Vol. 831
No. 186

Monday
3 July 2023

PARLIAMENTARY DEBATES

(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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

Abbreviation	**Party/Group**
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind 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
UUP	Ulster Unionist Party

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House of Lords

Monday 3 July 2023

2.30 pm

Prayers—read by the Lord Bishop of Exeter.

Death of a Member: Lord Kerslake

Announcement

2.37 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I regret to inform the House of the death of the noble Lord, Lord Kerslake, on Saturday 1 July. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

Drax Biomass Power Station

Question

2.38 pm

Asked by ***Baroness Jones of Whitchurch***

To ask His Majesty's Government what assessment they have made of the extent to which Drax biomass power station has complied with sustainability requirements; and whether they are reviewing subsidies to it.

The Parliamentary Under-Secretary of State, Department for Energy Security and Net Zero (Lord Callanan) (Con): My Lords, this is a matter for Ofgem. The regulator is the administrator for monitoring compliance with the sustainability criteria within the renewables obligation scheme. It has opened an investigation into whether Drax Power Ltd is in breach of its annual profiling reporting requirements related to the renewables obligations scheme.

Baroness Jones of Whitchurch (Lab): I thank the Minister for that reply. It is estimated that we will have given Drax some £11 billion in subsidies over the different renewable energy schemes. Is the Minister concerned that Drax's claim to be using sustainably sourced wood from Canadian forests currently lacks any detailed full-cycle carbon accounting and the audit trail that we have the right to expect for that level of subsidy? Why did Ofgem commission the technical consultancy Black & Veatch to advise on this even though the company is already working for Drax? Finally, does the Minister accept that, in order to get to the truth, independent advisers and scientists should go to Canada to check that 70% of the wood biomass being imported is actually sustainable offcuts, as our rule requires, and not from virgin forests?

Lord Callanan (Con): A couple of points for the noble Baroness. First, the renewables obligation legislation was originally introduced by the last Labour Government. Secondly, Ofgem is investigating these matters. The noble Baroness is jumping to a lot of conclusions there. If it is proved that Drax is not in compliance, of course some of the value of the certificates that it has received will be withdrawn.

Lord Birt (CB): Speaking of proof, has the Minister had a chance to view the devastating "Panorama" on Drax? Drax's claims have been fatally undermined. Ancient forests have been cut down and indiscriminately turned into pellets, transported 12,000 miles by ship and incinerated in Yorkshire, emitting more CO_2 than coal did before and at gigantic cost to the taxpayer. This is not the route to net zero.

Lord Callanan (Con): The noble Lord should be careful of jumping to conclusions. I have not seen the programme, but my officials have. They have engaged extensively with forestry experts and Canadian officials following the programme, and the officials' conclusion is that the "Panorama" programme provided an inaccurate representation of practices by the forestry and biomass sector on the ground.

Baroness McIntosh of Pickering (Con): My Lords, looking at renewables more broadly, does my noble friend have a view on the efficacy and morality of taking electricity that has been generated offshore in the Yorkshire and Humber region and transporting it all the way down to the West Midlands, when we could actually use that electricity locally, particularly to power up electric cars, for which there are so few charging points in rural areas?

Lord Callanan (Con): I have to say that I am really not sure what the noble Baroness is talking about. There is a national grid. Electricity is transported from all parts of the country to other parts, as demand varies. That is the whole principle of a grid.

Baroness Bakewell of Hardington Mandeville (LD): The emissions that occur as a result of Drax burning mature trees are not counted as CO_2 emissions; only emissions from transporting trees from forests to furnaces count. When are the Government going to wake up to this ridiculous accounting fraud and stop giving Drax green subsidies?

Lord Callanan (Con): Again, the noble Baroness is jumping to conclusions before the investigation has proceeded. Based on the evidence reviewed to date, Ofgem has not established any non-compliance with the scheme. But the investigation is continuing and I would caution noble Lords to wait for the outcome from the independent regulator.

Lord Berkeley (Lab): My Lords, transporting this woodchip from a forest somewhere in North America by truck or train, loading it on to a container ship, taking it to the Mersey, taking it across the Pennines in another train and then discharging it into Drax—how can that possibly be green?

Lord Callanan (Con): It is because the sustainability criteria say that the biomass has to come from sustainable sources. Most of it is by-product from normal sustainable commercial forests.

Baroness Boycott (CB): My Lords, a few years ago when this Question came up in the House, the noble Lord assured the noble Earl, Lord Caithness, that if Ofgem found Drax not to be meeting its sustainability

[Baroness Boycott]
criteria, the subsidies would be immediately removed. Since then, we have had the "Panorama" review and, while I accept the noble Lord's point that the jury is still out, I would like to know whether he is still prepared to make the same commitment to the House today.

Lord Callanan (Con): Yes.

Baroness Jones of Moulsecoomb (GP): My Lords, you have to admit that the "Panorama" programme had some interesting facts. In fact, a lot of that information comes from Canadian environmentalists who are on the spot and see the ancient forests being destroyed for those wood pellets. So why on earth does the Minister still persist in saying that we are jumping to conclusions when he is just burying his head in the sand?

Lord Callanan (Con): As somebody famous once remarked, recollection of facts may vary. Forgive me if I do not necessarily take as absolute fact the statements of some Canadian environmentalists. Officials have looked into it. Ofgem is investigating whether the biomass is sustainable or not. Let us wait for the outcome of that investigation.

Lord McLoughlin (Con): My Lords, my noble friend said in his original Answer that it was matter for the regulator. Are the Government wholly satisfied with the way regulation is working at the moment, with questions around the regulator Ofgem? Who regulates the regulators?

Lord Callanan (Con): The noble Lord was probably in the other place when the regulations and laws for Ofgem were passed. It is an independent regulator; that is the whole principle of it. Until I see any evidence that it is not carrying out its job satisfactorily, I will continue to have confidence in it.

Baroness Blake of Leeds (Lab): My Lords, when Ofgem opened its investigation into Drax's biomass sustainability reporting a month ago, it made clear it would act if it found breaches of the rules—the right approach, surely, to a single case. However, what assessment have the Government made of wider compliance with reporting requirements and what steps are they taking to improve monitoring, particularly with regard to the origin of fuel sources?

Lord Callanan (Con): I refer the noble Baroness to the answers I have given to previous questions. There are other biomass operations that fulfil the sustainability criteria. If any evidence is produced and if the noble Baroness has any evidence, I would be delighted to pass it on, but until then we should trust what they say.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, in answer to the excellent question from the noble Lord, Lord McLoughlin, the Minister said that officials had looked into this and that Ofgem was satisfied. But, as far as this House is concerned, it is the Minister who is responsible. What has he personally done to look into this since the programme aired so that he could have answered the Question from the noble Baroness, Lady Jones, properly?

Lord Callanan (Con): My Lords, I have answered the Question properly. Ofgem is an independent regulator and takes these matters extremely seriously. I have spoken to the chief executive of Ofgem about it and I have spoken to officials who have investigated it, so I feel that I have discharged my duties on this one.

Baroness Hayman (CB): My Lords, I declare my interests as set out in the register. The Minister was very dismissive to the noble Baroness, Lady McIntosh of Pickering, on the issues around the national grid and the use of sustainable energy. We had long debates about this, and about community energy, in the Energy Bill. Does he not accept that there is a possibility, with some of the large onshore wind turbines we now have, that we could almost avoid grid connection and go to direct supply for developments that are important?

Lord Callanan (Con): That was not the question I was asked, but let me tackle the question from the noble Baroness. Of course, it is perfectly within anybody's rights to set up a private wire supply and their own community generation if they wish, but I think the noble Baroness will find that the vast majority of those schemes also want to be connected to the national grid for cases where it does not work.

Nuclear Submarines: AUKUS
Question

2.46 pm

Asked by ***Lord Walney***

To ask His Majesty's Government what steps they will take to ensure the United Kingdom meets the increased demands to produce nuclear submarines entailed by the AUKUS agreement with the United States of America and Australia.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the UK is stepping up to meet the opportunities of the AUKUS nuclear submarine agreement, a multidecade undertaking that will create thousands of jobs. We are investing an extra £3 billion over the next two years in our defence nuclear enterprise, including support for AUKUS. Rolls-Royce plans to almost double the size of its Derby site, creating 1,170 skilled roles and demonstrating our commitment to the expertise embodied in British industry.

Lord Walney (CB): I thank the Minister for that Answer. I should add that my declared interest for the Purpose Coalition includes advising Rolls-Royce on how to meet that production challenge. AUKUS is great news for our global security and for the UK submarine industry, but does the Minister accept that it requires a step-change in Whitehall departments working together on a genuine national endeavour, which has long been promised but has not been delivered across Whitehall?

Baroness Goldie (Con): I thank the noble Lord for the role he is playing and wish him well in his advisory capacity to Rolls-Royce. This is a very important project. It is probably one of the most important we have entered into in the post-Second World War period.

He is absolutely correct that there is a need for cross-government co-operation and consultation. That is happening. As he is also aware, one of the big challenges is in relation to skills. We are very cognisant of that, and activity is under way to try to increase nuclear sector engagement with young people and attract talent from a more diverse background.

Lord Singh of Wimbledon (CB): My Lords, does the Minister accept that increasing the number of submarines armed with nuclear weapons invites less responsible countries, like Russia and China, to do the same? This increases the possibility of their accidental or malevolent use, leading to horrendous suffering.

Baroness Goldie (Con): I can simply clarify to the Chamber that the AUKUS programme's SSN-AUKUS submarines are nuclear-propelled, not nuclear-armed.

Lord Browne of Ladyton (Lab): My Lords, the first AUKUS pillar 2 autonomous weapons and artificial intelligence trial took place in April. On 27 June, the White House Indo-Pacific co-ordinator, Kurt Campbell, said that there would be co-operation with all three countries on artificial intelligence and quantum computing, and that other allies and partners would be invited to join this development. That is quite a significant development, although not unexpected, given the elements of AUKUS. Is there any possibility that we will get a ministerial Statement on this matter?

Baroness Goldie (Con): What I can confirm to the noble Lord is what is already in the public domain. We have always said that, as progress is made with the three countries on pillar 2—which is distinct from the original pillar, which is trilateral—other critical defence capabilities will then seek opportunities to engage allies and close partners. As the noble Lord correctly indicated, the trial held in April was most encouraging, and a two-minute video was released by all three nations. We have to take one step at a time.

Baroness Smith of Newnham (LD): My Lords, while AUKUS is clearly very important, Europe and our neighbourhood remain the closest security partners and allies for the United Kingdom. Could the Minister confirm that working with AUKUS will not reduce our commitment to our neighbourhood? At the same time, if there will be increased skills and work for developing the nuclear-propelled submarines, could some of that expertise be used to ensure that the development of other equipment, under the MoD's auspices, is fit for purpose the first time round?

Baroness Goldie (Con): On the first point, it has always been acknowledged that, although AUKUS is intended to do two things—to augment our Indo-Pacific tilt and to provide us with our new class of AUKUS submarines and succession to Astute—it will also enable the UK and its partners to develop capabilities that will, for example, not only reinforce NATO but help the states in the Indo-Pacific bolster their own security. On the noble Baroness's latter point, we already have a huge base of skills in the UK, as I indicated to the noble Lord, Lord Walney. That, quite simply, is why AUKUS is a trilateral agreement with the United States, the UK and Australia. We are building on that; we are not complacent. We need to expand that skills base. I agree with the noble Baroness that, once we do that, we will see a fanning out of other benefits to the broader defence enterprise.

Lord Carlile of Berriew (CB): My Lords, for the aspirations set out in my noble friend Lord Walney's Question to be achieved, we need to ensure that the United Kingdom provides the capital impetus for us to participate fully in the construction and development of the submarines. Will the Minister tell us what steps are being taken by His Majesty's Government to ensure that the United Kingdom is a full participant in the construction programme?

Baroness Goldie (Con): I respond to the noble Lord by reminding the Chamber that, in March this year, the Prime Minister announced that we are investing an extra £3 billion over the next two years in our defence nuclear enterprise to support AUKUS and other areas. Other financial contributions will be coming from Australia; for example, at the Rolls-Royce base in Derby plans are under way for a significant expansion of its Raynesway nuclear reactor manufacturing site. That will create 1,170 skilled jobs. We expect this tandem of co-operation to produce not only a contribution to the project itself but a financial contribution to the endeavour.

