope and some common ground.

How naive I was. Last Friday, the3million received a letter from the Home Office rejecting the idea of a barcode. It is four pages of bureaucratic obstructionism without any acknowledgement of the problem that needs to be addressed, the anxieties of those whom the policy affects, or any positive proposals about a way forward. It makes a whole series of inaccurate assertions that could easily have been corrected if those involved in determining the policy had engaged effectively with those affected by it, but they did not.

Having finally agreed to a meeting for the 3million to present the proposal, the Home Office then took eight months to respond to it and refused to hold an interim meeting with the group during that time to discuss progress with its assessment of the proposal. It then produced a wholly negative response that rejects the proposal out of hand on grounds that are simply wrong and could have been corrected had the interim meeting taken place.

The truth is that the Home Office had made up its mind before it had even begun. Unfortunately, this sort of response is not a one-off but part of a pattern of behaviour at the Home Office that was identified in the independent *Windrush Lessons Learned Review*—commissioned by the Home Office—which states on page 141:

"It is not clear that the department has learned the wider lesson that it should be engaging meaningfully with the communities it serves. The true test will be whether stakeholders, including those considered to represent critical voices, are firstly invited to participate in developing the department's policies, and also in designing, implementing and evaluating them."

The Home Office's response to the barcode proposal makes it abundantly clear that this test has been comprehensively failed. At the heart of this issue is whether the Home Office is willing to listen to the users of its services and take on board their concerns, or whether Ministers and officials are impervious to them and simply determined to pursue their policy regardless of the consequences.

[LORD OATES]

As I have said in all our previous debates, this is ultimately about people's lives, the unnecessary difficulties and anxieties being imposed on them, and the Home Office's seeming inability to recognise or empathise with those concerns. I hope that the Minister and her department will reflect on how their response fits into the wider cultural problems in the Home Office and come back with a proposal that will fix this problem, rather than continuing to pretend that it does not exist. I beg to move.

11.15 pm

Lord Kerr of Kinlochard (CB): My Lords, I supported the noble Lord, Lord Oates, last time, as did the House, as he said, by an enormous majority. I did this because I was impressed by the postbag I got from people who argued that they would feel more confident, and that it would be easier to rent accommodation, open a bank account and so on, if they had some physical proof. I am sure that is the case.

The Minister then argued against me that there was a cost involved in doing as I asked and providing physical proof. I confess that she was probably right. There is no cost involved now if one follows the example of the QR code on the NHS vaccination app. That works brilliantly well, as she acknowledged in Committee, and I see no reason why it should not be applied here. There is no reason why one should not be able to download a document off the Home Office website, and present it—with the QR code on it—as the necessary authentication, thus avoiding the need for any biometric card. It seems to me that it is now genuinely cost-free.

Since it would provide considerable reassurance to a large number of people, I hope that this time the Minister will feel able to accept the amendment in the name of noble Lord, Lord Oates.

Baroness Shackleton of Belgravia (Con): My Lords, I speak not only on my own behalf but on behalf of my noble friend Lady Altmann, who has had to leave the Chamber due to the illness of one of her children.

I sat on the Select Committee which investigated settled status. We interviewed, at length, as I have said before, the ambassadors for the other European countries. Each and every one of them identified as the most egregious problem the lack of giving their nationals with settled status physical proof. What was more abhorrent is that every English person living in their states was offered such physical proof.

As I am known to be speaking out on this, my inbox has been inundated with examples of people being stuck at airports, at hospitals and when renting. It is iniquitous, because the Government have failed to give any comprehensive, sensible, rational reason why they will not simply change their mind and look at this from the perspective of the people being disadvantaged by it. If I could be persuaded that it was just about money, I am sure that given the choice of having to buy physical proof for a small fee, most applicants would be more than happy to pay to give them peace of mind.

It is simply not good enough to rely on machinery. Machinery lets us down. Why do we have a centre outside the Chamber for when our voting system does not work? Why do we have back-up systems? What happens when the power goes down? What happens when people interfere with systems, which is probably going to happen in any war? What happens if you are dispossessed?

The Government should reflect seriously on how we welcome the many people who live in this country and who give their lives for this country. They are considered to be citizens equal to the people born here but they are disadvantaged by not having the simple provision of a piece of paper—a card, a passport, a driving licence or any other of the pieces of paper we carry around—with no viable explanation as to why it is refused. Please, can they change their mind?

The Earl of Clancarty (CB): My Lords, I have added my name to Amendment 79. I did not speak on this in Committee, but I did raise this concern in a question on 1 July last year. The Minister told me then that the Home Office had recently met with the3million—that was on 21 June—to discuss this in relation to European citizens. As the noble Lord, Lord Oates, has said, that was over eight months ago, so there has been a lot of dragging of feet.

The recent letter from the Home Office to the3million, with its rejection of the use of a QR code, is hugely disappointing. Perhaps even more disappointing is the fact that the response does not start from the premise that physical proof is a necessity—indeed, quite the opposite. It perversely insists on disputing what is a clear necessity for a significant number of citizens, as the3million would have explained carefully to the Home Office in that aforementioned meeting. In Committee too, the noble Lord, Lord Oates, gave many examples of where physical proof is necessary. We have just heard how noble Peers have had their inboxes inundated.

Whatever happens to this amendment, it is important that the dialogue between the Home Office and the3million continues. I know it has written to the Home Office today addressing every single one of the objections that the Home Office has raised concerning the proposal for the use of a QR code. If it would be helpful, is the Minister willing to meet a number of interested Peers, alongside a representative of the3million, to discuss a way forward?

A purely digital approach is not a panacea in this regard, even if the Government wish to believe it is. There needs to be the option of physical proof of status. I will certainly vote for Amendment 79 if it is taken to a Division.

Lord Hannay of Chiswick (CB): My Lords, the noble Lord, Lord Oates, ran off an extremely impressive list of people and groups supporting this amendment for physical proof. I add the European Affairs Committee of your Lordships' House, of which I am a member, along with the noble Earl sitting on the Woolsack. Last year, when we examined the implementation of the settled status system, we unanimously recommended that physical proof be made available. That committee contains members of all parties in your Lordships'

House and none, and we had no hesitation whatever about the recommendation we made. This was after the evidence had come from the Covid barcode system that it could be done at nil cost and would give tremendous relief to people like me who sometimes struggle a little with the digital world in which we now live.

I really hope that the Minister will now go back and accept that providing this physical proof will greatly increase the respect in which this country is held by member states of the European Union, which have unanimously asked for this. It will do nothing but good for the individuals who get the physical proof and for this country, which will have shown that it listens to the views of others. I hope the amendment can be accepted.

Lord Sandhurst (Con): My Lords, I am pleased to follow my noble friend Lady Shackleton's speech.

We had the Windrush disaster because people got nothing in writing. That was a shameful episode; many people suffered badly and we are now paying large sums of compensation. That does not assist the taxpayer, but no doubt the civil servants 30 years ago did not think about that. It costs us all money now, so if nothing else think about the money for future taxpayers. I see no reason why we should risk a repeat of the Windrush disaster.

If a modest charge is necessary, so be it. People will pay £10 for a piece of paper or for registration costs, but what is that? They will have comfort and security. The Home Office's reluctance to issue proof in documentary form for European citizens living here, minding their own business, is difficult to understand.

There will be personal disasters in future. They will be disasters in 10, 15 or 20 years for the individuals who, for one reason or another, are unable to prove that they are settled in this country when they come back from time abroad. I ask the Minister to think of herself and her children and grandchildren in that position. Decent people living in this country deserve to be treated decently.

Baroness Bennett of Manor Castle (GP): My Lords, I rise very briefly to say that the Green group would certainly have attached a signature to this motion had there been space. Like everyone else, my inbox has been utterly swollen with emails and letters about this.

I will make an additional point which no one else has. Travelling has now become much more stressful. There are extra stresses and worries. Not having a piece of paper just multiplies that. I draw here on my own example of helping an older gentleman to make some travels across the channel recently. He carries a whole wodge of printed-out Covid vaccine passports. Every time we travel, we must have a passenger locator form; there is huge stress until it is printed out. He is lucky enough to be a British citizen, so he then puts his passport with those printed-out pieces of paper, and there is a sigh of relief. However, there are additional difficulties if you do not have that piece of paper. In the case of this gentleman, several times recently the travel has gone wrong, his phone has run out of charge and he has been left relying on the kindness of strangers to pull through. However, if you need your phone to prove your settled status, that is not going to help. We cannot assume that people are always going to have charged, working devices with them. Just printing out a piece of paper would offer a level of assurance for travel in these difficult times.

Baroness Neville-Rolfe (Con): My Lords, I will not delay the House as we are all keen to complete Report stage. Having read *Hansard* for 3 am on 9 February, I felt that I must return to the charge on Amendment 82, which is eccentrically grouped with the high-profile Amendment 79.

The purpose of my amendment is to ensure that visa provisions can be included in future trade agreements only if they are specifically and separately approved by both Houses of Parliament. The need for this arises because of recent reports of plans to grant visas in trade agreements currently under discussion with India. I know that this has been a long-term aspiration for them. I believe that visas should be the subject of nationality law, such as this Bill. It should be separately agreed, and not bundled up into the CRaG process. Discussion in the CraG process will always look at an agreement in the round in the light of the interests usually concerned with such agreements. It certainly will not want to hold up an agreement for immigration reasons. Yet, as we know from WTO agreements, once provisions are in them, they are legally enforceable whatever happens. Given the population of some countries with which we are negotiating, I am very concerned.

The Minister was reassuring and suggested in Committee that any visa provisions would be confined to mobility issues affecting UK service suppliers seeking to go to India, and that this was precedented in the Japan and Australia agreements. In these circumstances, I cannot see why he cannot agree to my amendment—perhaps with a government tweak to make this explicit and/or to give a categoric assurance that visa provisions in any trade agreement will be confined to this area.

Lord Paddick (LD): My Lords, obviously, these Benches wholeheartedly support Amendment 79 for the reasons explained.

I have some sympathy for the noble Baroness, Lady Neville-Rolfe, as far as Amendment 82 is concerned. One would hope that there would be cross-departmental working on trade agreements so that there would be no agreement to any visa deal without Home Office agreement. However, bearing in mind the apparent disagreement between the Home Office and the Ministry of Defence over the role of the MoD in the channel in relation to migrant crossings, I am not reassured. Perhaps the Minister can reassure the House on this issue.

Lord Rosser (Lab): I too will be brief. I was anticipating a more favourable response to Amendment 79 and the issue of the QR code. I was certainly taken aback to hear from the noble Lord, Lord Oates, that the Home Office has now rejected the bar code. I accept that the Government did not give any specific commitment in relation to the QR code when we discussed the matter in Committee, other than to say that they would take the matter back to the Home Office.

11.30 pm

We have heard some fairly powerful submissions this evening on why that documentary proof is required, why people feel it is necessary, and why people feel that they could be left in an awkward situation if they do not have it. One only hopes that the Government will take some cognisance of what has been said in the debate this evening, reflect further and take this back, and perhaps have another rethink in the hope of coming forward with something more positive when we get to Third Reading.

On Amendment 82, the noble Baroness, Lady Neville-Rolfe, pursued this in Committee. She said in response to the Government:

"I found what he said"—

that would be the Minister—

"about trade reassuring on sovereignty. I am less happy on the application of CRaG, because of course that gives us a vote only on a whole trade agreement. It is the provisions on visas or immigration that worry me. If a favourable trade agreement were presented to Parliament, obviously Parliament would not want to vote against that, so we have a little problem."—[*Official Report*, 8/2/22; col. 1574.]

I understand what the noble Baroness is saying. In a way it is a bit like a statutory instrument: you either accept it or you reject it, and you cannot take out bits that you are not happy with. It will be interesting to read the Government's response.

Having said that, I crave the indulgence of the House because, frankly, I have reached the stage where I will have to depart in order to get home. I apologise because I know that is not what I should be doing, but I hope the House will accept my apologies on that particular score. I have sought to set out where we stand as an Opposition on these issues.

Baroness Williams of Trafford (Con): I am always worried that the noble Lord, Lord Rosser, will not get home, so if he wants to exit stage left, I will not be in the least bit offended. I am very keen that he gets his train.

On Windrush, that tragedy did not arise because people did not have a piece of paper. That problem arose because, through successive changes in immigration law over the years, Windrush was simply forgotten. Of course, it was at the time a declaratory system, but the problem did not arise because people did not have a piece of paper.

To return to Amendment 79, I know that the noble Lord, Lord Oates, will not be happy with what I will say. I hope that I can provide a comprehensive and sensible reason why, to quote my noble friend Lady Shackleton.

We provide all individuals who are granted UK immigration status with a formal written notice of their grant. It is in the form of a letter sent by post or email which sets out their immigration status. They can retain the letter for their own personal records and use it, if they wish, when contacting the Home Office about their status.

We took full account of the recommendation from the beta assessment of the Home Office's "prove your right to work" service and have introduced a wide range of support to help vulnerable users as we roll out the e-visas, which are the secure, online services which can be used to view and prove immigration status. We are and have been implementing the change in an incremental way since 2018, to ensure that no one is left behind.

Those who struggle to use them can also contact the UKVI resolution centre, including by phone, for help using the service or sharing status on the individual's behalf. We have also developed mechanisms which reduce the need for individuals to prove their status themselves when accessing public services: for example, benefits and healthcare. Status information is already shared automatically with HMRC and DWP and the NHS in England and Wales.

We published a policy equality statement in relation to the EU settlement scheme on 18 November 2020. The statement considered the impact of e-visas and set out the support available to users who need help. There are reports of incidents where the system may not have worked as it should have, but feedback on the e-visas and online service has been generally positive. Most users find it easy to use and it is aligned with other digital government services, such as DVLA services for renewing driving licences and paying vehicle excise duty. E-visa holders can check their status at any time by logging into the view and prove service; they can even contact the Home Office if they experience any issues with their e-visa.

The noble Lord, Lord Oates, previously referred to the Government's intention to remove biometric residence permits, biometric residence cards and frontier worker permits from the lists of documents acceptable as part of a right-to-work check. We can do this because the online system works. The cards will remain valid for other purposes, including as an identification document and to board travel services when returning to the UK. As the noble Lord is aware and has mentioned previously, we have been considering the merits of introducing a QR code. As he said, I committed to take the matter back and discuss it with the Home Office. He is absolutely right: we have written to the3million, setting out why we do not think it is a viable option. We have had to consider a wide range of factors, not least that using this method in the context of demonstrating vaccination status is not equivalent to using it to show immigration status, since a person's immigration status can change in a way that their vaccination status cannot.

The information on an insecure printed document, even one validated by a QR code, would not be a secure method of sharing and proving immigration status in a way that gives confidence to the user and the checker. We consider that it would open the system up to potential fraud and abuse because the QR code would not be sufficient to verify the identity of the document holder. We have looked into whether we could incorporate a facial image on to the QR code but found that the technology would not support inclusion of high-resolution facial images. It would not adhere to the principles of data minimisation, whereby only as much personal data as is needed for the checking purpose should be shared and accessible only for as long as required. The checker would require an app on an internet-enabled device capable of reading the code, whereas any internet-enabled device with a web browser can be used to check a share code. Our reply to the3million, which I will share with the noble Lord, has been published on its website and provides a full explanation.

Physical documents obviously expire—my parents insist on printing their Covid passes out, and sometimes they are near or at expiration—they can become invalid or be lost, stolen or tampered with, and they take time to replace, leaving our immigration system open to fraud and abuse. They do not provide that real-time information. Last year, UK Visas and Immigration received over 44,000 reports of lost or stolen biometric residence documents and issued over 22,000 replacement cards for those reported lost or stolen. Implementing this amendment would involve significant costs; they could well be over £270 million if we had to issue a physical document to everyone with an immigration status.

Our provision of a letter sent by email or post meets the need for a physical document showing a person what their immigration status is, and it can be kept for personal records. The ability to view and prove immigration status online in the form of an e-visa provides foreign nationals with the certainty that they need to demonstrate their rights in the UK now and in the years to come. I hope—although I doubt it—that I have reassured the noble Lord on his concerns. On the other point, I am very happy to meet any interested parties that wish to discuss this further.

I turn to Amendment 82 from my noble friend Lady Neville-Rolfe and the noble Lord, Lord Green, on trade agreements containing provisions on visas. We should recognise that the Immigration Rules and decisions about visa requirements are sovereign national powers which rest with the Home Secretary. I sympathise with my noble friend's desire to retain national control over visa policy. We took back control of our borders when we left the EU and now have the freedom to set our own rules in the interests of the UK.

However, trade and immigration are separate policy areas and the UK does not routinely discuss immigration in trade negotiations. What comprehensive free trade agreements typically include is provisions on so-called mode 4 trade in services. These set the terms for the temporary movement of service providers between parties to the agreement. Immigration policy, as opposed to mode 4, is our overarching approach to long-term immigration and border controls.

I know my noble friend has expressed concerns about the Government's negotiations with India on a free trade agreement. As is standard in UK free trade agreements, I expect we will explore mode 4 provisions, which could support British and Indian businesses and consumers, in our negotiations with India. This is not a one-way conversation. UK business stakeholders have identified mobility issues affecting UK service suppliers seeking to go to India, which we might seek to address in these negotiations. This is just as we have done in our free trade agreements with other partners such as Japan, Australia and the EU and would expect to do in any future comprehensive free trade agreements. But any agreement will be consistent with the points-based immigration system and we will not compromise the principles or functioning of that system.

I also want to note that Parliament already has appropriate involvement in the scrutiny of free trade agreements and their provisions through the CRaG process. The legislative framework set by CRaG provides Parliament with the opportunity to undertake scrutiny of an FTA prior to its ratification. I understand the point my noble friend raised previously that CRaG is a rather binary tool, but it would not be appropriate to have additional processes to consider individual issues within the agreement. Immigration is clearly an important issue but comprehensive trade agreements, by definition, cover more areas. It would not be practical or desirable to have carve-outs for individual issues; taken together, these could make the process of negotiating and scrutinising trade agreements lengthy and impractical.

While I agree with the thrust of my noble friend's argument that robust scrutiny is critical, I cannot agree with the amendment. I instead point to the comprehensive processes we already have in place to ensure that Parliament has its say on trade agreements and, critically, that any changes to domestic law would need to be passed by this House in the normal way. I hope I have set out clearly for my noble friend why this amendment should not be pressed.

Lord Green of Deddington (CB): Before the Minister sits down, is she confirming that any immigration negotiations with India will be confined to mode 4?

Baroness Williams of Trafford (Con): Yes.

Lord Oates (LD): My Lords, I thank all noble Lords who have taken part in this debate. Given the lateness of the hour, I will not go into detail but just say two things. First, I have read the entirety of the Home Office letter to the3million group, most of which is wrong and could have been corrected if the Home Office had the decency to meet on an interim basis as requested. The Minister will have seen, or will see shortly, the comprehensive refutation of every point that she has made.

Secondly, it is all very well to say that the system works well for some people. For digital-savvy people, I am sure it is fine; but for people who are not digital-savvy, it is not. That is specifically what the pilot undertaken by the Government warned about. It said that the system should not be changed, as unless effective mitigation was put in place it would have a significant impact on vulnerable users. It is having a significant impact. I very much regret and am dismayed that the Home Office does not understand that and will not listen to the people who have to use it. On that basis, I would like to test the opinion of the House.

11.45 pm

Division on Amendment 79

Contents 61; Not-Contents 83.

Amendment 79 disagreed.

Division No. 9

CONTENTS

Adonis, L.	Coussins, B.
Alton of Liverpool, L.	Dholakia, L.
Bennett of Manor Castle, B.	D'Souza, B.
Blower, B.	Durham, Bp.
Bradley, L.	Garden of Frognal, B.
Brinton, B.	Grantchester, L.
Browne of Ladyton, L.	Green of Deddington, L.
Campbell-Savours, L.	Grender, B.
Chandos, V.	Grey-Thompson, B.
Clancarty, E.	Hamwee, B.
Coaker, L.	Hannay of Chiswick, L.
Corston, B.	Harris of Richmond, B.

Hollins, B.
Howarth of Newport, L.
Humphreys, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kinnoull, E.
Kramer, B.
Lea of Crondall, L.
Liddle, L.
Lister of Burtersett, B.
Manchester, Bp.
Neuberger, B.
Newby, L.
Oates, L.
Osamor, B.
Paddick, L.
Pendry, L.
Pinnock, B.
Ramsbotham, L.
Shackleton of Belgravia, B.
Sheehan, B.
Shipley, L.
Smith of Basildon, B.
Smith of Newnham, B.
Stansgate, V.
Stoneham of Droxford, L.
Strasburger, L.
Stunell, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Wallace of Saltaire, L.
Walmsley, B.
Wheatcroft, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altrincham, L.
Ashton of Hyde, L.
Barran, B.
Benyon, L.
Bethell, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Brady, B.
Caine, L.
Callanan, L.
Carrington of Fulham, L.
Choudrey, L.
Colgrain, L.
Courtown, E.
Crathorne, L.
Davidson of Lundin Links, B.
Davies of Gower, L.
Duncan of Springbank, L.
Eaton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fox of Buckley, B.
Godson, L.
Goldie, B.
Greenhalgh, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Haselhurst, L.
Hayward, L.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Kamall, L.
Leicester, E.
Leigh of Hurley, L.
Lingfield, L.
Manzoor, B.
McInnes of Kilwinning, L.
Mobarik, B.
Montrose, D.
Moylan, L.
Neville-Jones, B.
Neville-Rolfe, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Penn, B.
Pidding, B.
Porter of Spalding, L.
Reay, L.
Robathan, L.
Sanderson of Welton, B.
Sarfraz, L.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Trenchard, V.
True, L.
Vere of Norbiton, B.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Younger of Leckie, V.

11.56 pm

Amendment 80

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

80: After Clause 78, insert the following new Clause—

"Duty to publish immigration data

(1) The Secretary of State must ensure that information is regularly published on immigration, including data on asylum and other immigration.

(2) The Secretary of State must, within six months of the passing of this Act, review the International Passenger Survey conducted by the Office for National Statistics and in particular review whether the data that it collects are—

(a) accurate, and

(b) relevant for assessing the scale and nature of immigration to the United Kingdom.

(3) The Office for National Statistics must update the International Passenger Survey in the light of the review."

Baroness Neville-Rolfe (Con): My Lords, noble Lords will know the importance that I attach to numbers. This has become even more important as the number of refugees and migrants entering the UK increases, as they arrive perfectly legitimately from Hong Kong, Afghanistan and, unless disaster can be reversed, Ukraine. My Amendment 81 would require the Secretary of State to ensure that information is regularly published on immigration, including regular data on both asylum and other immigration. I am grateful for the support of the noble Lord, Lord Green, and my noble friend Lord Hodgson of Astley Abbotts.

Many years ago, I was the Home Office adviser in the Downing Street Policy Unit, and I discovered just how difficult it was to get up-to-date figures on the movement of people. The International Passenger Survey improved things, but although revived after a Covid break, it no longer includes the key questions on passenger arrivals or departures that the ONS needs to produce accurate statistics. Adequate data matters, whatever your position on immigration. It is vital to make provision for housing, schooling, health services and transport, and to prepare for other aspects of the care and employment of migrants.

We had a good and mature debate on Friday at the Second Reading of my noble friend Lord Hodgson of Astley Abbotts's Private Member's Bill on the office for demographic change. Even if the Government were discouraging, a strong case was made for more and better work by the ONS and the Home Office on immigration and asylum data to aid long-term planning. However, today, local authorities bear the immediate impact of the need to look after migrants, and are therefore also in need of immediate and up-to-date data.

As things stand, we risk chaos when there is a surge of arrivals, yet the tone of the response in Committee, certainly in respect of asylum seekers crossing the channel, was to produce less data, including

"presenting data in a way that enhances the public's understanding of key issues and puts the data into appropriate context, as well as the need to prioritise the department's resources."—[*Official Report*, 8/2/22; col. 1552.]

The Commons Library has produced a good report, dated 2 March, on asylum statistics, which perhaps unsurprisingly showed that in 2021 we saw the highest annual figure for asylum since 2003, up two-thirds from 2020, and that work in progress was 125,000 claims —far too high a figure. That is a lot of people waiting. I also picked up from discussions with officials that it was thought desirable to delay the logging of some immigration data for up to a year, to check whether those who had arrived remained.

My noble friend the Minister is always so helpful that I hesitate to be critical. However, taking all this together, it sounds like a move to less up-to-date data,

more spin and fewer facts and figures on which to base sound policy. Knowing the Secretary of State as I do, I am very disappointed and wonder whether this is fully understood by her. In any case, I call on my noble friend the Minister for more reassurance.

Midnight

My second amendment, Amendment 82, follows reports in the media that the publication of a regular daily or weekly count of migrants crossing the channel to the UK was being discontinued. To my mind, this is unacceptable. My amendment therefore provides for at least weekly figures published within seven days, and not all at once in quarterly updates. Rather to our surprise, my noble friend Lord Sharpe of Epsom indicated in Committee that this was the Government's new approach. Given the degree of concern about channel crossings and the abuse of migrants by traffickers who lure them into dangerous boats in busy shipping lanes, I deplore this reduction in transparency.

I have tried to get to the bottom of the matter with the help of our wonderful Library, which has referred me to the data in the Home Office's statistics on irregular migration to the UK. This is monthly data going back to January 2018, and includes data up to December 2021. It was published on 24 February 2022. It contains a good deal of information, including both the number of small boats detected and the number of people in those boats by month, and the number of people in detected small boats by nationality, age group and sex. But—and here is the rub—there does not seem to be any information available on shorter periods, such as by day or by week.

In my opinion, the change in statistical publicity will take more and more of our arrivals below the radar and could provide a further incentive to the wicked traffickers. It is a step in the wrong direction that will be regretted by those trying to deal well with migrants arriving on our shores, such as local authorities, and indeed across this House as a reduction in openness.

I am sorry that we do not have Divisions in Committee any more as I might have won the day then. However, we have a lot to get through this evening, so I am looking instead to the Government for a clear statement of their intentions on providing up-to-date figures on channel crossings, and perhaps some follow-up discussions with me. I am not going to go away on these data issues. I beg to move.

Lord Green of Deddington (CB): My Lords, I support Amendment 80, which I have co-sponsored. The problem is that Covid has sent immigration statistics into a tailspin, to which the Government's response has made matters worse. As I understand it, the Government suspended the International Passenger Survey that took place at all airports when Covid struck, mainly to protect the staff, who would normally have been interviewing people all day. That is fair enough. It was also the case that the number of international passengers fell through the floor, so it was not much of a guide to levels of immigration.

All this roughly coincided with efforts by the ONS to use existing statistical data to estimate migration flows. That effort has already run into trouble. In any case, it is by definition a year late because it relies on statistics that are looked at every 12 months.

The purpose of the amendment is in effect to call for the reinstatement of the International Passenger Survey, improved where possible, so as to have a clearer and more up-to-date indication of where we stand. I need hardly remind the Government that they promised to "take back control" of immigration. At present, they have very little idea of the present scale of immigration, and when they do find out they are likely to have an unpleasant surprise, with very little time to adjust their policy before the next election. That is their problem.

I will also speak briefly on Amendment 81, which concerns people crossing the channel. The Home Office has announced that it will publish the statistics on only a quarterly basis. I hope that is wrong and that the Minister will be able to say that it will be much more frequent than that.

There seems to have been a kind of fix between the Office for Statistics Regulation and the Home Office, whereby it was agreed that quarterly publication would ensure that the statistics were

"put into the longer term and wider immigration and asylum context and so better support the public debate and understanding".

Well, "weasel words" does not describe it. What they are actually doing is insulting the public's intelligence. If they go on with that policy, they are simply trying to keep the facts from the public on a matter of considerable public concern. So it is not surprising that a number of MPs have actually attacked this move, with one calling it an attempt to cover up failure while another said that it was "burying bad news". I regret to say that that may very well be an accurate statement of the position. The Government clearly have a serious problem here, exacerbated by their previous promises, but they will have to deal with it, and deal with it honestly.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have put my name to Amendment 80, which I am pleased to support—and I also support Amendment 81 very strongly as well. My noble friend Lady Neville-Rolfe is a demon for data, as she has just demonstrated in the House, as a basis for good decisions and keeping the public well informed about what is going on around them while avoiding rumour and anecdote, which takes us to a bad place, particularly in areas as sensitive as immigration. Therefore, I particularly share her view, and the view of the noble Lord, Lord Green of Deddington, that the Government's decision to reduce transparency about the flow across the English Channel is regrettable. It is clearly an area of considerable public concern and, for better or worse, we will not solve it by not publishing the figures—that is likely to make it worse.

I shall add one thing on the international passenger survey, when we come to relaunch, refocus and redesign it. I was once questioned as part of that survey, when I was travelling through Heathrow, and I was very pleased to answer the lady, who was very good and helpful. I went on and talked to her a bit about her job, and I can offer the House three take-aways. First, under no circumstances do you cross-question; so if someone says that they are coming here to be a plumber in Cardiff, a plumber in Cardiff they are—there is no question of whether they might be something else. That is not your job; you just write that into the form.

[Lord Hodgson of Astley Abbotts]
The second was that you tended to have a predominance of older people answering the form. She said that younger people would be in a hurry, pushing on, and they tended not to want to stay and answer her questions—or there were not many of them. Older people seemed to have more time and, therefore, she felt that the survey was biased towards older people. Thirdly, and finally, on the issue of the early morning or transcontinental flights, known as the red-eye flights, unsurprisingly those people coming off those flights did not want to answer a survey—they wanted to get to a shower, a bed or their office. She told me that so difficult had it been that they had started reducing the number of staff who were on the early shift, and they brought full staffing on at about 8.30 am or 9 am, when people were in a more helpful mood—perhaps that is the best way of putting it.

I leave it to the House, and to my noble friend the Minister, but with that sort of anecdotal background, this can hardly be a system that inspires confidence as to the accuracy and value of the data that it collects. If we are going to relaunch it, we need to think much more clearly about how we are going to gather data in a way that creates confidence and trust.

Baroness Fox of Buckley (Non-Afl): My Lords, I will speak in support of Amendment 80 and, partially, Amendment 81. On Amendment 80, it is common sense—and would be helpful to all sides of the debates on this Bill that arose in Committee and on Report—that we should know more. As the noble Baroness, Lady Neville-Rolfe, has said, whatever our analysis or principles, we would all be helped if we had reliable data in the public square on asylum and immigration because we could then perhaps do some myth-busting.

When you talk to people outside of this House, there are a range of responses to this issue and, indeed, to our discussions here on the Bill. There is some perception that borders are open, and that there are too many people flooding into the UK for society to cope. Some people will even go so far as to say that we are full. I do not think that we are full but, as far as some are concerned, it looks as though we are being overwhelmed. They use the evidence of their own eyes, watching people crossing the English Channel weekly, sometimes daily, with a perception that nothing is being done. I know that this Bill is trying to do something about precisely that, but the perception is that all these people are coming in and nothing is being done.

I have said before that I do not believe that the people making those observations in public are motivated by xenophobia. I have a number of observations. The UK may not be full—it is not full—but if you live in one of the many towns where there is a chronic housing shortage, you are near the top of the housing list and then you get bumped, you may have a perception that it is to do with immigration because some refugees have been given housing. British citizens from all ethnicities can become frustrated and can feel as though there are indeed too many people coming to the UK. We need to have the figures to be able to refute that, or to do something about it. Also, as it happens, you need the figures to plan how we can get more housing and deal with the lack of services—because, actually, the problem is not too many people but not enough services. We need to know, and that is why the data would be helpful.