Lord West of Spithead (Lab): My Lords, the AUKUS programme is extremely good news; it is very good news for the UK and for stability. Looking to the future, does the Minister agree that this will allow us, in the longer term, to increase the number of SSNs we have—because we have too few—and that that will be good for the north Atlantic and the Arctic as well as the Far East? They can move from one place to the other in a matter of three or four weeks, so does she agree that this is a potential for the future?

Baroness Goldie (Con): It give me great pleasure to agree with the noble Lord—it is refreshing and, I hope, a recurring experience. The noble Lord makes a very good point. As he is aware, we currently have Vanguard that will translate into Dreadnought in due course. On the Astute class, the final two submarines are still being built: boat six, "Agamemnon", and boat seven, "Agincourt". They will make an important contribution, but as we move on to the Astute class, the noble Lord is correct. We are aware of diverging maritime challenges, not least in the high north and the Arctic. The MoD is cognisant of that. I referred to the fact that we have published our Arctic strategy to his colleague, the noble Lord, Lord Robertson of Port Ellen, on Friday.

Lord Coaker (Lab): My Lords, His Majesty's Opposition Front Bench fully supports the AUKUS programme. As the noble Lord, Lord West, has pointed out, it will make a huge contribution to global security in the decades to come. Returning to the point a number of noble Lords have mentioned, there are already thousands of unfilled vacancies in skilled engineering in our defence industries. There will need to be a step change with respect to skills if we are to fully utilise all the opportunities that are available under the AUKUS scheme. The Minister mentioned

[Lord Coaker]
some of the initiatives the Government are bringing forward, but I ask her—as a matter of urgency—to look at whether that needs refreshing. So far, all our efforts in that have not delivered the results we want.

Baroness Goldie (Con): I can share with the noble Lord that additional apprenticeship and graduate bursary schemes have been implemented across the enterprise, and significant further increases are planned to build the capabilities to increase the cohort of apprentices and new graduate opportunities by 2029-30. Importantly—and it refers to the point the noble Lord, Lord Walney, was making—the MoD, the Department for Energy Security and Net Zero and employers in the nuclear circuit are all working together as part of the Nuclear Skills Strategy Group to address common challenges. The noble Lord is correct to allude to the challenge: it is there but we are not complacent about it, and we have a number of initiatives designed to try to address it.

Lord Peach (CB): My Lords, does the Minister agree that moving from the step change we have all agreed this afternoon will require an integrated approach? That will then leave the question of command and control. Who will lead on AUKUS for the whole of the Government to make sure that, end to end, we deliver this important programme?

Baroness Goldie (Con): I hope I can reassure the noble and gallant Lord that the Cabinet Secretary has asked the MoD's Permanent Secretary, David Williams, to be the UK's AUKUS principal. That is a very significant position. He will have overall responsibility for the programme in the UK with support from the Director General Nuclear, the Deputy Chief of Defence staff, military capability and senior civil servants from a number of relevant departments from across Whitehall. He will be at the very top of the chain, the essential co-ordinating presence.

Low Traffic Neighbourhoods
Question

2.57 pm

Asked by ***Baroness Deech***

To ask His Majesty's Government what assessment they have made of the balance between (1) the duty of local authorities under section 122 of the Road Traffic Regulation Act 1984 to secure expeditious, convenient and safe movement of vehicular traffic and pedestrians, and (2) the imposition of low traffic neighbourhoods and low emission zones.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the department has made no such assessment. It is for local authorities to ensure they manage their roads in such a way as to fulfil the duties placed on them. They have a wide range of traffic management tools to support them in this.

Baroness Deech (CB): My Lords, I declare a type of interest in that I drive an all-electric car and I have a clear conscience.

Does the Minister want people to return to work and productivity to increase? I am urging the Government to stop any government inducement to obstacles placed in the way of normal life in pursuit of ideology and fines, not science. Studies prepared for Oxford show that pollution is simply displaced from the centre and the same amount goes to the ring road where poorer people tend to live, and they are the ones punished by fines.

There are about 100 empty shops in Oxford. Businesses near the low-traffic neighbourhoods are folding with great losses, and they are often owned by ethnic minorities. There are tussles in the streets over the barriers, ambulances take longer and the once beautiful Broad Street is filled with industrial crates. Working people are having great difficulties, the consultations are ignored and the scientific evidence is withheld. Most important of all, the traffic blockades discriminate—even the blue badge is not exempt. Will the Government enforce the protection of the rights of elderly, pregnant and disabled people?

Baroness Vere of Norbiton (Con): There was a fair amount in that statement. The noble Baroness mentioned Oxford, and it is important to understand that all the issues she mentioned should be taken up with the local authority. The Government have never been in control of local roads and are not now. These issues are devolved to the local authority, and I encourage her to raise those issues with her local council.

Lord Woodley (Lab): Speaking of convenience and safe movement of traffic, can the Minister say what is happening with autonomous vehicles, be they cars, lorries or buses, particularly with the trials going on in this country and stretching right across Europe?

Baroness Vere of Norbiton (Con): The Government believe that there is a huge future for autonomous vehicles, and we will bring forward legislation when parliamentary time allows.

Lord Storey (LD): My Lords, I am sure the Minister agrees that we must get this right. The Transport for London web page tells us the details about the scrappage scheme changes and the full eligibility criteria for small and micro-businesses and charities. The new grace period will be available on the discounts and exemptions page at the end of this month, but the scheme is to be implemented in August. Does the Minister think it is acceptable that people struggling with rising costs should have only a few weeks to find out if they are eligible?

Baroness Vere of Norbiton (Con): The scrappage scheme in London is of course under the remit of the Mayor of London, and the Government have no recourse to have any influence over it.

Lord Cormack (Con): My Lords, the noble Baroness, Lady Deech, raised an important point. Would it not be sensible for the Government to have some conversations with these local authorities? Oxford, with a bereft high

street, is not the Oxford most of us know and love, and it is important that we get this thing in perspective. The Government surely have an overall duty here.

Baroness Vere of Norbiton (Con): My Lords, one-way streets, traffic calming and pedestrianisation have been used for decades. In some circumstances, they have been put in and are not working, and in those cases it is for the local authority to be held accountable by the local electorate. The Government do, however, provide various bits of guidance, both statutory and non-statutory, to assist local authorities to come to the right decisions.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the noble Lord, Lord Campbell-Savours, is participating remotely.

Lord Campbell-Savours (Lab) [V]: My Lords, on low-emission zones, can Ministers identify any research showing that vehicles travelling over a given distance at a constant 20 miles per hour in a low gear at high revs emit less carbon monoxide than vehicles travelling at 30 miles per hour in a higher gear at low revs? When I asked for the evidence in 2021, this Minister gave the following answer:

> "The Department does not have specific results for the situations outlined".

How can the public throughout the UK have confidence in a speeding regime which lacks detailed assessment?

Baroness Vere of Norbiton (Con): It is up to local authorities to decide on local speed restrictions, which they are encouraged to evaluate. As the noble Lord will know, in most circumstances 30 miles per hour is the limit, but some local authorities have chosen to make some streets 20 miles per hour.

Lord Shinkwin (Con): The noble Baroness's Question raises the important issue of the safe movement of pedestrians. My noble friend the Minister may be aware that the danger to disabled pedestrians posed by the irresponsible use of e-bikes and e-scooters in the centre of London's low-emission zone was the focus of a recent Policy Exchange paper, *A Culture of Impunity*, to which several noble Lords contributed. Can my noble friend write to me with a formal response to its recommendations and place a copy in the Library?

Baroness Vere of Norbiton (Con): I will certainly look into that, but I am not entirely sure that I will be able to do as my noble friend asks. The safety of people on our roads is critical, and one of the elements of traffic management is the reduction in killed and seriously injured people which I am sure all noble Lords would want to see. It is not just about journey time changes but increasing the number of people walking and cycling, and looking at modal shift and levels of car ownership.

Lord Hunt of Kings Heath (Lab): My Lords, I was brought up in Oxford. It was known then as the "city of screeching tyres" and the college buildings were blackened by pollution. Surely the best way to promote the city is to continue with the huge environmental improvements that are taking place there.

Baroness Vere of Norbiton (Con): As I said earlier, that is a matter for the council.

Baroness Taylor of Stevenage (Lab): My Lords, local authorities are still having to rely on outdated guidance from 2007 for the design and modification of residential streets. In a debate in the other place in November last year, Minister Richard Holden referred to the Department of Transport publishing a revised version of the *Manual for Streets* early in 2023. Can the Minister please give us update on when we can expect that new manual?

Baroness Vere of Norbiton (Con): Yes, I can indeed. The *Manual for Streets* is an important document on which we have engaged closely with stakeholders. That engagement is still under way but I can commit to the noble Baroness that the document will be published soon.

Lord Polak (Con): My Lords, I declare an interest: I was invited to a speed awareness course for travelling at 25 mph on Park Lane. Can my noble friend explain how Park Lane, with three lanes and a bus lane, can possibly be a 20 mph zone?

Baroness Vere of Norbiton (Con): It is a 20 mph zone because the Mayor of London has decided that it should be.

Lord Grocott (Lab): My Lords, I am biased but the question from my noble friend Lord Campbell-Savours, on the emission levels associated with a 20 mph limit and a 30 mph limit, was splendid. I did not catch whether the Minister answered that question, which is presumably a pretty precise one, on which there can be scientific evidence. Can she try to answer it now?

Baroness Vere of Norbiton (Con): I am not aware of any research in that area but I will take that question back to the department and write to the noble Lord.

Baroness Jones of Moulsecoomb (GP): My Lords, I have enjoyed the Minister's answers, batting away some of the silly questions she has had from her own side. I just wonder whether the explanation for shops shutting is not that people are working from home now but simply the cost of living; and perhaps people are not travelling as far and are shopping locally.

Baroness Vere of Norbiton (Con): I reassure the noble Baroness that there are no silly questions in your Lordships' House. As I mentioned earlier, many of these schemes are put in place to enable local economic growth. I cannot conceive of my local town centre still having cars in it: it is a hugely thriving town centre because it is pedestrianised. However, what is really important is that local councils need to get it right. If they do not get it right, they need to listen to local communities and remove any interventions.

Cybersecurity
Question

3.08 pm

Asked by **Lord Clement-Jones**

To ask His Majesty's Government what progress has been made in implementing the recommendations on cybersecurity made by Sir Patrick Vallance in his report *Pro-innovation Regulation of Technologies Review: Digital Technologies,* published in March.

The Parliamentary Under-Secretary of State, Home Office (Lord Sharpe of Epsom) (Con): My Lords, in the Government's response to the review, we set out that the Home Office is taking forward work to consider the merits and risks of the proposals made. We have created a group that includes law enforcement agencies, prosecutors, the cybersecurity industry and system owners to consider these issues and reach a consensus on the best way forward.

Lord Clement-Jones (LD): My Lords, Sir Patrick made a very clear recommendation to amend the Computer Misuse Act to include a statutory public interest defence for cybersecurity researchers and professionals carrying out threat intelligence research. This has been extremely long awaited. We finally had a review, which started in 2021 and reported this year; we had a consultation, which concluded in April; and now we have the steps that the Minister talked about. What conclusion can we expect at the end of the day? Progress on this has been totally glacial given the importance to innovation and growth of this change to legislation.

Lord Sharpe of Epsom (Con): My Lords, I agree that there is an enormous necessity to get this right, but that is part of the problem of why things are perhaps not happening as fast as the noble Lord would like—progress is far from glacial. These issues are incredibly complicated because, as the noble Lord noted, the proposals would potentially allow a defence for the unauthorised access by a person to another's property, and in this case their computer systems and data, without their knowledge and consent. We therefore need to define what constitutes legitimate cybersecurity activity, where a defence might be applicable and under what circumstances, and how such unauthorised access can be kept to a minimum. We also need to consider who should be allowed to undertake such activity, what professional standards they will need to comply with, and what reporting or oversight will be needed. In short, these are complex matters, and it is entirely right to try to seek a consensus among the agencies I mentioned earlier.

Lord Arbuthnot of Edrom (Con): My Lords, I declare my interests as set out on the register. Does my noble friend accept that it is very difficult for Governments to keep up with the speed of change of technology in their legislation? The Computer Misuse Act is now 33 years old. If progress is not glacial, please could we have an injection of urgency into the changes to it that we need?

Lord Sharpe of Epsom (Con): I agree with my noble friend that it is difficult for Governments to keep up with the pace of technological change, but I also reflect on the fact that much of the legislation going through your Lordships' House at the moment contains many efforts to future-proof it in this area. As I said, I do not agree that this is glacial. I know that the Act is old. The report was delivered only earlier this year and the discussions are very complicated, as I just highlighted.