My second point is about lack of trust, a sense that those in authority are not prepared to tackle this issue; that it is too difficult. Often, that takes the form of people believing that lies are being told about the figures and the real numbers are being hidden. It is in all our interests in restoring trust that we are not hiding any figures. Also, confusion remains over different categories of people wanting to come to the UK. Even in this House, throughout this debate there has been slippage in talking about migrants, immigration, asylum seeking, refugees and so on; they are all too often conflated.

This is further confused by reality. For example, in my view, there are not enough opportunities for unskilled economic migrants to make their life here. I have to persuade my fellow citizens of that; they do not necessarily agree. Regardless, many undoubtedly present themselves as asylum seekers here because of the confusion. I know that it is not a clear picture; none the less, it would surely help to detoxify the issue if politicians were open and honest. That would mean our having much more granular information about the numbers of all types of people living in the UK and their status here.

Finally, I have reservations about Amendment 81 asking for weekly figures of the numbers entering the UK across the English Channel. My reservations are based on the image of some ghastly nightly announcement like those Covid death announcements, which were so often demoralising and not necessarily very reliable. I do worry about scaremongering, or that stats might be used as a substitute for analysis or context, but, on balance, I believe that sunlight is the best disinfectant and the more information in the public realm, the better. This is not because I am particularly enthusiastic about data or into number-crunching, like some other noble Lords. No nation state can claim to have meaningful sovereignty if it does not know or check, or has no control over, the number of people living within its borders. It comes over as indifference to the worries of people who are already citizens here if it looks like we are being evasive about those numbers, or not openly telling them the truth.

Lord Paddick (LD): I hope that I do not disappoint noble Lords, but I generally agree with all the speakers before me, particularly the noble Baroness, Lady Fox of Buckley. We agree with Amendment 80 in principle, in that there is a definite need for accurate immigration data. In particular, the public need to know what net immigration to the UK is—that is, the number coming into the UK set against those emigrating. In particular, they need to know how many of those are seeking refuge from war and persecution, such as those trying to come to the UK from Ukraine, and how many are effectively economic migrants, whether workers or students, who make a contribution to the economy as either workers or consumers. The former—genuine refugees—arguably have a stronger case for coming to the UK than those who want to further themselves or their careers. As I have said numerous times, in recent years only six in every 100 immigrants have been refugees.

12.15 am

The noble Lord, Lord Green of Deddington, whom I hope knows by now that you can speak only once on Report—I see that he is trying to get to his feet—

Noble Lords: Oh!

Lord Paddick (LD): I thought that I would short-circuit the process. The noble Lord said that Covid had sent immigration into a tailspin. Certainly it has distorted the immigration figures and, although refugee numbers were high in 2021, as the noble Baroness, Lady Neville-Rolfe, said, that is because they were much lower in the previous two years because of Covid.

The International Passenger Survey is not the vehicle by which accurate immigration figures should be counted, as the noble Lord, Lord Hodgson of Astley Abbotts, said. The IPS conducts between 700,000 and 800,000 interviews in a normal year, of which over 250,000 are used to produce estimates of overseas travel and tourism, so I do not even think that it is intended to be an accurate measure of people coming here to live, as such. As the noble Lord said, the people who conduct these surveys come up to you with an iPad and ask you a series of questions, none of which is verified, and participation is voluntary. This is hardly a basis for accurate migration figures.

Can the Minister please tell the House how the Home Office keeps track of those entering and leaving the UK, particularly those entering visa-free from the EU/EEA and the 10 other countries whose nationals can now use the e-passport gates? In particular, how do the Government keep track of how many of those leave at the end of the maximum six-month period? Can the Minister also explain why citizens of the United States, say, can enter visa-free and use the e-passport gates but UK citizens cannot do the same when entering the United States? I thought that we were taking back control of our borders.

Amendment 81, as drafted, would include those crossing the channel by ferry and by Eurostar legitimately, which is not quite what the noble Baroness was seeking to achieve.

Lord Coaker (Lab): My Lords, I will briefly say that, like the noble Lord, Lord Paddick, I agree with most of what many noble Lords have said. The need for accurate immigration data is absolutely fundamental to any discussion on this issue. The noble Baroness, Lady Fox, made this point: one of the things that is important is to distinguish clearly between immigration, asylum and migration. All that gets conflated into one, which is not helpful to the debate or the discussion, and it simply confuses people. It would be interesting to hear from the Minister the Government's position on data. Irrespective of the debate that we will have about policy, if we are going to build trust, that data basis is essential not only for the public but for us to understand the policy prescriptions that we will debate between ourselves.

This is in line with Amendment 81 of the noble Baroness, Lady Neville-Rolfe: on trust, whatever the rights and wrongs, the decision of the Government to abandon the daily figures for migrants crossing the channel was a disaster in public relations terms, because people knew that the Government were failing on it. It was going up and up, and the Government were making prescription after prescription, in terms of policy, to try to deal with it. In the end, they brought the MoD in, in a confused way where we are still not sure how that is meant to work, and they are going to quarterly figures. What people say to me, and what I think—to be perfectly blunt, although I am not a cynic—is that the Government would not have acted as quickly as that if the numbers were going in the right direction; that is what people think. If people think you hide figures when they are bad, and publish them only when they are good or meet your policy objectives, it is no wonder there is distrust among the public about official statistics.

The amendments before us are absolutely essential. They ensure that we have data which is accurate, objective, allows us to make decent policy decisions, and is a basis for our debates. Can the Minister say something about what the Government's policy is on data? Also, what is happening with respect to the migrants crossing the channel? What is the figure today, compared to what it was a couple of weeks ago? When can we expect the next figure? When the Government are seeking to build trust in passing the Bill—controversial in its own right—why on earth have they taken the decision, which is hard to comprehend, to produce figures on a quarterly basis? It simply looks as though they are hiding bad news.

Lord Stewart of Dirleton (Con): My Lords, I thank noble Lords for their amendments and their participation in this debate. I note that their interest lies in ensuring that the Secretary of State publishes regular data on a range of areas on immigration. I acknowledge the importance which my noble friend Lady Neville-Rolfe attaches to statistics, and I acknowledge the important work which the noble Lord, Lord Green of Deddington, has carried out over many years, which serves to inform debates not only in the public sphere but in this place.

I assure the House that the Home Office provides a wide range of immigration data on a regular basis and has done for many years. This includes information on many parts of the immigration system, including the asylum and resettlement systems, returns and detention, and other areas such as visas and citizenship. All this demonstrates our commitment to ensuring that the public have the information they need to understand migration trends, and that the approach to small boat arrivals is in line with these other statistics on the immigration system.

The Home Office reviews the statistics that it publishes as a department, in line with the *Code of Practice for Statistics*. Where it is clearly in the public interest to do so, it will publish new statistics and amend existing statistics to ensure they continue to provide transparency around key government policies. However, we must weigh up the need for more statistics against other considerations. This includes the practicalities and costs of producing resilient, assured data derived from operational systems, presenting that data in such a way as to enhance the public's understanding of key issues, and putting the data into appropriate context, as well as recognising the need to prioritise the department's resources.

[Lord Stewart of Dirleton]

Amendment 80 would require reviewing and updating the International Passenger Survey by the Office for National Statistics. I emphasise that the ONS is a statistical agency, which is independent of government, and whose work is overseen by the UK Statistics Authority. While the Home Office publishes statistics in relation to the operation of the immigration system, the ONS is responsible for the national migration and population estimates. It would be inappropriate, I submit, for politicians to interfere with or seek to direct the National Statistician in his statistical duties.

My noble friend Lady Neville-Rolfe and the noble Lord, Lord Green of Deddington, referred to the International Passenger Survey, as did my noble friend Lord Hodgson of Astley Abbots. Prior to April 2020, the Office for National Statistics used this to measure migration but it is important to note that, as your Lordships have heard, it is no longer used for that. While the noble Lord, Lord Green of Deddington, calls in effect for the reinstatement of the IPS, I have to advise the House that it was the ONS that concluded that the IPS had failed to meet changing user needs. It did not tell us what we needed to know about migrant patterns or give us enough detail to get a robust understanding of migration. I happily adopt the useful points made in this regard by the noble Lord, Lord Paddick.

As acknowledged by the noble Lord, Lord Green of Deddington, the IPS was paused during the pandemic. The Office for National Statistics is instead working on producing statistics that will tell us more about migrant patterns. This is a work in progress but it should better meet the needs of policymakers. It is experimental statistical work, and we do not yet know whether it will provide robust answers, but the Home Office is committed to supporting ONS statisticians in exploring every avenue. We need to ensure, as I think the House agrees, that we have a clear understanding of such issues and their implications for the data before we publish anything or we risk doing precisely what the noble Baroness, Lady Fox of Buckley, said we risked: misleading the public and undermining faith in statistics, rather than enhancing the public's understanding of such important matters.

In relation to Amendment 81, the noble Lord, Lord Coaker, from the Opposition Front Bench and others have pressed us on the alteration or the presentation of small boat statistics. Following advice from the independent UK Statistics Authority on making sure statistics on small boat crossings are published in an orderly way, the Home Office published a new statistics report on irregular migration to the United Kingdom. The report, which includes statistics on those arriving across the channel in small boats, was published for the first time on 24 February, covering data up to December 2021. We will update on a quarterly basis.

The decision to publish small boats figures in a quarterly report ensures regular statistics are released in an orderly, transparent way that is accessible to everyone, meeting the principles set out in the code of practice for statistics. The approach has been particularly important in allowing us to present small boats data in the wider context of longer-term trends, other methods of irregular entry and the immigration system more widely, and hence to provide statistics on a more sound basis. Where it is clearly in the public interest to have more frequent releases of information, we will consider this, as we have done with the EU settlement scheme, on which we publish statistics monthly.

In the case of small boats, publishing frequent updates will not provide sufficient time to collate the data collected in the field by operational staff and integrate that with the information from the asylum applications. Nor will it allow us to perform the robust assurance processes we undertake for our wider published statistics. This increases the risk of incomplete or incorrect data being put into the public domain.

The motivation for these changes is not to obfuscate or conceal. It is an attempt to provide more useful statistics —not to hide figures but to provide more assured data. Given that assurance, I ask the noble Lord and the noble Baronesses to withdraw their amendment.

Baroness Neville-Rolfe (Con): My Lords, I thank my noble friend the Minister for his comments, although I have to confess a sense of disappointment. Cutting resources and costs devoted to immigration data, whether by the ONS or the Home Office, may prove to be a false economy, and I am not convinced of the case for moving to quarterly reporting on small boats. It feels a little bit like hiding the story.

However, I am grateful to all noble Lords for their welcome support. I think we are all agreed on the need for accurate and reliable data on asylum and immigration, and on small boats and both directions of travel. Like the noble Baroness, Lady Fox, we should respect the principle that sunlight is a powerful disinfectant. It should help to build trust but, for now, I beg leave to withdraw Amendment 80.

Amendment 80 withdrawn.

Amendments 81 and 82 not moved.

12.30 am

Amendment 83

Moved by ***Baroness McIntosh of Pickering***

83: After Clause 78, insert the following new Clause—

"Fees

(1) Section 68 of the Immigration Act 2014 is amended as follows.

(2) After subsection (9), insert—

"(9A) Notwithstanding subsection (9), in setting the amount of any fee in relation to registration of British citizenship the Secretary of State—

(a) must not set that amount at a level beyond the Secretary of State's estimation of the administrative costs of the function to which the fee relates,

(b) must have regard to the need to promote British citizenship as the nationality of all persons connected to the United Kingdom and British overseas territories citizenship as the nationality of all persons connected to the British overseas territories, and

(c) may have regard only to—

(i) the costs of exercising the function,

(ii) fees charged by or on behalf of governments of other countries in respect of comparable functions, or

(iii) any international agreement."

(3) After subsection (10), insert—

"(10A) Fees regulations must provide that no fee is to be charged for—

(a) the registration of any child who is looked after by a local authority, or

(b) the registration by statutory entitlement of any person to correct any historical legislative unfairness.""

Baroness McIntosh of Pickering (Con): My Lords, it gives me great pleasure to move Amendment 83. I say at the outset that I shall neither speak to nor move Amendment 84. I take this opportunity to thank the noble Baroness, Lady Lister of Burtersett, the right reverend Prelate the Bishop of Durham and the noble Lord, Lord Alton of Liverpool, for their support for this amendment.

The attraction of this amendment is that, after this matter was raised in Committee, it marries together two separate ideas—one pressed so eloquently by a long-standing campaigner on these issues, the noble Baroness, Lady Lister of Burtersett, and the other by me in a separate amendment. I say how delighted I am that we have the support of the Constitution Committee of this House in its HL paper 149 of January this year. Paragraph 15 states clearly:

"Clause 1 provides that a person is entitled to be registered as a British overseas territories citizen if a number of conditions are met. This clause corrects the historical inability of mothers to transmit citizenship. It is unclear what fees will be charged for registration applications under this clause and similar provisions"

in later clauses. It goes on:

"In a recent case the Court of Appeal held that a fee of £1,012 for certain registration applications by children was so high as to be unlawful."

In paragraph 16, the Constitution Committee therefore requests:

"The Government should clarify its intentions on the amount of fees to be charged under clauses 1, 2, 3 and 7."

Amendment 83 deals specifically with Clause 1. In the amendment, we state that no fee can be set above the cost to the Secretary of State of registration and that the cost must be set having regard to the vital importance of rights to citizenship by registration, securing the shared connection of all British persons; can be set only having regard to the specified principles; must not be charged to register the right to citizenship of

"any child who is looked after by a local authority";

and must not be charged to register the right to citizenship of any person under a statutory provision specifically intended to correct past legislative discrimination or injustice that had wrongly excluded that person from citizenship.

It is clear from the Explanatory Notes—I entirely endorse this—that the purpose of Clause 1 and the whole of Part 1 is to correct a historical wrong, saying:

"This clause creates a registration route for the adult children of British Overseas Territories citizen … mothers to acquire British Overseas Territories citizenship".

The wrong is that:

"Before 1 January 1983 children could not acquire British nationality through their mother. While registration provisions have since been introduced to rectify this issue for the children of British citizens (section 4C of the British Nationality Act 1981), this was not changed for children of"

British Overseas Territories citizens.

I am sure your Lordships would agree that charging £1,012 for a child and £1,126 for an adult to be registered as a British citizen is prohibitively expensive when the cost to the Home Office of registration, as estimated by the Secretary of State, is only £372. It could lead to many in this position not seeking registration because they cannot afford the fee. I ask my noble friend the Minister to tell us, in summing up the debate, where people—particularly children but also adults—will be expected to find the fee.

The remaining £640 in the case of a child, and more in the case of an adult, is money raised by the Home Office from the process that these British children and adults must go through to secure their citizenship rights. I do not know whether that is an unintended consequence of the way the fees are structured, but it does not seem fair to me.

In the case of PRCBC and others v SSHD, in February 2021, the Court of Appeal emphasised that for many

"children of a single parent on state benefits. it is difficult to see how the fee could be afforded at all."

In its judgment handed down on 2 February 2022, the Supreme Court emphasised that these findings are not disputed. The court has similarly emphasised the importance of citizenship to a person's identity and sense of belonging, and to their capacity to fully participate in social and political life. The Supreme Court Justice ruled that this a political decision, and I put it to the House this evening that it is now for us to rise and respond to the challenge and make sure that, as this is a matter of policy that is for political determination, we put it right this evening.

In conclusion, this is a very modest amendment. It seeks simply to remove the power to use the function of registering British people's citizenship to raise money to pay for the immigration system and to restrict any fee that is charged to cover the estimated costs of registration. It does this by amending the powers in Section 68 of the Immigration Act 2014 to clearly distinguish rights to be registered as a British citizen from the many and diverse Home Office immigration functions to which those powers also apply. These people have lived their whole lives in this country and essentially have nowhere else to go. I do not believe that it is right that this fee should cause a barrier to them obtaining full citizenship, which, in my view, is their right.

As I said earlier, the amendment also precludes registration fees being charged in two specific cases. Local authorities should neither be charged nor discouraged from acting to secure the citizenship rights of British children whom they are looking after. Further, where a right of registration is provided to correct this historic injustice in British nationality legislation, the only fee should be to cover the process of that application.

With those remarks, I hope that this amendment will find the favour of the House and not just of those have who co-sponsored it, thereby correcting a historic injustice and ensuring that those who are entitled to this will actually be able to afford it. I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, I am very grateful to the noble Baroness, Lady McIntosh of Pickering, for tabling these amendments. I welcome

[Baroness Lister of Burtersett]
her to the noble band of terriers who have been snapping at the Home Office's heels on the issue whenever the occasion arose.

In Committee, the Minister, who to be fair is new to the issue, tried some of the old, discredited arguments. Notably, he referred to the

"sustainability of the system and fairness to the UK taxpayer."

When challenged, he acknowledged that the system to which he referred was the migration and borders system. Once again the Home Office is conflating citizenship with immigration. We still await a convincing reason as to why children who were born or who have grown up in this country should be subsidising the migration and borders system. Moreover, the distinction between this group and taxpayers is simply not valid, as the children's parents are already taxpayers and the children will be in future and may already be paying indirect taxes.

The Minister also tried to reassure us that there are a number of exceptions to application fees which protect the most vulnerable, including young people who are in the care of a local authority and applying for limited or indefinite leave to remain. However, the exceptions apply only to leave to remain, and when challenged he accepted the distinction between citizenship and leave to remain, saying:

"There is no arguing about that at all."—[*Official Report*, 27/1/22; col. 469.]

When challenged again later, he assured me that he would not try the argument again today. Now that both he and the noble Baroness, Lady Williams of Trafford, have accepted that that argument will not wash in this House, and the importance of citizenship has been a thread running through the debates on the Bill, I hope he will not attempt to use the argument again this evening.

In Committee, the Minister also promised to write in response to a number of questions on the best interests review, for which we have been waiting, like Godot, for a good year since the Court of Appeal ruled that the current fee is unlawful because of the failure to take account of the best interests of children under Section 55 of the Borders, Citizenship and Immigration Act. I am grateful to him for the letter, although I found it a bit confusing. However, as the noble Baroness said, at least we now have the Supreme Court judgment, which did not dispute the best interests finding, and the Minister's letter confirmed that the best interests Section 55 review will be published. My understanding is that it will be published by early May. Can he confirm that and say whether it will include a race and disability equality assessment? Can he also give an assurance that Parliament will be given an opportunity to debate the review report?

It is difficult to believe that a fee of over £1,000 is in the best interests of any child who has to pay it, given the evidence of the insecurity, alienation, exclusion and isolation it can cause, as noted by the Court of Appeal. The Supreme Court judgment found that, best interests aside, as the noble Baroness said, it is for political determination to limit the Home Secretary's discretion in setting the fee level. The Bill gives us the opportunity to so determine politically.

Noble Lords have frequently cited the former Home Secretary Sajid Javid, who described the fee as "huge". Less well known is that, just shortly before becoming the current Home Secretary, Priti Patel also questioned the level of the fee, according to a *Times* report, and indeed the Minister accepted that it is "a lot of money". We have an opportunity this evening—or rather, this morning—to end the long-standing injustice created by this huge fee that has served to exclude thousands of children from their right to register as citizens. I hope we will take it.

Lord Alton of Liverpool (CB): My Lords, I am very pleased to speak at this time of day in favour of this amendment, which was so ably moved by the noble Baroness, Lady McIntosh, and supported by the noble Baroness, Lady Lister. I have spoken at earlier stages, so I do not need to detain the House for very long this evening. I have spoken not just on earlier stages of the Bill but over the years about the injustice of this extraordinary sum of money being charged in citizenship fees, especially in the case of children, as we have just heard. Like the noble Baroness, Lady Lister, I was struck by Sajid Javid's own remark about the huge cost of placing such a large amount of money on the right to become a British citizen—over £1,000.

I gave a witness statement to the High Court about what the intentions of the 1981 legislation actually were. I served in another place then and I spoke in the debates in the House of Commons at that time. The Government of the day—a Conservative Government—rightly wanted to ensure that every person in this country saw themselves as a British citizen and gave them routes to achieve that status. I think that the Home Secretary and the Prime Minister of the day would be horrified at the idea that we would try to make money out of this process and thereby exclude people who ought to become British citizens from being able to do so. I particularly draw the attention of the House to proposed new subsection (2)(c)(i), as inserted by Amendment 83, which deals with the costs of exercising the function.

12.45 am

Whatever it costs the Home Office to administer, these fees will still be reclaimable. What will not be reclaimable is the excess which is being made in what some have described as a "nice little earner". That cannot be appropriate—not in the case of citizenship. The largest group of people excluded by these fees are thousands of people born in the United Kingdom who have grown up and lived here all, or nearly all, of their lives. Some people in the group are living in the UK in their twenties and thirties, still excluded from the citizenship rights which have been theirs from at least the age of 10. The impact, in some instances, is passed on when their children are in turn born without citizenship and face the same exclusion by the same fees. Those people are entitled to citizenship by registration, but the fees have undoubtedly excluded them.

I like what the Government have said about the importance of citizenship. It has been alluded to by the noble Baroness, Lady Lister. It is something which I have cared about a great deal, as the noble Baroness, Lady Williams, knows. I have shared with her some of

the work I did for over 20 years holding a chair in citizenship at the University of Liverpool. I passionately believe that we must integrate people fully into our society. This includes everything from the teaching of language to the teaching of patriotism: the duty and belief that it is worth being a citizen of this country and upholding its values. All of us who were privileged to sit today in another place when President Zelensky addressed both Houses of Parliament really had it brought home to us how fortunate we are to live in a country like this with the rights, freedoms and liberties which we enjoy here. To adapt a phrase which was once used by an eminent citizen of the Roman Empire,

"we are citizens of no mean country".

We are citizens of a great country, and others should be able, and entitled, to become so as well.

The Project for the Registration of Children as British Citizens and Amnesty International UK have brought together an impressive coalition of support from the community and children's and legal organisations for Amendment 83, the amendment of the noble Baroness, Lady McIntosh.

The director of law reform at the Law Society of Scotland said:

"The Law Society of Scotland supports Amendment 83. It is important that registration fees do not present a barrier to people who want to be British citizens. We particularly support subsection (3) of the amendment which requires that no fee is to be charged for the registration of any child who is looked after by a local authority, or the registration of any person to correct a historical legislative unfairness."

As we have heard, the Supreme Court has batted this one back to us and said that this is now a matter for Parliament to decide. This is our opportunity in this Bill. I will greatly regret if it is not passed this evening. However, I am certain that the noble Baroness, Lady Lister, alongside her new-found ally, the noble Baroness, Lady McIntosh, will recruit many more "terriers"—as she puts it—to the cause to ensure that we will continue chomping away at the ankles of the Minister until something is done to put this injustice right.

The Lord Bishop of Durham: My Lords, in rising to support Amendment 83, tabled by the noble Baroness, Lady McIntosh, to which I have added my name along with the noble Baroness, Lady Lister, and the noble Lord, Lord Alton, I declare my interests as set out in the register.

I set out my reasons for supporting this amendment in Committee. We should simply not have a situation whereby people, including children, are excluded from the citizenship to which they are eligible because they do not have funds. It is nonsensical for the Government to put up a barrier to people being, and feeling, fully part of our society. The Government rightly talk about the importance of integration, community cohesion and levelling up. This policy works against all three of those.

Being a British citizen is completely different from indefinite leave to remain, and this must be constantly recognised. If people are eligible to be citizens, cost should not be a barrier. The registering of British people's citizenship should have no revenue function, and fees should be removed altogether for children in care and for those whose registration is provided to correct a historical injustice.

I simply urge the Minister to hear the strength of feeling in the House, accept this amendment and deal with it once and for all.

Lord Hacking (Lab): My Lords, I am wholly familiar with Governments siphoning off funds raised for one purpose and using those funds for a quite different purpose. I was particularly conscious of that during my years as president of the Civil Court Users Association, when the Government collected very large funds on the issue of writs and the like needed in the litigation process, and then used that money in a quite different sector of the court system.

I am also familiar with the disproportionate fees, compared to the administration costs, involved in the process of obtaining British citizenship. The noble Baroness, Lady McIntosh, has already given examples of that which I willingly adopt. I am aware too of this problem for a rather more personal reason, in that young members of my family, who have very little resource, have been in the process of obtaining British citizenship and have been heavily penalised—not by £1,000 but by £2,000 and more. They were young, and the family were able to provide the necessary support. But that is an example of the rampant unfairness.

My recollection—I cannot put my finger on it exactly—is that one of your Lordships' committees recently investigated this problem and issued a report, in which it said specifically that the correct level of fees involved in the obtaining of British citizenship should be based on the administration cost and nothing else. However, the practice continues, and the provision contained in this amendment to Section 68 of the Immigration Act 2014 is very well drafted and sets out precisely what should be done. It reads as follows:

"in setting the amount of any fee in relation to registration of British citizenship the Secretary of State … must not set that amount at a level beyond the Secretary of State's estimation of the administrative costs of the function to which the fee relates".

There cannot be a fairer or more precise way of addressing the problem, and I congratulate the tablers of this amendment on the care and precision with which they have done it.

Since I have not tabled this amendment, it is not for me to make the decision about whether a Division should be called. That is a matter for those who have brought it forward. I look down at the leaders of my own party to see how they are going to participate in this issue—we have not heard from the noble Lord on my side what position my party is taking.

I would, however, discourage a Division at this time of night. Certainly, when I was last in the House, a number of years ago, if you put forward an amendment at Report and it had been defeated in a Division, you were not entitled to take it further—to Third Reading, for example. The fact is that those who will be voting in whatever Division is called are not in this House and have not listened to the arguments. It is a kind of routine form of voting, not the measured form of voting that happens after listening to the arguments.

Lord Hodgson of Astley Abbotts (Con): My Lords, I am afraid I have to plead guilty as charged to the point made by the noble Lord, Lord Hacking, since I was chair of the committee on citizenship and citizenship

[Lord Hodgson of Astley Abbotts]
engagement that he was referring to, which had among its extremely able members the noble Baroness, Lady Lister, and my noble friend Baroness Eaton.

We came across this issue, so I have some sympathy with the direction of travel of this amendment. In simple terms, while our committee was sitting the fees for naturalisation were raised to £1202, with an extra £80 if you wanted to have a citizenship ceremony. We were told that the cost of administering was roughly half that, so there was an override of about £600.

To be honest, to forgo the citizenship ceremony, which we were able to attend, would be to miss something. It was an extraordinarily moving experience to watch the people enter enthusiastically into their new life. In the margin of the meeting, they did, of course, tell us about the costs that they had to incur along the way. My major reason for supporting the direction of travel, though, is the point made by the noble Lord, Lord Alton. We are trying to promote people to come forward and anything that dissuades them is a mistake. I am not sure that we must have regard to what other countries are charging. That seems to me not necessarily something that will add to the sum of human knowledge; nor do I think there is necessarily not some room for a bit of a surcharge for the overall administration. But the underlying point is that the margin between the cost of providing the service and the cost being charged is too great.

In my view, this amendment—not in this form, but something like it—would impose some financial discipline at a lower operational level because it would impose some direct responsibility. Once it becomes a sort of global figure, nobody cares about it, is responsible for it or does anything to improve the service it is providing. That is why I think this is going in the right direction, even though I do not agree with all the detail.

Baroness Fox of Buckley (Non-Afl): My Lords, I want to support Amendments 83 and 84 and really thank the noble Baroness, Lady McIntosh of Pickering, for putting them forward. I do not know whether she will be grateful but I am also grateful to the noble Baroness, Lady Lister. Whether she wants me or not, I am one of the terriers she has managed to inspire in this instance. I have tried to pursue a bit of theme—I raised it at Second Reading and in Committee—that the Bill should have been used, apart from anything, to send a positive message about the benefits of being a citizen and those special rights and duties characteristic of any nation state. I feel the Government have missed a trick.

It seems to me that these modest amendments could punch above their weight by, on the one hand, removing entirely unnecessary barriers to citizenship but, on the other, making a positive case that we care about citizenship by doing so. It is a reminder that the barriers we are talking about here are not necessary. They are just financial ones. These are people whom the British state, according to its own British Nationality Act, says are entitled to citizenship, so that is not even in dispute. That is what is so irritating about this.

The fees are undoubtedly causing people problems and putting them off realising their citizenship rights. We have already heard the details. But the fact that you can be charged well over £1,000—despite the Home Office estimating that it takes only £372 to cover costs—just makes it feel like a rather grubby money-raising scheme. The amendment rightly tackles the fact that you should restrict any fee to just covering the real cost. I worry that it sends a message that citizenship is being cheapened morally by charging too much.

This goes beyond money because we need to consider what it means. The noble Lord, Lord Alton, and the right reverend Prelate both referred to what this means politically. It is completely counterproductive that citizenship is treated in this financial way because of the impact it has on social bonds and cohesion. Rather than citizenship which allows a sort of national solidarity of citizens—as we have inspiringly seen among the citizens of Ukraine—instead we are socialising new generations into a kind of shadow citizenship status that is fracturing and creates cynicism in the UK's very commitment to the belonging, to equal rights and virtues and to the promise of what it means to be British.

1 am

To quote the High Court again, it said that, by excluding children from their citizenship rights, the fee makes them

"feel alienated, excluded, isolated, 'second-best', insecure and not fully assimilated into the culture and social fabric of the UK."

The context here is the broader problem, which many across parties, in civil society and even prominent members of the Conservative Party know, that there is a real concern about powerful and regressive trends that are tugging hard at those threads of the cultural and social fabric of society, whether it is identity politics or a fashionable hostility to British values, or even to the idea of a "united" kingdom. Why would the Government add to that fragmentary trend by unnecessarily undermining the integration of all their citizens into the nation state?

Could the Minister take back to the Government that this is a miserly, penny-pinching policy that creates a negative relationship between the state and a section of the citizenry, and denies rights for no good reason? He should just get rid of it.

Baroness Bennett of Manor Castle (GP): My Lords, I rise extremely briefly to demonstrate the very great political breadth of the terrier pack of the noble Baroness, Lady Lister. I just tweeted a picture of the text of the amendment with the hashtag #FairFees. It is simply unconscionable that people having to register the right they hold as a British citizen is being treated as a cash cow. To charge any fee to a looked-after child—how incredibly counterproductive is that?

Lord Paddick (LD): My Lords, I thank the noble Baroness, Lady McIntosh of Pickering, for so ably introducing this amendment. I recognise the commitment of the noble Baroness, Lady Lister of Burtersett, and the noble Lord, Lord Alton of Liverpool, on these issues over many years.

Enabling eligible citizens to register their British citizenship is a positive thing, not just for the individual concerned but for society as a whole, for the reasons many noble Lords explained. Fees should not be set so prohibitively high as to prevent anyone who is eligible having their British citizenship officially registered.

We have raised before, and say again: why are immigration and nationality unique among government departments in being required to be self-funding when the services they provide are of benefit to everyone, not just the users of these services? We support the amendment.