Lord Coaker (Lab): My Lords, if it is not glacial, it is very slow. The point we have heard from both noble Lords is that Sir Patrick Vallance made nine recommendations; the Government have accepted them. We know that cybersecurity is a real problem—the Government accept that—but what everybody is waiting to hear is what the Government intend to do and the timescale.

Lord Sharpe of Epsom (Con): My Lords, I am trying to answer this question. Sir Patrick Vallance reported in April; it is now July. I do not think that is glacial or particularly slow. The fact is that these are complicated matters that need to be considered very carefully. They involve all sorts of different implications for us all.

Lord Alton of Liverpool (CB): My Lords, in addition to the amendment to the 1990 computer Act and the opportunity the Minister will have to address that in due course, will he reflect on what Sir Patrick said about international harmonisation and the need for regulation of significant emerging technologies to reflect what other countries are doing, as well as what we are doing?

Lord Sharpe of Epsom (Con): The noble Lord makes a very good point, and one I inquired about this morning. There is a considerable exchange of information with our friends and allies and other interested countries across the world. It is perhaps worth pointing out that the Department of Justice in the States has just reissued guidelines for prosecutions only. Guidance and prosecutorial discretion are major features of the American way of doing it; we are going a slightly different route and seeking consensus, but of course we will consult.

Baroness Bennett of Manor Castle (GP): My Lords, the Minister may be aware of reports out this morning that Barts Health NHS Trust has been hacked, potentially by a ransomware group of thieves—I suppose that is the right word—and that 7 terabytes of data may have been taken control of, which of course may well involve confidential personal medical data. Does the Minister agree that it is really important that the NHS workforce plan includes and considers the NHS's IT needs and IT skill needs? Is that something the Minister is talking about with the health department?

Lord Sharpe of Epsom (Con): I have not spoken about it directly with the health department, but I note from other debates that we have had in your Lordships' House over the past few months that a skills shortage in the area of computers, data and whatnot is a problem across all economies, not just ours.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I thank the Minister and his colleagues in the Home Office, and those in the Foreign, Commonwealth and Development Office and the Ministry of Defence, for the excellent and detailed briefings they give us on security issues, which are really helpful. What precautions are taken to make sure that this information is not passed, either deliberately or inadvertently, to representatives of the Government of Russia?

Lord Sharpe of Epsom (Con): My Lords, I am afraid I have no idea; I will find out.

Viscount Stansgate (Lab): My Lords, I am a member of the Joint Committee on the National Security Strategy. We are currently conducting an investigation into ransomware and cybersecurity, which are very much at the heart of this Question. I agree with the noble Lord opposite who said that the Computer Misuse Act is now 33 years old—it is. Heaven knows the world has changed since then. I agree with the Minister that an enormous amount of co-ordination has to be done within government to get this right. Can the Minister provide some future opportunity in government time to have a more general debate about the issues involved? Otherwise, knowing what this House is like, it will take a year or more before the report that the committee eventually introduces can be debated here.

Lord Sharpe of Epsom (Con): The noble Viscount makes a good point. I am obviously unable to comment on the scheduling of parliamentary business but, when the group that I referred to in my initial Answer has finished its consultations and considerations and come to a consensus, we will of course report back to Parliament. I imagine that will include a debate.

Lord Clement-Jones (LD): My Lords, does not everything that has been said on this Question today demonstrate the importance of fresh intelligence work and, therefore, the importance of changing the Computer Misuse Act?

Lord Sharpe of Epsom (Con): I do not think that anybody disagrees with that. I am just saying that we need to get it right and do it properly.

Lord Kamall (Con): My Lords, the Vallance report talks about the fact that, under the Computer Misuse Act, professionals conducting legitimate cybersecurity research in the public interest currently face the risk of prosecution. It asks us to look at the examples of France, Israel and the United States. Is my noble friend the Minister aware of any possible unintended consequences of modifying the Act to align it with the changes in those countries?

Lord Sharpe of Epsom (Con): Yes; one of the considerations that is being looked at is the various potential unintended consequences of making some of these changes. As I say, they involve a fairly significant invasion of privacy—I suppose that is the right phrase. There may well be circumstances in which that is appropriate but, obviously, who does it and how they do it are incredibly difficult.

Illegal Migration Bill

Report (2nd Day)

Relevant documents: 34th and 37th Reports from the Delegated Powers Committee, 16th Report from the Constitution Committee, 12th Report from the Joint Committee on Human Rights. Correspondence from the Senedd published.

3.16 pm

The Deputy Speaker (Lord Haskel) (Lab): My Lords, before the House resumes consideration of the Illegal Migration Bill on Report, we come to two Divisions that the House agreed to defer after the failure of the pass reader Division system on 28 June, beginning with the deferred Division on Amendment 15.

3.17 pm

Division on Amendment 15

Contents 204; Not-Contents 168.

Amendment 15 agreed.

Division No. 1

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Aberdare, L.
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Addington, L.
Allan of Hallam, L.
Alton of Liverpool, L.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Andrews, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Birt, L.
Blackstone, B.
Blake of Leeds, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bowness, L.
Boycott, B.
Bradley, L.
Brennan, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brown of Cambridge, B.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Butler-Sloss, B.
Cameron of Dillington, L.
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Campbell-Savours, L.
Carlile of Berriew, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Coussins, B.
Crawley, B.
Crisp, L.
Cunningham of Felling, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
D'Souza, B.
Dubs, L.
Durham, Bp.
Etherton, L.
Exeter, Bp.
Faulkner of Worcester, L.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Gloucester, Bp.
Goddard of Stockport, L.
Gohir, B.
Golding, B.
Grocott, L.
Hacking, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayman of Ullock, B.
Hayman, B.
Healy of Primrose Hill, B.
Hendy, L.
Hollins, B.
Hope of Craighead, L.
Humphreys, B. [Teller]
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.

Hutton of Furness, L.
Hylton, L.
Jay of Paddington, B.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kidron, B.
Kramer, B.
Laming, L.
Lawrence of Clarendon, B.
Layard, L.
Leong, L.
Liddell of Coatdyke, B.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Lytton, E.
Macdonald of River Glaven, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Monks, L.
Morgan of Huyton, B.
Morgan, L.
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Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Grady of Upper Holloway, B.
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O'Neill of Bengarve, B.
Osamor, B.
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Parminter, B.
Pinnock, B.
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Prentis of Leeds, L.
Primarolo, B.
Purvis of Tweed, L.
Razzall, L.
Rebuck, B.
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Reid of Cardowan, L.
Rennard, L.
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Rooker, L.
Rowlands, L.
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Sandwich, E.
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Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
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Smith of Finsbury, L.
Smith of Newnham, B.
Snape, L.
Stansgate, V.
Stone of Blackheath, L.
Stoneham of Droxford, L. [Teller]
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Symons of Vernham Dean, B.
Taylor of Bolton, B.
Taylor of Stevenage, B.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
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Tomlinson, L.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warner, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
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Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Woodley, L.
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Young of Old Scone, B.

NOT CONTENTS

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Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashton of Hyde, L.
Balfe, L.
Barran, B.
Bellamy, L.
Benyon, L.
Berridge, B.
Bethell, L.
Bew, L.
Blencathra, L.
Borwick, L.
Bray of Coln, B.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cavendish of Little Venice, B.
Chartres, L.
Colgrain, L.
Cormack, L.
Courtown, E. [Teller]
Craigavon, V.
Cromwell, L.
Cruddas, L.
Cumberlege, B.
Davies of Gower, L.
De Mauley, L.
Deech, B.
Dunlop, L.
Eccles of Moulton, B.
Eccles, V.
Effingham, E.
Empey, L.
Evans of Bowes Park, B.
Evans of Rainow, L.
Fairfax of Cameron, L.
Farmer, L.
Faulks, L.
Fleet, B.
Fookes, B.
Fowler, L.
Frost, L.
Gadhia, L.
Garnier, L.
Geddes, L.
Glenarthur, L.
Godson, L.
Gold, L.
Goldie, B.
Goodlad, L.
Green of Deddington, L.
Grimstone of Boscobel, L.
Hailsham, V.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Harlech, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hogan-Howe, L.
Holmes of Richmond, L.
Horam, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jackson of Peterborough, L.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Kamall, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lampard, B.
Lansley, L.
Lea of Lymm, B.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Lucas, L.
Markham, L.
Marland, L.
Maude of Horsham, L.
Mawson, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Meyer, B.
Minto, E.
Montrose, D.
Morris of Bolton, B.
Mott, L.
Moylan, L.
Moynihan, L.
Murray of Blidworth, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Parkinson of Whitley Bay, L.
Patten, L.
Peach, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Randall of Uxbridge, L.
Ravensdale, L.
Rawlings, B.
Reay, L.
Redfern, B.
Remnant, L.
Risby, L.
Robathan, L.
Roberts of Belgravia, L.
Roborough, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Sewell of Sanderstead, L.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Soames of Fletching, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stirrup, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Suri, L.
Swinburne, B.
Swire, L.
Taylor of Holbeach, L.
True, L.
Tugendhat, L.
Udny-Lister, L.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Verma, B.
Waldegrave of North Hill, L.
Watkins of Tavistock, B.
Wei, L.
Weir of Ballyholme, L.
Wharton of Yarm, L.
Williams of Trafford, B. [Teller]
Wrottesley, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

3.27 pm

Division on Amendment 37

Contents 216; Not-Contents 147.

Amendment 37 agreed.

Division No. 2

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Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Adebowale, L.
Allan of Hallam, L.
Alton of Liverpool, L.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Bew, L.
Blackstone, B.
Blake of Leeds, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bowness, L.
Boycott, B.
Bradley, L.
Brennan, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brown of Cambridge, B.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Butler-Sloss, B.
Cameron of Dillington, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carlile of Berriew, L.
Cashman, L.
Cavendish of Little Venice, B.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Coussins, B.
Crawley, B.
Crisp, L.
Cunningham of Felling, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
D'Souza, B.
Dubs, L.
Durham, Bp.
Etherton, L.
Exeter, Bp.
Falkner of Margravine, B.
Faulkner of Worcester, L.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fowler, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasman, L.
Gloucester, Bp.
Goddard of Stockport, L.
Gohir, B.
Golding, B.
Grocott, L.
Hacking, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Haworth, L.
Hayman of Ullock, B.
Hayman, B.
Healy of Primrose Hill, B.
Hendy, L.
Hollins, B.
Hope of Craighead, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Hutton of Furness, L.
Hylton, L.
Jay of Paddington, B.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L. [Teller]
Kennedy of The Shaws, B.
Kidron, B.
Kramer, B.
Laming, L.
Lawrence of Clarendon, B.
Leong, L.
Liddell of Coatdyke, B.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Lytton, E.
Macdonald of River Glaven, L.
Mawson, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Monks, L.
Morgan of Huyton, B.
Morgan, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Grady of Upper Holloway, B.
O'Loan, B.
O'Neill of Bengarve, B.
Osamor, B.
Paddick, L.
Parminter, B.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prentis of Leeds, L.
Primarolo, B.
Purvis of Tweed, L.
Ravensdale, L.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Roberts of Llandudno, L.
Rooker, L.
Rowlands, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Russell, E.
Sahota, L.
Sandwich, E.
Scriven, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Newnham, B.
Snape, L.
Stansgate, V.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Symons of Vernham Dean, B.
Taylor of Bolton, B.
Taylor of Stevenage, B.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tomlinson, L.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Vaux of Harrowden, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Walney, L.
Warner, L.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watson of Wyre Forest, L.
Watts, L.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Woodley, L.
Young of Hornsey, B.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Ashcombe, L.
Ashton of Hyde, L.
Balfe, L.
Barran, B.
Bellamy, L.
Bellingham, L.
Benyon, L.
Bethell, L.
Blencathra, L.
Borwick, L.
Bray of Coln, B.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Colgrain, L.
Cormack, L.
Courtown, E. [Teller]
Cruddas, L.
Cumberlege, B.
Davies of Gower, L.
De Mauley, L.
Dunlop, L.
Eccles of Moulton, B.
Eccles, V.
Effingham, E.
Empey, L.
Evans of Bowes Park, B.
Evans of Rainow, L.
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Farmer, L.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Frost, L.
Gadhia, L.
Garnier, L.
Geddes, L.
Glenarthur, L.
Godson, L.
Gold, L.
Goldie, B.
Goodlad, L.
Grimstone of Boscobel, L.
Hailsham, V.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Harlech, L.
Haselhurst, L.
Hayward, L.
Henley, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Horam, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jackson of Peterborough, L.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Kamall, L.
Kirkham, L.
Lamont of Lerwick, L.
Lampard, B.
Lansley, L.
Lea of Lymm, B.
Leicester, E.

Leigh of Hurley, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Lucas, L.
Markham, L.
Marland, L.
Maude of Horsham, L.
McInnes of Kilwinning, L.
McLoughlin, L.
Meyer, B.
Minto, E.
Montrose, D.
Morrissey, B.
Mott, L.
Moylan, L.
Moynihan, L.
Murray of Blidworth, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Nicholson of Winterbourne, B.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Rawlings, B.
Reay, L.
Redfern, B.
Remnant, L.
Risby, L.
Robathan, L.
Roberts of Belgravia, L.
Roborough, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Sewell of Sanderstead, L.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Soames of Fletching, L.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Suri, L.
Swinburne, B.
Swire, L.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Udny-Lister, L.
Vere of Norbiton, B.
Verma, B.
Waldegrave of North Hill, L.
Wei, L.
Wharton of Yarm, L.
Williams of Trafford, B. [Teller]
Wrottesley, L.
Young of Cookham, L.
Younger of Leckie, V.

3.38 pm

Clause 10: Powers of detention

Amendment 51

Moved by ***Baroness Mobarik***

51: Clause 10, page 15, leave out lines 10 to 35 and insert—

"(2D) Detention under sub-paragraph (2C) is to be treated as detention under paragraph 16(2) for the purposes of the limitations in paragraph 18B (limitation on detention of unaccompanied children)."”

Member's explanatory statement

This amendment, with others to Clause 10 in the name of Baroness Mobarik, would retain existing limits on the detention of unaccompanied children (24 hours).

Baroness Mobarik (Con): My Lords, Amendment 51 in my name seeks to retain existing statutory time limits for the detention of unaccompanied children put in place by a Conservative Government. I am grateful for the significant support from these Benches and across the House during last Wednesday's debate. Although we have received some verbal reassurances throughout the passage of the Bill, the Government have yet to put in place the necessary safeguards in time limits to protect children from the harms of detention under the Bill. Therefore, I have no alternative but to test the opinion of the House. I beg to move.

The Deputy Speaker (Lord Haskel) (Lab): My Lords, if Amendment 51 is agreed to, I cannot call Amendments 52 to 54 because of pre-emption.

3.40 pm

Division on Amendment 51

Contents 230; Not-Contents 152.

Amendment 51 agreed.

Division No. 3

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Adebowale, L.
Allan of Hallam, L.
Alton of Liverpool, L.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Blackstone, B.
Blake of Leeds, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bowness, L.
Boycott, B.
Bradley, L.
Brennan, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brown of Cambridge, B.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Butler-Sloss, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carlile of Berriew, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Chartres, L.
Clancarty, E.
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Clement-Jones, L.
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Crisp, L.
Cromwell, L.
Cunningham of Felling, L.
Davies of Brixton, L.
Desai, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
D'Souza, B.
Dubs, L.
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Eatwell, L.
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Wrottesley, L.
Young of Cookham, L.
Younger of Leckie, V.

3.50 pm

Amendments 52 to 54 not moved.

Amendment 55

Moved by ***Lord Hunt of Kings Heath***

55: Clause 10, page 15, line 35, at end insert—

"(2L) The Secretary of State may not exercise these powers to detain a person under section (2C) where they fall within section 21(3) of this Act."

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendment 55 agreed.

Amendment 56 not moved.

Amendment 57

Moved by ***Baroness Mobarik***

57: Clause 10, page 15, line 38, leave out subsection (4)

Member's explanatory statement

This amendment would retain existing limits on the detention of children (72 hours or one week with ministerial approval).

Baroness Mobarik (Con): My Lords, I have thought long and hard about calling another Division from these Benches, this time on retaining our current statutory time limits on detention of accompanied children or children who are with their families. These children are likely to be much younger. The psychological harms of detention on young children are significant and likely to impact them for the rest of their lives. For that very reason, I ask that we retain the statutory time limits put in place by a Conservative Government. I wish to test the opinion of the House. I beg to move.

3.52 pm

Division on Amendment 57

Contents 230; Not-Contents 151.

Amendment 57 agreed.

Division No. 4

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Amos, B.
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Berkeley, L.
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Blake of Leeds, B.
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Colville of Culross, V.
Cormack, L.
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Hussein-Ece, B.
Hylton, L.
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Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L. [Teller]
Kennedy of The Shaws, B.
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Kramer, B.
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Lipsey, L.
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McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Mobarik, B.
Monks, L.
Morgan of Huyton, B.
Morgan, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Neuberger, B.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Grady of Upper Holloway, B.
O'Loan, B.
O'Neill of Bengarve, B.
Osamor, B.
Paddick, L.
Parminter, B.
Peach, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Prentis of Leeds, L.
Primarolo, B.
Purvis of Tweed, L.
Ravensdale, L.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Roberts of Llandudno, L.
Rooker, L.
Rowlands, L.
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Russell of Liverpool, L.
Russell, E.
Sahota, L.
Sandwich, E.
Scott of Needham Market, B.
Scriven, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
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Smith of Newnham, B.
Snape, L.
Stansgate, V.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Symons of Vernham Dean, B.
Taylor of Bolton, B.
Taylor of Stevenage, B.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurlow, L.
Tomlinson, L.
Tope, L.
Touhig, L.
Triesman, L.
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West of Spithead, L.
Wheatcroft, B.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Winston, L.
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Woodley, L.
Young of Hornsey, B.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
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True, L.
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4.02 pm

Amendment 58

Moved by ***Lord Hunt of Kings Heath***

58: Clause 10, page 16, leave out lines 36 to 38

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Lord Hunt of Kings Heath (Lab): My Lords, this is consequential and I beg to move.

Amendment 58 agreed.

Amendment 59

Moved by ***Baroness Mobarik***

59: Clause 10, page 16, line 44, leave out from beginning to end of line 20 on page 17 and insert—

"(2B) Detention under subsection (2A) is to be treated as detention under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 for the purposes of the limitations in paragraph 18B of Schedule 2 to the Immigration Act 1971 (limitation on detention of unaccompanied children).""

Member's explanatory statement

This amendment, with others to Clause 10 in the name of Baroness Mobarik, would retain existing limits on the detention of unaccompanied children (24 hours).

Amendment 59 agreed.

Amendments 60 to 62 not moved.

Amendment 63

Moved by ***Baroness Mobarik***

63: Clause 10, page 17, line 23, leave out subsection (8)

Member's explanatory statement

This amendment, with others to Clause 10 in the name of Baroness Mobarik, would retain existing limits on the detention of unaccompanied children (24 hours).

Amendment 63 agreed.

Amendment 64

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

64: Clause 10, page 17, line 30, leave out subsection (10)

Member's explanatory statement

This is a technical amendment that is consequent on the amendment in my name to Clause 10, page 17, line 32. This is because section 10(10) as currently in the Bill is consistent with the exclusion of pregnant women from section 60 protection, and should therefore be removed as a consequence of the other amendment.

Baroness Lister of Burtersett (Lab): My Lords, I move Amendment 64 and will introduce Amendment 65. One is consequential to the other so I will take them together. I thank the right reverend Prelate the Bishop of Gloucester and the noble Baronesses, Lady Sugg and Lady Gohir, for their invaluable support, and Women for Refugee Women for all its work on the amendments.

The amendments do no more than restore the status quo ante by limiting the detention of pregnant women to 72 hours, extendable up to a week with ministerial authorisation. This aim is supported by the JCHR, Children's Commissioner and many organisations.

The existing time limit represented a compromise put forward by the then Home Secretary Theresa May in response to your Lordships' House voting time and again for the absolute exclusion of pregnant women from detention, as recommended in the government-commissioned review by Stephen Shaw, former Prisons and Probation Ombudsman. Shaw based his recommendation on what he considered to be the incontrovertible evidence of detention's deleterious effects on the health of pregnant women and their unborn children. His verdict was referenced in a recent letter to the *Times* from, among others, the CEO of the Royal College of Midwives and the president of the Royal College of Obstetricians and Gynaecologists, calling on us to oppose the removal of the detention limits.

I still await an answer to the question I posed in Committee, citing an unanswered letter from the Independent Advisory Panel on Deaths in Custody to the Home Secretary. Has the Home Office

"carried out a full assessment of the risks linked to the indefinite detention of pregnant women"?—[*Official Report*, 7/6/23; col. 1494.]

Given that the limits on detention for pregnant women were introduced only seven years ago, and it has been admitted that very few have come over in small boats, there must surely be strong grounds for this change in policy. However, as the noble Baroness, Lady Sugg, exposed so skilfully in Committee, we have been given the flimsiest of justifications, lacking any evidential base. For example, in Committee the Minister declared that he was

"happy to repeat … that we must not create incentives for people-smuggling gangs to target pregnant women or provide opportunities for people to exploit any loopholes".—[*Official Report*, 7/6/23; col. 1504.]

Could the Minister explain what the Government have in mind here? Are they suggesting that women might deliberately get pregnant to avoid unlimited detention or that people smugglers will be scouring refugee camps for pregnant women?

To be fair to the Minister, he tried to persuade us that pregnant women would be treated well on a case-by-case basis. But let us remember what Theresa May said in 2016:

"This new safeguard will ensure that detention for pregnant women will be used as a last resort and for very short periods".—[*Official Report*, Commons, 18/4/16; col. 679WS.]

For a safeguard to be effective, it needs the backing of law. Discretionary case-by-case consideration is simply not enough to ensure the protection of women in very vulnerable circumstances. We can see this from what was happening before the time limit was introduced. Previous Home Office guidance stated:

"Pregnant women should not normally be detained".

However, under this guidance, nearly 100 pregnant women were detained in 2014, with one-third held for over a month and four held for between three and six months. The gulf between policy and practice has been closed only with the implementation of the statutory time limit.

The Minister also insisted that pregnant women will be protected through categorisation as adults at risk level 3. Yet during the passage of the 2016 Act, the Government ultimately recognised that this approach provided insufficient safeguards. Why are they now arguing the opposite? The Minister further tried to reassure us by pointing out that

"it will be open to pregnant women to apply to the First-tier Tribunal for immigration bail after 28 days"

or that

"a writ of habeas corpus"—

which, as pointed out in Committee, is very limited in its application—could

"be made at any point".—[*Official Report*, 7/6/23; col. 1505.]

But these are women who are likely to be very stressed and may already be traumatised by what they have been through, with damaging effects on their unborn baby. Twenty-eight days in detention is a long time, particularly in the context of a pregnancy.

How realistic is it to expect them to have to engage with the legal system for protection that they receive automatically now? If they did so, why would the Government want to spend time and money on what should be unnecessary legal challenges? This is all in the context of what the JCHR has described as a severe restriction on judicial supervision.

When we debated a similar amendment in Committee, not only did all those who spoke give it unequivocal support but I was aware of a number of noble Lords sitting on the Government Benches and the Cross Benches who were supporting the amendment in silent solidarity. That was quite something, given that it was well past midnight. While I feel passionately about the amendment, it is a very small cog in the wider wheel of the Bill. It is one which the Government could easily concede without undermining the Bill's objectives, as much as I disagree with them. I very much hope that the Minister will remember what is at stake for pregnant women and their unborn children and will do the right thing today. I beg to move.

The Lord Bishop of Gloucester: My Lords, it is a great pleasure to follow the noble Baroness, Lady Lister, who expertly outlined why the amendment is needed.

I will not repeat all the points made, but this is an issue of dignity for a highly vulnerable group. I will highlight one or two things that have been said. There is no evidence to suggest that the current 72-hour time limit on their detentions resulted in lots of pregnant

women making the crossing. The Government have previously conceded that the adults at risk policy would not adequately safeguard pregnant women, and, in response, the 72-hour limit was brought in. We have research from prior to the introduction of this time limit that highlighted the inadequate healthcare for detained pregnant women. It is hard to believe that any healthcare arrangements would therefore relieve the stress of detention and the damaging impact on both a pregnant woman and her unborn baby.

We have already heard from the noble Baroness, Lady Lister, on the number of medical organisations and people who are opposed to removing the 72-hour limit. I join with them by strongly supporting this amendment, and I urge noble Lords to do likewise.

Baroness Gohir (CB): My Lords, I support the amendment from the noble Baroness, Lady Lister, to which I have added my name, because this Government are compromising the safety of pregnant migrant women and their babies.