Lord Coaker (Lab): My Lords, I join other noble Lords and various noble Baronesses from across the House in welcoming Amendment 83, as tabled by the noble Baroness, Lady McIntosh, the right reverend Prelate the Bishop of Durham, the noble Lord, Lord Alton, and my noble friend Lady Lister. There is universal agreement that fees should not be a barrier to citizenship. I think the Government probably agree with that, so the only plea I make is that they act on it to make sure that fees do not act as a barrier. The Government have the power to do something about this. They can hear what people think about the importance of citizenship as a social glue in our society, and the reverence we all have for it, yet a barrier is placed because of the fee. The Government have it in their power to resolve it. Let us do it.

Lord Sharpe of Epsom (Con): My Lords, I am grateful to my noble friend Lady McIntosh for tabling Amendments 83 and 84, concerning the fees that may be charged in relation to registration of British citizenship. Please be in no doubt that we recognise the strength of feeling on this subject, which I know is of particular importance to my noble friend, as well as the noble Lord, Lord Alton of Liverpool, the right reverend Prelate the Bishop of Durham and the noble Baroness, Lady Lister. I say at the outset that the Government recognise that the acquisition of British citizenship is a significant life event and offers particular value to those able to obtain it, particularly children. All noble Lords agree with this point and have observed it.

Apart from allowing a child to apply for a British citizen passport, British citizenship gives them the opportunity to participate more fully in the life of their local community as they grow up. It also offers specific practical, legal and intangible benefits, including the right to vote on reaching adulthood, of course, and the particular sense of identity and belonging that results from knowing that the country that you have grown up in is your own.

Please let me also reassure the House that the Government are actively considering fees in this space. Following the Court of Appeal judgment in the case brought by the project for the registration of children as British citizens last year, the Secretary of State committed to reviewing the fee in line with her duties under Section 55 of the Borders, Citizenship and Immigration Act 2009. While I recognise that the House has been very patient, waiting for the outcome of that review as though waiting for Godot, it is the Government's view that it was important to allow the Supreme Court to give its view on the questions raised by a separate ground in this case, which considered fundamental questions around whether the powers that underpin the setting of fees had been lawfully applied, before concluding that work. Following the Supreme Court judgment of 2 February, the Secretary of State is currently considering her policy response to the review, and I hope to update the House by early May. I cannot give a specific date.

Furthermore I reiterate that, as regards the new routes introduced by the Bill to correct instances of historical legislative unfairness, it remains the Government's intention not to charge in instances where there has been historical unfairness and/or discrimination. This is in line with our approach to other instances of historical unfairness, where waivers and exceptions were introduced in fee regulations, as is appropriate for provisions of this nature. The Government are currently exploring options in this regard for the routes introduced by the Bill. I hope that this reassures my noble friend to some extent.

However, it is important to consider the legislative history of the fee-setting regime, and the intent that has underpinned it. Since the establishment of the current nationality regime in the British Nationality Act 1981, registration of British citizenship for those who either have an entitlement under the provisions of that Act or who are applying on a discretionary basis under Section 3(1) has been contingent on payment of a fee. Current fee-setting for British citizenship is underpinned by the powers set out under Section 68(9) of the Immigration Act 2014 which, as the Supreme Court has affirmed in its recent judgment, were explicitly authorised by Parliament and empowered the Secretary of State to set fees at a level that reflected the costs of exercising the function, the benefits that accrue to an applicant as a result of acquiring that British citizenship, and the wider costs of the borders and migration system. Parliament also explicitly authorised the maximum amount that may be charged in relation to an application for British citizenship registration at £1,500, through the Immigration and Nationality (Fees) Order 2016, which sets the framework for the current fees set out in secondary legislation.

The wider application of these principles and the powers to set immigration and nationality fees have underpinned the Government's policy over the last decade of moving the borders and migration system to an increasingly self-funded basis, reducing the reliance on the UK taxpayer. Accordingly, fees across several routes, including nationality, have increased to support those broader funding objectives.

However, it is important to be clear on the role that these fees play in supporting the essential work of the border and migration system and particularly in funding the critical activity that supports and safeguards the interests of the people in the UK. These activities, which include ensuring that the UK's borders are secure from threats and illegal activity, the effective operation of resettlement schemes to support those who are in greatest need and the management of a visa system that attracts the best and brightest to contribute to the UK's prosperity, are essential to the delivery of the department's wider mission and objectives.

Any reduction in income from fees must therefore be considered in terms of its impact on these activities, with the likely result being that activity in those areas will be reduced or income must be recovered through other means. This funding includes support for front-line operations that keep the country safe. A need to secure

[Lord Sharpe of Epsom]
funding through other means may impact on fees for economic routes where the department's objective is to attract visitors and skilled individuals to support the UK's economy, which in turn benefits all those who live in the UK, or it will place an increased reliance on the taxpayer to fund these activities, which may in turn reduce the funding available for other important government work.

As such, there is a complex balance of considerations that the Secretary of State must take into account when setting fees, and, in line with the charging powers established by Parliament through the 2014 Act, these have informed the current fees structure. Fees charged are kept under review, as they are in other countries, and, as I have stated, there are ongoing considerations regarding fees charged for citizenship registration specifically, the outcome of which we will share in due course.

Additionally, I emphasise that elements of the amendment, such as the requirement to except fees for children in local authority care, although of course well intentioned, would more appropriately be set out in fees regulations and should not be introduced in primary legislation. In addition, it is not appropriate for a duty to have regard to the need to promote British citizenship in primary legislation that is setting fees. I therefore request that the noble Baroness withdraw her amendment for the reasons that I have outlined.

Baroness McIntosh of Pickering (Con): My Lords, I am humbled by the level of support expressed in the House this evening and outside the House from the Law Society of Scotland, the Project for the Registration of Children as British Citizens and Amnesty International UK. I pay tribute to the long-standing work of the noble Baroness, Lady Lister, and the support that I received this evening from the noble Lord, Lord Alton, and the right reverend Prelate the Bishop of Durham. Very seldom do the noble Baroness, Lady Fox, and I agree, but on this occasion I am delighted to have her support and that expressed by the noble Lord, Lord Hacking, and others. I am particularly pleased to welcome the support of my noble friend Lord Hodgson, who speaks with great authority on these matters. As he described it, the Government are going in the right direction, but I argue that, this evening, I do not believe that they have gone far enough. Therefore, regrettably, I wish to test the opinion of the House on Amendment 83.

1.11 am

Division on Amendment 83

Contents 25; Not-Contents 69.

Amendment 83 disagreed.

Division No. 10

CONTENTS

Alton of Liverpool, L.
Bennett of Manor Castle, B.
Campbell-Savours, L.
Chandos, V.
Coaker, L.
Coussins, B.
D'Souza, B.
Durham, Bp.
Fox of Buckley, B.
Grantchester, L.
Hacking, L.
Hamwee, B.
Hollins, B.
Jones of Cheltenham, L.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kramer, B.
Lister of Burtersett, B.
McIntosh of Pickering, B.
Osamor, B.
Paddick, L.
Smith of Basildon, B.
Smith of Newnham, B.
Stansgate, V.
Stoneham of Droxford, L.

NOT CONTENTS

Ashton of Hyde, L.
Barran, B.
Benyon, L.
Bethell, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Brady, B.
Caine, L.
Callanan, L.
Colgrain, L.
Courtown, E.
Crathorne, L.
Davidson of Lundin Links, B.
Davies of Gower, L.
Duncan of Springbank, L.
Eaton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Godson, L.
Greenhalgh, L.
Hamilton of Epsom, L.
Haselhurst, L.
Hayward, L.
Holmes of Richmond, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Kamall, L.
Kinnoull, E.
Leicester, E.
Leigh of Hurley, L.
Lingfield, L.
Manzoor, B.
McInnes of Kilwinning, L.
Mobarik, B.
Neville-Jones, B.
Neville-Rolfe, B.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Penn, B.
Porter of Spalding, L.
Reay, L.
Robathan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Vere of Norbiton, B.
Wharton of Yarm, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Younger of Leckie, V.

1.23 am

Amendments 84 and 84A not moved.

Amendment 84B

Moved by ***Baroness D'Souza***

84B: After Clause 78, insert the following new Clause—

"Afghan Relocations and Assistance Policy

(1) Within 30 days of this Act being passed, the Secretary of State must amend part 7 of the Immigration Rules on the Afghan Relocations and Assistance Policy ("ARAP") in accordance with subsections (2) to (11).

(2) The Secretary of State must amend paragraph 276BB3 to specify that a person falls within that paragraph if—

(a) at any time on or after 1 October 2001, the person—

(i) was directly employed in Afghanistan by a UK government department, or

(ii) provided goods or services in Afghanistan under contract to a UK government department (whether as, or on behalf of, a party to the contract); and

(b) because of that employment or provision of goods or services, the person's life or safety is at real risk.

(3) The Secretary of State must revoke paragraph 276BB4.

(4) The Secretary of State must amend paragraph 276BB5 to specify that a person falls within that paragraph if the person meets conditions 1 and 2 and one or both of conditions 3 and 4, as set out in subsections (5) to (8).

(5) Condition 1 is that at any time on or after 1 October 2001, the person worked in Afghanistan alongside, in partnership with or closely supporting and assisting a UK government department or for a British-based organisation or institution founded by, funded by or otherwise connected to the UK government.

(6) Condition 2 is that the person, in the course of that work, made a substantive and positive contribution towards the achievement of—

(a) the UK government's military objectives with respect to Afghanistan,

(b) the UK government's national security objectives with respect to Afghanistan (and for these purposes, the UK government's national security objectives include counter-terrorism, stabilisation, counter-narcotics and anti-corruption objectives), or

(c) the UK government's human security objectives with respect to Afghanistan (and for these purposes, the UK government's human security objectives include interventions to reduce violence, ensure basic security and promote human rights and the rule of law).

(7) Condition 3 is that because of that work the person is or was at high risk of death or serious injury.

(8) Condition 4 is that the person holds information the disclosure of which would give rise to or aggravate a specific threat to the UK government or its interests.

(9) The Secretary of State must amend paragraph 276BB2 to reflect subsections (2) to (8) of this section.

(10) The Secretary of State must insert into the Immigration Rules a route for additional family members of locally employed staff to apply in exceptional circumstances for relocation, and ensure this route is provided on terms that are no less favourable than those contained in the Home Office's Additional guidance on the eligibility of additional family members under the Afghan locally employed staff relocation schemes, published on 4 June 2021.

(11) The Secretary of State must specify in the Immigration Rules that any decision to exclude a person who would otherwise be eligible for the ARAP scheme must be made in accordance with the exclusion criteria set out in Article 1F of the 1951 Refugee Convention, and provide independent and transparent due process guarantees in relation to any exclusion decision, including impartial decision makers, disclosure of relevant information and evidence and rights of appeal."

Member's explanatory statement

This new Clause would expand eligibility for ARAP by amending the Immigration Rules. It would insert into the Rules a relocation route for additional family members, which can be no less favourable than the current Home Office guidance, and limit the basis on which persons, who would otherwise be eligible for relocation under ARAP, can be excluded from the scheme.

Baroness D'Souza (CB): My Lords, I return to the Afghan relocations and assistance policy. This stand-alone amendment seeks to protect and indeed make welcome those Afghan citizens who worked with UK bodies to promote democratic policies and, as a result, are in danger of retaliation from the current Administration in Afghanistan. Most of us will have heard terrifying stories of young women and, by extension, their families hiding in appalling circumstances simply because they are known to have worked with British organisations, including the British Council, the BBC and other non-governmental organisations.

Recent reports by reputable bodies not only indicate public support for Afghan resettlement but cite many distressing case studies of the rejection by ARAP of those who played a central role of advancing the UK's military and security objectives. This amendment seeks to revise the Immigration Rules in three main ways: by broadening and clarifying the eligible criteria; by narrowing the exclusion criteria; and by inserting into the Immigration Rules a route for the relocation on additional family members. This amendment also brings the Immigration Rules into conformity with the obligations due as a signatory to the 1951 UN refugee convention.

Despite many brave words, the current schemes for rescuing Afghan citizens are limited, in many cases exclusionary and somewhat duplicitous, in that the resettlement offer has been gradually reduced, leaving many hundreds if not thousands at risk, purely because of their association with the UK. We have a moral duty; we chose to go into Afghanistan with many different aims and goals, and often these goals were implemented by Afghans who served us well and courageously. We need to honour our commitment to protect them, as well as our international reputation as a fair and decent country. I might add that, if this amendment is accepted, it will also benefit Ukrainian refugees, who will no doubt continue to seek refuge in the UK for some time to come. I beg to move.

Baroness Coussins (CB): My Lords, in supporting Amendment 84B, I declare my interest as a member of the MoD's former assurance committee on locally employed civilians, set up to monitor the intimidation policy for Afghan interpreters. My concern is that, without this amendment, the relocation possibilities available to former Afghan interpreters will be significantly and unfairly reduced. I acknowledge, of course, that before ARAP our ex gratia redundancy scheme, though not without its problems, nevertheless managed to relocate well in excess of 5,000 interpreters and their families, and I think that number is probably now significantly higher. But ARAP was meant to improve eligibility even further. It now appears that the Government are determined to row back again with new restrictions, even though, at the point of the Taliban's takeover, there were interpreters who had already obtained security clearance under either the ex gratia scheme or ARAP.

We need—and these people deserve—clarity. This amendment would ensure that they were eligible under category 1 of ARAP. They also deserve transparency of decision-making, but last July the Home Office rejected 21 interpreters on national security grounds for relocation under ARAP, despite the fact that the MoD had already confirmed that they were eligible. Their rejection letters from the Home Office gave no information on why this change of heart was made. Why is there not better alignment between the MoD and the Home Office on this? Nine of them have already had their rejections overturned, following judicial review, and this amendment would ensure that the others could also come to safety in the UK, as well as their family members, as was always the original intention and scope of the pre-ARAP scheme.

1.30 am

Baroness Bennett of Manor Castle (GP): My Lords, I will speak briefly. The case has overwhelming been made, and this has broad cross-party support. I want to make one point. A few hours ago—yesterday, now—the

[Baroness Bennett of Manor Castle]
Independent reported concern from British staff in our embassy in Kyiv, who have of course been relocated, that Afghanistan part 2 is happening, with local British embassy staff, some of whom have worked there for many years, are being denied visas to the UK and the chance to escape the high risk of Russian retribution and the obvious dangers of Kyiv. This amendment would set the right model for this and future situations. I am interested to hear from the Minister, given the urgency of the situation for the people in Kyiv now, what the Government's plans are.

Baroness Smith of Newnham (LD): My Lords, I support this amendment. The hour is very late and it is customary at this time of night to say that I shall be brief. I am not proposing to say that—which is probably just as well because, normally, if a noble Lord says they are going to be brief, they talk for at least 10 minutes.

This is an incredibly important amendment. In many ways, it is worthy of a debate in its own right—perhaps a Question for Short Debate—which would allow the House to discuss the details and the Minister to give a full answer. Six months ago, we were all talking about Afghanistan and our duties to people who had worked with us, alongside our forces, for the British Council and as security guards. In the last two weeks we have heard little about Afghanistan. When the Secretary of State for Defence was asked on the radio yesterday morning whether the Afghan citizens resettlement scheme had been opened, he was unable or unwilling to answer. He eventually said, "Well, it's a matter for the Home Office, and by the way we're very busy with Ukraine." Yet as the noble Baroness, Lady Bennett of Manor Castle, has pointed out, the issues that we are thinking about here have parallels in Ukraine.

Importantly, the fact that there is a war in Ukraine does absolutely nothing to take away our moral duties to those people in Afghanistan who have been left vulnerable because they worked with us—perhaps for the British Council as contractors. There is a group of people who are petrified now, moving to safehouses on a regular basis and going underground so that we do not know where they are. Their lives are at risk. While the world is looking at Ukraine, we still have a duty to Afghanistan.

This amendment is detailed and specific. As the noble Baroness, Lady D'Souza, made clear when moving it, it is extremely important as a way of delivering on the commitments that we made six months ago. The ARAP scheme, when it was announced by the Secretary of State for Defence in April 2021, was seen as being important; nobody quite thought it would be needed to the extent that it has been. But the rules have changed, and they keep being changed. People who worked for the British Council as contractors and as interpreters—as the noble Baroness, Lady Coussins, said—thought they had a right to come under ARAP but then that has become unclear. The Minister has on previous occasions agreed with me and other noble Lords that it is important that the Home Office, the MoD and the FCDO work together. Could she tell us, at least, that there is going to be some progress on ARAP?

It is now so late and there are so few Peers around that I believe it is unlikely we will take this to a vote, because it would be unfortunate and unhelpful to those who might wish to come under ARAP that a vote be lost. That would look like a kick in the teeth, which I hope is not a message that your Lordships' House would wish to send.

Even if this amendment is not put to a vote, can the Minister give us some commitments on the ARAP scheme and the ACRS that might give hope to people who are still stuck in Afghanistan? Finally, might people who have been in Ukraine as Afghan refugees and are now seeking refuge yet again be able to come here? Might we deliver on some of our commitments under the Geneva convention on refugees?

Lord Coaker (Lab): I will speak briefly in support of the amendment in the name of the noble Baroness, Lady D'Souza; it is a really important amendment, which goes to the heart of the matter. Whichever way you look at it, there are Afghans who helped us who cannot relocate to the UK; that goes to the core of the importance of the noble Baroness's amendment. The noble Baroness, Lady Coussins, has given us some examples and the noble Baroness, Lady Smith, reminded us of the obligations that we continue to have. What assessment has the Home Office made, with the Ministry of Defence and the Foreign Office, about the number of people they would have expected to help who are still trapped in Afghanistan? What is the current situation there?

The amendment in the name of the noble Baroness, Lady D'Souza, seeks to extend that eligibility to others who may be at risk from the Taliban-controlled Government in Afghanistan. We have a duty to help those who helped us; we all accept that, but what is the current situation? What are the routes available, and why would the Government not accept the amendment? We all agree with the principle but we know that problems still exist. An explanation would be extremely helpful; even at this late hour, this amendment enables us, once again, to ask the Government the extent of the problem and what they are going to do about it.

Baroness Williams of Trafford (Con): My Lords, I apologise for being slow to rise; I was frantically writing down the points made by the noble Lord, Lord Coaker. I will perhaps answer the last question first on how many are yet to come. That is a very difficult question to answer; I do not think that anyone would pretend to know. I can give an answer the other way round in that ARAP has already seen over 8,000 people relocated to the UK, many as part of the Operation Pitting group who were safely evacuated from Afghanistan last summer. Eligibility has actually been expanded, not reduced. I am not sure which noble Lord said that it had been reduced, but it has been expanded several times since it was launched: first to include people who had resigned from service, then to include people who had been dismissed for all but serious or criminal offences, and then in December last year to include people who had worked alongside rather than directly for HMG, and their non-Afghan family members.

The ACRS opened on 6 January this year; it is up and running. The noble Baroness, Lady Smith of Newnham, spoke earlier of an almost dismissive comment about the ACRS. I do not think that she was referring to me—I hope she was not.

Baroness Smith of Newnham (LD): No. The person who was unable to answer the question was the Secretary of State for Defence, on the radio this morning. He basically said, "It is a Home Office matter and, by the way, we are rather too busy with Ukraine." That was the impression that he gave.

Baroness Williams of Trafford (Con): It is a Home Office matter, so he was absolutely right on that, but it remains very important. Putting Ukraine into strong focus does not take away from our concern for what is happening to the people of Afghanistan. I doubt that it is getting any better; possibly it is getting worse. They still need our help and support.

On ARAP, the Home Office works with the MoD and the FCDO to ensure people's safe passage here. I appreciate the sentiment behind the amendment, which seeks to widen further still the eligibility criteria, but it is not necessary to put the suggested changes in primary legislation. The Immigration Rules are designed to be altered where needed, with the approval of Parliament, to enable us to make changes such as those I have just been talking about. Having them prescribed in primary legislation would prevent the Government responding quickly where changes are required.

In any case, the specific changes put forward here are unnecessary. The ARAP rules as drafted, and changed as recently as December, provide us with the requisite flexibility to allow all those who made a substantive and positive contribution to the UK's objective in Afghanistan, either directly for or alongside a UK government department, and who are now at risk as a result of that, to come to the UK. This has always been the intention of the scheme, and that is what is being delivered.

On additional family members, the ARAP rules reflect the wider immigration system in that principals can be joined by spouses, civil partners, durable partners and children under 18. It is right that they are consistent with other routes to the UK. In June last year we published guidance on how additional family members can join principal ARAP applicants here outside the rules, where there are specific levels of dependence or risk. This option has been widely used, and by definition provides us with greater discretion than having prescriptive criteria set out in the rules.

Security checks are carried out by the Home Office after the MoD has approved them. On JRs, the Home Office overturns MoD grants only ever on serious national security grounds.

The ARAP scheme has been a huge success. It has provided resettlement to more than 8,000 people already, with a similar number yet to come. The rules in place strike the right balance between providing support to those who need and deserve it and protecting the finite capacity of this country to resettle those in need. I hope the noble Baroness will be happy to withdraw her amendment.

Baroness D'Souza (CB): My Lords, I thank the Minister, as always, for her answer. I think the most recent pronouncement from the Home Office on the ARAP scheme was that it would in future include only Afghan citizens who were explicitly involved in promoting British values and policies, which necessarily excludes an awful lot of people who worked for British companies but without necessarily being seen to be explicit in promoting their values.

Secondly, the Minister said that she did not feel it necessary for this to be in the Bill, but I feel strongly that unless these criteria are in the Bill they will never remotely happen, and therefore it is important that they be included. I feel that the ARAP scheme continues to be somewhat thin, a little confused and confusing and somewhat pusillanimous, but in view of the hour I beg leave to withdraw the amendment.

Amendment 84B withdrawn.

Amendment 84C

Moved by ***Baroness Hamwee***

84C: After Clause 78, insert the following new Clause—

"Assessments: trauma-informed approach

(1) All assessments of persons subject to immigration control or relating to modern slavery or human trafficking must be made on the basis of a trauma-informed approach.

(2) The Secretary of State must publish and keep updated guidance for caseworkers and others dealing with such persons regarding the use of such an approach in achieving best evidence in order to reach decisions.

(3) The Secretary of State must ensure that caseworkers and others to whom the guidance under subsection (2) applies receive appropriate training to ensure assessments under subsection (1) are conducted on the basis of a trauma-informed approach.

(4) Before publishing or updating the guidance in subsection (2), the Secretary of State must consult—

(a) the Royal College of Psychiatrists,

(b) the British Medical Association,

(c) the British Association of Social Workers, and

(d) any other persons they consider appropriate.

(5) In subsection (1) "a trauma-informed approach" includes—

(a) the recognition of the impact of trauma on individuals,

(b) the recognition of the causes and indicators of trauma,

(c) the importance of avoiding re-traumatisation, and

(d) the integration of knowledge about trauma into policies, procedures and practices."

Member's explanatory statement

This new Clause is aimed at ensuring that immigration officials and caseworkers operate a trauma-informed approach in assessing claimants and provides for training to ensure a capacity for trauma-informed interviewing, similar to Ministry of Justice and National Police Chiefs' Council guidance on achieving best evidence in criminal proceedings.

Baroness Hamwee (LD): My Lords, Amendment 84C would provide for a trauma-informed approach to assessments of persons subject to immigration control or relating to modern slavery or human trafficking—not the first time this has been referred to during the course of the Bill. I am grateful to the noble Baroness, Lady Hollins, for adding her name to this amendment. She has had amendments regarding codes of practice, but the whole issue has been central to much of the Bill. Government processes and actions should be trauma-informed.

[Baroness Hamwee]

Both the Ministers who have responded on these points have rested their arguments on asylum seekers having access to healthcare, but the point is much wider. I have attempted to spell it out in an amateurish way, but the point must be emphasised, even at what I described when making my notes as "stupid o'clock."

1.45 am

The amendment would require guidance for caseworkers, among others, because they make assessments and assessments mean decisions. The guidance should follow consultation with the relevant professional bodies and it would also require training, with—I emphasise this, too—knowledge about trauma integrated into policy.

A point that has not been mentioned in this debate is that of achieving best evidence. I have based this on the MoJ and National Police Chiefs' Council guidance on interviewing victims and witnesses of crime, *Achieving Best Evidence in Criminal Proceedings*. To quote the MoJ, it

"promotes a strong victim-centred and trauma-informed approach."

With the appendices, that guidance amounts to almost 250 pages, so I will not read it to your Lordships—or perhaps I should, to curry a little favour. It stresses the importance of this approach to interviews, including considering how trauma might affect the emotional well-being, behaviour and memory recall of those being interviewed.

Given the long-standing and very respectable genesis of ABE in that context—in fact, a psychologist who works with victims of torture told me it works very well as an approach—I hope the Government might accept that work on applying it in the immigration and asylum context would be valuable. I beg to move.

Baroness Hollins (CB): My Lords, this amendment, which I am pleased to add my name to, aligns well with the principles of my own earlier amendments on Report and in Committee. On all the previous occasions, the government response highlighted just how underappreciated the impact of trauma is on the health and recovery of refugees and asylum seekers.

Public Health England has produced advice and guidance on the health needs of migrant patients for healthcare practitioners. This was updated in August 2021 to include advice that practitioners should:

"Consider applying trauma-informed practice principles when working with migrants affected by trauma."

The guidance emphasised the six principles of trauma-informed practice, including safety, trust, choice, collaboration, empowerment and cultural consideration. I will quote just one paragraph from the guidance:

"Trauma-informed practice is not intended to treat trauma-related issues. It seeks to reduce the barriers to service access for individuals affected by trauma. While more evidence is needed to gain an in-depth understanding of the effects of trauma-informed practice for migrant populations, there is evidence that services provided to vulnerable migrants without a trauma-informed approach can result in harm."

Unfortunately, the recent report *We Want to Be Strong, But We Don't Have the Chance*, published by the British Red Cross in 2022, stated that

"for many women, the UK's asylum process is not sensitive to gender or trauma and does not provide the support they need."

It gave examples, which I will not repeat at this time of night, but one of the key recommendations of the report is to

"Ensure each stage of the asylum process is trauma-informed and gender-sensitive".

This amendment seeks to achieve consistency and accountability in achieving this, with the person at the centre, not the process. I urge the Minister to accept this amendment.

Lord Coaker (Lab): My Lords, I will just make a couple of remarks about this amendment from the noble Baronesses, Lady Hamwee and Lady Hollins, which I support. It is a shame that we are right at the end of the evening—or in the middle of the night, or in the morning, or whatever—because it is one of those amendments that raises a number of really important questions for the Government. It is really quite an appropriate way—not at this time—to end the Report stage, because it encompasses so much of what has been debated on the Bill so far.

We are talking about people who are traumatised, fleeing war, risking their lives; people who have lost their homes and loved ones, experienced extreme violence, and children who have been trafficked and exploited. One of the criticisms throughout the passage of the Bill so far is that we are debating measures that we believe would remove support from these people, damage their credibility, penalise them for not providing evidence neatly to a deadline, as we heard earlier, and make it harder, for example, for modern slavery victims to report abuse. That is a point of difference between us.

I am sure the Minister will say that of course, people will take account of trauma, and they will interview, meet and discuss such issues with these individuals and support them in a way which reflects that. But what this really important amendment is driving at is the absolutely essential need to have a trauma-informed approach. If the amendment does nothing else but remind those who work with victims and survivors that that sort of approach is the best way forward, then it has served its purpose.

Baroness Williams of Trafford (Con): I thank noble Lords for their comments. I say to them, in particular the noble Baroness, Lady Hollins, that the impact of traumatic experiences is writ large throughout the whole decision-making process in the asylum system. For example, the asylum interview policy guidance includes a specific section on

"Victims of torture or other trauma",

and this supports interviewers to create a suitable environment for claimants who have experienced trauma to explain their claim. The impact of trauma has also been carefully considered in the drafting of the Bill.

In relation to modern slavery and human trafficking, we are acutely aware of the trauma that victims of modern slavery may experience, and already recognise the impact that this trauma might have on a potential victim's ability to even recognise themselves as a victim or indeed be identified. We are committed to identifying victims of modern slavery as quickly as possible and ensuring that they receive support as early as possible too.

The effects of trauma are already considered as part of the decision-making process and included in the current modern slavery statutory guidance of the Modern Slavery Act 2015, and they will continue to be applied in decision-making. There is a code of conduct for all professionals working with survivors of human trafficking and slavery, published by the Helen Bamber Foundation, and *The Slavery and Trafficking Survivor Care Standards*, produced by the Human Trafficking Foundation. We will build on this approach in updated published guidance, ensuring that decision-makers have the tools to recognise the effect that traumatic events can have on people's ability to accurately recall, share or recognise such events. This will give decision-makers the flexibility to take a case-by-case approach and the tools to recognise the possible effect of exploitation and trauma and ensure that decisions are based on an understanding of modern slavery and trafficking.

We will also continue to engage with the six thematic modern slavery strategic implementation groups, bringing together government, the devolved Administrations, NGOs and businesses. We recognise that modern slavery remains a rapidly evolving area, and it is very important that the guidance be continually updated to ensure that it is reflective of current policy and practice.

In summary, I hope that I have explained that trauma-informed decision-making is writ throughout the whole asylum system process, and I hope the noble Baroness will be happy to withdraw her amendment.

Baroness Hamwee (LD): My Lords, this noble Baroness will withdraw my amendment but not that happily, I am afraid. It refers not only to interviews and so on but to policy-making. If it is actually incorporated in policy-making, why have we, during the course of the Bill, been discussing how delays are treated and late evidence? Only today—or yesterday—we have discussed inconsistencies in evidence. The amendments are aimed at the whole of immigration control, which would include, for this purpose, asylum seekers as well as slavery and trafficking.

I am afraid that the words may be there on paper—and my words can only be on paper—but I have had the clear impression, not only during this Bill, that the process and the policy-making are not trauma-informed. I do not know how many Members still remain in the building on the government side, but it would be inappropriate and have no effect to tax the patience of those who remain by dividing the House. I beg leave to withdraw the amendment.

Amendment 84C withdrawn.

Clause 82: Extent

Amendment 84D not moved.

Clause 83: Commencement

Amendment 84E

Moved by ***Baroness Williams of Trafford***

84E: Clause 83, page 84, line 27, at end insert—

"(aa) sections (Visa penalty provision: general), (Visa penalties for countries posing risk to international peace and security etc) and (Visa penalties under section (Visa penalty provision: general): review and revocation) (visa penalties in relation to countries posing a risk to international peace and security etc);"

Member's explanatory statement

This amendment provides that the provisions for imposing visa penalties introduced by the three new clauses in the Minister's name relating to visa penalties will come into force on Royal Assent.

Amendment 84E agreed.

Amendments 85 and 86 not moved.

House adjourned at 1.57 am.

Grand Committee

Tuesday 8 March 2022

Nuclear Energy (Financing) Bill

Committee

3.45 pm

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): My Lords, Members are encouraged to leave some distance between themselves and others and to wear face coverings when not speaking. If there is a Division in the Chamber, I will adjourn the Committee for 10 minutes. At 4.40 pm the Committee will adjourn, as will the Chamber, until about 5.15 pm for Members to go to the Commons to listen to President Zelensky.

Clause 1: Key definitions for Part 1

Amendment 1

Moved by ***Lord Wigley***

1: Clause 1, page 1, line 7, at end insert—

"(2A) "Nuclear energy generation" includes the generation of energy by either nuclear fission or nuclear fusion."