To date, the Minister has not provided evidence that the numbers will increase if women are not detained. I wrote to the Minister and last week he acknowledged that, since January, no pregnant migrant women have arrived in this country illegally. Evidence has also not been provided that housing a few handfuls of migrant women, who have probably arrived over several years, will provide a danger to our society. For those reasons, I urge the House to support the amendment from the noble Baroness, Lady Lister.

Baroness Sugg (Con): My Lords, I support the cross-party amendments in this group. I thank my noble friend the Minister for his engagement, which I have truly appreciated, but I regret to say that I have yet to hear an argument as to why this amendment should not be accepted.

This is a very narrow and focused amendment that simply maintains the current protection on the detention of pregnant women. There is a clear medical case, which is why it is supported by the royal colleges, medical professionals and over 140 groups representing women. It will not create loopholes. It will not incentivise pregnant women to make a dangerous crossing across the channel. It does not exempt women from the rest of the provisions of the Bill, such as removal. It will not create a pull factor, and there is really no way it can be exploited by the criminal gangs who arrange crossings. There cannot be false claims of pregnancy, as the time limit starts only once the Home Office is satisfied that a woman is pregnant.

Some have said that pregnant women are unlikely to be removed, given fitness to fly, but that is not the case, as NHS guidelines say that women can travel safely well into their pregnancy. That argument also misses the point, as this narrow amendment is not about removal; it is about detention. If it is the Government's case that pregnant women may not be removed, it is even more important that this amendment be accepted, so that pregnant women are not detained for lengthy periods of time.

The amendment does not undermine the Bill. It is not a wrecking amendment; I have been very careful to try to avoid those. It impacts just a small number of women, but it will have a big impact on those women's health and futures.

My noble friend the Minister is sincere when he says that the Government do not wish to detain pregnant women for any longer than is strictly necessary. Sadly, however, before this protection was in place and in legislation, women were kept in detention for weeks and sometimes months. We should not return to that. This narrow amendment is designed to ensure that that does not happen and that no women can slip through the cracks. Even at this last minute, I sincerely hope that my noble friend will accept the amendment. If he does not, however, and the amendment is pressed, I will, with regret, vote against the Government and in support of the amendment.

Lord German (LD): My Lords, we on these Benches are pleased to support both amendments in the name of the noble Baroness, Lady Lister. I recommend that the Minister take note of the request she has made time and time again in this House for some form of impact assessment in respect of pregnant women.

4.15 pm

The detention of women and children marks a major shift in public policy in the UK that we live in. Detention is no place for pregnant women, for the health of the woman or her unborn child. The Royal College of Midwives views the detention of pregnant women as harmful: it increases the likelihood of stress and impacts the unborn baby's health, as well as interrupting access to maternity care. The Government intend to have a Bill that has no exceptions. What is driving that forward in this detention policy is the argument that it will create a deterrent, and it is shocking that they are rolling back the safeguards we have in current legislation.

One of the issues that has not been mentioned—very briefly—is the suitability of the accommodation and the facilities to accommodate the needs of pregnant women. How can the places promised for detention—barges, barracks and even marquees in the middle of runways—be suitable for pregnant women? The power is created in this Bill and any promises from the Minister that implementation will be different are not sufficient when the power is being taken under the Bill. We need time-limited safeguards on the face of the Bill.

Baroness Hayman (CB): My Lords, I have not spoken earlier on the Bill, but I hope the House will forgive me for speaking for a couple of minutes now.

This debate takes me back 25 years to when I chaired a hospital trust. Pregnant women prisoners from Holloway were brought in wearing handcuffs and were chained to beds when receiving treatment and giving birth. We fought a battle with exactly the people who are supporting this amendment to stop that practice. It left me with an overwhelming long-term view that, in all but the most exceptional circumstances, pregnant women should not be in prison in the first place—and those were pregnant women who had been convicted of crimes. Here, we are talking about the detention of people who have not been convicted of crime in that way: they are migrants who are extremely vulnerable. It

[Baroness Hayman]
would be a terrible, retrograde step to take away the protections they have at the moment, so I support the amendment.

Lord Cormack (Con): My Lords, enforced equality, no matter where, cannot be right. To say that everybody must be treated precisely the same under this Bill—which is the only substantive argument that has been advanced—is something that I just could not accept.

Lord Coaker (Lab): My Lords, I thank my noble friend Lady Lister and the others who have signed these amendments, which we fully support. At its heart, there may be debate and disagreement with respect to this Bill. It is certainly contentious and sometimes we have large disagreements. Despite that, however, whatever the disagreements, we should do the right thing. That is why we support the amendments from my noble friend Lady Lister—because they seek to do the right thing by pregnant women.

The Parliamentary Under-Secretary of State for Migration and Borders (Lord Murray of Blidworth) (Con): My Lords, as we have heard, with these amendments we return to the issue of detention time limits in relation to pregnant women. As I explained last Wednesday, holding people in detention is necessary to ensure that they are successfully removed from the United Kingdom under the scheme provided for in the Bill, which is designed to operate quickly and fairly.

However, our aim is to ensure that no one is held in detention for longer than is absolutely necessary to effect their removal. The duty on the Home Secretary to make arrangements for the removal of all illegal entrants back to their home country or to a safe third country will send a clear message that vulnerable individuals, including pregnant women, cannot be exploited by the people-smuggling gangs facilitating their passage across the channel in small boats on the false promise of starting a new life in the UK.

Under the Bill, detention is not automatic. The Bill confers powers to detain, and the appropriateness of detention will be considered on a case-by-case basis. As regards pregnant women, we expect that anyone who is in the later stages of pregnancy and who cannot be removed in the short term will not be detained but would instead be released on immigration bail.

For women who are detained in the earlier stages of pregnancy, we already operate our adults at risk policy, where pregnant women are recognised as a particular vulnerable group. In all cases in which a pregnant woman is detained for removal, the fact of her pregnancy will automatically be regarded as amounting to level 3 evidence under the adults at risk policy, and thus the pregnancy will be afforded significant weight when assessing the risk of harm in continued detention. This means a woman known to be pregnant should be detained only where the immigration control factors that apply in her case outweigh the evidence of her vulnerability—in this case, the evidence of her pregnancy. Such control factors at level 3 are where removal has been set for a date in the immediate future or where there are public protection concerns.

The detention of a pregnant woman must be reviewed promptly if there is any change in circumstances, especially if related to her pregnancy or to her welfare more generally. Examples of specific welfare considerations that may need to be taken into account include the stage of pregnancy, whether there have been complications in the pregnancy, any known appointments for scans, care or treatment, and whether particular arrangements may be needed to facilitate safe removal. While in detention, pregnant women will receive appropriate healthcare.

I assure the House that, as now, the enforced removal of a pregnant woman must be pursued only where it can be achieved safely and there is no suggestion that her baby is due before the planned removal date. Additionally, pregnant women will not be removed from the UK if they are not fit to travel based on medical assessments.

Given the safeguards we have already built into the arrangements for the detention of pregnant women, the Government remain of the view that these amendments, however well-meaning, are not necessary. I am very grateful to those who have spoken in this debate for outlining their—I am sure—well-held concerns and for their thoughtful contributions. However, in light of what I have just said, I ask the noble Baroness, Lady Lister, to withdraw her Amendment 64. If, however, she is minded to test the opinion of the House, I invite noble Lords to reject the amendment.

Baroness Lister of Burtersett (Lab): My Lords, I am very grateful to everyone who spoke, and to the Minister as well. Unfortunately, I do not think that he really heard, or listened to, the arguments put. He says he does not think that the amendment is necessary. I am sorry, but countless health organisations, Members of this House and many others think that it is. It is not enough simply to give us assurances here. I have no choice but to test the opinion of the House.

4.24 pm

Division on Amendment 64

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Amendment 64 agreed.

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4.35 pm

Amendment 65

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

65: Clause 10, page 17, line 32, leave out from "paragraph" to end of line 33 and insert "(a) of the definition of "relevant detention power", after "paragraph 16(2)" insert "or (2C)"."

Member's explanatory statement

The effect of this amendment is that section 60 of the Immigration Act 2016 (which limits the detention of pregnant women normally to 72 hours under existing powers of immigration detention) will apply to the new powers of detention created by Clause 10 of the Bill.

Amendment 65 agreed.

Clause 11: Period for which persons may be detained

Amendment 66

Moved by ***Lord Carlile of Berriew***

66: Clause 11, page 18, line 2, at beginning insert—

"17A(A1) This paragraph is subject to section 11(7) of the Illegal Migration Act 2023."

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

Lord Carlile of Berriew (CB): My Lords, I rise to speak to Amendments 66 to 76, which stand in my name, and in support of Amendments 77 to 79. The substance of my amendments is in Amendment 76. What I apprehend will happen, if the matter is brought to the opinion of the House, is that we will vote on Amendment 66 and, if it is carried, Amendments 67 to 76 will be moved formally. That seems the correct procedure to me; I have not been contradicted in that.

The amendments I have tabled are designed to confirm that the lawfulness of immigration detention is not simply put in the hands of Ministers but remains subject to the principles established in common law. All the amendments in this group would reinstate the existing Hardial Singh principles and be consistent with the conclusion and recommendation of the Joint Committee on Human Rights at paragraph 202 of its report. What did it say? It said:

"The common law approach to immigration detention, established in the case of Hardial Singh, currently operates to ensure that immigration detention complies with Article 5 ECHR".

Before we possibly hear criticism from some quarters of the House about the use of the European Convention on Human Rights, I remind your Lordships, as a parenthesis, that it has recently been cited by the Government in support of their case in the High Court. They cannot have it both ways; they have had it the way of wanting to support the convention in court. The Joint Committee goes on:

"This recognises that it must be for the courts to determine the legal boundaries of administrative detention … We are extremely concerned that this change would result in an immigration detention system that is not consistent with Article 5 ECHR. The Bill should be amended to ensure that there is independent, judicial oversight of individual liberty and compliance with Article 5".

What are the Hardial Singh principles? Before I come to them, I will cite a dictum from my noble friend Lord Brown of Eaton-under-Heywood, who—very sadly for the rest of us on this side of the House—retired recently. In 2012, in the case of Lumba v Secretary of State for the Home Department in what was then the House of Lords, rather than the Supreme Court, he stated:

"Freedom from executive detention is arguably the most fundamental right of all".

That has been adopted, repeated and uncontradicted.

The four limbs of Hardial Singh, which were created by my noble and learned friend Lord Woolf in his judgment in that case, have been identified and described in more detail by Lord Dyson as four propositions governing the legality of Immigration Act detention emerging from Hardial Singh:

"i) The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;

ii) The deportee may only be detained for a period that is reasonable in all the circumstances;

iii) If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;

iv) The Secretary of State should act with … reasonable diligence and expedition".

Those are magnificent principles, created after repeated cases following our common-law tradition of creating sound precedent when there is not statutory law in place that is lawful.

The court makes its own judgment when applying the Hardial Singh principles and is not limited to reviewing the jurisdiction that has been exercised by a Secretary of State. It can examine "incidental questions of fact", some of which

"the court may recognise that the Home Secretary is better placed to decide than itself, and the court will no doubt take such account of the Home Secretary's views as may seem proper".

Those are the words of Lord Justice Toulson in R v Secretary of State for the Home Department in 2007.

That is the legal basis for these amendments. I will now leave the world of reality and the law and take a short trip into cloud-cuckoo-land. If any of your

Lordships wishes to have a quick cup of tea, they can hear a shorter version of this by simply going into iPlayer and listening to last weekend's edition of "Dead Ringers" on Radio 4, which tore this Bill to pieces in about 35 seconds. We keep hearing from the Minister something that is not based on reality. He seems to have forgotten that the Government lost a case in the Court of Appeal last week. We hear their plea in mitigation that it was a 2:1 decision, but every day in this House we have majority and minority votes. Verdicts of juries by 11 to one or 10 to two are no less verdicts of juries than verdicts by 12 to zero, so that argument has no power whatever.

Above all, we in this House are entitled to expect the Government to obey the law. They cannot send anyone to Rwanda; it is unlawful. The Court of Appeal found that the risk of unlawful refoulement from Rwanda meant that the Rwanda scheme was unsustainable. Furthermore, when the statistics for June—which I mentioned in the House last week—were recalculated yesterday, they showed that the number of people coming on small boats has reached record levels. So it is not exactly the deterrent that the Minister has been calling for repeatedly, unless they are going to change their approach and say, "Come to Britain in your small boats; it's the quickest way of getting to Rwanda and to the two-star hotel accommodation that is being supplied there".

We are not in a realistic situation, because they can send nobody to Rwanda at the moment. The appeal to the Supreme Court will not be heard and adjudged upon before October at the earliest. We will probably be into the next Session of Parliament. It is a little bit of an insult to this Parliament that the Government have not obeyed the law as found in that case, withdrawn this Bill and said, "We'll start again when we have a decision from the Supreme Court".

We have to be careful that we are the antidote to oblique motives. There are oblique motives based on the assumption, and not on any good grounds, that the Government will be able to send people to Rwanda—maybe they will, maybe they will not, but at the moment they have lost. My request and submission to your Lordships is that the only decent thing this House can do—Members on all sides, and I hope that the lawyers will not contradict this—is support the Hardial Singh principles and back Amendments 66 to 79.

4.45 pm

Viscount Hailsham (Con): My Lords, I speak to Amendment 76 which, in my view, sets out in the clearest possible terms the principles that should be applied to the power of detention presently under discussion. Indeed, if I have correctly understood the law—of which the noble Lord, Lord Carlile, reminded us—Amendment 76's principles are principles that are currently being applied by the courts, and will be applied unless this Bill is enacted in its present form.

It is perhaps worth reminding the House of the strategic purpose of the Bill: to deter would-be migrants by the prospect of deportation to their country of origin or to a safe country. In my view, that is a perfectly legitimate objective; nation states are entitled to regulate the flow of migration. However, I also think that, in the modern world, that can be done only by the collective action of countries working together. That may require—I think it probably will—the substantive amendment of existing international agreements and conventions. I think there is very little prospect of unilateral action succeeding, save on the margins of the problem. The policy that underpins this Bill will fail because it will not be possible to deport migrants in sufficient numbers to constitute an effective deterrent.

Given that, I am extremely concerned about the ability of a Secretary of State to use a power of detention to reinforce, rather than to implement, the policy of deterrence. That would be an improper use of the power of detention. I am also deeply concerned that the power of detention as contemplated by the Bill will be used as an administrative convenience: detention without obvious limits of time in the hope that some possible prospect of deportation in respect of an individual will turn up. In my view, that would be highly objectionable.

I come to the four detailed provisions in Amendment 76. They should be considered individually. I will not repeat each one, because the noble Lord, Lord Carlile, has read them out, but just take the first and ask a sensible question:

"the Secretary of State must intend to remove the person being detained and can only use the power to detain for that purpose".

That seems to be a very fair statement of the law, and we are entitled to know from my noble friend the Minister what the principled objection to such a statement is. The same question applies to each of the remaining three provisions. I will not read them out because the noble Lord already has. Each one of them seems to me to be wholly right as a statement of principle, and this House is entitled to know the principled objection to them if there is one.

As it happens, I think I know the principled objections—at least I know the objections—because they are set out in paragraph 95 of the Explanatory Notes. The Government wish to give the Secretary of State, rather than the courts, the right to determine the length of time deemed to be reasonable for a period of detention. Moreover, when early deportation is not practicable, the Bill will give the Secretary of State the power to detain for such a period that the Secretary of State deems reasonable. That is a huge enlargement in the discretionary powers of a Secretary of State, and I do not want to give any Secretary of State, least of all the present Home Secretary or her immediate predecessor, such additional powers. In my view, the judgment of the legality of detention should be left to the judges and the courts, in applying the principles that are so well set out in Amendment 76.

Lord Hacking (Lab): My Lords, I have been asked by my Front Bench not to speak at all and, if I break that, to speak in the shortest possible terms. I can do that, because I completely support the noble Lord, Lord Carlile, in the speech that he just gave and most particularly in his admonishing the Government for not withdrawing this Bill. I have read the two court judgments and can say only that, until or unless the Supreme Court takes a different view, Clause 2 is a nullity, and that is the heart of the Bill.

Lord Green of Deddington (CB): My Lords, I shall be even briefer. I listened with great interest to our two lawyers. They spoke with the fluency and knowledge that one simply has to respect. However, I point out that we face a very difficult policy problem, with serious effects on public opinion towards immigrants and arrivals in Britain. We face a situation in which, so far, what the Government have done has had no or very little effect. If this continues for some months or longer, there will be a serious impact on the authority of this Government and, possibly, the successor Government. I ask the lawyers and other Members of the House to bear those aspects in mind.

Lord German (LD): My Lords, in the absence of my noble friend Lady Ludford, who cannot be in her place today, I will speak to Amendments 77, 78 and 79, which are in her name and that of the noble Lord, Lord Anderson of Ipswich. Those three amendments are intended to tackle the same issues as those tackled by the noble Lord, Lord Carlile, albeit with a different approach. If the noble Lord wishes to press his Amendment 66 to a vote, we will support him.

It is critical that the decision about the reasonableness—we have just heard that word from the noble Viscount, Lord Hailsham—of the length of immigration detention remains a matter for judges, not for the Secretary of State. Incidentally, those who read the judgment of the Appeal Court last week will have noted subsection (5) of paragraph 264, in which the Appeal Court questions

"whether the culture of the Rwandan judiciary will mean that judges are reluctant to reverse the decisions of the Minister".

This very much puts the separation of powers between the courts and the Executive in Rwanda under question. Here we have virtually the same process, in which the courts of this country are being denied the principles on which they have operated. Set against that is a decision that is down to the reasonableness of the Secretary of State.

It is critical to preserve the Hardial Singh principles to ensure that the most vulnerable people do not have their freedoms curtailed unjustifiably. When the Secretary of State deprives someone of their liberty, there must be a clear avenue for the person to seek independent review of the legality and necessity of their detention. Detention should be for only a short period pending removal. We know now from the judgment that that will be much more unlikely. With no viable agreements in place, save with individual countries for individual persons who belong to those countries, it is highly likely that the 28 days that people will be detained on arrival in the UK will not be pending removal but will be purposely and purely to deter others.

We will be building up more and more people in detention or in some form of curtailed liberties. That is wrong, and it is why the judiciary needs to maintain oversight. This is critical, given that the Bill intends to detain everyone, regardless of age, ill health, disability and trauma. I am pleased to speak to these amendments and, as I say, these Benches will support the noble Lord, Lord Carlile, if he wishes to press his amendment.

Lord Ponsonby of Shulbrede (Lab): My Lords, we will support the noble Lord, Lord Carlile, when he presses Amendment 66, and we would expect the subsequent amendments he mentioned to be consequential to that. He clearly and helpfully set out the four Hardial Singh principles and gave their legal basis and history, and I thank him for doing so. As he pointed out, the Government themselves recently cited those principles in a High Court case. I also thank the noble Viscount, Lord Hailsham, who succinctly summed up the Opposition's view on the Bill. He said that there is little prospect of unilateral action succeeding, and we agree. He deplored the Secretary of State's using the power of detention to reinforce the message of deterrence, rather than speaking of the need to implement the Bill, and we agree with that as well. He said that the power should not go to the Secretary of State rather than the courts, and he cited the Explanatory Memorandum. We agree with that too, so I thank the noble Viscount for summarising our view of the Bill.

The noble Lord, Lord Green, said that what the Government have done so far has not had much had effect. The Government are asking us again to support them to do more, yet they have been unsuccessful in the various Bills they have introduced in recent years to try to address this problem. It is a real problem, and there needs to be a different approach to reduce the numbers. Of course, I agree with the noble Lord, Lord German, as well. For all those reasons, we will be happy to support the noble Lord, Lord Carlile.

Lord Murray of Blidworth (Con): My Lords, as we have just heard, Clause 11 clarifies the time period for which the Secretary of State may detain individuals by placing two of the common law Hardial Singh principles on to a statutory footing. As we have also heard, the principles provide that a person may be detained only for a period that is reasonable in all the circumstances, and if it becomes apparent before the expiry of the reasonable period that the Home Secretary will not be able to examine, effect removal or grant leave within a reasonable period, the Home Secretary should not seek to continue the detention.

As my noble friend Lord Hailsham noted, the Explanatory Notes published with the Bill make it clear that it is the Bill's intention expressly to overturn the common law principle established in R on the application of A v the Secretary of State for the Home Department, 2007, and that henceforth it will be for the Secretary of the State rather than the courts to determine what constitutes a reasonable time period to detain an individual for the specific statutory purpose. In this regard, these amendments seek to preserve the status quo and leave it to the courts to determine the reasonableness of the period of detention. I put it to your Lordships that it is properly a matter for the Home Secretary rather than the courts to decide such matters, as the Home Office will be in full possession of all the relevant facts and best placed to decide whether continued detention is reasonable in the circumstances.

5 pm

A person's detention will continue to be subject to judicial oversight. We are not removing the involvement of the courts, as some in the House may have suggested. That oversight will continue by way of a writ of habeas corpus in the first 28 days, via an application

for bail to the First-tier Tribunal, or a judicial review after that initial 28-day period. In any such judicial review proceedings, the Secretary of State's assessment as to whether a period of detention is reasonable can be challenged on conventional public law grounds, including whether the decision is Wednesbury unreasonable. To be clear, the Bill explicitly does not, as has previously been suggested, provide for indefinite detention. The Government's aim is to ensure that people are not held in detention for any longer than is absolutely necessary, as I have already said.

Viscount Hailsham (Con): If my noble friend is right, he is effectively saying that people who are detained will be released if there is no prospect of deportation. If that is right, the policy of deterrence is entirely without merit.

Lord Murray of Blidworth (Con): My noble friend is right, in that it is one of the Hardial Singh principles that, if there is no reasonable prospect of removal, that person should not be detained. But I cannot agree with him that the policy of deterrence is not right, because it is clearly the Government's intention to remove any illegal entrants to a safe third country. In answer to the noble Lord, Lord Carlile, I add that the Court of Appeal unanimously agreed with that being lawful as a matter of principle.

We recognise that circumstances can change. Where that is the case, detention must be reviewed. If it is considered that the anticipated period of detention is not reasonably necessary, the individual will be bailed. This reflects the existing legal and policy position on the use of detention.

It remains the Government's view that the provisions in Clause 11 provide an appropriate balance between the respective roles of the Home Secretary and the courts. Accordingly, I ask the noble Lord to withdraw his amendment.

Lord Carlile of Berriew (CB): My Lords, I express my gratitude to the noble Viscount and others who have spoken on the Bill, including the noble Lord, Lord German. I now come to this place for my daily dose of disappointment. It seems to me that the Minister is deliberately missing the point. He cannot be failing to see it, and I very much regret having to say that.

Who do noble Lords trust to make these decisions: a Minister or the courts? I will tell them something about the latter, in case they have never seen any of these cases in court. Judges sit day after day in the Administrative Court, hearing case after case involving asylum and refugees, and they make decision after decision about whether a period of detention is too long, too robust or unreasonable in some other way. They have built up a corpus of law which has become reliable and admired not just in this place but throughout our jurisdiction and the common law world.

Make your choice. I am going to test the opinion of the House.

Lord Lilley (Con): My Lords, can the noble Lord explain why our courts, and our officials acting under their duties, reach such different decisions from the courts and officials on the continent? Why do we reject only 25% of claims for asylum, whereas France rejects 75%?

Lord Paddick (LD): My Lords, this is Report and that intervention is not appropriate, I am afraid.

Lord Carlile of Berriew (CB): Whether it is appropriate or not—and I tend to agree with the noble Lord, Lord Paddick, on that subject—it seems to me that the noble Lord who just intervened has made a very selective judgment without analysing the continental cases that have taken place. I have given a fair description of what happens in our jurisdiction; it is the one that I regard well, and I hope that your Lordships will too.

5.05 pm

Division on Amendment 66

Contents 216; Not-Contents 163.

Amendment 66 agreed.

Division No. 6

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5.15 pm

Amendments 67 to 76

Moved by ***Lord Carlile of Berriew***

67: Clause 11, page 19, line 6, after "to" insert "section 11(7) of the Illegal Migration Act 2023,"

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

68: Clause 11, page 19, line 13, at beginning insert "Subject to section 11(7) of the Illegal Migration Act 2023,"

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

69: Clause 11, page 20, line 2, at end insert—

"(c) section 11(7) of the Illegal Migration Act 2023."