Member's explanatory statement

This subsection is to clarify that the provisions of the Bill may extend to nuclear fusion electricity generation if that process becomes viable.

Lord Wigley (PC): My Lords, it is an honour to be moving the first amendment in our Committee deliberations on the Nuclear Energy (Financing) Bill. It is fair to say that this is a probing amendment in the true meaning of the term. If I had received an answer on the issues relating to nuclear fusion when I raised them at Second Reading, I would not have needed to have tabled this amendment now.

Amendment 1 proposes to insert the definition that "'Nuclear energy generation'" includes the generation of energy by either nuclear fission or nuclear fusion."

The Bill is clearly intended to serve as a long-term framework for the financing of nuclear projects. It could hardly be otherwise, since the cycle of agreeing a location for a new nuclear facility, securing all the necessary consents, getting a credible financial package into place and then building the facility, testing it and engaging it with public electricity networks takes over a decade, and probably two, to bring to full fruition. It is by definition a long-term project, and all the uncertainties arising from such long-term gestation periods are what make this Bill necessary.

It is in this context that I tabled Amendment 1, relating to nuclear fusion. Many people may mutter, "Nuclear fusion? But surely we're many decades away from that becoming an economic possibility." Yes, it is true that for most of my lifetime nuclear fusion has been the big white hope lurking just over a distant horizon. Back in the 1950s we were told about what I think was then called the Zeta project, which could harness abundant fuel made from seawater, as was quoted, in a process that was far safer than nuclear fission and whose waste product had a half-life of less than 100 years. That project stuttered on through the 1960s, seen as having the possibility of producing an inexhaustible source of energy for future generations, but with scientific and engineering challenges that seemed then to be insurmountable.

Then in 1997 there was a breakthrough, and, excitingly, only last month scientists at the Joint European Torus project, JET, at Culham near Oxford, succeeded in generating by fusion 11 megawatts for five seconds—a small amount, yes, but an indication of things to come. This came shortly after American scientists, using the world's largest laser, achieved burning plasma, a major stride towards self-sustaining nuclear fusion energy, and in America the National Spherical Torus Experiment will be fired up in the autumn of this year. So at long last we are at a credible position where nuclear fusion may be a practical proposition for the second half of this century. As such, that possibility should be on our agenda as we map out the means of funding the production of electricity with a very low carbon footprint.

However, there is a problem as far as we in Britain are concerned. Last year EUROfusion decided to end JET's operations at Oxford next year after 40 years, and according to reports the UKAEA intends to decommission the experiment. The focus of research is sadly moving from the UK to France, where the International Thermonuclear Experimental Reactor—abbreviated as ITER—is being built, funded by the European Union, the United States, China and Russia. When it is fired up in 2025, it will be the world's largest fusion reactor. If it works, it will make fusion power a viable source of energy, with realistic hopes of it being in commercial operation between 2030 and 2035. It will generate usable electricity without carbon emissions and with low levels of radioactivity.

So we are falling off the bus just as it moves towards its destination. Does this not just encapsulate the botched manner in which successive UK Governments have dealt with the nuclear industry? I want to see a pledge from the Government that they have some commitment to nuclear fusion technology and that they would be prepared to put their money on the table to help make this happen.

In the context of this Bill, Amendment 1 would ensure that projects related to nuclear fusion would be fully entitled to seek funding through the avenues opened by the proposed legislation before us today. The best way of ensuring that this possibility does not fall by the wayside is to accept Amendment 1 and provide that nuclear fusion is included on the face of the Bill. I beg to move.

Lord Teverson (LD): My Lords, I will make just a brief intervention. I do not disagree at all with the noble Lord's amendment, except that clearly we should not use this form of funding for research until we know that we are building something that is going to work. It would be absolutely wrong to use this sort of funding for the research side. In defence of this Government and previous ones, in the area of fusion we have probably been more consistent in terms of our policy and research than we have with nuclear power—so that was probably slightly unfair criticism of the Government in that regard.

[Lord Teverson]

At this stage, without getting into heavy weather, the point I want to make is that we have an energy crisis at the moment, which makes this Bill slightly less relevant than anything else. I would be interested to have a statement—just a short sentence—from the Minister on what BEIS is doing at this moment to accelerate the alternative forms of energy that we have in the UK, particularly renewables, given the situation that we are now seeing: not just even higher energy prices but energy prices that will probably remain high for a long time, and the wish and absolute need of the West—Europe and the UK—to disinvest from supplies of Russian energy. I realise that is not great in terms of the UK, but we are as much subject to these global markets as anyone else.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, before we begin, I understand that the noble Lord, Lord McNicol, is unfortunately unwell and therefore unable to join us here today. I wish him a speedy recovery and look forward to welcoming him back to the House soon. It is a pleasure to open for the Government in response to the amendment tabled by the noble Lord, Lord Wigley. Mae'n ddrwg gen i am beidio a roi ateb i chi yn barod—I am very sorry that we have not given you an answer already. I think that somehow passed me by after Second Reading.

The Government share the noble Lord's enthusiasm for the potential of fusion energy to play a role in our future energy system. However, I do not believe that the noble Lord's amendment is necessary or appropriate here. First, the term "nuclear energy" is sufficiently broad that fusion projects can be regarded as already falling in scope. This makes a specific amendment on this point unnecessary.

I also want to make clear to the noble Lord that, despite recent technological advances and increases in private investment, fusion remains a comparatively early-stage technology; prototypes are not expected to be deployed until the 2030s or the 2040s. The Government are supporting the development and deployment of fusion demonstrator facilities by investing in R&D programmes and facilities and developing a proportionate regulatory framework. Indeed, there is already significant private investment in a number of fusion projects both here in the UK and in the US.

None the less, the Government intend to develop an appropriate funding model for commercial fusion energy facilities in due course, as fusion energy moves closer to commercial deployment. This funding model will reflect the nature of this means of energy generation. I hope that I have provided adequate reassurance for the noble Lord, Lord Wigley, that the Government share his goals and that this amendment is not necessary for achieving them. I therefore hope that the noble Lord will feel able to withdraw his amendment.

On our support for renewables, we have enunciated the breadth of work that we are doing in this area a number of times. We have made numerous statements in the House on this issue recently. I would be happy to write to the noble Lord with more information about the Government's plans, but I do not think it is appropriate just to give a brief statement of our current intent.

Lord Teverson (LD): What I was trying to ask is whether BEIS is getting itself into gear—and I realise that the Government will probably look wider than renewables—and getting its act together now to really look at how we move forward in this area. Can the Minister assure noble Lords on this?

Baroness Bloomfield of Hinton Waldrist (Con): I am sure that this is upmost in the minds of the Secretary of State and the Energy Minister. The Prime Minister has also made statements to this effect, and it is very much on every morning's agenda. We have a ministerial meeting and it is the first topic at every one of them.

Baroness Wilcox of Newport (Lab): Before the Minister sits down, I had hoped that she would have said that the Bill had been drafted in a technology-neutral manner and that the amendment was therefore not necessary, so receiving a clarification would be useful. We cannot afford to fall off the bus again.

Baroness Bloomfield of Hinton Waldrist (Con): I take the noble Baroness's point. Indeed, the Bill has been drafted in a technology-agnostic way to cover all forms of energy infrastructure.

Lord Wigley (PC): My Lords, I am very grateful to the noble Baroness for her response and for the interventions on the points that I raised. A moment ago, the noble Lord, Lord Teverson, appeared in the uncharacteristic role of being a protector and defender of the Government on these matters, and I am sure that that will be bankable by the Government at some stage. This is not a party-political point because it is not party politics; I am speaking on my behalf, as my own party has divisions on these issues. Over the past 30 years, we have had "stop-start-stutter" with regard to nuclear; if you do not want nuclear, perhaps "stutter" and "stop" are good options. But if nuclear is going to play a role, it has to be treated in a serious and coherent manner. It needs to be transparent, and we will be coming on to questions of transparency in a number of later amendments.

Returning to the core of my amendment—

Lord Teverson (LD): I hesitate to interrupt, but I was relating only to fusion, rather than fission, in my comments.

Lord Wigley (PC): I accept that clarification, of course. With regard to fusion, I accept that successive Governments have been generous in helping to sponsor research but, over the last couple of years, we seem to have had some difficulty with our European partners as to the ongoing role of Oxford, which apparently is coming to an end, and the fact that the Russians, Americans and Chinese are providing finance for the location in France where the major project is going forward. I very much hoped that we would have been involved in this, because so much of the work on fusion has been done in the United Kingdom. It is something that we should be proud of.

I hope that, when this eventually comes through, it is something that is of benefit. That is why I want to see, if this Bill goes forward—and it has shortcomings, but any such Bill is bound to, because of the uncertainties that we have in this area—that we have full provision for fusion as one of the nuclear alternatives. The Minister stated quite categorically that fusion is included in this Bill, so that anyone who is considering fusion projects for the future may be able to rely—other things being equal—on this Bill as a source of finance and a framework within which to operate. That is a helpful clarification and, on that basis, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Baroness Wilcox of Newport***

2: Clause 1, page 1, line 15, at end insert—

"(6) "Owned by a foreign power" means owned by a company controlled by a foreign state and operating for investment purposes."

Member's explanatory statement

This amendment provides a definition of foreign ownership and is linked to a further amendment to Clause 2 in the name of Lord McNicol of West Kilbride.

Baroness Wilcox of Newport (Lab): My Lords, I begin my comments by thanking my noble friend Lord McNicol for the substantial work he has already done on this important Bill, and by conveying his apologies to the Committee for being unable to attend because of his continuing isolation with Covid. I had just a passing knowledge of the Bill until yesterday, and my interest, as always, was fired by the attention given to the outcomes for Wales, which is my main shadow portfolio brief. Nevertheless, I shall do my best to substitute for my noble friend Lord McNicol's wide and detailed knowledge of the subject, ably supported by our team of advisers, who have supplied me with excellent briefing notes on this significant Bill.

4 pm

I shall speak to Amendments 2, 9 and 19. Taken together, Amendments 2 and 9 prevent the Secretary of State designating a nuclear company owned or part-owned by the agents of a foreign power, and ensure that the fuelling of the designated company's reactor is provided by a UK-based company. We welcome the related amendments from the noble Lord, Lord Vaux of Harrowden, and look forward to his remarks.

The topic of foreign ownership has taken on a new significance in light of ongoing events across the globe. Of course, those events are not directly related to the Bill, and the amendments were discussed in the Commons long before Putin's plans became apparent. Be that as it may, ongoing events in Ukraine draw attention to the importance of national security, as well as more practical considerations such as reliability, when working with foreign powers or foreign-owned firms. It is highly unlikely that we would ever seek to include Russian interests in a future nuclear project in the UK, but there is a much higher probability of Chinese investment, for example, and it may be desirable for the final version of the Bill to include safeguards over these in the National Security and Investment Act 2021.

We appreciate that Amendment 9 takes a hard line. It would completely disallow any foreign involvement in UK projects, which would scupper the agreement with EDF, for example. However, the amendment provides us with an opportunity to discuss whether and where we should draw a line on foreign involvement in UK civil nuclear infrastructure. I think that all sides agree that there should be a line, so the Committee's time is probably best spent exploring what kind of test or threshold there should be. We are not wedded to any particular approach at this stage, but the Minister will be aware that, in relation to money laundering and terrorist financing, the UK automatically mirrors the Financial Action Task Force's list of high-risk countries. So is there potential to create a similar list for involvement in nuclear projects, with it being subject to periodic review? Any updates the Minister is able to provide today will be invaluable as we assess our options ahead of Report.

On Amendment 19, we are grateful to the GMB union for its input and ongoing work representing the nuclear workforce. Over the course of many years, the GMB worked to negotiate terms with EDF as part of the Hinkley Point C project, and this could provide a model for future projects. I am sure that the Minister will say that such matters will be subject to negotiation as part of each individual nuclear project, but that need not be the case. If the Government support the role of unions in this sector, why should relevant conditions not be imposed on potential providers?

Labour is concerned about foreign state control and these amendments would mandate nuclear stations to use UK-manufactured fuel and stick to UK consumer charges. This is about protecting people and it does not need me to remind the Minister and noble Lords of the current global crisis we face in Ukraine, and the overreliance on energy sources from hostile—indeed, war-mongering—states. At this unprecedented time in European history, surely we should be overcautious when beginning such projects.

In addition, Amendment 19 specifies a variety of conditions that the Secretary of State may wish to impose on a nuclear company as part of the designation process. These conditions reflect some of the terms agreed with the GMB union and EDF as part of the Hinkley C project, as I mentioned earlier. I commend the amendments to the Committee.

Lord Vaux of Harrowden (CB): My Lords, first I should apologise for not being able to take part in the Second Reading of the Bill. I therefore start by stating that I generally support the Bill, for two reasons: first, because I believe that nuclear power will be essential if we are to meet our net-zero goals; and, secondly, because I believe that it is essential that we become more self-sufficient in our energy needs and, in particular, reduce our reliance on other countries that may not share our values—this has been starkly demonstrated in the past couple of weeks.

The three linked amendments in my name in this group, Amendments 11, 22 and 24, are intended to address that last point. In order to ensure that we are not reliant on potentially hostile parties for our energy needs, we must be able to identify the ultimate beneficial

[Lord Vaux of Harrowden]
owners or controllers of any companies that own a material part of our key energy providers. I hope that that is not a controversial statement. Indeed, the Government are in the process of putting rules in place for the identification of owners of UK property and I would argue that it is much more important for owners of nuclear-generating assets to be identified.

However, I can find nowhere in the legislation where identification of the ultimate beneficial ownership or control is a requirement. The nearest that I could find are the persons of significant control rules, but they do not always apply; they apply only to UK companies, for example, and in any event are easily avoided. These three amendments therefore try to address that shortcoming. I tried to introduce a clause that required all holders of nuclear generation licences to identify their ultimate beneficial owners, but it was not allowed. It was apparently out of scope of the Bill. I think that the Minister might want to consider that. Therefore, I have had to restrict these amendments simply to the designation process.

Amendment 11 ensures that, before a nuclear company can be designated under the Bill, the Secretary of State should be satisfied that the identity of any party that owns or controls, directly or indirectly, more than 10% of a nuclear company has been verified. Amendment 22 then allows the Secretary of State to revoke that designation if at some future point they are no longer satisfied that those identities have been verified. Amendment 24 adds a further duty on the nuclear company to notify the Secretary of State of the identity of any party that later gains ownership or control of more than 10% of it, again directly or indirectly, and allows the Secretary of State to revoke the designation if the nuclear company fails to make such notification or if the Secretary of State considers the new party not to be a fit or proper person to own or control a nuclear company.

I have deliberately not put in any prohibition of ownership in these amendments. I would not, for example, go as far as the noble Lord, Lord McNicol of West Kilbride, or the noble Lord, Lord Oates, in Amendment 9, which would prohibit the designation of a nuclear company that has any foreign power as a shareholder. As we heard, there are plenty of countries—France, for example—where it would be perfectly acceptable for them to own a stake and there are many others where it would clearly not be acceptable.

We should not be looking at state shareholdings only. There are many non-state parties that I would think would not be fit and proper to own nuclear assets. I think that it is appropriate that we look at each case on its merits and allow the Secretary of State to decide if the ownership is acceptable in the particular circumstances. The critical thing is that we should be able to identify the ultimate ownership and control and take appropriate decisions based on that, including the right to revoke the designation.

I am sure that the Minister will point out his statement at Second Reading that the Government intend to take a special share in all future nuclear new-build projects, but that is only an intention and, as the Minister pointed out, is subject to negotiation; no details of the rights attached to such special share have been provided. I therefore think that some safeguard is required in the legislation. While I would be happy to discuss the details of these amendments—for example, whether 10% is the right level—I hope that the Minister can see the attraction of the principles set out in Amendments 11, 22 and 24. I also hope that, as I said, he will consider the wider point that these rights and duties should apply with respect to all nuclear power generation licences, not just those that wish to be designated.

Lord Howell of Guildford (Con): My Lords, we are getting to the important issue—quite rightly raised by the noble Lord, Lord Vaux—of control, the involvement of foreign companies and, behind them, possibly foreign Governments in this vital part of our energy security. There is one thing that I would like to know before the Minister replies. He will remember, as will most of your Lordships, that my right honourable friend Theresa May, back in 2016 after she became Prime Minister, ordered a review of Hinkley Point C, in particular the involvement of Chinese interests in that vast project, which is now going ahead. Everyone got quite agitated at the time. I remember the Chinese ambassador walking around saying, "Has there been a coup? What's happened? What's gone wrong? Was the Chancellor of Exchequer not in Beijing the other day agreeing that this was a new golden area of co-operation between China and the United Kingdom and, in the words of Xi Jinping, that there was going to be 'unlimited' partnership in all sorts of investments?" The Chinese, along with EDF and the French, were welcomed with open arms to get the Hinkley Point C project off the ground.

After a while, there was a review, which concluded that Hinkley Point C should go ahead, to the great delight of the Chinese. The whole thing was a very good bargain for them: not only did they get involved in Hinkley Point C, but they had a promise of involvement in Sizewell C and, even better for them, a promise of bringing in Hualong technology and managing their own project at Bradwell-on-Sea. This was a great delight and was going to be the poster boy project for the Chinese, as they moved into massive sales of Chinese technology and development, which would go well beyond a GDA for Bradwell into the possibility of building and managing a nuclear power station right at the middle of our system.

The review that Theresa May authorised was thorough and went into considerable detail into the conditions that there should be on the Chinese going forward. I would like to know from the Minister whether those conditions still prevail or whether they have been modified 10 years later, under further pressures, when the public attitude towards Chinese involvement has changed 180 degrees. We have moved from an age of loving everything Chinese to getting rid of everything Chinese. Has there been a change? It would be helpful if he could describe to what extent we have moved on that and to what extent those review conditions of 2016 still prevail.

Viscount Trenchard (Con): My Lords, I agree with the amendments put forward by the noble Lord, Lord Vaux of Harrowden. The noble Baroness, Lady Wilcox, introduced the amendments in the name of the noble Lord, Lord McNicol, extremely impressively, but I

agree with the noble Lord, Lord Vaux, that they go too far by effectively excluding all companies owned by foreign powers.

It is a matter of great regret to me that, in collaborating with Japan on nuclear energy, the projects at Wylfa, Ynys Môn, of Hitachi's Horizon, and at Moorside, Sellafield, of Toshiba, were both cancelled. Perhaps if the Bill before the Committee had already been on the statute book, there would have been a good chance that either or both might have been rescued. If either project had gone ahead, it was expected that one or both of the state-owned banks in Japan—the Japan Bank for International Cooperation, on which I declare my interest as a consultant to that bank, and the Development Bank of Japan—would have provided both or part of the equity and debt for those projects. On the face of it, if the amendments tabled by the noble Lord, Lord McNicol, were enacted, it would be impossible for those banks to participate, which would have killed the projects by another means.

4.15 pm

I very much agree with what my noble friend Lord Howell has just said. I too ask the Minister what the position is. I have heard that attempts are now being made to secure alternative investors to replace the 20% shareholding in Sizewell C. Some people are even suggesting that there is interest in replacing part or all of the 33% interest held by Chinese investors in Hinkley Point C. I would be grateful for more clarity on those points if the Minister is able to say any more.

In the same connection, I ask the Minister whether obtaining nuclear fuel and enriched uranium in particular will be treated in the same way as obtaining other forms of energy from Russia and/or China in future. Is the Minister confident that the business model of Urenco, the uranium enrichment company one-third owned by Her Majesty's Government, continues to be viable? From where is the raw material sourced at present and where does the Minister think it will be sourced from in the future?

Baroness Bennett of Manor Castle (GP): My Lords, I offer support to Amendments 11, 22 and 24 in the name of noble Lord, Lord Vaux of Harrowden, although I start from a very different position from him on nuclear power and perhaps where my areas of concern lie. It is important that we are talking here about ultimate ownership and control identified and verified. We are looking at ensuring that any change of ownership is clear. When I looked at the amendments, I inevitably thought about what has happened with our water companies and indeed with some privatised elements of our NHS, where we have seen GP surgeries sold off through a chain and sometimes the ownership and the sale have become clear only several times down the track. When we are talking about something as crucial, strategic and potentially dangerous as nuclear power generation, we need to ensure that there is clarity about where control lies—obviously, I am looking at that not just from a national perspective but much more broadly.

I shall comment particularly on Amendment 19 in the name of the noble Lord, Lord McNicol, and the important elements in that about transparency of costs and ensuring that those costs and the spending are fully declared. I talked last night in relation to the Health and Care Bill about instances where public money that is paid in supposedly for care—in this case, it might be paid in for power—is pumped out into dividends through complex financial instruments.

Since this is the first time that I have risen to speak in this Committee, I want briefly to pick up one point raised by the noble Baroness, Lady Wilcox: we are now in unprecedented times in European history. Since Second Reading, the events in Ukraine have taken place. At Zaporizhzhia, the largest nuclear power plant in Europe, a building—not the reactor—was set on fire during a bombardment from all sides, on the Ukrainian account, by Russian forces. The International Atomic Energy Agency has expressed grave concerns about its safety. It is worth noting that, even after those reactors are switched off, they will need weeks of cooling down. There are pools of spent fuel rods which require safe storage for several years. As the noble Baroness said, this has put us in a different situation from that of even weeks ago.

I will point to something else, for reasons which will take a second to become clear. There is an Australian town called Lismore that I know very well. It is a town that floods; it has always flooded. A hundred years ago, they built a church high on the hill to make sure that it would not flood—a couple of decades ago, they built a shopping centre that was flood-proof. Lismore has just flooded, with significant loss of life; both the shopping centre and the church have flooded. We are in unprecedented times.

I ask the Committee to think about how, when we put public money into a nuclear power plant, we have to guarantee political, military and climate stability—the last of which we know we will not have—for six or seven decades at a minimum. Does anyone in the Committee truly believe we can guarantee that we can continue to safely operate a nuclear power plant in six or seven decades in the world we live in? That has to underlie all of our debates today.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, as well as of course supporting the amendments spoken to by my noble friend Lady Wilcox, I support the amendments spoken to by the noble Lord, Lord Vaux. In fact, he is in danger of changing my views about hereditary Peers—these debates are difficult things.

I support him on two counts. The first is in relation to beneficial ownership. Could the Minister say if this would cover ensuring that we could check whether countries we do not want to own these power stations are setting up companies in tax havens—particularly the Crown dependencies and overseas territories we have responsibility for? That has been happening far too often and we need to clamp down on that.

Secondly, I support him because I too was concerned about the scope of the Bill. I support what he said, and I am sorry that he was not allowed to table the amendment he suggested; I hope it will be picked up. I had a little problem in tabling my amendment; I had to change it and the one I have got down is not exactly what I wanted. I will come back to that later. The scope of the Bill has unfortunately been drawn far too

[Lord Foulkes of Cumnock]
narrowly. It deals with the purposes the Government want and are concerned about, but it does not allow us to deal with some of the wider aspects. So there we are—I support a hereditary Peer on two counts. It is a red letter day.

Lord Oates (LD): My Lords, I will speak briefly on this group, particularly to Amendments 2 and 9 in the name of the noble Lord, Lord McNicol of West Kilbride, which I have also signed. I also support the amendments in the name of the noble Lord, Lord Vaux. Like the noble Baroness, Lady Bennett, I come at this from a different perspective from him, but it surely must be right that we are able to identify and verify the ultimate ownership.

As the noble Baroness, Lady Wilcox, set out, Amendments 2 and 9 seek to ensure that a nuclear power station cannot be owned or part-owned by a company controlled by a foreign state and being operated for investment purposes. However, I was a little surprised to hear her say that the amendment would cover EDF, because that was not my understanding. My understanding was that the amendments would not cover EDF, which is not operating for investment purposes, and that is why

"and operating for investment purposes"

is critical in the definition—but it would cover China General Nuclear Power Group, which does operate for investment purposes. I understood that was why the amendment was tabled and drawn in that specific way, but we can perhaps discuss that further later.

The main point here is the general concern that has been expressed on all sides of the Committee about the involvement of the Chinese state in critical national infrastructure, particularly nuclear. As we know, it currently has a 35% stake in Hinkley C and will have a proposed 20% stake in Sizewell C if that goes ahead. So I imagine that, regardless of our wider views on nuclear, we are all concerned about this issue and need some clarity from the Government on their position on this. I hope that the Minister will be able to tell us how the Government intend to proceed with regard to these matters and also answer the important questions asked by the noble Lord, Lord Howell.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): First, I thank everyone who contributed to this important and well-structured debate. I also pay tribute to the noble Baroness, Lady Wilcox, for her valuable contributions and for stepping in at the last moment to substitute for the noble Lord, Lord McNicol; having picked up a difficult and complicated subject at such late notice, she did extremely well in moving the amendment.

This group includes Amendments 2, 9, 11, 19, 22 and 24, originally tabled by the noble Lords, Lord McNicol, Lord Oates and Lord Vaux. They have been grouped together because they all address in different ways the ownership of nuclear companies that ultimately may benefit from the RAB model. Let me be clear at the outset, as I was at Second Reading, that the Government emphatically do not support investment in our critical infrastructure at the expense of national security. There is no compromising on that point and I hope to reassure all noble Lords who have spoken during this discussion shortly.

The general purpose of this Bill is to broaden our options when financing new nuclear projects and to widen the pool of potential investors; that is widely understood. It is our expectation that doing this will reduce our reliance on state-owned developers to finance the construction of new nuclear power stations. So I do not consider that Amendment 11 and, as a consequence, Amendment 22 are necessary, for the reason that designation is a robust and transparent process. I make a similar case with regard to Amendment 24. The Committee can be assured that appropriate and robust due diligence will be carried out through to the financial close of every single project, in particular following a capital raise where the financing structure of the project may change as new investment is introduced.

I assure noble Lords—particularly my old sparring partner, the noble Lord, Lord Foulkes—that the Government have strong oversight of foreign ownership in nuclear projects as a result of the National Security and Investment Act, which includes a wide-ranging ability to call in for assessment qualifying acquisitions if, in our opinion, there are any national security concerns. These are wide-ranging powers. The noble Lord will be aware that we deliberately did not define "national security" during the passage of what became that Act to give ourselves a wide range of flexibility on this subject.

I should add that the Secretary of State may also apply any conditions that he deems appropriate to the designation of a nuclear company—conditions that, if not met, may lead to the company having its designation revoked. Let me also stress—I made this point in a letter to the noble Lord, Lord McNicol—that it is the Government's intention to take a special share in the Sizewell C project, assuming that the negotiations are successful and the project proceeds to a final investment decision.

I note the intention of the noble Lord, Lord Vaux, that we should legislate for this sort of safeguard, but I caution him that it is right that the terms of the special share should be negotiated as a commercial agreement, according to the circumstances of every particular RAB project. The projects might be different when they are negotiated, so I think that imposing constraints in primary legislation would be too severe.

4.30 pm

My noble friends Lord Howell of Guildford and Lord Trenchard correctly asked about China's role in UK nuclear and the 2016 agreement. Let me be clear that nuclear projects in the UK have always been and will always be approved on a case-by-case basis, so the confirmation of one project does not in any way imply a successful outcome for another. With regard to the current arrangement on Hinkley Point C, CGN for the moment remains a 33% shareholder in the project and is currently supporting its financing and construction. CGN is a 20% shareholder in Sizewell C, up to the point of final investment decisions. Both negotiations are still ongoing and no decisions, including on a final configuration of investors, have yet been made. In both projects, no major equipment is being or would

be supplied by a Chinese company, including any major part of the instrumentation or the control system, and we are very clear that any decisions beyond that will be taken in a future Parliament.

I say in response to the noble Lord, Lord Oates, that in our view there is a significant risk that Amendments 2 and 9 would, as I think the noble Baroness, Lady Wilcox, indicated, rule out EDF from investing in new projects under a RAB model. Furthermore, the amendments could reject huge amounts of potential investment from bodies such as sovereign wealth funds and so undermine a fundamental purpose of the Bill, which is, as I said, to attract new, appropriate forms of investment. I noted the noble Baroness's comments with interest on how we might potentially list entities that should be excluded from investment under a RAB model. Perhaps we could explore that with her further.

Let me briefly celebrate the UK's nuclear fuel industry, which a number of Members mentioned and which is specifically addressed in Amendment 9. We have an extremely highly skilled technical workforce at the Springfields and Capenhurst sites and I am pleased to say that currently, bar Sizewell B, all operational UK nuclear power stations use fuel supplied in the UK. This will be further strengthened by the recent spending review decisions, which confirmed that up to £75 million could be used to preserve and develop the UK's nuclear fuel production capability. We also welcome the industrial benefits to the UK that new nuclear brings. For example, for the potential Sizewell C project, EDF has said that it would aim for a 70% UK supply chain, up from the 64% at Hinkley Point C.

In all these matters, however, it is important that we do not limit in legislation our optionality with regards to fuel supply. Retaining an option to source fuel from appropriate international partners, alongside our excellent UK fuel industry, will ensure that we are prepared for all scenarios to ensure a secure and resilient fuel supply to our reactor fleet. It is for these reasons that I cannot accept Amendments 2 and 9.

Amendment 19 was tabled by the noble Lord, Lord McNicol. First, I thank him for the amendment on the conditions, which replicate the very high standards that were set during the Hinkley Point C negotiations. For that reason, however, I cannot accept the amendment. The terms that were agreed for the Hinkley Point C project were agreed during negotiations. My submission is that it is not the place of legislation to seek exhaustively to list the conditions that the Secretary of State may wish to impose in relation to the designation of a nuclear project company under the RAB model. It is certainly our expectation that similar or improved terms would be agreed should the decision be made to go ahead with the Sizewell C project. However, it is appropriate that these are negotiated and agreed at the time between all relevant parties and not defined in precise terms in primary legislation.

If the Sizewell C project goes ahead, workers throughout the supply chain will benefit from commitments made by the project company to improve upon the 64% that I mentioned earlier of UK construction value of Hinkley Point C, with the aim of achieving 70%. In addition, the nuclear sector deal agreed between the Government and the UK nuclear industry seeks to maximise the UK nuclear industry's ability to come forward and compete for UK projects. The deal also includes the aim to diversify the workforce, with a target of 40% women in nuclear by 2030.

Productive conversations have also been held with the Sizewell C project team during the negotiations. It is our understanding that they are seeking to replicate the commitments made in the Hinkley Point C solidarity agreements, so I hope that provides some reassurance to the noble Baroness, Lady Wilcox. The agreements represent a new and innovative approach to industrial relations; for example, they will ensure high levels of health, care and safety, respect for individuals, competitive pay and conditions, and a structured partnership with the trade unions.

I hope that in this fairly detailed reply I have been able to reassure noble Lords that the Government take national security incredibly seriously when bringing forward new nuclear projects and that at the same time we are very supportive of our UK nuclear industry. In addition, we will strive to maintain the high standards set by the industry during the Hinkley Point C negotiations for any future nuclear negotiations and projects. I hope, therefore, that, with the reassurances I have been able to provide, the noble Baroness will feel able to withdraw her amendment.

Baroness Wilcox of Newport (Lab): I thank the Minister for his reply and the noble Lord, Lord Vaux, for agreeing with me that we must address the shortcomings. I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 1 agreed.

4.37 pm

Sitting suspended.

5.22 pm

Clause 2: Designation of nuclear company

Amendment 3

Moved by ***Lord Foster of Bath***

3: Clause 2, page 2, line 8, at end insert "and

(b) a geological disposal facility for the disposal of high-level nuclear waste has been constructed in the United Kingdom and is operational, such that the full life costs of construction and decommissioning of a nuclear energy generation project can be accurately quantified prior to designation."

Member's explanatory statement

This amendment would prevent the Secretary of State from designating a company under the Act until such time as a geological disposal facility for the disposal of high-level nuclear waste has been constructed in the United Kingdom and is operational.

Lord Foster of Bath (LD): My Lords, on behalf of my noble friend Lord Oates and—I am sure—with his agreement, I beg to move Amendment 3 in his name.

Lord Wigley (PC): My Lords, I wish to speak to Amendments 17 and 20 in my name, which have been linked with this group headed by Amendment 3 which—I have written here—has been spoken to with considerable force by the noble Lord, Lord Oates. That may need to be adjusted a little, but I agree with the principles put forward in Amendment 3. However, my Amendment 17, which paves the way for Amendment 20, writes into the Bill—

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, there is a Division in the Chamber. The Committee stands adjourned for 10 minutes.

5.24 pm

Sitting suspended for a Division in the House.

5.26 pm

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, in the circumstances, all voting having taken place, let us resume. The noble Lord, Lord Wigley, can continue his speech and perhaps the noble Lord, Lord Oates, might follow.

Lord Wigley (PC): I am grateful to you, Lord Chairman. As I was saying, my Amendment 17 paves the way for my Amendment 20, which writes into the Bill, on page 3, line 13, a duty on the Secretary of State to impose conditions that provide: first, for pinpointing responsibility for the eventual decommissioning of a project; secondly, for specifying the extent of the nuclear company's liability for decommissioning and rendering the site safe; and, thirdly, for providing that all residual costs for decommissioning, over and beyond those shouldered by the nuclear company, are paid by Parliament.

This amendment deals head on with one of the arguments used, sometimes very effectively, by the opponents of nuclear power concerning the cost of decommissioning nuclear power stations and the danger, of which local communities are understandably fearful, of the site of a nuclear power station being left as a radioactive hulk. They are also concerned that undertakings given at the time when planning consent was approved might just be abandoned, with the local community being left to deal with a problem way beyond its ability to handle.

We see at Trawsfynydd today, over three decades after the ending of the generation of electricity, the hulk of the station still there. It is still radioactive and still awaiting full decommissioning. In 2020, it was announced that there would be a new programme for the demolition of the reactor buildings and that the site would be fully cleared by 2083—yes, another 60 years. If the Government are serious about bringing forward another programme of nuclear power stations—as colleagues will know, I support that, because I believe that it is the way to tackle the global warming issue—they must show that they are prepared to take on the ultimate responsibility of rendering the site safe, clean and in a condition acceptable to the local community.

Part of the responsibility for securing this must, of course, be placed on the plate of the nuclear company; after all, if it is to make money from the site, it has a moral duty to clear up the station when it has ended the generation of electricity. But such companies can easily walk away from their responsibilities and the buck must surely stop with Parliament for the residual work of clearing up and rendering safe the site that the Government and Parliament have approved.

This amendment tests the Government's resolve on this issue. If they are serious about having a new programme of nuclear power stations, they must grasp the nettle and write these, or equivalent provisions, into the Bill. I look forward to their response and, in the event of them failing to give adequate, bankable assurances, I give notice of my intention of returning to this issue on Report and pressing an amendment along these lines to be written on the face of the Bill for MPs to further consider.

Lord Oates (LD): My Lords, I apologise for my delay in arriving; I misunderstood and thought that the Committee was adjourned until the end of the special session, which was slightly delayed.

I am pleased to follow the noble Lord, Lord Wigley. Amendment 3 in my name and that of my noble friend Lord Teverson would require a geological disposal facility, or GDF, to have been constructed in the United Kingdom and be operational before the Secretary of State could designate a nuclear company under this Bill. The amendment's objective is to bring some focus to the issues of nuclear waste and decommissioning, which were largely and curiously absent from the debate at Second Reading.

5.30 pm

As we know, high-level nuclear waste is deadly for thousands of years—longer than any human civilisation has ever survived—yet we seem strangely cavalier about the fact that we intend to create more of this deadly waste without any current means of permanent disposal or any certainty about the costs of delivering a permanent disposal solution. To my mind, it is morally unjustifiable to create dangers such as this, to be encountered by people thousands of years hence, in order to satisfy our demands today. However, for the purposes of this amendment, I will focus particularly on the costs of a geological disposal facility and how they will be accounted for in determining the costs of new nuclear generation.

We know from the *GDF Annual Report 2020–2021* that the geological disposal facility is intended to store not just legacy waste, such as the waste created by new nuclear generation—waste that, as is pointed out in the report's introduction, will have to be stored safely and securely

"over the hundreds of thousands of years it will take for the radioactivity to naturally decay."

We also know from pages 24 to 26 of the report that, this year, the lifetime cost of that geological disposal facility leapt to an estimate of between £20 billion and £53 billion. This represents an increase of between £8 billion and £41 billion on the previous estimate of £12 billion. That itself represented a more than three-fold increase on the original estimate for the GDF of £3.7 billion, which can be found in the Nuclear Decommissioning Authority's annual report for 2008-09. So today's upper estimate is more than 14 times the original projected cost of the GDF.

The truth is that, today, no one knows what the costs will be in the end. Whatever the nuclear industry tells us about the cost of disposing of this waste today, I would place money on the actual figure being many times higher. I should be clear that I do not blame the NDA or its subsidiaries for the difficulties in arriving at figures that can be relied on, because such estimates involve a number of highly complex factors that must be projected over immensely long periods. The NDA's annual report for 2020-21 states in respect of its wider nuclear liabilities:

"The quality of the forecast becomes less certain further into the future".

The same report estimates the current total nuclear liabilities for the NDA group at £135.8 billion, with a range between £115 billion and £246 billion—figures that have mushroomed from the £30.57 billion quoted by the NDA when it made its first estimate. Even that figure of £135.8 billion is probably already out of date, as I assume that it does not include the revised estimates for the GDF. Perhaps the Minister can clarify that in his response.

All this shows that we will not know what the GDF will cost until it has been constructed and is operating. We cannot know the real cost of nuclear generation and decommissioning in the absence of that information. It follows that the Secretary of State will lack the information to determine whether a nuclear project represents value for money, which he is required to determine under Clause 2. For those reasons alone, it is our belief that we should not move forward with new generation until a GDF is operational. However, there is also a more profound reason: we have no business creating more deadly waste until we have proven that we are capable of cleaning up the nuclear mess that we have already made. I would beg to move, but I believe that my amendment has already been moved and I thank my noble friend Lord Foster for that.

Viscount Hanworth (Lab): The proponents of this amendment are trenchantly opposed to nuclear power. They are proposing as a condition for allowing a company to construct a new nuclear plant that a facility for the disposal of high-level nuclear waste should be available. Presumably they imagine they are proposing a condition that cannot be met. The proposers should be aware, albeit that they may have missed the point, that work is already under way to establish a geological facility for such waste. Three locations have been proposed, and there have been favourable responses from the people in the areas concerned. This was announced in a symposium that was held in November in Methodist Central Hall, a stone's throw away from Parliament by Nuclear Waste Services, which is a branch of the Nuclear Decommissioning Agency. In fact, the Liberal Democrats have strongly opposed the establishment of a geological disposal facility. They have recently organised a petition of local residents to oppose a tentative proposal that such a facility might be created on the south coast under Romney Marshes.

Just a month ago, the Liberal Democrats ago voiced the old trope that nuclear waste is highly radioactive and highly hazardous and that the hazards will endure for millennia. They cannot have it both ways. Nuclear radiation is subject to a geometric or exponential process of decay. The more intense the radiation, the shorter lived it will be. On the other hand, a substance that has a half-life of thousands of years is only weakly radioactive. The methods that have been devised for the storage of nuclear waste can accommodate all these circumstances in a manner that can render the waste harmless. We have had various figures quoted for the cost of this enterprise, but the proponents of the amendment are proposing these figures as if they are a cost to be borne immediately. In fact, that cost will be distributed over a long period. If you take that into account, a very different conclusion arises.

This is an ill-conceived amendment and should be dismissed without further ado. We should not allow the legislative process to be entrammelled by such groundless objections and impediments.

Lord Foulkes of Cumnock (Lab Co-op): I am not sure why my noble friend is so surprised that the Liberal Democrats have moved this amendment. They are always looking in two directions, and this is absolutely typical of them. My noble friend has been in the House of Lords long enough, and he ought to have got used to it by now.

Viscount Hanworth (Lab): Yes, indeed. In 2010, the Liberal Democrats in the coalition Government proposed that 10 new nuclear plants should be built. Of course, they have totally changed their opinion.

Lord Teverson (LD): Perhaps the noble Viscount will explain how the Labour Party in government has made some of the biggest U-turns on nuclear power ever seen in this country.

Viscount Hanworth (Lab): No, I am not in the business of explaining that. There has never been consensus in the party but, right now, I think there is consensus as never before. The party is facing up to realities. I hope I shall have the opportunity to describe what those realities may be if we were to follow the prescriptions of the Liberal Democrats. I think that we would be looking at a scenario of misery and—

Lord Teverson (LD): We all agree with the principle that the polluter pays. I believe that we also have a principle in life that we should not pollute if we have no way of solving that pollution during the time for which we are planning. The issues here are complex, but I do not think they are necessarily quite so straightforward as the noble Viscount describes.

Lord Howell of Guildford (Con): My Lords, I had rather a nice time working with the Liberal Democrats in the Cameron Government, when, in an enlightened way, they were strongly in favour of nuclear power. It appears that they chop and change from time to time, but those were the days.

Before I speak further, my noble friend Lord Trenchard has reminded me that I should have made it absolutely clear that I have an indirect interest to declare, in that I advise Mitsubishi Electric, which is concerned with the power sector and indirectly therefore with nuclear

[Lord Howell of Guildford]
construction. I suppose that I also have a sort of interest in the sense that I was Secretary of State 40 years ago and tried to build nine new reactors, of which only one, Sizewell B, was ever built. I think that I am allowed to reflect to this Committee that things would be much nicer for us if we had got the other eight built as well. They were all low-carbon and would have helped greatly in the present crisis, but that is all history.

On these amendments, it is absolutely true, as the noble Lord, Lord Oates, observed, that the radioactive waste issue requires careful handling and examination, and it must be addressed fully and with all the knowledge that we can bring to bear to establish and meet the many understandable concerns about it.

As for value for money, we will come to that in the next amendment. Of course, there are enormous difficulties in defining what value for what money, but we can debate that in more detail in a moment.

What is not true is to imply that there has been no technical solution to the absolutely safe—nothing is 100% but it is highly safe—burying of high-radioactivity nuclear waste for thousands of years. It is certainly more than 40 years since the late Walter Marshall explained to me that vitrification and burial two or three miles down in a stable geological formation was very nearly foolproof. There was a faint possibility of corrosion of the glass vitrification case around the radioactive material, but otherwise it would be safe for hundreds of thousands of years. He added, rather cynically, that if before then people wanted to dig it up and eat the glass, they may have more problems than radioactive waste. The vitrification option is there; it can be done.

In the great debate going on in America about the Yucca Mountain development as a waste disposal centre, I noticed that the statistics produced—I have the precise figure here—say that all but one in every 10,000 waste packages going into the repository, if it is built, would be secure for more than 150,000 years. So we are talking about the most minute dangers. The danger is there, but it is minute, and has to be weighed against all the other problems—we will come to value in a moment—of abandoning an area of low-carbon electricity which will be reliable, will stop a great deal of the suffering that we have today, and will be not only a stepping-stone to but a crucial adjunct and back-up of the renewable and clean energies that we all want to see dominate when conditions allow.

Lord Vaux of Harrowden (CB): My Lords, my Amendment 42 to Clause 40 is loosely related to decommissioning, which is why it is in this group, but perhaps slightly niche or tangential.

It is important that there is clarity as to who is responsible for decommissioning. As I understand it, Clause 40 is intended to make it easier for nuclear companies to obtain debt finance by removing the risk that a lender might be caught by the definition of being associated and so potentially become liable for the decommissioning costs, which would not be appropriate for a debt provider. That makes perfect sense, and I fully support the clause in principle.

However, it seems to me that as currently drafted there is a risk that the exemption the clause sets out could create a loophole under which a party that should be treated as associated for decommissioning purposes is able to avoid that by doing some creative structuring of their holding using debt. This is often done, for example, by private equity companies, although more commonly for tax purposes, but it would not be hard to reduce a shareholding to just below the threshold of 20% while in fact retaining the ability to take control above 20% because of the rights attached to debt or quasi-debt. If a party has structured their investment to be 19.9%, and is thus not deemed associated and not liable for decommissioning costs, but it then goes over 20% through the exercise of rights arising due to debt holdings, that party should clearly be treated as associated and should not be able to utilise the exemption set out in Clause 40. However, as the clause is written, it would be able to.

It would be highly unusual for a genuinely arm's-length debt provider such as a bank to own shares in a company as well as providing debt, apart from the share security rights that come with the debt. Amendment 42 would simply restrict the exemption to parties that did not own shares. That should close off the potential loophole while not changing the intended aim of Clause 40 to encourage debt financers to step up. I hope the Minister can accept it.

5.45 pm

Baroness Bennett of Manor Castle (GP): My Lords, I shall speak to Amendments 44 and 45 in my name. They have essentially the same aim as Amendment 3, moved by the noble Lord, Lord Oates, but would intervene in the Bill in a different place and at a different point in the process. The noble Lord was intervening at the designation stage; my amendments would intervene in Clause 44, at the stage of handing over the money.

We have had a very illuminating debate. I make the point that no one can accuse the Green Party of not having been being consistent through the decades about nuclear power.

Lord Foulkes of Cumnock (Lab Co-op): It was just that you were wrong.

Baroness Bennett of Manor Castle (GP): Well, on many issues, such as the climate emergency, the nature crisis, concern about air pollution and whether we should have a living wage, we have won all those arguments over time, and I fully expect that we will make the same progress here.

The noble Viscount said, "Don't worry, the costs won't be borne immediately." I point to your Lordships' House having recently passed the Wellbeing of Future Generations Bill—an acknowledgment that we have already laid huge costs on future generations in terms of the destruction of the earth. What we are talking about here is like buying a property and then saying that the ground rent in future will be decided by a random number generator. We do not know what the costs will be, but those costs of trying to dispose of this material exist.

The noble Lord, Lord Howell, said, "Oh, we have the technological solutions", and the noble Lord, Lord Deben, hinted at the issue when he asked, "Why would future generations dig this up?" We should think about what we have done to the pyramids and a great many

ancient sites: here is this mysterious thing from the past and there might be treasures in there. One of the great challenges of trying to decide about deep geological disposal is the question of whether you should mark it or hide it. If you mark it then how do you convey, many centuries into the future, that this is a dangerous place? That is not a question that anyone has ever found an answer to because there is no answer to it.

I would be interested in the Minister's answer to this. At Second Reading the noble Lord, Lord Oates, said there had not been much discussion of this issue, but when I raised the question of a geological disposal facility the Minister told me there were four places where this was being consulted on. I asked him to identify those places and he said he could not, so I would be interested to hear any updates on that. It rather contradicts the comments from the noble Lord in front of me, who said that three places had already decided. I spoke at Second Reading about my experience of being in Cumbria and seeing what resistance there was, even in a place that is broadly pro-nuclear power, to deep geological disposal.

You do not make a purchase, particularly with public money, without knowing what the costs will be. I have some sympathy with the amendments in the names of the noble Lords, Lord Wigley and Lord Vaux, about trying to make sure that the cost does not land on the public purse—except that the practical reality is that we have seen a great deal of socialisation of costs and privatisation of profits. The state will always be the organisation that has to pick up the costs because the clean-up and the storage have to happen and the state has to ensure the security of its people.

Baroness Worthington (CB): My Lords, I apologise for not being present at Second Reading, and this is the first time I have spoken in Committee. I am speaking to Amendments 3, 44 and 45. Normally, when I speak on matters of climate change, there is not much distance between my position and those of the noble Lords, Lord Oates and Lord Teverson. However, on this issue, I totally oppose Amendment 3, which can be interpreted really only as a wrecking amendment designed to derail the Bill and the financing of this essential infrastructure, which we need to see built for the clean, affordable and secure sources of electricity that we will need in the future. Amendments 44 and 45 similarly seek to derail this effort and therefore should be opposed by the Government.

To pick up on some of the details, at heart, the difference between us is a sense of radiophobia. Noble Lords on the other side believe radiation to be a deadly, uncontrollable source of pollution that cannot be managed, which is just not true. We know how to manage this waste today and will know how to manage it tomorrow. If you know the source of radiation, and whether it is alpha, beta or gamma, and how it can be stopped by simple everyday materials—paper, metal and concrete—you can contain this waste. You can stand today in a disposal facility of high-level waste, in existing reactors above ground, and touch the sides of the casks containing that waste. It is that safe. In fact, the background radiation would be less than you would get if you were exposed to background radiation from visiting parts of Cornwall.

So please can noble Lords engage in this debate on the basis of science? Can you visit these facilities and engage in an understanding of how this currently operates and will operate in the future? If you drop this radiophobia, you will understand that this is essential in the fight against climate change—not only the existing reactors, but the new reactors and existing-design reactors. We need them all. We need to throw everything we can at this. We need to do it safely and securely, and that is what we have been and will be doing.

Please can we not accept this amendment, but have a dialogue and get to the root of noble Lords' concerns? I am sure, as was pointed out by the noble Viscount, Lord Hanworth, that once you understand the nature of radiation and that the higher the radiation, the quicker it decays, you will understand that this is a manageable problem, unlike the completely unmanaged problem of CO_2 emissions. CO_2 is emitted every second of every day in every country, and is accumulating in the atmosphere with no one taking responsibility. No one is paying for its collection and storage. You have to put this in context, understand the science and visit the current management practices in this country and others. Then you will understand that these amendments are not in good faith; they are designed simply to slow this down, and I therefore cannot support them.

Baroness Bennett of Manor Castle (GP): Before the noble Baroness sits down, perhaps she would acknowledge that the circumstances in which waste is currently being managed are stable—I do not think she was here when I was speaking to the earlier group of amendments, about Ukraine—and we have orderly government and an orderly economic system. We have controls. The world cannot be guaranteed to stay in that place. In another case, waste could look very different.

Baroness Worthington (CB): Perhaps the noble Baroness would like to comment on the completely and utterly irresponsible spreading of misinformation around the Ukraine reactor. People are claiming that it would be 10 times worse than Chernobyl, which is utterly untrue. This is the largest reactor in Europe, yet it is so secure that it cannot be compared to Chernobyl in any way, shape or form, but all this misinformation is circling around it. We have seen that reactor being rendered to a safe point even under the conditions of war. What more proof do you need that this can be safely managed?

Baroness Bennett of Manor Castle (GP): The noble Baroness directed that to me, so I will point out that, yes, the artillery shells did not hit the reactors, but they are designed to deal with aircraft strikes and earthquakes. They are not designed to deal with artillery shells.

Baroness Worthington (CB): Which do you think is more impactful—an artillery shell, or an airliner or F14 fighter flying into the side of the reactor? They are designed for this. They have regular safety protocols and procedure which they go through in considering what should happen in a conflict situation like this. You are really not speaking from a position of information to understand this, I am afraid. I should not use

[Baroness Worthington]
pronouns; I should have said that the noble Baroness should really study this more before making proclamations such as this. It derails this essential effort.

Lord Teverson (LD): My Lords, of course, the problem is actually flooding, as was shown at Fukushima—and bad maintenance, even in an organised society like Japan. The Tokyo Electric Power Company is probably seen as one of the most reliable companies in the world, but it did not do its job and caused a lot of the problem when there was the tsunami. I am not suggesting that a tsunami will hit Ukraine very soon, but there are issues.

I want to move away from the polemics. I thank Labour Members of the Committee for giving us a headline on opposing such facilities, but I admit that it is not the Liberal Democrats who have determined that they have not happened so far; it is the local communities that have rejected them. Maybe that will change. I have huge regard for the noble Baroness, Lady Worthington. I said this at Second Reading and will not go through it again: if you want nuclear, you do not do it this way. You do not build one big facility at 22 billion quid, and decide five years later to build another. You organise it in a different way, perhaps as South Korea did, with a fleet of the bloody things; sorry, I should not say that. This is the most inefficient and crass way of building nuclear power in this country.

Baroness Worthington (CB): We are doing series building. The existing Hinkley Point is two reactors built in series, and these will be another two built in series. That is four, so that is not bad—and they are large reactors, double the size of the existing PWRs. You get what you pay for. You will get an enormous amount of reliable, secure and clean electricity that will be the backbone of our grid. It will flex to allow us to accommodate huge proportions of renewables, and it will be a system where we can produce hydrogen from nuclear. There is absolutely nothing for one to be concerned about in this proposal. I am a fan of alternative reactors; there are other ways of doing nuclear that are inherently safe and would not have led to the Fukushima accident, because they could have been designed differently. However, I ask the noble Lord: how many other reactors sustained themselves through that tsunami? It was unprecedented—10,000 people lost their lives—yet there was only one reactor problem, because it did not allow a release of pressurised air with water and vapour. That was what went wrong, not maintenance. There was a political call, and the reason for that was the world's media focusing on it because of the radiophobia that has been spread, I am afraid, largely by the green movement over the last 30 years.

Lord Teverson (LD): I can see the Government Benches starting to go for a refreshment break; never mind. I am trying to make a serious point. I have been to Hinkley C; I understand it all, believe me, but this is the wrong way to do it—the technology is obsolete. The question I want to ask the Minister outside the polemics is about the Nuclear Liabilities Fund, which he will be well aware of. Its current value in assets is £15 billion, largely through the Government's sale of British Energy. We heard from my noble friend Lord Oates that the potential future liability is some £53 billion. EDF pays into the Nuclear Liabilities Fund at the moment.

My question is around the problem of there being a future liability that cannot be met. How does the Minister see that developing? Will the fund be able to meet the costs in the future? I am particularly interested in understanding whether the fund is in a bank account somewhere or is just an item on the Treasury's balance sheet, so it is not really there and is just absorbed into public expenditure. It is a serious question. I would like to understand the previous methods that have been used to make sure that there is not a liability in the future. The figures just seem totally inadequate. Even if we do go through these types of facilities, how will we make sure that the liabilities can actually be met?

6 pm

Baroness Wilcox of Newport (Lab): My Lords, this group of amendments centres on the important aspects of nuclear waste and the decommissioning process. As we have heard, they give rise to polarised opinions. I will be brief, given the number of amendments that we are aiming to get through this afternoon.

A number of speakers raised issues around nuclear waste at Second Reading. The Minister acknowledged that work on a geological disposal facility to dispose of high-level waste permanently is still ongoing. It is doubtful that the Minister will be able to provide any meaningful updates on that project this afternoon, but I may be proved wrong.

There are genuine questions to be answered. However, whether they need to be answered in full through this Bill is less clear. The answer to that question may lie in the likely process once the Government are finally ready to proceed with their chosen long-term solution. Will separate legislation be required to get that project under way?

Lord Stunell (LD): My Lords—

Lord Foulkes of Cumnock (Lab Co-op): Oh, no.

Lord Stunell (LD): Yes, I know—it's boring hearing the facts, isn't it? I apologise for not catching the noble Baroness's eye earlier but I want to contribute briefly to this debate with just a couple of historical facts that might help.

I thank the noble Lord, Lord Howell, for his words about the Liberal Democrats in the coalition. As one of the four people from the Liberal Democrat side who contributed to the agreement with the Conservatives, my recollection on that is that, as I am sure he will remember, nuclear power was to be at no cost to the public purse. That was very much the coalition's starting and finishing point; I hope that it will continue to be so.

I have done most of the things that the noble Baroness, Lady Worthington, invited us to do to apprise ourselves of the facts. Indeed, back in 2001, with the active co-operation of BNFL—British Nuclear Fuels Ltd—I produced a short report, *Cleaning Up the Mess*, which looked specifically at what would be the best way to deal with nuclear waste; at that time, it was much more prominent in the headlines than it is now

and just as intractable. We looked at some of the conditions needed. One is stable geology but the other, which the noble Baroness, Lady Bennett, mentioned, is stable politics. If you look at Europe, only two countries —England and Sweden—have had even 350 years of political stability. Of course, the events in eastern Europe at the moment are a reminder of that.

Lord Foulkes of Cumnock (Lab Co-op): It seems to have been relatively stable in Scotland.

Lord Stunell (LD): I am sure that the noble Lord's colleagues from the Scottish National Party will remind him of the Act of Union, which was subsequent to that date. Yes, England was a deliberate choice, but I will accept other places; it is hard, however, to find another place other than Sweden that has had even 300 years, let alone however many thousands of years we are talking about, of stability.

Lord Foulkes of Cumnock (Lab Co-op): What about Portugal?

Lord Stunell (LD): Let us try Portugal. The Duke of Wellington was required to liberate Portugal from Spanish and Napoleonic domination. It is easy to forget Napoleon and Hitler and all sorts of things but—not that it is particularly relevant to this debate—political stability is important and rare. This country is one of the places that has been able to exhibit that despite our sometimes fractious debates on nuclear storage.

The conclusion of my report was that you need deep geological storage. It would be sensible for it to be in England. This is not, and never has been, Liberal Democrat policy, but my report pointed out that there was a big business opportunity because nobody else in the world—neither then nor, for that matter, now—had a good place to put their nuclear waste. I am certainly not opposed to having a deep geological disposal point.

The purpose of this is to establish the risk and the cost to the public purse. I go back to where I was in 2010—that there should be no cost to the public purse. We have gone backwards since 1999. Then we at least had a site and a plan—or BNFL did, which was strongly advocating it—but at the moment we have neither. We had a timescale; it would have been operational in 2024, which would have been very convenient for the passage of this Bill. Now it will probably not be for another 25 years, even if it gets a fair wind.

Lord Wigley (PC): When the noble Lord says that there should be no cost to the public purse, is that in regard only to future projects or also to existing nuclear power stations? I mentioned in my intervention the situation in Trawsfynydd, the cost of decommissioning which could never have been anticipated when it was built. Is there not a case in those circumstances that the public purse is the only way to bail out that sort of situation?

Lord Stunell (LD): The noble Lord is almost certainly right. That ship has sailed, to say the very least. In phases one, two and three of the nuclear programme, no adequate provision was made for decommissioning or any way of storing the waste. Unfortunately, that will clearly fall back on to the public sector in some form or another.

We are talking about a new generation. It is surely right and proper to learn from the mistakes of the last 60 years and make sure that that is properly costed in the formulation given for the construction and operation of these plants. I do not think that it is particularly controversial that we should learn from previous experience, although it is often very hard to do so.

Is the Minister satisfied that the public purse will be properly protected over a period of time from finally picking up the costs of geological disposal of nuclear waste from the plants that this Bill is intended to finance? The Government ought to answer that honestly and frankly so that there is no illusion on anyone's part either about what is happening in terms of public subsidy or that the true costs of delivering a nuclear programme incorporate the costs of decommissioning, rather than shuffling them off at the start and delivering them as a bill of unknown but undoubtedly large size to the public purse.

Baroness Worthington (CB): Before the Minister responds, I would be interested in whether we should have a review of the societal demands of how we treat the decommissioning and waste of nuclear, because it seems to me that we are operating against a set of principles that have become detached from the reality of how you can manage this more cost-effectively. A large body of evidence says that geological disposal is not needed, because you can just do subterranean management. If it were not for the widespread lack of understanding about the nature of the problem and the way it can be dealt with, we would not have to incur these costs. If there is a review, we should go back to basics.

The same is true of decommissioning. The simplest and cheapest way to decommission is to leave it alone and then decommission it. The desire to bring it back to greenfield status is utterly unnecessary. These are highly concentrated industrial sites that serve clean energy to millions of people. We should not be seeking to return them to greenfield on an accelerated timescale, unnecessarily incurring huge costs to the taxpayer. We should have a review, go back to basics and consider all of the above in terms of what we should do with our waste and decommissioning.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I shall speak to Amendments 3, 17, 20, 42, 44 and 45, laid by the noble Lords, Lord Oates, Lord Teverson, Lord Wigley and Lord Vaux, and the noble Baroness, Lady Bennett. They relate to decommissioning and it is appropriate that they are all discussed together.

Prior to doing that, I will address the comments of the noble Lord, Lord Teverson, on the Nuclear Liabilities Fund. The NLF is a segregated fund which has been set up to meet the costs of decommissioning nuclear power stations currently owned and operated by EDF. The fund is managed by an independent Scottish trust, the Nuclear Trust. The trustees are responsible for ensuring the sufficiency of the NLF to meet decommissioning liabilities. I hope that that answers his questions.

[Baroness Bloomfield of Hinton Waldrist]

I return to new nuclear and make it clear to the Committee that there is already a robust and effective statutory regime in place that addresses the decommissioning costs of new nuclear power stations. Under the Energy Act 2008, it is a legal requirement that all proposed new nuclear power stations have a Secretary of State-approved funded decommissioning programme in place before nuclear-related construction can commence on site. This includes setting out how the operator will safely manage spent fuel and waste during operations and meet the costs of decommissioning and the clean-up of the site. I note with interest the comments made by the noble Lord, Lord Wigley, and welcome the opportunity to meet him if he would like to discuss this process further.

As part of the FDP approval process, the Secretary of State must consult the Office for Nuclear Regulation—the ONR—and relevant environmental regulators where their functions are concerned. The Government have also published FDP guidance, which clearly sets out the principles that the Secretary of State will expect to be satisfied in an FDP. I note that we expect any approved FDP for a new project to be available publicly, as was the case for Hinkley Point C, save for material of a sensitive nature.

Approximately 94% of legacy waste created by nuclear power stations in the UK is low-level waste, which is either recycled or disposed of safely and securely. Higher-activity waste is treated and stored safely and securely in nuclear-licensed sites around the country. This will then be disposed of in a geological disposal facility, which the Government are committed to developing. The noble Baroness, Lady Worthington, made these points eloquently and I thank her for her contribution. A GDF will ultimately allow the Nuclear Decommissioning Authority to complete the decommissioning and clean-up of the existing nuclear estate and to continue to manage radioactive waste effectively. This is the safest and most environmentally responsible option for managing higher-activity radioactive waste in the long term and there is a process under way to identify a suitable location for a GDF.

The noble Lord, Lord Callanan, recently wrote to the noble Baroness, Lady Bennett, on this very matter. A GDF working group, which is the first formal step in the process to identify a suitable location, has been formed in Theddlethorpe in Lincolnshire and is beginning discussions with the local community. In addition, the first three GDF community partnerships—the second formal step in the process—have been formed in Mid Copeland, South Copeland and Allerdale in Cumbria. These groups provide a platform for long-term community engagement, local investment funding and investigations to assess potential site suitability.