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

70: Clause 11, page 20, line 8, at beginning insert "Subject to section 11(7) of the Illegal Migration Act 2023,"

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

71: Clause 11, page 20, line 24, after "to" insert "section 11(7) of the Illegal Migration Act 2023,"

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

72: Clause 11, page 20, line 30, at beginning insert "Subject to section 11(7) of the Illegal Migration Act 2023,"

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

73: Clause 11, page 21, line 1, at beginning insert "Subject to section 11(7) of the Illegal Migration Act 2023,"

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

74: Clause 11, page 21, line 4, at beginning insert "Subject to section 11(7) of the Illegal Migration Act 2023,"

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

75: Clause 11, page 21, line 9, at beginning insert "Subject to section 11(7) of the Illegal Migration Act 2023,"

Member's explanatory statement

This relates to the amendment in the name of Lord Carlile of Berriew to Clause 11, page 21, line 15.

76: Clause 11, page 21, line 15, at end insert—

"(7) None of the amendments made in this section permit detention that is inconsistent with the following principles—

(a) the Secretary of State must intend to remove the person being detained and can only use the power to detain for that purpose,

(b) the person being removed may only be detained for a period that is reasonable in all the circumstances,

(c) if, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect removal within a reasonable period, they must not seek to exercise the power of detention, and

(d) the Secretary of State must act with reasonable diligence and expedition to effect removal."

Member's explanatory statement

This amendment would confirm that the lawfulness of immigration detention remains subject to the principles established in the common law. It would reinstate the existing Hardial Singh principles in a single amendment and would be consistent with the JCHR's conclusion and recommendation at para 202 of the Report.

Amendments 67 to 76 agreed.

Amendment 77 not moved.

Clause 12: Powers to grant immigration bail

Amendments 78 and 79 not moved.

Schedule 2: Electronic devices etc

Amendments 80 to 84

Moved by ***Lord Murray of Blidworth***

80: Schedule 2, page 71, line 9, leave out "local" and insert "relevant"

Member's explanatory statement

This amendment, the first amendment in the name of Lord Murray of Blidworth at page 71, line 22 and the amendment in the name of Lord Murray of Blidworth at page 71, line 25 have the effect that the reference to a person in the care of a local authority in the definition of "appropriate adult" in paragraph 2(1) of Schedule 2 is replaced with a reference to a person in the care of a relevant authority as defined by that paragraph.

81: Schedule 2, page 71, line 12, leave out "social worker of a local authority" and insert "registered social worker"

Member's explanatory statement

This amendment and the second amendment in the name of Lord Murray of Blidworth at page 71, line 22 have the effect that the reference to a social worker of a local authority in the definition of "appropriate adult" in paragraph 2(1) of Schedule 2 is replaced with a reference to a registered social worker as defined by that paragraph.

82: Schedule 2, page 71, line 22, at end insert—

""local authority" —

(a) in relation to England, means a county council, a district council for an area for which there is no county council, a London borough council, the Common Council of the City of London in its capacity as a local authority or the Council of the Isles of Scilly;

(b) in relation to Wales, means a county council or a county borough council;

(c) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;"

Member's explanatory statement

See the amendment in the name of Lord Murray of Blidworth at page 71, line 9.

83: Schedule 2, page 71, line 22, at end insert—

""registered social worker" means a person registered as a social worker in a register maintained by—

(a) Social Work England,

(b) Social Care Wales,

(c) the Scottish Social Services Council, or

(d) the Northern Ireland Social Care Council;"

Member's explanatory statement

See the amendment in the name of Lord Murray of Blidworth at page 71, line 12.

84: Schedule 2, page 71, line 25, at end insert—

""relevant authority" —

(a) in relation to England and Wales and Scotland, means a local authority;

(b) in relation to Northern Ireland, means an authority within the meaning of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (see Article 2(2) of that Order);"

Member's explanatory statement

See the amendment in the name of Lord Murray of Blidworth at page 71, line 9.

Amendments 80 to 84 agreed.

Amendment 85 not moved.

Amendment 86

Moved by ***Lord Murray of Blidworth***

86: Schedule 2, page 71, line 38, at end insert—

""voluntary organisation" —

(a) in relation to England and Wales, has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);

(b) in relation to Scotland, has the same meaning as in Part 2 of the Children (Scotland) Act 1995 (see section 93(1) of that Act);

(c) in relation to Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 74(1) of that Order)."

Member's explanatory statement

This amendment defines "voluntary organisation" for the purposes of the reference to a person in the care of a voluntary organisation in the definition of "appropriate adult" in paragraph 2(1) of Schedule 2.

Amendment 86 agreed.

Amendment 87

Moved by ***Lord Scriven***

87: Before Clause 15, insert the following new Clause—

"Children Act 1989

(1) Upon entry or arrival into England, every child to whom section 3 of this Act applies must have afforded to them all rights under the Children Act 1989.

(2) Nothing in this Act may require any act or omission that conflicts with or undermines the obligations, duties or responsibilities of the Secretary of State under the Children Act 1989, in particular the principle that the child's welfare be a primary consideration and that particular regard be given to the child's wishes and feelings.

(3) This Act must not cause any delay in ensuring that unaccompanied children become looked after as soon as the child's age has been determined."

Member's explanatory statement

This amendment ensures all children who enter or arrive in England under section 2 are afforded the rights available under the Children Act 1989. It also provides that well-established duties under that Act are not undermined by the requirements of this Bill.

Lord Scriven (LD): My Lords, Amendment 87 is in my name, and I thank the noble and learned Baroness, Lady Butler-Sloss, the noble Baroness, Lady Berridge, and the noble Lord, Lord Touhig, for adding their names to it. We on these Benches support all the amendments in this group. With the exception of the amendments in the name of the noble Baroness, Lady Meacher, who wishes to remove Clauses 15 and 16 from the Bill—that would be the ideal solution but is unlikely to win the day—they try to fully understand the relationship between the Home Secretary's new powers as indicated in Clauses 15 and 16 and the obligations and duties of local authorities to children as laid out in the Children Act 1989.

The statutory scheme for looked-after children has been carefully developed over many decades, with safeguards added in response to learning from systematic failings and research into different aspects of child well-being. Empowering the Home Secretary to radically change that statutory scheme and the provisions around it on the basis of how a child arrives in a local authority area is both radical and untested; it restructures England's child welfare system.

Where there was total clarity on the interests of the child, the clauses bring ambiguity and confusion. I am confused, as are many other noble Lords, about how the powers given to the Home Secretary in Clauses 15 and 16 are in line with the duties and obligations of local authorities. Unaccompanied children seeking asylum are children in need under the Children Act 1989, and local authorities have specific duties to them and specific powers—for example, under Sections 17 and 47. Under Part 1 of Schedule 2 to the Act, certain activities have to follow.

Section 22C of the Children Act sets out the ways in which local authorities are to accommodate and maintain children. Section 23ZA requires local authorities to regularly visit looked-after children. Sections 25A and 26 place a duty on local authorities to appoint an independent reviewing officer for looked-after children and to make arrangements for independent advocates for them.

The first question I wish to tease out is: when children are removed—either put into the Home Office accommodation initially or removed at the request of the Secretary of State—do they still have looked-after status? If so, how will provision be made for local authorities to carry out the duties they have to looked-after children? The significant question is: what happens when the local authority deems that the Home Office accommodation is not in the best interests of the child, as the statutory scheme suggests? Under this provision of the Bill, can the local authority override the Secretary of State's request to move a child into certain accommodation and move them into accommodation that is in their best interest? It is a key question that was asked in Committee which the Minister did not answer. The Minister said that he would write to noble Lords on this issue, and I am very pleased that at 12 pm today a letter dated 3 July arrived in our inboxes.

However, that letter creates further confusion and does not answer the following central questions. How will local authorities be able to conduct all their duties under the Children Act 1989? Why does the Secretary of State's new power lie in the provisions of that Act in

terms of where a child shall be put, particularly in terms of the best interests of the child? We really need clarity to be able to understand the interrelationship and how local authorities can carry out their full legal duties under the Children Act 1989 to put the interests of the child first. The Minister was unable to clarify this in Committee and it is important that those issues are now clarified on Report. I beg to move.

Baroness Butler-Sloss (CB): My Lords, I declare that I was President of the Family Division and tried endless care cases involving local authorities. I am extremely concerned about Clauses 15 and 16 and their interrelation with the Children Acts, particularly the Children Act 1989. As the noble Lord, Lord Scriven, has already pointed out, the Secretary of State does not have parental responsibility for children.

I pointed this out to the Minister several times in Committee. So far, and I do not mean to be impolite, I am not sure that either he or—more importantly—the Home Office have put their minds to the implications of parental responsibility. I have not seen a copy of the letter that apparently was sent. It would have been helpful if I had seen it before I came to this House, because since I have been here I am afraid that I have not been looking at my emails.

The local authority is, under the Children Act, the only corporate parent and no one else can be. If the local authority goes to the court and seeks a care order under Section 31 of the Children Act 1989, there will be a court order requiring the local authority to keep the child and place the child in appropriate accommodation. I ask the Minister: has the Home Office has reflected on what Clause 16 is saying—that the Home Secretary can take a child away from local authority accommodation and put that child somewhere else? Is it intended that this Bill is to override the Children Acts and create a new situation where parental responsibility is of no significance if the Home Secretary considers that a child should be dealt with by the Home Office and not a local authority?

This is a very serious legal situation for children. Although there may not be all that number of younger children, there are certainly some. Even a child of 16 is entitled to the care of a local authority. I just wonder whether the Government have thought through the implications of this. I do not believe that this matter will be taken to a vote, which I am rather sad about in a way, because I would like the Government to put their minds to the existing law—which, I have to tell noble Lords, a Conservative Government passed in 1989, and I was one of those who played a part in the legislation. I am extremely sad to see these two clauses.

Baroness Berridge (Con): My Lords, I have added my name to Amendment 87. Like the noble Lord, Lord Scriven, I do not support the other amendments, which would get rid of these clauses entirely.

I had hoped not to have to put my name to that amendment, particularly as I hoped there would be a government amendment because of the clarification by the Family Division of the High Court during Committee on 9 June, in a case brought by Article 39, which was trying to make missing unaccompanied asylum-seeking children wards of court. It is interesting to note in that case that the lead submissions from the Government were not from my noble friend the Minister's department but from the Department for Education, which holds the responsibility for the Children Act.

I have a simple question to my noble friend the Minister. As a Conservative, I believe it is important that every child has a parent. While the children are accommodated by the Home Office when they initially come into the country, who has parental responsibility? From my reading of the Bill—I am grateful to the noble and learned Baroness, Lady Butler-Sloss—we are changing a fundamental principle in our law and children may not have a parent, without due consideration of the consequences. It might just be for two days, two weeks or four weeks, but it is really important.

I can foresee, even on my cursory glance at this, at least three cracks in that foundation. First, if a child who is being accommodated in these hotels or hostels ends up at A&E and needs an operation but there is no parent to consent to that surgery—so to do that surgery would be an assault—then precious NHS time would be spent contacting the Home Office and not caring for patients.

The second healthcare situation is that children can be detained under the Mental Health Act. That Act gives important powers, duties and safeguards to the statutory nearest relative—and there is a list of those. Again, if a child is under a care order, under the Mental Health Act the corporate parent is the nearest relative. If the child has no parent and is detained in a secure mental health unit, who will be the nearest relative? Again, precious NHS resources will be, in my view, ill-used.

The most worrying crack—which I hope I am wrong about; I remind noble Lords that I am not a criminal lawyer, and I have done my best when looking at this piece of legislation—is that, when child protection functions under Parts 4 and 5 of the Children Act, such as Section 31, are exercised, there is then a very important exemption for local authorities or public authorities from criminal liability under Section 7 of the corporate manslaughter Act 2007. I would be grateful to hear my noble friend the Minister's view on that statute. It defines senior management. That perhaps includes the board, civil servants in the department, as well as Ministers and, potentially, the Secretary of State. Giving evidence to public inquiries and appearing before Select Committees is commonplace for civil servants; what is not commonplace is being called as a witness to a Crown Court trial for such a prosecution of the corporate body, the Home Office, which is included under Schedule 1 to the corporate manslaughter Act. If there were to be a change of Government next year, it might be the right honourable Member for Pontefract going to the trial, and it would not be good enough for her to say, "We had only been in office for two weeks before the child fell out of the hotel window".

5.30 pm

This should be a short-term issue. The boats will soon be gone, due to the weather, or, as my noble friend the Minister hopes, the implementation of the Bill. Surely, it is better for the Home Office to resource properly the local authorities dealing with these children arriving from the date of their arrival and for them to

[BARONESS BERRIDGE]
have parental responsibility, rather than to fall through any of the three cracks that I have identified. My noble friend the Minister assures us that these children will be accommodated only for a short term, but his words are not the law; it is the Bill that will become the law. I hope that I encourage the noble and learned Baroness by saying that I reserve the right to come back at Third Reading on this matter, particularly bearing in mind the case in the High Court that took place during Committee which clarified the law that local authorities are still under their duties under Section 17 of the Children Act.