It is for these reasons that I cannot accept Amendments 3, 17, 20, 44 and 45. The FDP regime in the Energy Act 2008 already exists to ensure that new nuclear projects have effective arrangements in place before they begin construction to manage, pay for and dispose of the waste that they create. Amendment 3 in particular would prevent the Government from bringing forward new nuclear power using the nuclear RAB model that we need to decarbonise our power system and help meet our ambitious climate change goals. A GDF is the best option for the long-term management of radioactive waste and I thank the noble Viscount, Lord Hanworth, for his support for such a facility. I also thank my noble friend Lord Howell for his thoughtful reflections on this matter. As I said, a process is already under way to identify a suitable location with a community willing to host a GDF. It is imperative that we bring forward nuclear now, given that arrangements are in place for safe, secure interim storage of waste and its ultimate disposal.

The noble Lord, Lord Oates, made several comments on the potential costs of a GDF and how our understanding of these has developed. The earlier cost figure to which the noble Lord referred represented a lower-end single point estimate around some basic assumptions on the depth and type of rock in which the GDF would be constructed. It included only the cost of disposing of legacy waste. The revised cost range of £20 billion to £53 billion is a more mature and complete estimate based on credible scenarios. It includes figures for waste from new nuclear projects and materials such as uranium and spent fuel from earlier nuclear power stations, which may be declared as waste if no further use is found for them. It also accounts for factors including uncertainty and optimism bias. Uncertainty will be reduced as we progress through the siting process. We will understand the specific geology and associated engineering and technical requirements, allowing us to refine our cost estimates.

I turn to Amendment 42, which was laid by the noble Lord, Lord Vaux. It is our understanding that the intent of the definition of "associated" in Section 67 of the Energy Act 2008 was to provide the Secretary of State with the flexibility to impose decommissioning obligations on entities that would be expected to have a substantial degree of influence over the operator's normal activities, such as the operator's group companies and shareholders with an interest in the company significant enough to influence its decisions.

6.15 pm

However, it is possible that legislation as currently drafted could be interpreted in such a way that other participants in the financing of new nuclear projects, such as secured creditors and security trustees, could be at risk of falling within the definition of bodies associated with the operator, particularly due to the action that they might take in relation to the enforcement of security in a default scenario.

It is therefore necessary to introduce new Section 67A, which clarifies that certain types of activities should be disregarded when considering whether an entity should be classed as associated with a site operator to encourage investment from lenders. It should be noted that the financing from lenders in this scenario would not be expected to bring with it rights to influence the day-to-day running of the operator. In terms of the example given by the noble Lord, Lord Vaux, of a bank that may be a debt investor but would be unlikely to take equity, that may well be the case. However, as I have argued, we do not wish to preclude the possibility of an equity investor providing debt.

Amendment 42 would restrict the flexibility for companies to invest in a project in the capacities of both shareholder and lender and this would in turn

limit our options to encourage finance into new nuclear projects. To be clear, nothing in Clause 40 changes the fact that a company that holds 20% or more of the shares in a site operator will be associated with that company under the FDP legislation.

I hope that I have reassured noble Lords of the robust existing statutory regime that we have in place to ensure that prudent provision is made for the full costs of decommissioning and waste management by the operator of a new nuclear power station. This is complemented by the excellent work currently being undertaken to develop a GDF. I therefore ask that the amendment be withdrawn.

Lord Wigley (PC): Will the Minister clarify her response on Amendment 20? If the cost of decommissioning, including of the site, goes beyond that which has been built in to the financial agreement at the origin of the scheme, is she saying that the Government would pick up the bill in those circumstances and that there is already a provision to provide for that, or is she saying that in no circumstances would the Government use public money for that purpose? If she is saying the latter, getting a nuclear power station such as Wylfa off the ground does not have a snowball's chance in hell. There has to be a guarantee that ultimately the public purse will pick up the cost.

Baroness Bloomfield of Hinton Waldrist (Con): All I can say is that all these issues will be negotiated up front in the agreement that we make with the potential operator of a new nuclear site.

Lord Wigley (PC): I am sorry to press this further, but of course there will be negotiations and some sort of a deal will be made with those developers, but if the circumstances change, as happened at Trawsfynydd, and there are immense additional costs beyond what was anticipated, surely there has to be a public guarantee to those communities. Those communities have supported nuclear power on the basis that such an understanding exists. If it is not there, there will be a volte-face, and there will be a reaction against nuclear power. This assurance has to be given one way or the other. If the Government want to go away, think about what mechanism is appropriate and come back on Report, I accept that, but to say that in no circumstances would the Government pick up the tab is to kill off the prospect of those locations.

Baroness Worthington (CB): I do not think that that assertion is correct, because my understanding is that once the nuclear industry stopped building new reactors it moved into decommissioning. What we had was a period in which the entire sector was making all its money from decommissioning costs. The reason that those costs kept rising was that we had a very poor regulator which allowed a reciprocal relationship with private contractors, who brought forward all sorts of faster decommissioning timetables. That was nothing to do with what society needed or required; it was to do with the profitability of the industry. I hesitate to say that there are these red lines where society will not accept a new reactor because of decommissioning. It is much more complicated than that. We must be careful that we are not gold-plating regulations that deliver millions of pounds to contractors unnecessarily.

Lord Wigley (PC): I entirely accept what the noble Baroness is saying, but circumstances will change and there will be costs that have not been anticipated. Those will be picked up either by the local community or by someone else. If it is someone else, who else can it be but central government?

Baroness Bloomfield of Hinton Waldrist (Con): What I can say is that the Government will meet all our obligations to communities in decommissioning the site.

Lord Vaux of Harrowden (CB): When the Minister was answering on Amendment 42, I think that she confirmed the existence of the loophole that I had pointed out, so I will just ask her a direct question. If someone whose stake was, say, 30% managed to structure it so that it was 19% and debt, then that debt was subsequently rejigged to bring us back above the 20% threshold, should that person be treated as associated or not?

Baroness Bloomfield of Hinton Waldrist (Con): I am told that Section 67 of the 2008 Act already provides for this, because the totality of the investment would be taken together. If it is over the threshold, it will be caught.

Lord Vaux of Harrowden (CB): But the whole point of Clause 40 is to create an exemption, so that share security rights that arise from debt are not taken into consideration when deciding whether someone is over the 20% or not. That is the whole point of Clause 40 and is precisely the problem that I was alluding to. I am happy to meet the Minister to discuss it, if that is easier.

Baroness Bloomfield of Hinton Waldrist (Con): I am happy to explore this further out of Committee.

Lord Oates (LD): I thank noble Lords—some more than others—for their contributions to this debate. I particularly thank the noble Lord, Lord Howell, who, while we disagree strongly on these issues, addressed nuclear waste seriously. One of my purposes in tabling Amendment 3 was not only to expose issues about and have a proper discussion around the costs of a geological disposal facility but because it concerned me, at Second Reading, that there was little focus on waste.

I perhaps should have declared an interest at the beginning as, many years ago, I acted as an adviser to the NDA. While I do not pretend to be a scientist, I have some understanding of this and say gently that there are many people, on all sides of this debate, who have an understanding and take different views. Noble Lords should not make assumptions about their greater knowledge to underpin their enthusiasm for nuclear.

On the specific point of my party's position on this—again, rather than addressing some of the issues, we seemed to get into a rather unnecessary partisan

[Lord Oates]
issue—different parties have different views. As my noble friend Lord Stunell pointed out, the agreement in the coalition was no public subsidy for new nuclear and that is the position we took.

The noble Viscount, Lord Hanworth, for whom I have great respect, was uncharacteristically partisan. He told me that I could not have it both ways, but I gently suggest that he cannot have it both ways either. If the issue of nuclear waste is of such marginal concern and I should not be bothering the Committee about it or the costs of it, why are we intending to spend potentially £51 billion—I imagine much more by the time we get to it—on a geological disposal facility? The noble Viscount said, "Well, there are things happening", but there have been things happening for a long time on the GDF. As my noble friend Lord Stunell pointed out, we have gone backwards in many ways. I have also heard some argue, "Oh, actually, we do not need a geological disposal facility. That solves it, because then we do not have to worry about the costs of that or the difficulties of securing it." That is not the view of the majority of people I have spoken to, and I have spoken not only to those who are opposed to nuclear but to those involved in the nuclear industry. Certainly, the international view and the international experience is that such a GDF is required.

All I would ask of the Committee and the Government is, if they are intent on going down the road of nuclear—I am quite open that I am opposed to it, not for some ideological reason or from radiophobia but for some very practical reasons relating to the problems; they are not about encased waste, which you can standby or store for 100, 200 or possibly 300 years, but about long-term disposal, as talked about by my noble friend Lord Stunell, the noble Baroness, Lady Bennett, and others—

Lord Foulkes of Cumnock (Lab Co-op): Is it not the case, when we are dealing with the disposal of waste, that more than 90% of it is already there, coming from the old Magnox reactors, and the new nuclear reactors produce relatively small amounts of nuclear waste?

Lord Oates (LD): I have heard this from others, and the argument seems to be, "Well, we've created such a mess already that it doesn't make much difference if we create any more." They may create less waste than the old Magnox reactors, but all I am asking is that, before we create more of that waste, we have a way of disposing of it. It is important that we take that seriously, whether we are pro-nuclear or anti-nuclear. We will not convince people unless we deal with this sensibly. In terms of this Bill, we cannot know the real costs unless we understand the costs of construction and operation.

Baroness Worthington (CB): My Lords—

Lord Oates (LD): I say with respect to the noble Baroness, Lady Worthington, that she has intervened on many occasions and we probably need to move on. I just ask that these matters be taken seriously and that when people discuss nuclear waste they think about it in terms of the very long term over which it has to be dealt with and the fact that we do not yet have that GDF and cannot possibly know the costs of it. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4

Moved by ***Lord Foster of Bath***

4: Clause 2, page 2, line 14, leave out from "project" to end and insert "will result in value for money, as evidenced by the publication of the Value for Money assessments conducted to date."

Member's explanatory statement

This amendment would require the Secretary of State to provide stronger evidence that the project will result in value for money through publication of such assessments carried out to date.

Lord Foster of Bath (LD): My Lords, I begin by declaring a couple of interests. First, I should place on record that I live quite close to Sizewell. I say to the noble Lord, Lord Howell, that if only the current construction of Sizewell C were done in the way in which they built Sizewell B, with much of the material brought in from Sizewell A, some of the objections in the locality—not all of them—would certainly disappear. Secondly, and I say this particularly to the noble Baroness, Lady Worthington, for whom I have enormous respect as she knows a great deal about this, I know a little bit because I used to be a physics teacher, but I do not think that that holds much water these days—it was a long time ago.

My amendment is in a long grouping of amendments, but all seem to cover roughly the same theme, that of transparency and trying to ensure that we have as much information available to us as we can before fundamental decisions are made and this Bill goes through. There are many amendments covering issues to do with the designation procedures and so on. I note, for instance, that my noble friend Lord Oates in his Amendment 13 asks not only for more information on what impact the RAB will have on consumer bills but for that to be independently checked—something that Citizens Advice, for instance, has long been campaigning for.

My noble friend also raises a really interesting issue in Amendment 6. It is about getting some assurances that the station or generation system to be built will be able to deliver and will not have a number of outages, or perhaps will not even work at all. Of course, that is already being experienced by the Taishan EPR new build in China, which has been offline for the past eight months after only two and a half years in operation.

6.30 pm

Getting information is proving very difficult indeed. Today, letters were received by two people living near me in Suffolk. One of them had requested information about the expected timeframe in which the designation criteria referred to in Clause 3(1) would be provided. The reply that came today from BEIS's new nuclear projects directorate said:

"The statement mentioned in Clause 3(1) is currently being developed, with a plan to be published in due course."

So it has not even finalised the details of what Clause 3(1) in a Bill that we are expected to agree to will say.

The other letter discussed the issue raised in my Amendment 4. It specifically asked for information about whether the value-for-money estimates will be published. Answer came there none; no answer was given at all. Amendment 4 is fairly simple. It says that, in designating a nuclear company in relation to a project, the Secretary of State must be convinced that it

"will result in value for money, as evidenced by the publication of the Value for Money assessments conducted to date."

It simply seeks further information, which will be vital before we go ahead with designating a project.

Of course, the problem is that whether nuclear can ever give us value for money is somewhat moot. Look at all the different technologies. The cost of nuclear has always stayed incredibly high. The annual levelized cost of energy analysis by the United States, which was updated by Lazard in October 2020, suggests that between 2015 and 2020 the average unsubsidised electricity generating cost declined for solar PV from $64 to $37 per megawatt hour and for onshore wind from $55 to $40 per megawatt hour. At the same time, nuclear power costs went up from $117 to $163 per megawatt hour. Over the past five years alone, nuclear energy costs have risen by 39%, while renewables have become the cheapest of any type of power generation.

No doubt the Minister will say in response that reducing the cost of finance, which this Bill proposes, is the key and will sort out all our problems. However, the truth is that those costs are so high because nuclear builds are inherently risky. The frequency of cost and time overruns of EPR builds in France, Finland, the UK and even China is, frankly, staggering. For instance, the cost and completion date of the Flamanville plant in France has now been updated seven times in 11 years. It is currently 12 years late and is expected to cost four times the original budget. The difficulties with all these builds are then explained as being because they are the first of their kind in their country, but of course that totally ignores the fact that EDF has been involved in every single one of them.

Even the Government's impact assessment suggests that a new project such as Sizewell C is likely to take 13 to 17 years as opposed to EDF's estimate of between nine and 12 years so, frankly, how can we have confidence that, for instance, Sizewell C can be built on schedule within the already eye-watering £20 billion? Incidentally, the £20 billion figure is two years out of date and, interestingly, EDF refuses to provide updated information to the planning inspectorate on the grounds that it is commercially sensitive. Therefore, I believe very strongly that we need to have more information about what the value-for-money estimates are and what they are based on.

One of the things which I got really concerned about was that when this was being debated in the other place we were told that, for instance, Sizewell C would be perfectly okay because huge lessons would be learned from Hinkley Point C. We are just going to move the thing on, but, of course, unless we have a value-for-money estimate that takes into account all the relevant factors, then I, for one, would be worried. What are the relevant factors? It seems to me that if you simply believe that you can replicate Sizewell C from what you have done at Hinkley Point C, you fail to take into account the huge differences in the construction site itself: the different geology, for a start, the bridging work and working around sites of special scientific interest. There are huge issues around coastal defences, water desalination, new roads and so on, each of them bringing different challenges that have to be taken into account. Amendment 4 seeks not just to get more information but requires the publication of a value-for-money estimate so that we can have confidence in the project going forward.

I turn very briefly to Amendment 26, also in my name, which is a probing amendment. I looked very carefully at Clause 6(4)(e), where we are told that in exercising his or her powers the Secretary of State must have regard to

"the need to secure that the nuclear company has appropriate incentives in relation to the carrying out of its activities"

among many other factors. I hope that the Minister will be able to give us some information about what exactly that means because I suspect that it will refer, at least in part, to the agreed balance of risk sharing between the developer and the consumer—that is, who is going to pay for what over what period of time?

In reference to that I notice that the Minister in the other place said:

"Under an RAB model, the licence would determine a risk-sharing mechanism, whereby construction cost overruns up to the agreed financing cap are shared between investors and consumers. We expect that any RAB structure will ensure that financial incentives are in place to ensure the company's investors manage project costs and schedules. The financing cap will be based on a robust risk analysis, including best-practice, reference-class modelling, and set at a level that is sufficiently remote that there is a very low chance that it would be reached".—[*Official Report*, Commons, 18/11/21; col. 126.]

If I am right that part of the issue here is to do with cost-sharing, and if the cap is going to be set so far away and so high, presumably that means that the consumer will have to pay his or her share—we do not know what that percentage is—and that is just going to go on and on to a high level. I would be grateful for clarification on that, just so I know where I stand.

Also, I assume that what is intended here is that pressures will be put on the developer to ensure that there are not the cost overruns that, sadly, there have been on so many occasions. Since cost overruns have occurred on so many occasions, it would be helpful to know what the Government have in mind that will ensure that we are not going to have those in projects that will be covered under the RAB model.

I look forward to the Minister's response and beg to move.

Lord Howell of Guildford (Con): My Lords, I am second to none in my concern for the escalating costs of past nuclear projects—large-scale projects, that is. That is why my hope is that more and more emphasis will be put on returning to smaller modular reactors and new technologies, where the opportunities for vast cost escalation over a long period of time are reduced. One cannot help coming to that conclusion from the experience of Flamanville, where there was a huge cost overrun—the noble Viscount, Lord Hanworth, will remember that because we visited it together—and, of course, that of Olkiluoto, where the cost and time overruns are colossal.

[Lord Howell of Guildford]

So large scale does not have a good story. The sooner we can face up to that and give full support—even more support than at present—to the development of SMRs, borrowing foreign technology if we have to but hoping that Rolls-Royce has got it right and is on the right lines, the better. In a way, the regulated asset base will work all the better for these smaller and much more financeable projects, which are much more attractive to the private sector than large-scale projects. However, the large-scale project at Sizewell C is already under way, so perhaps my prayers are not going to be answered for that one; I just hope that they are for the future.

My problem with Amendment 4 is the emphasis on the concept of value for money, which is of course something that the Treasury talks a great deal about. Can the noble Lord who moved the amendment enlighten us later on what he means by "value"? Part of the argument all along—it has never been stronger than it is now—for building nuclear is national security, as the noble Baroness, Lady Wilcox, rightly mentioned at the beginning of the day. National security is the case for an element: you cannot go completely for national security on the basis of autarky—that would be absurd—but we do know that events happen, and have happened.

Right now, we face tremendous problems because of not being able to mobilise a system that is less prone to colossal price increases, causing enormous damage, hurt, suffering and danger to the economy, as a result of the more than tripling—the sevenfold increase—in the price of gas. Only yesterday morning, I was listening to the noble Lord, Lord Duncan, say on the radio that, in the two hours before he had come on the radio, the price of gas had risen from being five times as high as last year to nine times as high. It is a crazy situation, arising entirely from a lack of diversity and support because we have let our low-carbon, reliable nuclear sector run right down from the 35% it was in its heyday to something in the mid-20s; it is going to be 7% until we get it started again.

Is national security part of the value? Is there the back-up capacity of having a reliable sector of low carbon when renewables, however much we love them, falter? They do falter, and can fail completely at times. Is that built into the value? Is the fact that this is an enormous future source of clean, green hydrogen built into the value? Is the fact that nuclear itself is low carbon and therefore should be backed, and justifies subsidy in the way that other low-carbon renewable sectors have all received substantial support in their time—although their costs are coming down—included in the value? Unless we are able to get some realisation that value is a disputable, subjective point, and that behind it lie much deeper assessments of the defence of the nation and our national security in the next 30 to 40 years and further ahead, it is impossible to lay down rigid rules about how some kind of assessment of value for money should be reached. That is my problem with this entire amendment.

As I say, although we cannot go for autarky—that would be absurd—we must have reliable electricity for what everyone says is going to be an electric future. We are going to use 12 times as much electricity in the western world in 2050 as we use now, so we must have electric reliability. For that, we must have a nuclear sector that is strong, effective, reliable and, one hopes, more affordable. In the meantime, what is the value? That is my question.

6.45 pm

Lord Foster of Bath (LD): I have enormous respect for the noble Lord—indeed, I think that he has asked some very pertinent questions—but he has spent his time criticising the amendment when the Bill that he is perhaps going to support later currently says that

"the Secretary of State is of the opinion that designating the nuclear company in relation to the project is likely to result in value for money."

So the value for money is already there; my amendment seeks to have it published so that we can see what basis has been used. I think that the noble Lord should be addressing his questions to the Government, not to me.

Lord Howell of Guildford (Con): What I am saying is that, if the Secretary of State decides to publish his value for money assessment, that assessment will of course include the long-term national security concerns of this nation and a variety of other advantages of moving into a proper low-carbon electric age. That kind of value is not one that the noble Lord is going to agree with, so the disagreement will continue. Value is a totally subjective aspect; that is so with many national projects, but particularly with this one.

If I may say to the noble Lord, Lord Stunell, the rather endearing Lib Dem concept that no public subsidy could possibly be involved—that is, nuclear is all right but there must be no public subsidy—is an absurdity. Of course there is going to be public concern about the national security of this nation; public concern is something that will have to be paid for, either through subsidy by the taxpayer or by ordaining the Government to raise the money in some other way. The latter was the proposition for Hinkley C, which was allowed to have a strike price that was at that time almost twice the going rate for electricity kilowatts per hour from coal, oil or anything else, including renewables. Things have changed since then; now that electricity and gas have soared, perhaps the strike price is quite reasonable compared with other fossil fuels. That raises the question of contracts for difference; perhaps it was not quite such a bad prospect as some of us thought.

Anyway, that is beside the point. The main point is that value is utterly subjective and must contain all kinds of assessments by the Secretary of State, his colleagues and the Government about national security and its contribution to our long-term aim of a decarbonised world, as well as a vast range of other considerations—all of which have to be balanced out in taking these difficult political decisions. We can argue until kingdom come but the reality is that judgments have to be made, and they are much bigger than value in the narrow sense.

Viscount Hanworth (Lab): I quite agree with what the noble Lord, Lord Howell, has just said; indeed, I feel somewhat pre-empted. However, before I address the amendment, I shall talk about cost overruns.

The cost overruns have been substantial in Flamanville and Olkiluoto but they are mainly attributable to the fact that there was a long hiatus in the process of

constructing nuclear power stations, so the skills that constructed the majority of the French and our own power stations had evaporated. It is worth looking back at the history of our original nuclear programme to recognise both how rapid and effective it was and that it was not accompanied by the kinds of problems we have witnessed on these large power stations.

Be that as it may, Amendment 4 from the Liberal Democrats is predicated on their opposition to nuclear power and the proposal that nuclear power projects should be assessed in terms, as we have heard, of their value for money. I presume that they wish the assessment to be based on commercial accountancy, and that they hope and expect that on that basis the projects will be judged to be too expensive to pursue. The proposers of the amendment should know that when a nuclear project is financed by commercial funds, the likelihood is that more than 50% of the cost of the project will be attributable to interest costs.

In other words, the costs of projects pursued in this manner will comprise a substantial transfer payment by the beneficiaries of the project, who are the consumers of electricity, in favour of the financial sector. Are the Liberal Democrats happy to see major investments in social and economic infrastructure evaluated according to the criteria of commercial accountancy? If so, they are aligning themselves with a political ideology that I would have expected them to reject.

Lord Teverson (LD): That is not what the amendment says.

Viscount Hanworth (Lab): Be that as it may, when we talk of value for money, we usually have in mind the amount of money we would be paying for an item that is subject to immediate use or consumption. The concept loses its meaning, as we have heard, when considering something where consumption is to be deferred and is liable to take place over an extended period. In such cases, we must attempt to envisage the circumstances likely to prevail in the future. This is surely the case for a nuclear power station, the construction of which may take a decade and which is intended to provide a carbon-free supply of electricity for many years. It is envisaged that such power stations will be able to supply the plentiful electricity needed to power a carbon-free economy and to assist in averting climate change.

The appropriate means of determining the value of a nuclear project is to consider the associated opportunity cost. Opportunity cost is a technical term in economics that denotes the opportunities that are forgone by pursuing—or not pursuing—a particular project. It requires a degree of imagination to assess the opportunity cost of a nuclear project, which far exceeds the imagination required in pursuing an exercise in commercial accountancy. I invite the Liberal Democrats to assess the opportunity cost of forgoing nuclear power. In particular, I encourage them to envisage the consequences in terms of economic and social misery that will arise if we fail to create an ample and carbon-free supply of electricity. Their policies are inviting such a failure.

Lord Teverson (LD): There is a concept in economics—which I am sure the noble Viscount is aware of—of opportunity cost.

Viscount Hanworth (Lab): That is exactly what I have been talking about.

Lord Teverson (LD): Exactly. My point about it is that, first, it is the Government's Bill says there will be this assessment. We are trying to find out is what it actually is, in the interests of transparency—which I am sure the noble Viscount would not disagree with. In terms of costs, there are opportunity costs of other forms and ways of meeting climate change targets. That is the point. You can reject opportunity cost, which means other ways of doing this. I do not think the noble Viscount's enthusiasm for nuclear—which I understand—should disregard some of the other ways of achieving these objectives.

Viscount Hanworth (Lab): Let me answer that. Looking at the alternatives proposed by the Liberal Democrats, I could go into a long discourse to outline what will happen to our industries if we forgo an ample supply of electricity to power them and maintain our economy. This is what the Liberal Democrats are inviting. They simply have not faced up to the realities of their proposals. The noble Lord says the Bill already asks for an assessment; I think that is a trivial point, because I am trying to tell him that such an assessment is probably not the appropriate way of proceeding—as we have heard very eloquently from the noble Lord, Lord Howell. I am not defending the proposal that a value for money assessment should be made. I am suggesting that such an assessment should be put aside because it is irrelevant and inappropriate.

Baroness Bennett of Manor Castle (GP): I am sorry to intervene on the noble Viscount's private discussion with the Liberal Democrats, but he referred to opportunity costs and may not be aware of the study from the University of Sussex Business School and the International School of Management—ISM—of 123 countries over 25 years, which was published in *Nature Energy*. It showed that nuclear and renewable energy programmes do not operate very well together and that nuclear crowds out renewable. That is the opportunity cost when going for nuclear; you lose the renewables.

Viscount Hanworth (Lab): My discourse on renewables would have been on the extraordinary cost of having to accommodate intermittence. I am afraid there are other things to discuss. I have already discussed this in another forum, so I think we can leave that point.

Baroness Worthington (CB): My Lords, I will speak briefly on Amendment 4, as much of what I was going to say has already been covered. I have some sympathy with this amendment, as transparency is nearly always good and it would benefit the industry to have a thorough description of the value of investing in nuclear on this and other scales, so that we have it as an option as we combat climate change and seek to deliver affordable power to the nation.

As the noble Lord, Lord Howell, pointed out, value is subjective. Therefore, it would be hard to use it as an objective way of saying that this should not go ahead. What value does Switzerland currently place on its electricity grid, which is almost 100% hydro and nuclear? That means that, despite its location in the centre of

[Baroness Worthington]
Europe, Switzerland is feeling incredibly safe in these troubled times. What value does it place on that? It is of huge value to Switzerland.

Similarly, the social cost of carbon rapidly needs to be revised as we realise that the impacts of climate change are happening far faster and at far greater cost than we ever thought. How do we factor that into value? Transparency is important and I would welcome a much more open discussion about the value that these large-scale nuclear power projects deliver for us. You can look at the levelised cost of electricity, but I suggest it is not the most important factor. You can pay a lot less for a tricycle than for a tractor, but they do not perform the same job. You must compare like with like.

With renewable technologies you have rapid deployment but very diffuse sources of energy, large land take and intermittency, which then requires a substantial extra cost on the grid for levelling when the sun is not shining or when we have periods of no wind, which does happen in Europe—it happened recently, actually, and contributed to the high gas prices we have seen. Let us have that discussion. I feel confident that the project we are talking about here, Sizewell C, will provide a great value for the money we are about to spend, not least because 50% of its additional cost comes from its financing, as has already been stated. That is a huge overhead, because these are capital-intensive long projects. This Bill will help reduce that and increase the value for money.

We now have two reactors under construction today. We can look at the costs of those to see how they transfer to subsequent projects that are funded under this more efficient mechanism. I have been informed about and questioned EDF about its cost overruns. The costs of the two reactors being built today are in line with what you would expect if you were building a huge construction project through the period of Brexit and Covid. Nearly all the inflated costs are true of all big infrastructure projects and are not unique to the nuclear project currently under way. So I would welcome having this conversation. I think transparency would be a friend of the industry and I therefore have some sympathy with this amendment.

Lord Oates (LD): My Lords, I will concentrate in particular on Amendment 6, addressing nuclear outages, and Amendment 37, which would protect recipients of universal credit from being liable to the levies under this Bill. I support the amendments in the name of my noble friend Lord Foster of Bath, and I am slightly bemused about why it is not recognised that we should understand the basis of the value for money test, given that it is in the Bill.

7 pm

Let me start with Amendment 37, which deals with universal credit. As we know, the hike in energy bills that has already happened is causing severe distress across the country, and that distress is particularly acute for those on low incomes who are often forced to choose between heating their home or feeding their family. It just does not seem right to impose further disproportionate costs on them from such hugely expensive and uncertain projects. If this money must be found, it should be found in a more proportionate way so the burdens fall less heavily on the least well off. It is our hope that the Minister will give us some indication that the Government recognise this problem and will at least make some attempt to address it.

Amendment 6 addresses nuclear power outages and would require the Secretary of State to be of the opinion that sufficient back-up power sources exist should the nuclear energy project suffer significant outages or be unable to generate power at all due to delays et cetera. We all know of the huge delays. My noble friend and others talked about Olkiluoto, EPR and Flamanville, and I shall not repeat that, but we know that they are many times over budget and were over time. Flamanville recently announced another delay. If our reactors end up with that level of delay, what are the plans to cover the missing capacity?

This is not about just construction delays. When plants are up and running, they can be subject to frequent outages. Since 2010, Sizewell B, which is the youngest reactor in our fleet, has on average been offline for 64 days a year. Ten French reactors, about 20% of the French fleet, are currently offline. On average, UK reactors have been offline for nearly 25% of the time since 2010.

While it may be true that the sun does not always shine and the wind does not always blow, it is equally true that nuclear power plants do not always generate. If a plant such as Hinkley—I am told it is estimated that, when it finally comes online, it will form something like 6% to 8% of total generating capacity—goes offline, we had better have some back-up for it. I hope that in his reply the Minister addresses some of these points and tells us what plans the Government have to ensure that that back-up exists to cover nuclear stations when they are non-operational.

Baroness Worthington (CB): When we embarked on our nuclear build, we also took government money to build our hydroelectric pumped storage units, which were designed specifically to compensate and were built alongside the nuclear units. We are losing nuclear units, but we still have our hydroelectric pumped storage. The noble Lord can speak to National Grid. As we are not going to be seeing the same parity of nuclear output even after we have built the next round because we are losing the AGRs, we have more than enough capacity on the grid to cope with those fluctuations.

Viscount Hanworth (Lab): I regard this amendment as a complete blind. Indeed, the figures that have been quoted do not tally with the ones to which I am privy. Large nuclear power plants are the only proven technology available today to provide a continuous and reliable source of low-carbon electricity. They have never been afflicted by major unplanned outages, albeit that as nuclear power plants—

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, there is a Division in the Chamber. The Committee will adjourn and return as soon as agreed after Members present have voted.

7.04 pm

Sitting suspended for a Division in the House.

7.06 pm

Viscount Hanworth (Lab): As I was saying, large nuclear power stations are the only proven technology available today which provide a continuous and reliable source of low-carbon electricity—

Lord Teverson (LD): Geothermal.

Viscount Hanworth (Lab): Can I please proceed uninterrupted, then we can have a real set-to later?

Nuclear power plants have never been afflicted by significant unplanned outages, albeit that, as they have aged, their maintenance needs have increased. These have been fully accommodated by planned outages. Nevertheless, the closure of the Magnox reactors has led to an increase in load factors, which are now considerably above their historical average. The average has risen from an historical 60% to its current level in the high 70s. The recent unplanned outage at Hunterston B, which can be blamed on the age of the plant, limited its nuclear power generation for much of 2018. It was accompanied by an average load factor throughout the industry of 72.4%.

This amendment flies in the face of reality. We must turn the matter around by asking the Liberal Democrats and the Greens, who are averse to nuclear power, how they propose to accommodate the intermittence and unreliability of the renewable sources of power they are so keen to advocate. Perhaps I should not raise the temperature by declaring this, although I fear I must, but this amendment is a blind and is a transparent piece of nonsense.

Lord Teverson (LD): I will not respond to that hugely, except to say that the really important amendment, which I think we will all treat seriously, is the one on the cost of energy and the fact that this will add to energy prices. The proposition that we should exempt fuel-poverty households from this is serious; we should discuss it, because it is very current and important.

I gently suggest to the noble Viscount, Lord Hanworth, with whom I have enjoyed serving on the committee for many years, and the noble Baroness, Lady Worthington, that they have somehow fallen into the wrong idea that it is renewables versus nuclear. That is how the argument has gone.

Viscount Hanworth (Lab): If I could interject, we are objecting to the complete exclusion of nuclear, which is the agenda of the Liberal Democrats. It is madness.

Lord Teverson (LD): The answer to intermittency comes back to opportunity cost. As I said at Second Reading, the most effective way of reducing it is energy efficiency. That should be the prime objective. Does the noble Viscount disagree about energy efficiency?

Viscount Hanworth (Lab): No, I do not, but that is not the point. Continue.

Lord Teverson (LD): There are all sorts of ways of dealing with intermittency. Interconnectors have been quite effective, and I congratulate the Government on their policy of increasing those. Energy storage has been mentioned, in terms of hydro. On baseload, I agree that there are other ways of doing that in terms of geothermal starting, although I understand that is very young. There is a whole plethora of other strategies that work here.

I purely wanted to suggest that one of the most important matters here to the people outside this Room is the cost of energy and how we deal with fuel poverty in terms of this specific financial model, and to emphasise that the argument is not just around nuclear versus renewables.

Lord Howell of Guildford (Con): My Lords, surely no one is suggesting that these are alternatives, or if they are then that is not what any sensible assessment would allow. Of course the aim for a decarbonised world has to be sought through many forms. All that is being said is that to leave out one of the major areas of decarbonised electricity is asking for trouble, unless one can begin to assess the enormous costs of trying to fill it in in areas where it may not even be available.

The example of Germany is one that the noble Lord should perhaps bear in mind. The rumour is that, having tried to do without nuclear power and got down to its three remaining nuclear stations, there is strong talk that if it is to move into the new world that we are facing now, which has all sorts of implications for the future, a large chunk of reliable low-carbon nuclear capacity must be either retained or developed to add to all the other highly desirable things for net zero and all the other projects, including of course energy efficiency and a far greater use of every kilowatt of electricity for output, which is the secret of considerable improvement without too much electricity. If that is what is being argued, we are all for it, but nuclear electricity is an unavoidable part and to drop it seems a bit odd and very high-cost indeed.

Baroness Worthington (CB): The noble Lord, Lord Teverson, has talked about the cost of energy. I agree with him that it is very important that we take this issue seriously. The reality is that the CfD mechanism, which will still be part of the financing mechanism under the RAB model, will pay back when we see these very high prices—some of those CfD models are paying back to consumers. My question for the Minister is: under the RAB model, if it pays back in future, will that revenue flow back to consumers or will it sit with the Treasury?

One of the criticisms that could be levelled at this idea is that it is regressive. If it were a tax, those who could afford to pay it would pay more while those who could not would pay less. The universal credit amendment is trying to say that the regressive nature of this needs to be thought about. If you exclude someone from the payments then you might be excluding them from the repayments if the CfD provides revenue back, so this needs thinking through. There is a real question here about its regressive nature. If the CfD is paying back in, are we holding that in the Treasury or could it go back to the consumer?

Lord Wigley (PC): My Lords, before the Minister concludes this debate—oh, I beg your pardon.

Baroness Bennett of Manor Castle (GP): Sorry, I have been trying to find a space to get into a number of amendments here. On the debate we have just been having, I shall quote Steve Holliday, the CEO of National Grid, who said in 2015 that the idea of nuclear for baseload was "outdated" and that:

> "From a consumer's point of view, the solar on the rooftop is going to be the baseload. Centralized power stations will be increasingly used to provide"

variable power.

In the interests of taking us forward, I will speak fairly briefly to my Amendments 7, 8 and 23 in this group. I apologise if Amendments 7 and 8 might have been better grouped with Amendment 2, which I did not spot at the time.

Amendment 7 seeks to ensure that nuclear companies be either a not-for-profit entity, a co-operative, a community-interest company or wholly owned by UK public authorities. This comes back to the point about the ownership of the designated nuclear company and a point I made earlier. I will not replay it at length, but we have very often seen through our whole system of privatised public services—railways, power companies, et cetera—the socialisation of costs and the privatisation of profits. This is an attempt to say that this is a core public service: this is not a competition, and it should be provided through that means of ownership.

7.15 pm

I will also comment very briefly on Amendment 23 in my name, about what happens when a nuclear company is sold. This addresses the issues I referred to in group two. It is to make sure that, whatever rules we have, they continue to be the rules.

Lord Wigley (PC): My Lords, I will speak very briefly indeed. I hate to disagree with my friends in the Green Party and in the Liberal Democrats, but the question has been asked about the impact on those on lower incomes. It is absolutely a fair question, but it must surely be resolved through the social security systems and the underpinning of people who are in that position. Surely, the crunch here is that, if there is one thing that is worse for those people than the impact of the cost of energy, it is there being no energy available: no electricity available when you put the switch down. That is the real, stark possibility that we could be facing in the world that is coming. We have to gear up for that, and then we have to arrange matters in such a way that those on the lowest incomes are protected from it. That surely must be our priority when facing the challenges of global warming.

Baroness Wilcox of Newport (Lab): My Lords, as in the previous group, we have heard a variety of views trenchantly expressed. The Labour Party has tabled four amendments in this group: Amendments 10, 16, 29 and 38. Amendment 10 would require the Secretary of State to gain assurances about the delivery of a project.

7.17 pm

Sitting suspended for a Division in the House.

7.19 pm

Baroness Wilcox of Newport (Lab): I have started so I will finish. Amendment 10 would require the Secretary of State to gain assurances about the delivery of a project before designating a nuclear company to undertake it. We hope that a designated nuclear company will not fail and that projects will be delivered without a hitch, but experience teaches us that complex infrastructure projects often encounter bumps in the road. There will always be scenarios that cannot be planned for but the aim of this amendment is to ensure that the Government can demonstrate the existence of contingency plans for the most obvious obstacles.

Amendment 16 is designed to probe plans for promoting the production and capture of hydrogen as part of nuclear power generation. Various methods are outlined in the UK hydrogen strategy but the next steps are limited to awaiting further innovation and developments in the 2020s. Have the Government assessed the potential benefits of utilising by-products from nuclear processes, and have they now modelled costs and other impacts?

Amendment 29 would require the Secretary of State to lay before Parliament a statement outlining the steps taken to prevent further charges being imposed on revenue collection contracts when cost caps are revised. We understand that the Government would not necessarily want to rule out imposing further charges on consumers if it is the only way a project can come to fruition, but I hope that the Minister can clearly state today that it is by no means the department's preferred option.

Finally, Amendment 38 would bring legacy benefits within the scope of Amendment 37 in the name of the noble Lord, Lord Oates. Many legacy benefits remain active. If we were to insulate recipients of universal credit from additional costs, that same protection should be extended. Again, I am sure that the Government will not want to rule anything out, but I hope that the Minister can demonstrate how they will shield the least well-off from relevant levies on energy bills. They are a constant source of worry and concern given the cost-of-living issues we face at this time and will face in future.

Lord Callanan (Con): I thank everybody who has spoken in yet another wide-ranging debate on energy policy—I definitely have all my lines ready now for the next time we have Oral Questions in the House. At the risk of agreeing with almost everybody, I just want to say that what we need in this country is a diverse mix of supply—yes, we need new nuclear; yes, we need more renewables; yes, we need interconnectors; yes, we need pump storage—which is the best way to keep bills low and supply reliable. It is absolutely not a question of renewables or nuclear; government policy is that we need both.

There is a long list of amendments in this group. They have been tabled respectively by the noble Baroness, Lady Bennett, and the noble Lords, Lord Foster, Lord Teverson, Lord Oates and Lord McNicol. We have taken them together because they are of similar intent and similar subject matter.

Let me start by replying to the noble Lord, Lord Foster, and his comments on the designation statement. He is of course right that the department is still developing

the statement, given that we do not want to pre-empt any of the debates we are currently having in Parliament on this Bill; the noble Lord would be one of the first to criticise us if we decided all these things in advance. We want to listen to what parliamentarians say and gather all opinions before finalising the statement.

Before coming on to the individual amendments, let me remind the Committee of the commitment we made in the 2020 energy White Paper to bring at least one large-scale nuclear project to a final investment decision by the end of this Parliament, subject to value for money and all the relevant approvals. I thank my noble friend Lord Howell and the noble Baroness, Lady Worthington, for their thoughtful contributions setting out all the considerations that we need to take into account when making decisions about the value for money of new nuclear projects.

The Bill has been introduced with this objective in mind. It seeks to introduce a funding model that can lower the cost of finance for the large-scale nuclear that most of us agree we need; help to invigorate the UK nuclear industry; encourage, ideally, investment from British institutional investors and pension funds; and support our desire—shared by everyone, I think—for a decarbonised, resilient energy system.

Amendments 7 and 8 seek to clarify the types of company that may benefit from the nuclear RAB model. Amendment 7 would severely inhibit our ability to achieve the objectives I have just set out by restricting those able to benefit from the RAB model to not for profit, co-operatives, community-interested companies or companies wholly owned by a UK public authority. I understand the political intent of the amendments tabled by the noble Baroness, Lady Bennett, but I point her to the brilliant examples of energy companies that have been set up by a multiplicity of local authorities across the country in recent years. Without exception, every one of them has gone bankrupt, with considerable costs to local taxpayers. These things are not as easy to do in the public sector as the noble Baroness might imagine. If it was so easy and simple, all those companies would be prospering and returning funds to the taxpayer. In fact, a number of—mainly Labour—local authorities have lost millions of pounds for local taxpayers in attempting to do things better than the market. Public is not always good.

With regards to Amendment 8, I am pleased to confirm that Clause 14 already provides that "a company" means a company that is registered under the Companies Act 2006 in England and Wales or Scotland. The amendment is therefore unnecessary.

On Amendment 23, I can confirm to the noble Baroness, Lady Bennett, that, irrelevant of ownership, if a designated nuclear company ceases to meet the designation conditions set out in the Bill, the Secretary of State has the power to revoke its designation. Provision is already made for this in Clause 5(1); for that reason, the noble Baroness's amendment is unnecessary.

Amendments 6, 10 and 29 seek to tackle scenarios whereby a nuclear station may not be built or suffer from cost overruns, or there are issues with its generation output. Those things can happen in the real world but all these scenarios are fairly unlikely to occur. The approvals process for nuclear projects, of which designation for the purposes of the RAB model will form a part, is designed precisely to ensure that the Secretary of State must be sufficiently confident that the proposed project would be able to complete construction. In due course, we will publish a statement to provide details of exactly how the Secretary of State expects to determine whether the designation criteria have been met.

Once construction is under way, we will want to make sure that the project company is incentivised to manage its costs and schedule. It will be overseen by Ofgem as the independent regulator. However, in the unlikely and remote circumstance that a project looks as though it may exceed the cap on construction costs set out in its modified licence, it is important that there is a mechanism in place to allow additional capital to be raised to ensure completion of the project. The aims of that, of course, are to ensure that consumers can continue to benefit from their investment and to minimise the risk of sunk costs.

With regard to Amendment 6 and the first part of Amendment 16, I assure the Committee that the RAB model will be designed to ensure that the appropriate incentives are placed on the company to maximise plant availability. Nuclear reactors have an extremely good record of availability and delivery but we want to make sure that that is maintained. On broader generation capacity security, I draw the Committee's attention to the Great Britain security and quality of supply standard and the Great Britain capacity market. Both these essential tools ensure that security of supply is met in GB and that we have resilience in the day-to-day operation of the GB electricity system should generation outages occur.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): There is a Division in the House. The Committee will adjourn and resume as soon as agreed after the Members present have voted.

7.29 pm

Sitting suspended for a Division in the House.

7.32 pm

Lord Callanan (Con): Moving on to the second part of Amendment 16, the Government are in full agreement that nuclear could have a role in low-carbon hydrogen production. I was delighted to discuss this in a meeting with the noble Baroness, Lady Worthington, earlier this week—or was it last week? I have lost track of when it was. Of course, this could potentially include the Sizewell C project if it goes ahead. It is for this reason that the Government are looking to stimulate private investment in new low-carbon hydrogen production. We have consulted on the appropriate hydrogen business model, and we included a lot of this in the UK's first hydrogen strategy, which was launched in August last year.

However, as I made clear to the noble Baroness, I do not consider that this Bill is the right place for such an amendment. The purpose of the Bill is to facilitate investment in the design, construction, commissioning

[Lord Callanan]
and operation of nuclear energy generation projects. It is therefore more appropriate, in my view, that hydrogen production specifically should be taken forward using a different vehicle. It is for this reason, and those given previously with regard to incentivising plant availability, that I am not in a position to accept Amendment 16.

Prior to turning to the next amendments, let me address the questions asked by the noble Baroness, Lady Worthington, and confirm for her benefit that any payments received by a nuclear company above its allowed revenue would not be received by the Treasury. Instead, they would be returned to the suppliers who were levied in the first place. They who would then have the choice of whether to refund the payments to consumers in a competitive market situation. As the noble Baroness mentioned, the process is similar to the CfD model under which consumers will ultimately benefit from a cheaper system.

Amendments 4, 13, 37 and 38 were tabled by the noble Lords, Lord Foster, Lord Teverson, Lord McNicol, and the noble Baroness, Lady Bennett. Each amendment addresses the important subject of consumers and value for money. On Amendments 37 and 38, I of course agree on the importance of protecting vulnerable consumers from increases in their energy bills, but let me reassure all noble Lords that the need to protect consumers' interests is very much at the heart of the Bill. The nuclear RAB model will be regulated by Ofgem, whose principal objective, as enshrined in statute, is to protect the interests of all existing and future consumers, including consumers who are claiming universal credit and other legacy benefits.

Ofgem is also a statutory consultee for significant decisions in the Bill relating to whether a nuclear company should benefit from the RAB model. In addition, the Bill requires the Secretary of State to have regard to the interests of existing and future consumers when making any modifications to a nuclear company's licence. So I make it clear that the Government intend to protect all our most vulnerable energy consumers in what is a very difficult market at the moment, given the record high gas prices, but we believe that Amendments 37 and 38 are not the best way of ensuring this and that a more holistic strategy for supporting vulnerable energy customers is preferable, as the noble Lord, Lord Wigley, commented in the debate.

The Government are taking a number of actions to help low-income households. I will list them for the Committee. They include the warm homes discount, which provides eligible households with a £140 discount, and the Chancellor confirmed on 3 February the Government's plans to expand the scheme by almost one-third, raising the number of beneficiaries from 2.2 million vulnerable households to more than 3 million. We are further supporting consumers through the cold weather fund and the household support fund. I think that those measures are a more appropriate way of protecting vulnerable consumers, and I hope that I have been able to reassure noble Lords who tabled these amendments that the design of the RAB model and the revenue stream that will flow from that are such that the interests of vulnerable consumers are and will be the highest priority for us.

On Amendments 4 and 13, I stress to the Committee that we have sought to establish a transparent designation process that requires the consideration of whether designation of a nuclear company is likely to result in value for money. This process requires the Secretary of State to prepare draft reasons for designation, to consult on those reasons with specified persons, including independent regulators such as Ofgem, and to publish a designation notice setting out the final reasons for designation. This final notice would include designation against the criteria of being likely to result in value for money, which the noble Lord, Lord Foster, asked about in the debate.

Given all that, I am confident that the process is sufficiently transparent. Through consultation with Ofgem we will ensure that consumer impacts are fully taken into consideration and accounted for. Value for money is and always will be a core part of government approvals beyond the designation of a nuclear company as a designated company's licence conditions are negotiated and as part of any capital raised for a project. Therefore, I hope the noble Lords who tabled Amendments 4 and 13 will not press them.

Finally, on Amendment 26 from the noble Lord, Lord Foster, let me gently point out that the amendment would remove the obligation for the Secretary of State to have regard to whether the nuclear company has appropriate incentives. I am not sure that that was the intention of the noble Lord, so perhaps he will have another look at it and will feel able not to press it because ensuring that projects have appropriate incentives forms a vital part of the RAB model. We have learned from the experience of projects in the US—the noble Lord quoted them to me at one of our meetings—and elsewhere that incentivising developers to deliver to cost and schedule will be important to ensure value for money for consumers. As the noble Lord, Lord Foster, questioned in the debate, we expect that such incentives will include an appropriate risk-sharing mechanism between consumers and the nuclear company and its investors. We would not expect the bill payer to bear all the risk.

We expect that incentives would be included in the modified licence conditions for the nuclear company, and so would be consulted on and published as set out under the provisions of the Bill. These incentives would be overseen by Ofgem in its role as the independent regulator.

In conclusion, I hope I have been able to satisfy noble Lords on all these measures and provided the appropriate reassurance that the Bill introduces a robust and transparent process for the approval and awarding of the benefits of a RAB model to nuclear companies, and that there are appropriate checks and incentives in place to protect consumer interests—which should be at the forefront of our thinking. Therefore, I hope that the noble Lord will feel able to withdraw his amendment.

Lord Foster of Bath (LD): My Lords, I am enormously grateful for the opportunity to listen to so many noble Lords who have contributed to the debate. It has been a masterclass in what we mean by value for money. I am enormously grateful; I have learned a great deal about whether or not we should be just using commercial

accounting or incorporating opportunity costs. Should we define opportunity costs in the way that the noble Baroness, Lady Bennett, and others have defined them? It has been incredibly illuminating.

My amendment was very simple indeed. The Government said they were going to do an assessment; all I wanted them to do was publish it. I am enormously grateful that I got the support of the noble Baroness, Lady Worthington, for that. Sadly, despite all the Minister subsequently said, we have not yet heard whether the value for money assessment is or is not going to be published—and, if it is, when that would be.

We then come to the interesting issue of the amendments surrounding the designation process. I am enormously grateful to the noble Lord the Minister, who enables me to sit down while we vote again.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): There is a Division in the House. The Committee will adjourn and return as soon as agreed after Members present have voted.

7.42 pm

Sitting suspended for a Division in the House

7.43 pm

Lord Foster of Bath (LD): As I was saying, we come to the second string of things that were debated, in relation to the criteria surrounding the designation process. We heard something wonderful: a Government who admit that they are a listening Government. "The reason we haven't published the designation criteria is that we are listening to what you lot have got to say." Well, I say to the Minister that by the end of this evening at 8.45 pm he will have heard what has been said not only in the other place but in this place, so presumably there will be the opportunity to draft the designation criteria in time for the further stages of the Bill. So I hope that, before I sit down, he will intervene on me and make a clear promise that we will get at least a draft of the designation criteria before the final stages of this Bill are passed. I happily give way to the Minister.

Lord Callanan (Con): Like all government documents, they will be published at the appropriate time, and I will be sure to let the noble Lord know when that is.

7.45 pm

Lord Foster of Bath (LD): We have had a masterclass in defining things such as the value for money study; we are getting a masterclass in ministerial obfuscation. My question to the Minister was, "Are we going to see it before we complete all stages of the Bill?" To which the Minister replied that it would be published at an appropriate time. I think we can draw our own conclusion: we are not going to see it, and that is deeply worrying.

The Minister followed exactly the same procedure in relation to the issue of appropriate incentives. He is absolutely right that my amendment would remove them altogether from the Bill, but I began by saying that it was purely a probing amendment so that we could actually get some information from the Government about another issue about which we do not know very much. I am grateful that the Minister says that appropriate incentives will include the appropriate sharing method between the developer and the consumer, and I am grateful that we now know that that is going to be part of it. Of course, however, he has not told us what that percentage sharing would be—another piece of information that we do not have.

In relation to a more general point, we got this wonderful statement from the Minister that the Committee can be assured—and I feel so much better for this now—that appropriate incentives will be imposed. That is jolly good, but I would certainly like to know—and I suspect other Members of the Committee would as well—what is being imposed and how it is going to work. It is deeply disappointing: there is so much information that the Government should be providing but have failed to provide. They expect us to stand up and vote for this piece of legislation when most of the basics are simply not being provided. Nevertheless, we will have another opportunity to raise this, so I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5

Moved by ***Lord Oates***

5: Clause 2, page 2, line 14, at end insert "and has laid a report before Parliament setting out the reasons for that opinion, including—

(i) an estimate of the electricity price payable to the company over the period during which the nuclear energy generation project is generating electricity, and the modelling, assumptions and all relevant material underlying such an estimate;

(ii) an estimate of the regulated asset base charge payable by consumers in each year until the nuclear project is generating electricity, including the modelling, assumptions and all relevant material underlying such an estimate;

(iii) an estimate of the costs of decommissioning the project, how such costs will be met, and the modelling, assumptions and all relevant material underlying such an estimate."

Member's explanatory statement

This amendment would require the Secretary of State to publish a report setting out the reasons for their opinion that designating the nuclear company is likely to result in value for money.

Lord Oates (LD): My Lords, I will speak in particular to my Amendment 5, but I support all the amendments in this group aimed at greater transparency and accountability, particularly those in the name of my noble friend Lord Foster of Bath. I will speak briefly, as we have already discussed many of the issues on which Amendment 5 touches. As we heard previously, Clause 2(3)(b) of the Bill requires that the Secretary of State

"is of the opinion that designating the nuclear company in relation to the project is likely to result in value for money."

The opinion of the Secretary of State is, no doubt, valuable, but what would be even more valuable for Parliament and the public is to understand what that opinion is based on, in order to be reassured that it is not simply an assertion of policy preference.

[Lord Oates]

We spoke in Group 3 about the vast, full-life costs of nuclear generation when decommissioning is taken into account. The public would want to know that these costs are fully taken into account in the calculations of the Secretary of State when arriving at his opinion. In addition, it would be important to understand how the possibility of significant cost and time overruns would be factored in as well.

Amendment 5 seeks to address these issues by requiring the Secretary of State to publish a report setting out the reasons for their value-for-money opinion. Such a report would, hopefully, give Parliament and the public reassurance that these matters have been properly considered before a decision is taken to impose further costs on energy bills. I beg to move.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): Before I formally call this amendment, I need to inform the Committee that there is a mistake on the Marshalled List. Amendment 11 should begin:

"Page 2, line 14, at end insert—".

In relation to Amendment 5, the amendment proposed is:

"Page 2, line 14, at end insert"

the words on the Marshalled List—and Amendment 11 would come at the end of that.

Lord Teverson (LD): My Lords, I rise very briefly. In the last group, I mentioned some of the countermeasures to the variability of renewables, including interconnectors, energy efficiency, demand-side management and many more. But I also mentioned battery storage and I should have declared an interest: I was not expecting to get on to battery storage, but I am a director of a company involved in the development of battery storage. I apologise to the Committee that I did not raise that interest during the debate.

Lord Wigley (PC): My Lords, I will speak very briefly indeed. I have added my name to Amendment 27 in this group alongside that of the noble Lord, Lord Foster; I did so with particular regard to my strong feelings on new paragraph (e), proposed by the amendment, which concerns

"how decommissioning costs of the project will be met".

Of course, this issue appears in sub-paragraph (iii), proposed by new Amendment 5, which refers to

"an estimate of the costs of decommissioning the project".

As I indicated in our earlier debates, I feel that this is a critical aspect of the Bill that needs to be covered and where assurance needs to be given, whatever the mechanism of doing so. I would have thought that the Government could recognise that and say that, whether or not these amendments meet the standards that are acceptable to them, there may be some way of giving an assurance that the questions asked by these amendments can be answered—and that the answers will be forthcoming to this Committee.

Lord Foster of Bath (LD): My Lords, I am afraid that I cannot be quite as brief as the noble Lord because I have a number of amendments in my name. I am also conscious of the pressure on the Committee's time, so I will do my very best to be as quick as I possibly can. I will concentrate rather more on Amendment 12 than on any other of the amendments in my name, that of my noble friend Lord Teverson and those of other noble Lords.

Basically, Amendment 12 would require the department to define "sufficiently advanced" in its guidance. What we know is that designation will come at a certain point. We have already debated the fact that we have no idea what the criteria will be and that we may or may not see them before we finish our deliberations on this Bill. However, we are at least grateful that the Minister is apparently listening to what we have to say. I hope that he will listen to this particular bit because the designation can come only when the Secretary of State is satisfied that the project is sufficiently advanced; this amendment merely requires the Secretary of State to be clear about what that means.

Earlier, I referred to the fact that I live near Sizewell so it is a particularly good example to use, not least because it is the only project in the offing that might use this methodology. In the case of Sizewell, it is worth being aware that the planning application has been submitted and is awaiting the decision of the Secretary of State. Yet, at the conclusion of the planning examination, numerous issues were outstanding. They still have not been sorted out.

They include the crucial issue of the design of the hard coastal defences. If you live near Sizewell, as I do, you know that the coast there is eroding incredibly rapidly. Three weeks ago, I went for a walk on the clifftop and saw, in a field where the crops were planted this year, that some of the initial plants have already fallen over the edge of the cliff. The erosion is very rapid; appropriate measures must therefore be put in place, yet this has not been done.

Moreover, nothing has been done to ensure that there will definitely be potable water. Frankly, if you have a nuclear power station with no guarantee of potable water, it is a completely pointless exercise; that work has not been done. Also, there has been no work to look at soil mixing and ground anchor trials, which are vital because a huge hole will be dug in the ground and we have to be sure that the whole thing is not going to collapse. There are numerous issues that have not yet been sorted at this stage.

Using those three examples, my question for the Minister is this: does he see that a designation could take place without those three things having been addressed, or not? Will there be sufficient progress? I seek a definition and an understanding. I have given some specific examples for the Minister to consider; I hope that he can tell me whether they have gone on.

The other amendment in this group, Amendment 18, aims to provide further transparency about how taxpayers' money is going to be allocated and what taxpayers' money is being used. The recent announcement of £100 million of taxpayers' money being given to the project at this stage, before any decision has been made, does not look good locally. It almost appears as if the green light has been given to Sizewell before any of the issues that I have been raising have been taken into account. We need to have more transparency about the taxpayer contribution to projects.

Amendment 27 picks up an issue that was raised on an earlier amendment by my noble friend Lord Oates, so I will not go through it in any detail. It requires the Secretary of State to provide a report about the up-front and overall expected cost of the project, the likely cost of electricity going on to the national grid and decommissioning costs, which have already been the subject of much debate, so I shall not repeat that.

The subject of Amendment 28 was also raised in an earlier amendment by my noble friend Lord Oates. It is something that various consumer organisations have been calling for, which is that before final agreements are made, there should be an independent assessment of the information that is being provided to the Government. It would require an independent impact assessment to be conducted and to be approved by the House of Commons before licence modifications could be permitted.

The amendments in my name are all about transparency. If I go away at the end of the proceedings with one message, it is that at the moment the Government seem unable or unwilling to provide a great deal of information about the Bill. This is not about being pro or anti nuclear but about transparency, and at the moment I do not think we are getting anything like enough of it from the Government.

Baroness Bennett of Manor Castle (GP): I rise to speak briefly to Amendments 5 and 12 in the name of the noble Lord, Lord Foster of Bath, to which I have added my name. On defining "sufficiently advanced" in guidance, two projects come to mind: Crossrail and HS2. We were told everything was fine and that there was a fixed budget. One of the most interesting discussions in the other place was when the Minister argued that the possibility of costs exceeding the cap as predicted was remote, which was a triumph of hope over experience. It is important that we have that amendment.

Coming back to some of our earlier debates, because this is news just in literally in the past hour, I have to note that the director-general of the International Atomic Energy Agency has expressed grave concerns about the safety of the Chernobyl nuclear plant where staff have not been able to move since the Russian takeover.

> "I'm deeply concerned about the difficult and stressful situation facing staff at the Chornobyl nuclear power plant and the potential risks this entails for nuclear safety. I call on the forces in effective control of the site to urgently facilitate the safe rotation of personnel".

I hope some people who contributed earlier in the debate will not be in a much worse situation when we come to Report.

Baroness Wilcox of Newport (Lab): My Lords, this group relates to a broad range of transparency measures relating to project cost, the use of taxpayers' money and the use of delegated powers. I refer to the Minister's previous reply: if he wants to find out how to get a building delivered on time, within cost and with less cost to the taxpayer, he should speak to Edwina Hart, the former Minister in the Welsh Government who got the Senedd building built on time and within cost.

8 pm

We support including sensible transparency requirements in the Bill and are yet to be convinced that the current draft strikes the right balance. Amendment 25 would require the Secretary of State to lay before Parliament a statement on proposed licence modifications, under Clause 6. Given that the use of the power is limited to facilitating the design, construction, commissioning and operation of nuclear projects, the statement would essentially have to show the Secretary of State's working out and wider thinking. We hope the Government will take some of these suggestions seriously and come forward with proposals between now and Report.

Lord Callanan (Con): I will start with Amendments 5 and 27, laid by the noble Lords, Lord Foster, Lord Wigley, Lord Oates and Lord Teverson, and the noble Baroness, Lady Bennett. It will not surprise the Committee to know that I have reservations about how these amendments would operate in practice. On Amendment 5, for example, the requirement to publish estimates of the costs payable by consumers at the point of designation would risk undermining the independence of Ofgem, which has responsibility for determining a nuclear company's allowed revenue in accordance with its modified generation licence.

Moreover, the obligations to report on the price of electricity, or the minimum floor price, referred to in Amendment 27, simply do not align with the reality of how we expect the RAB model to operate in practice. Under the model, there is no minimum floor price. Ofgem, in its role as the regime's economic regulator, will need to determine the revenue the project is entitled to receive, in accordance with its modified electricity generation licence.

Finally, on decommissioning costs, we already have robust legal requirements in place in the Energy Act 2008, which require an operator to have a funded decommissioning programme in place before construction can commence on a new nuclear project. This must set out the operator's costed plans for dealing with decommissioning and waste management. For these reasons, I am unable to accept the amendments.

Turning to the comments made earlier in the debate by the noble Lord, Lord Wigley, under the RAB model, the regular price reviews would provide an opportunity to assess the performance of the FDP, and adjustments to the operator's allowed revenue can then be made should any potential deficiency in the fund be identified. This will deal with the noble Lord's concern, minimise any chances of a fund shortfall and ensure the operator retains its responsibility to meet the costs of decommissioning so they do not fall on local communities. I hope that this provides the reassurance that the noble Lord was seeking.

Amendments 12, 18, 25 and 32, from the noble Lords, Lord McNicol, Lord Foster, Lord Oates and Lord Teverson, and the noble Baroness, Lady Bennett, are aimed at obliging the Secretary of State to publish various pieces of information related to the functioning and implementation of the RAB regime. I fully understand noble Lords' desire for more information, but think this is already addressed in the Bill.

[Lord Callanan]

On the publication of licence modifications, Clause 6(9) already provides that modifications made under Clause 6 would not come into effect unless a revenue collection contract was entered into with the nuclear company. Publishing them as soon as reasonably practicable will provide adequate opportunity for scrutiny.

On Amendment 12, the Bill already obliges the Secretary of State to publish a statement setting out how they expect to determine whether the designation criteria have been met. This statement will provide further explanation as to how the Secretary of State expects to determine whether the development of a project is "sufficiently advanced". While, as I said, we will publish a statement in due course, I can tell the noble Lord, Lord Foster, and the Committee that we would expect it to include consideration of a number of factors, including, for example, the progress of the prospective project through the important planning process.

On Amendment 18, where it is assessed that it would be appropriate for development funding to be included in the calculation of a nuclear RAB company's allowed revenue, this would in turn be reflected in the company's modified licence. Outside of the RAB structure, the Government may choose to provide development funding to projects to mature technologies and de-risk the development and construction phases. However, as this is not intended to be funded through the RAB scheme, it would be inappropriate to include information requirements about it in the Bill. They will be published in other quarters.

On Amendment 25, Clause 6(2) already states that the licence modification powers can be used only for the purpose of facilitating investment in the design, construction, commissioning and operation of nuclear energy generation projects. The Secretary of State may not exercise the powers for any other purpose. This is aligned with the consideration that the amendment discusses. I believe that the transparency processes already included in the Bill, the obligation to publish a statement on the designation criteria and the opportunity for scrutiny before the designation and licence modification powers may be exercised render these amendments unnecessary.

The final amendment on transparency is Amendment 28 from the noble Lords, Lord Foster and Lord Oates. It seeks to make the licence modifications necessary to implement the RAB model for a nuclear company contingent on approval by the House of Commons of a report about consumer bill impacts.

Bringing a project to the point where licence modifications can be made is likely to require significant investment. I submit that making a project subject to a parliamentary vote at that very late stage of licence modification would add huge uncertainty to the outcome of developers' investment. This additional uncertainty would make it very much harder to bring forward projects —which is possibly the purpose of the amendment—and lead to either an absence of new projects or the costs of financing being raised significantly to take account of the increased risks. That would inevitably result in much worse value for consumers. The amendment could therefore defeat the policy objective of the Bill: to secure financing for new nuclear projects in a way that could deliver better value for money for consumers.

To reiterate, in rejecting the amendments put forward, the Government are not attempting to hide from challenge or scrutiny. Through this Bill, we have created a clear and transparent process for implementing the RAB model. It will allow for the voices of experts and stakeholders to be heard and appropriate consultation to be carried out. That will help ensure that the model works for the industry and, above all, for consumers. I therefore hope that noble Lords will not press their amendments.

Lord Oates (LD): My Lords, I will speak briefly as time is marching on. I think the Minister told us that the reason why Amendment 5 would not work is basically that the Government cannot tell us how much this will all cost the consumer, which is one of our key worries about this means of financing.

On Amendment 12 and the definition of "sufficiently advanced", my noble friend Lord Foster raised a number of specific issues in relation to Sizewell C and asked whether, in view of those, the project would be regarded as sufficiently advanced. The Minister notably did not answer that question but repeated his previous statement that the Government will publish the designation criteria "in due course". Again, what he is telling us is that the Government will not tell us what those are before they expect noble Lords to vote on the Bill. As my noble friend said, whatever one's views for or against nuclear power, that is surely not a way to do legislation.

I hope that the Minister will consider carefully all the issues that have been raised in this group. If you are pro nuclear, I would have thought that transparency was a good thing, but, certainly, I hope that he will consider these issues and come back with some clearer answers for us on Report. With that, I beg leave to withdraw my amendment.

Amendment 5 withdrawn.

Amendments 6 to 12 not moved.

Clause 2 agreed.

Clause 3: Designation: procedure

Amendment 13 not moved.

Amendment 14

Moved by ***Lord Foster of Bath***

14: Clause 3, page 2, line 36, at end insert—

"(fa) the relevant upper tier local authority covering the site for the nuclear project;"

Member's explanatory statement

This amendment would require the Secretary of State to consult the relevant upper tier local authority before designating a nuclear company under section 2(1).

Lord Foster of Bath (LD): My Lords, quite rightly, the Bill before us requires a degree of consultation. In the designation process, the Secretary of State is required to consult a number of people, with the nuclear company that he proposes to designate included among them.

My amendment simply proposes that, in that list of persons or organisations with whom the Secretary of State must consult, the relevant upper-tier local authority should be included. The Minister may respond by reminding me to look at Clause 3(3)(g), which says

"such other persons as the Secretary of State considers appropriate".

I imagine that that might well include the local authority, but so important do I believe it is that the relevant upper tier local authority be consulted that I think it should be added to the list.

To illustrate how important it is that people who are directly affected, or those who represent them, be consulted, it is worth considering the impact on local people in the area if the decision is made to go ahead with Sizewell C—incidentally, I note that the noble Baroness, Lady Bennett, has tabled another amendment about consulting local people. Of course, I support that, but a mechanism for doing that far more easily is by having in the list a representative body, which the upper-tier authority is.

Let us think about the impact that the construction of Sizewell C will have on local people. Of course, there are those who will argue that they will have the long-term benefit of nuclear power being provided and all the things that go with that—I take that on board—but, during the process, there will be some 6,000 construction workers, 76% of them coming from outside the area and requiring accommodation. A campus for 2,400 people will be built right on the boundary of an area of outstanding natural beauty and within half a kilometre of a small, beautiful hamlet of just 50 people. The impact on that hamlet will be quite unbelievable. Thousands of people are expected to commute to the two large park-and-ride sites that are going to be built north and south of the site. There are going to be 12,000 vehicles a day on the unimproved A12 and 600 HGV journeys a day through local villages for the first two years before the new relief road is built. It is going to have a significant impact on local businesses, including tourism; the tourism losses are estimated to be in excess of £40 million a year.

8.15 pm

People may argue that that is a price worth paying. So be it; I am not arguing one way or the other, although I have a view on it, but I am clear that those people have as much right to be heard as the nuclear company that the Secretary of State proposes to designate. My amendment simply says that those people should be on the list of those who must be consulted, rather than those who probably will be under the category of

"such other persons as the Secretary of State considers appropriate".

I beg to move.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow that powerful and clear exposition by the noble Lord, Lord Foster of Bath. I declare my position as a vice-president of the Local Government Association.

Consulting the upper-tier local authority is certainly an important factor. It is one way of addressing local consultation; the noble Lord has set out all the reasons why that is needed. However, we are talking here not just about Sizewell C but about a potential model for the future. It is possible that a site might be located right on a boundary where it is within one local authority but covers a substantial number of people in the adjoining one. That is the reason why I went for a radius of 50 miles in my amendment.

If the Committee is wondering why I chose 50 miles, I would be happy to debate what it should be. There are of course significant construction impacts, as the noble Lord outlined, but also, after the Fukushima disaster, the US Nuclear Regulatory Commission recommended that the evacuation area around a nuclear power plant, should there be a serious issue, should be 50 miles. Obviously that has an impact on people's lives, on their feelings about their locality and even, dare I say it, on property prices. That is why I picked 50 miles. The people in the immediate vicinity are affected and they should be consulted as a simple matter of democracy.

Lord Wigley (PC): My Lords, I support the amendments and the principle of consultation, particularly with local authorities. I, too, declare my interest as a vice-president of the Local Government Association.

The point made a moment ago by the noble Lord, Lord Foster, with regard to the impact of the workforce is of significance; the proposed 50-mile radius is relevant to that. I draw the Minister's attention to the construction scheme of the Dinorwig pumped storage scheme in Snowdonia. It started in 1973 and was built, remarkably, with hardly any industrial disputes at all. More than 2,000 people were in that workforce; it was believed that they could not be recruited locally but, in actual fact, some 86% of the hourly paid were recruited locally while more than 70% of the office staff were recruited from within a radius of about 50 miles, which is the definition used for that purpose.

The outcome—it is relevant for the Minister to consider this when any new nuclear programme goes forward—was that there were remarkably good labour relations on that site, with close co-operation between the then CEGB and the trade unions. At a time when the Ince B project, for example, which will be known to the Minister, was suffering from tremendous labour problems, with strikes all the time, these were overwhelmingly avoided on the Dinorwig scheme. In other words, consultation with the trade unions, local authorities and representatives in the area enabled those dangers to be avoided. I believe that it is in the interests of everybody—the local community and the Government themselves, as well as the company—that the maximum degree of consultation is built in.

Baroness Neville-Rolfe (Con): My Lords, there has been a lot of consultation about Sizewell C and there is, of course, a nuclear power station next door to the proposed site. I remember visiting it many years ago when I was a director of John Laing which built it, so I went inside. The whole process of getting to this proposal for a new nuclear power station has taken forever, for reasons we will not go into this evening. As a result, we have an emerging energy crisis, which is obviously not helped by wider world events.

There will, I assume—and I am sure the Minister can confirm this—be a planning requirement for new nuclear power stations to be built under these new powers.

[Baroness Neville-Rolfe]
Any good builder of nuclear power stations will consult and consider the needs of the employees because that is the way these things are done, otherwise you do not get them through planning, as I know well from experience.

I am against adding extra statutory consultees to the Bill. The proposal for a 50-mile radius suggests that the new nuclear power stations might actually be dangerous, which would make people more fearful, whereas we are planning to build safe nuclear power stations learning from things in the past, so I would be against that.

My main point is that we need to get on with this. We cannot go round and round in circles. There is real opportunity, not only in East Anglia but in places such as Wales and, potentially, even in the Lake District, for investments that would be good for local communities, the staff and employees who will work in the power stations.

Baroness Wilcox of Newport (Lab): I am grateful to noble Lords for tabling their amendments on consultation. I declare that I too am a vice-president of the LGA and—for about another six weeks or so—a member of Newport City Council. I am curious yet not surprised to see the amendment from my noble friend Lord Foulkes, who has apologised that he has had to leave, seeking to disapply the requirement to consult the Scottish Government.

I am sympathetic to some of the arguments made. Any infrastructure project is easier to deliver when there is community consent for it. Communities and local representatives are likely to have very strong views on these matters, as I know of old. I hope that the Minister can outline existing requirements and any additional ones imposed by the Bill and say whether she thinks that the system is sufficient.

Baroness Bloomfield of Hinton Waldrist (Con): I thank the noble Lords, Lord Foster and Lord Foulkes, and the noble Baroness, Lady Bennett, for their amendments relating to consultation with different persons. Regarding the amendments tabled by the noble Lord, Lord Foster, and the noble Baroness, Lady Bennett, I understand their desire to bring the local community into the process. However, the Bill is not the place to do this. It is concerned with the financing of nuclear projects, rather than planning and other regulatory approvals.

While the publicly available information about a project's progress in seeking these approvals is likely to be relevant to decisions about which projects should benefit from the RAB model, the decisions themselves are separate and independently made. A company benefitting from the RAB model would receive revenue payments funded by licenced suppliers in Great Britain as a whole and, through them, consumers. It would therefore be wrong to grant a different status to either the local authority or particular groups of persons in respect of decisions made by the Secretary of State under the Bill's provisions.

Both local individuals and authorities would be able to express their point of view regarding any new project through the planning process. They would, for example, have the opportunity to input their views during the hearings that would take place as part of the consideration of a project's application for development consent. That is the right place and process for those concerns to be considered, rather than in discussions about a financing model that will impact all consumers.

I remind noble Lords of my noble friend Lord Callanan's comments on, I think, the second group of amendments today about the productive conversations we have been having with the Sizewell C project team during the ongoing negotiations. It is our understanding that the Sizewell team intends to replicate the commitments made in the Hinkley Point C solidarity agreements, which represent a new and innovative approach to industrial relations. Our industrial relations at Hinkley Point have been extremely good and, while I take the point about Sizewell C, this is a Bill for a financing model that is supposed to be for generic nuclear financing; it is not specifically about Sizewell C. Were it to be used, for example, for Wylfa, I am sure that there would be different considerations but, again, that is not the specific intention of the Bill. This is about creating a generic financing model to finance any large-scale nuclear power plant in the future.

Amendment 30 was tabled by the noble Lord, Lord Foulkes. I understand the noble Lord's concern about the different position on nuclear energy that is held by the Scottish Government, but ultimately it is right that the relevant devolved nations have equal rights under the Bill. It would be wrong to allow the Secretary of State solely to have the power to exclude Scottish Ministers while retaining an unqualified obligation with regard to Welsh Ministers. While this provision requires consultation with those persons, it does not require that they agree with the proposed modifications for those modifications to be made. I further point out to the noble Lord that nothing in the Bill will change the fact that Scottish Ministers are responsible for approving planning applications for large-scale onshore electricity generating stations within Scotland.

I hope that I have shown noble Lords that their amendments are inappropriate in the wider context. I therefore ask noble Lords not to press them.

Lord Foster of Bath (LD): My Lords, I am grateful to the Minister for her response, but I genuinely did not understand it and I apologise for that. The clause is about the designation of a nuclear company. That power rests in the hands of the Secretary of State, who will make the decision based on a number of criteria. As we pointed out, we do not yet know what those criteria are and we are not sure that we are ever going to find out. However, it is also going to be done after consultation, and the consultees are required to be a number of people, as specified in the legislation.

I sought to have local authorities included as a specified group to be consulted. The Minister's response was that they would get their opportunity to raise their issues of concern in other fora, and that this is not the right place. However, I am absolutely certain that my amendment was intended to ensure that local authorities, representing local people impacted by the decisions that are taken, should be able to be involved in the designation of a company. It is, after all, they who will have done all the work and they who will

have brought forward the planning application and the various modifications to it and sought money and received money from central government to help them get on with the task and so on. The designation of the company is critical. I therefore genuinely do not understand why the Minister says that it is inappropriate for this particular aspect of activity. I may be being stupid, in which case I will have time to reflect before the next stage and get a bit more informed before I come back. In the meantime, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendments 15 to 20 not moved.

Clause 3 agreed.

Clause 4: Expiry of designation

Amendment 21 not moved.

Clause 4 agreed.

Clause 5: Revocation or lapse of designation

Amendments 22 and 23 not moved.

Clause 5 agreed.

Amendment 24 not moved.

Clause 6: Licence modifications: designated nuclear companies

Amendments 25 to 27 not moved.

Clause 6 agreed.

8.30 pm

Amendment 28 not moved.

Clause 7: Licence modifications: relevant licensee nuclear companies

Amendment 29 not moved.

Clause 7 agreed.

Clause 8: Procedure etc relating to modifications under section 6 or 7

Amendments 30 to 32 not moved.

Clause 8 agreed.

Clauses 9 to 12 agreed.

Clause 13: Sensitive material

Amendment 33

Moved by ***Lord Oates***

33: Clause 13, page 11, line 27, at end insert—

"(A1) The primary duty of the Secretary of State is to publish all material relevant to—

(a) costs that may be incurred by the taxpayer arising from any provision of this Act,

(b) the determination of the regulated asset base charge that may be levied on consumers under the powers in this Act, and

(c) the cost to consumers of electricity produced by the project."

Member's explanatory statement

This amendment would place a primary duty on the Secretary of State to publish all material relevant to (a) costs that might be incurred by the taxpayer arising from any provision of the Act; (b) the determination of the regulated asset base charge that may be levied on consumers under the powers of this Act; and (c) the cost to consumers of electricity produced by the project.

Lord Oates (LD): My Lords, Amendment 33 and the subsequent amendments in this group seek to ensure that the Government cannot refuse to publish information that is in the public interest without compelling grounds. As it is currently written, Clause 13(2)(a) allows the Secretary of State to withhold any relevant material which he or she believes

"would … prejudice the commercial interests of any person".

This is an enormously wide loophole which makes no attempt to qualify the degree of prejudice to the commercial interests of that person or to balance that with the public interest in the disclosure of such information.

Amendment 33 would establish a primary duty on the Secretary of State to publish all relevant material. Amendment 34 provides that material may be excluded only in exceptional circumstances. Amendment 35 would insert the word "seriously" so that the test is whether disclosure would seriously prejudice commercial interests, not the much weaker test currently in the Bill. Amendment 36 would require that, should the Secretary of State exclude material on the grounds of serious prejudice to commercial interests, he or she must make

"a statement to Parliament that the prejudice to commercial interests"

set out in subsection (2)(a)

"is of such seriousness that it outweighs the"

overwhelming

"public interest in … the publication of material relevant to any"

costs that may be incurred by the taxpayer

"arising from any provision of this Act … the determination of the regulated asset base charge that may be levied on consumers under the powers in this Act, and … the cost to consumers of electricity produced by the project."

It is critical for proper public scrutiny that Ministers cannot decline to provide information behind claims of prejudice to commercial interests. These are projects being funded by consumers, and they have the right to know all relevant material except in the most exceptional of circumstances. We already know how reluctant government and its agencies are to provide information on costs which are overwhelmingly in the public interest. One such example is the apparent unwillingness of the Nuclear Decommissioning Authority and GDF to provide information on the breakdown of costs for cleaning up Sellafield and how the costs of GDF are accounted for in the NDA's figure for overall nuclear liabilities.

For example, the Nuclear Decommissioning Authority and the Radioactive Waste Management company, which is a subsidiary of the NDA, have been seemingly unwilling to provide a breakdown of how the estimated £96 billion clean-up costs at Sellafield were arrived at and what they account for. Likewise, there is no explanation of whether the nuclear liabilities costs include the additional figures of £20 billion to £51 billion for GDF that was announced in the NDA's annual report. I noticed, when we debated the GDF issues,

[Lord Oates]
that the Minister did not respond to my question about how that is accounted for within the overall NDA liabilities. We already have a reluctance to share information that is overwhelmingly in the public interest.

The record of transparency in these matters is very poor. This amendment would prevent it getting even worse. It is particularly incumbent on the Government to respond and provide assurance to the public, given that they are going to have these costs imposed on their bills for new nuclear power generation, and share all relevant information unless exceptional circumstances prevent that being possible. I beg to move.

Baroness Neville-Rolfe (Con): My Lords, I should have started by apologising for not being able to speak at Second Reading. I have a problem in that I am following two or three Bills at present and there have been some unfortunate clashes. I want to speak on this amendment because I am well known as a supporter of proper and transparent costings. To that extent, I was pleased to see the amendment of the noble Lord, Lord Oates.

However, I thought Clause 13 was quite narrow. It seemed to be concerned with matters that are commercially sensitive or need to be excluded on national security grounds. As a former businessperson, that seemed quite reasonable to me. Obviously, it would be good to know that we will have a proper understanding of costs, particularly to the consumer, which might occur as proposals are developed. I associate myself with the wish to understand the costings, although I am not convinced this amendment is appropriate or necessary.

Baroness Wilcox of Newport (Lab): I am grateful to the noble Lord, Lord Oates, for tabling these amendments, which bring us back to transparency. We are sympathetic to the argument that, generally, information should be made public unless there is a compelling reason for that not to be the case. However, we understand that these are arrangements with commercial partners and that this reality needs to be reflected in the final transparency provisions.

Lord Callanan (Con): I realise that time is getting on, so I will be as brief as possible. I thank the noble Lords, Lord Oates and Lord Foster, for Amendments 33, 34, 35 and 36. As most of the material is similar, I will take them together, starting with Amendments 33 and 36.

By way of background, I will explain the purpose of Clause 13. Four amendments have been tabled to it, but I reassure noble Lords and my noble friend Lady Neville-Rolfe that this clause is in no way designed to act as a "free pass" for the Government. It is a narrowly drawn provision, allowing for the exclusion of specific, sensitive, commercial and national security information only. I want to be upfront and clear about that. From looking at their detail, I do not believe these amendments will achieve what I suspect is noble Lords' goal to increase transparency. Actually, they could cause extra confusion.

Amendment 33 makes the publication of relevant material the "primary duty" of the Secretary of State, and so would effectively place transparency above the protection of national security. I submit that this is intuitively wrong; it would be dangerous to subordinate national security concerns to publication concerns.

Amendment 36 would require the Secretary of State to make statements to Parliament about the seriousness of the potential impact of the release of information on the commercial interests of companies and how this is balanced against the public interest in disclosure. This creates ambiguity around the protection of commercial interests, which could have a serious impact on the ability of a project to raise the necessary investment. It would either make it harder to bring forward new projects or, alternatively, raise the cost of financing those projects; either way would result in worse value for consumers. I submit that it also goes against a basic tenet of commercial negotiations and operations: that an investor's commercial interests will be treated respectfully and confidentially.

Amendments 34 and 35 similarly seek to restrict what information can be excluded from publication or disclosure under Part 1 on the grounds of national security or prejudicing commercial interests. Similar to the previous amendments, the suggestions made in these amendments would add unnecessary and unhelpful ambiguity to an otherwise straightforward provision. Again, this would introduce additional uncertainty for both the Government and potential developers.

Looking first at the addition of "in exceptional circumstances", there is no obvious legal understanding or definition of what such circumstances would be. This would create uncertainty as to when the provision could be used and what information could be redacted. The circumstances in which Clause 13 applies are already sufficiently set out in its subsection (2). Similarly, given that "seriously" has no clear definition in this context, I submit that the addition of this term would add to the uncertainty and ambiguity about whether legitimate commercial interests would be respected for potential investors. I think that it would make them less likely to go on to be involved in projects.

I understand the desire for increased transparency behind these amendments, but I hope that, given the legal uncertainty of the wording used, I have been able to reassure noble Lords that the Government have no intention of hiding any information that we do not strictly need to in order to respect commercial confidences, so I hope that noble Lords will feel able to withdraw or not press their amendments.

Lord Oates (LD): My Lords, I thank the Minister for his reply. I am afraid that I am not entirely reassured by it, because there is a lot of talk in this Bill about protecting commercial interests but there seems to be little about protecting consumers' interests. This Bill imposes burdens on consumers, and it is only right that they have available to them information to understand how decisions are made.

I will certainly go away and think about the points that the Minister made. I make it clear that the aim of this amendment was not to compromise the Secretary of State's ability to exclude material on grounds of national security; I fully accept that that may well be necessary. It may be that the current Minister would not use this test to withhold large amounts of material, but that certainly seems possible, and I think that

there needs to be a much firmer test to protect the consumer. No doubt we will come back to these amendments, or versions of them, on Report. In the meantime, I beg leave to withdraw my amendment.

Amendment 33 withdrawn.

Amendments 34 to 36 not moved.

Clause 13 agreed.

8.45 pm

Clauses 14 to 18 agreed.

Clause 19: Supplier obligation

Amendments 37 and 38 not moved.

Clause 19 agreed.

Clauses 20 to 31 agreed.

Clause 32: Objective of a relevant licensee nuclear company administration

Amendment 39

Moved by ***Baroness Wilcox of Newport***

39: Clause 32, page 24, line 28, at end insert—

"(5A) If the Secretary of State is of the opinion that a relevant licensee nuclear company cannot be rescued as a going concern, or that a transfer of the undertaking to a wholly owned subsidiary will not result in the establishment of a going concern, the Secretary of State must, as soon as practicable—

(a) undertake an assessment of the merits of establishing a Government-owned company into which the assets, liabilities and undertakings of the relevant licensee nuclear company may be transferred in order to allow electricity supply to be commenced or continued, and

(b) lay the outcome of the assessment before both Houses of Parliament."

Member's explanatory statement

Where the Secretary of State is of the opinion that a failed company cannot be rescued as a going concern or successfully have its assets transferred to a subsidiary, this amendment would require the Government to assess the case for establishing a state-owned company to continue operations.

Baroness Wilcox of Newport (Lab): I am moving Amendment 39 in the name of my noble friend Lord McNicol. It would require the Secretary of State to undertake an assessment of the case for establishing a state-owned entity to take over the delivery or operation of a nuclear project in the event that a nuclear company fails and cannot be saved or have its assets transferred. Having such safeguards is familiar to me from my time in local government, where every project brought risks of overrun and rising costs, despite our best efforts to nail down the terms and conditions.

However, let us not deviate from the ultimate aim of this Bill: to get power generated and distributed to homes and businesses across the UK. We sincerely hope that firms will not fail, but if they do there needs to be a clear process to ensure that plants are built and continue to operate. The Minister may well argue that the special administration regime does this, but there is still potential for further steps to be needed. Surely, we should define options in legislation now rather than wait for the worst to happen. "Fail to prepare"—I am sure noble Lords know the remainder of that phrase.

Lord Foster of Bath (LD): My Lords, very briefly, there are two amendments in my name and that of my noble friend Lord Oates. I think we are all conscious that things can go wrong and there may need to be procedures to pick things up and move forward. We accept that might be the case. Sadly, it is the case for Taishan 1, as I mentioned before; after only a couple of years, it suddenly went offline. They do not even know what is wrong with it, and somehow they have to pick up the pieces.

I absolutely accept that there is a need to have procedures in place, such as a special administration regime. I merely suggest in Amendment 40 that, if that is the case and action needs to be taken, there should be a report covering the issues I have referred to in the amendment—the liabilities associated with the nuclear company, the estimated cost of getting it going again if it has been temporarily shut down, the lifespan of the nuclear power station and so on. It seems fairly straightforward.

Of course, the Minister will say that he cannot do it because that would be providing information which is somehow sensitive or commercial and it should not be done. In those circumstances, I cannot see anything commercial or sensitive about it, and it is something the public need to know; they will find someone else to do it or find a way of supporting the existing company to carry on doing it. It will be the taxpayer's money, and the taxpayer has a right to know what it will be used on. That is why, in Amendment 43, I am basically saying that any payments that would come out in that process ought to be approved by an independent body—in this case I have suggested, perhaps slightly surprisingly, that the House of Commons should have the opportunity, as the elected body, to decide whether or not the money proposed to be spent is being spent wisely. With that, I look forward to the Minister's response.

Lord Callanan (Con): My Lords, I thank noble Lords for their brevity. I know that time is getting on, so I will attempt to be as brief as possible in providing noble Lords with the information that they properly seek.

Amendments 39, 40 and 43 from the noble Lords, Lord Foster, Lord Oates and Lord McNicol, have been grouped because they all relate to the special administration regime set out in Part 3. I remind the Committee of the purpose of the SAR. It is imperative that in the—hopefully, vanishingly—unlikely event of an insolvency we would be able to act quickly to ensure that a plant could commence or continue electricity generation. That gives an important protection to consumers. The special administrator has a duty, as per the Bill, to achieve this objective as quickly and efficiently as is reasonably practicable. I must add that these are powers that we hope never to have to use, but

[Lord Callanan]
I agree with the noble Baroness, Lady Wilcox, that it is important to prepare in case we do. There is a very low probability of insolvency under a RAB model, but we need to prepare just in case.

It is for these reasons that I cannot accept Amendment 39. If the rescue of the company cannot be achieved, the special administrator will need to consider all options for a transfer, including, very possibly, a transfer to a publicly owned company. This may be supported by the Secretary of State where it would provide clear value for money for both consumers and taxpayers. The amendment implies that the special administrator would consider a transfer to a publicly owned company only if a transfer to a privately owned company were not feasible, so we would simply want to have more flexibility, or rather give more flexibility to the administrator in those circumstances.

It is essential that the administrator and the Secretary of State retain the ability to act quickly if all options to achieve the objective of the special administration have been exhausted. It is highly likely that in meeting their objectives, the administrator will consider various ownership structures for the project and their various relative merits. In placing a new reporting requirement on the Secretary of State to make this assessment and to publish it before acting, the amendment could frustrate this process and potentially delay exit from administration, which could cause additional cost to both consumers and taxpayers.

Lord Foster of Bath (LD): The Minister just said that publishing a report could frustrate the way forward. Can he explain with an example how that would happen?

Lord Callanan (Con): This is not a direct example, but, of course, the special administration regime has recently been used in the case of one particular energy company. I do not need to go into the specific example, but I was aware of a lot of the discussions that went on before it. Some of those were extremely commercially confidential because, of course, discussing possible outcomes results in potentially prejudicial publicity and might perhaps bring about the objective that we did not want. The company eventually went into a special administration regime, and information was published as soon as practicable about that. It is important in those circumstances to retain the flexibility. The Secretary of State's discretion to act expediently would obtain the best outcome for consumers and taxpayers during the special administration.

Amendments 40 and 43 seek to place an additional reporting requirement on the Secretary of State which we consider would also impede the ability of the special administration to achieve its objective. In the case of Amendment 40, I remind the Committee that a special administration is a court-administered procedure and, in the circumstances, a nuclear administrator would be an appointee of the court. It is therefore important that we retain the established process and do not seek to put in place reporting requirements which could oblige the Secretary of State potentially to publish commercially sensitive material, which would then jeopardise a transfer. I cannot, of course, seek to predict the court process, but it is possible that that some aspects of the information that Amendment 40 seeks to have published would also be publicly available, such as through companies publishing their financial statements.

In the circumstances, should any licence modifications be made by the Secretary of State during the administration, the legislation determines that such modifications will—correctly—need to be published, except for any matters which are commercially sensitive or would be contrary to the interests of national security.

There are already statutory arrangements in place with regard to the costs of decommissioning in the Energy Act 2008. This requires an operator to have in place an approved funded decommissioning programme—as already discussed—before construction on a new project can commence. I expect that, as was done for Hinkley Point C, the FDP for any future projects would be published along with relevant supporting documentation—again, apart from material of a sensitive nature.

Turning to Amendment 43, again, I am unable to accept this amendment, because it would risk the ultimate operability of the special administration regime and consequently risk consumers being unable to realise the benefit of the plant they have helped to build. As we have seen during the recent energy supplier crisis, it is imperative, as in the example that I just gave to the noble Lord, Lord Foster, that a fully operational special administration regime can be stood up in the quickest possible timeframe to protect consumers. This includes allowing for requisite funding from the Secretary of State to be provided efficiently. In addition, if insolvency occurred when perhaps the House was not sitting, I am sure that the noble Lord would accept that this would also cause unnecessary further delay.

The amendment would also cause a level of uncertainty that could deter potential administrators from undertaking the appointment under the special administration regime. The administrator would need to be assured that funding would be available from day one of the SAR to ensure its operability and ability to deliver its objectives, which of course are to continue or commence the generation of electricity. If there are delays in accessing the required funding, that could result in outages and problems with security of supply. In the case of a nuclear power station, there are also safety considerations. Any lapse in funding could result in some safety-critical expenditure not being met.

I thank noble Lords for all their amendments and in particular for their consideration of these matters with regard to the special administration regime. I hope that I have been able to provide appropriate reassurance that we hope never to use the regime, but it is there to serve the crucial purpose of protecting the interests of consumers. We need to make sure in that case that it is fully operable, efficient and able to meet its objective that energy generation will commence or continue in the unlikely event of an insolvency. I hope therefore that the amendments will not be pressed.

Baroness Wilcox of Newport (Lab): I thank the Minister for his reply and recognise the points that he has made regarding SARs. Nevertheless, I still feel that greater safeguards need to be in place. However, at this point, I beg leave to withdraw the amendment.

Amendment 39 withdrawn.

Amendment 40 not moved.

Clause 32 agreed.

Clauses 33 to 35 agreed.

Clause 36: Procedure etc relating to modifications under section 35

Amendment 41 not moved.

Clause 36 agreed.

Clauses 37 to 39 agreed.

Clause 40: Decommissioning of nuclear sites: bodies corporate not "associated"

Amendment 42 not moved.

Clause 40 agreed.

Clause 41 agreed.

Amendment 43 not moved.

Clauses 42 and 43 agreed.

Clause 44: Commencement

Amendments 44 and 45 not moved.

Clause 44 agreed.

Clause 45 agreed.

Schedule agreed.

Bill reported without amendment.

Committee adjourned at 9 pm.