Lord Touhig (Lab): My Lords, I do not want to detain your Lordships for many minutes and will not do so, but I will speak in support of Amendment 87. It will probably not be pushed to a vote, but, if it were, it would help us to regain our self-respect as a nation that cares about the plight of unaccompanied migrant children.

When I spoke in Committee on 5 June, I highlighted the fact that 4,500 unaccompanied migrant children have been placed in Home Office-run hotels and not in the care of a local authority, as prescribed by Section 20 of the Children Act 1989. Some 200 of those children have gone missing. A whistleblower working at the hotel in Brighton said that he believed that they have just disappeared. Perhaps they were trafficked—who knows?—but they have not been found. Some of the children are as young as 10; they are put into hotels, unaccompanied and unsupervised, at the age of 10.

I pressed the Minister in Committee—as I did before and after—to explain which Act of Parliament allows the Government to place these children in the care of the Home Office and not local authorities. In his reply, he did not directly answer my question, but what he said is important:

"The present position will change when this Bill passes".—[*Official Report*, 5/6/23; col. 1174.]

I am not trying to put the Minister on the spot—he has enough woes trying to take through this awful piece of legislation—but, from his answer, I must deduce that the Government are acting unlawfully. They know that they are acting unlawfully and that they are not properly caring for these unaccompanied migrant children. All children arriving in this country should surely be afforded the rights under the Children Act 1989. Let us ask ourselves: who among us, if, God forbid, it was one of our children facing this perilous situation, would not want them to be properly cared for?

The Lord Bishop of Durham: My Lords, I declare my interests as laid out in the register. I will speak to Amendment 89, and I am grateful to my noble friends from differing Benches—the noble Lords, Lord Coaker and Lord German, and the noble Baroness, Lady Helic—for their support. It is a damning indictment that an amendment of this nature is even required, as it proposes such a basic safeguard to ensure the well-being of unaccompanied children. It requires that, if a child is to be transferred from local authority child protection systems, a justification should be provided as to why it is in their best interests to be looked after by the Home Office rather than the local authority.

It is reasonable that councils should not be mandated to follow a child transfer direction, regardless of any safeguarding or protection concerns. If the Government are unwilling to accept this point, can the Minister say how they will enable the appropriate scrutiny of a decision to move a child out of the formal child protection system and ensure the highest level of safeguarding consideration? These questions deserve full and detailed answers, since the Bill does not set any standards, safeguards or protective obligations for the Home Office when providing accommodation for children. It is even more pertinent given the Home Office's own record on accommodating unaccompanied children.

The Minister was pleased to share, during the passage of the Bill, that no children are currently accommodated in hotels, but let us not forget that this does not mean that all unaccompanied children are therefore in the care of local authorities. Up to April this year, 186 children remained missing, and it should keep us all up at night, including Ministers, when we think about whose care those children may now be under.

Regardless of the power that the Bill gives to the Government to accommodate children, two things remain true—both of which have already been explained well. First, the Children Act applies to all children, regardless of nationality, ethnicity or immigration status, and therefore any child under the care of the Home Office should have access to the same level of care and protection as any other child in need. Secondly, as recent legal judgments have shown, the Home Office does not have the expertise, knowledge or experience to look after children.

Therefore, it is only right and just that the power to remove a child from the well-established care system should be exercised only when a child's well-being will be served by doing so—I suspect that that would be very rare. I share the fear of the Children's Commissioner that accommodating children outside of foster families or children's homes will be harmful and unsafe; we have no evidence to the contrary. Fundamentally, the care of children is, first and foremost, not an immigration matter, and safeguarding cannot be allowed to be a casualty in pursuit of the objectives of the Bill. Thus, I also support Amendment 87, for all the reasons already laid out. Neither amendment should be regarded as controversial, as, frankly, a child's life, security and future are too important for them to become collateral damage. Therefore, I support Amendment 87 and intend to test the opinion of the House on Amendment 89.

Baroness Meacher (CB): My Lords, I support most strongly the remarks of my noble and learned friend Lady Butler-Sloss and the other powerful comments already made from the Conservative Benches, the Bishops' Benches and elsewhere.

My amendments propose that Clauses 15 and 16 should left out of the Bill in their entirety. These clauses, for the first time, provide the legal power for a central government department to take responsibility for extremely vulnerable unaccompanied children and to provide so-called care, protection and support, both while they are children and as adult care leavers.

I understand that the Home Office has recently been housing unaccompanied children in hotels, without the legal authority to do so. But, according to the Immigration Minister, Robert Jenrick MP, no unaccompanied young people are currently in hotels. The Home Office has recently reopened a hotel in Eastbourne, and another in Brighton and Hove, in anticipation of the Bill becoming law. The local authority in the second case is threatening legal action, and I anticipate that it will be successful.

Ofsted has described the housing of unaccompanied children in hotels as utterly unacceptable. The UN Committee on the Rights of the Child called for the urgent repeal of the provision in the Illegal Migration Bill, describing this practice as violating children's rights under the Convention on the Rights of the Child and the refugee convention 1951. Seven organisations responsible for protecting children have written to us, arguing that they consider Clauses 15 and 16 to be such a danger to unaccompanied children, and to our child welfare system, that they must be removed from the Bill altogether. The Association of Directors of Adult Social Services makes the point that unaccompanied children seeking asylum are fleeing desperate situations; they are extremely vulnerable and should not be placed in hotels, where they are open to further exploitations and abuse.

Clauses 15 and 16 are ill conceived and discriminatory in principle. They give the Home Secretary wide powers to house unaccompanied children of any age in any type of accommodation for any length of time—housing a one year-old or 18 month-old in great big ex-Army barracks, or whatever. The clauses direct that a local authority stops looking after an individual child irrespective, it appears, of the child's needs, characteristics, experiences and legal status. They legitimate and potentially make lawful arrangements that hundreds of non-governmental organisations have contended are unlawful for nearly two years.

I know that Amendments 87 and 89 might help a little. However, bearing in mind the powerful comments from his own Bench from the noble Baroness, Lady Berridge, and from the right reverend Prelate the Bishop of Durham and from other parts of this House, I appeal to the Minister to seek within himself his humanity and to withdraw Clauses 15 and 16 from the Bill.

Baroness Lawlor (Con): My Lords, I do not support Amendment 87. It would undermine the purpose of the measure to prevent and deter illegal and unsafe routes. It would require that all children who enter this country, and are subject to Section 3, be afforded the same rights as afforded to children under the Children Act 1989, as noble Lords have heard from the noble Lord, Lord Scriven. That Act includes that the child's wishes and best interests are taken into account. However, that could undermine Clause 3, which gives the Secretary of State discretionary powers to remove unaccompanied children who enter illegally, albeit with exceptions. Clause 3 is also concerned with returning children to their parents, and there is provision for that where it is safe to do so.

Moreover, Amendment 87 could and would give families across the world an incentive to try to get their children into this country. For the cost of a modest traffickers' fee, they would be more likely to make a dreadful gamble to get their children here to be educated, housed, looked after and supported at a cost to our taxpayers. Is there any reason—and I think it is important to ask this question—why taxpayers should be asked to pay sums for those who break the law in this way when there are safe and legal routes for entering this country? This amendment would provide an incentive to send children by these very dangerous routes. It is the very opposite of the purpose of the Bill, which is to deter people from using unsafe and illegal routes.

Noble Lords may not like what I say, but I cannot put from my mind the dangers occurring to children and women and even men on these unsafe routes. Only two weeks ago, we heard of the trawler which left the Libyan port of Tobruk and sank off the Greek coast. According to reports, over 700 people were on that boat. The women and children were in the hold: not one of them survived.

It is incumbent on this House to avoid giving any possible incentive to people traffickers to continue their unlawful and fatal trade. Anything we can do to stop it, we should do. This scheme is the first practical scheme that I have heard proposed which will deter people trafficking and the smuggling of children into the country by that route. The impact assessment has shown that the Australian scheme worked as a deterrent. For these reasons, I would prefer a practical scheme which deterred the use of these dangerous routes. Your Lordships should give the Bill a chance if we want to stop these fatal crossings.

5.45 pm

Lord Coaker (Lab): I do not agree with the noble Baroness, Lady Lawlor. The amendments before us do not seek to punish children who are in a situation that many of them have no choice in. We have a duty to them as a humanitarian country with proud traditions. We have a duty to protect children, and that is what we seek to do. We need to remember that we are talking about children here. Whatever we do, I do not want to punish children for however they may have arrived here.

We fully support the amendments of the noble Lords who have spoken in this debate, particularly Amendments 87 and 89. Amendment 89, of course, is in the name of the right reverend Prelate the Bishop of Durham and it is one to which I have added my name, along with the noble Baroness, Lady Helic, and the noble Lord, Lord German.

I do not want to speak for long, but the point that was made is significant, especially when one looks at Clause 16. The Secretary of State can decide on the transfer date that an unaccompanied child be moved away from the local authority. The point made by the noble and learned Baroness, Lady Butler-Sloss, goes right to the heart of the issue: the local authority acts as the parent. If you move a child away from that situation, you are effectively making them an orphan. There is nobody responsible for them by law. Is that really what we want? Is that really what we are trying

to achieve? We all agree that there is a problem, but we should not make children pay the price of trying to resolve it. That is not the right way of going about it.

As the right reverend Prelate the Bishop of Durham pointed out, the Secretary of State can direct the local authority to cease providing accommodation. There is no discussion between the Secretary of State and the local authority to view what is in the best interests of the child. The Secretary of State can compel the local authority—as the parent—to cease providing accommodation for a child, which will then take them into Home Office-provided accommodation. Within that Home Office accommodation, as the right reverend Prelate pointed out, we still have 186 children lost. They are missing. We have no idea where they are. I say it time and again but if the Home Office was a human being and a parent, that human being—the parent known as the Home Office—would be prosecuted. We would not tolerate losing children. We would not say that we are doing all we can. We would ask what on earth is happening that children are being lost. The local authority provides the best solution to looking after unaccompanied children in these circumstances.

The Home Office can demand that of the local authority with no justification. It can demand it with no idea of where these children are going to go and with no idea of the standards to be provided for them. They are simply to be housed in Home Office accommodation or wherever. That is not acceptable to the people of this country, irrespective of the fact that they understand there is a problem with the boats, and irrespective of the fact they understand that something needs to be done. They do not want is to see migrant children, or any child, having to pay the price for that. The Government need to sort it out in another way and ensure that all children in this country are properly protected.

Lord Murray of Blidworth (Con): My Lords, Amendment 87 put forward by the noble Lord, Lord Scriven, seeks to ensure that all children covered by the duty in Clause 2 have the protections afforded to children under the Children Act 1989. No one can disagree with the sentiment behind his amendment. However, in a sense, it misses its intended target, as the 1989 Act does not impose obligations, duties or responsibilities on the Secretary of State but rather on local authorities. There is nothing in this Bill that alters those duties or responsibilities, particularly as regards an unaccompanied child—a point well made by my noble friend Lady Berridge.

That said, Section 55 of the Borders, Citizenship and Immigration Act 2009 already requires that the Home Secretary carry out her functions in a way that takes into account the need to safeguard and promote the welfare of children in the United Kingdom, and I can assure noble Lords that this will continue to be the case.

Subsection (3) of the proposed new clause brings me to the provisions in Clauses 15 and 16 which were referred to by the noble Baroness, Lady Meacher. She seeks to remove those clauses; the right reverend Prelate the Bishop of Durham seeks to amend them with Amendments 88A, 89 and 89A.

Clause 15 makes provision for the accommodation of unaccompanied migrant children in scope of this Bill. This clause confers on the Secretary of State a power to provide, or to arrange for the provision of, accommodation and other support to unaccompanied migrant children in England. While the clause contains no time limit on how long any child spends in Home Office accommodation, as I have said previously on a number of occasions, our clear intention is that their stay be a temporary one until they transfer to a local authority for a permanent placement. This is not detained accommodation, and the support that will be provided will be appropriate to the needs of these young people during their short stay.

Baroness Butler-Sloss (CB): The problem is Clause 16, because the Home Office can remove the child from the otherwise permanent care of the local authority. How on earth is what the Minister is saying compatible with Clause 16?

Lord Murray of Blidworth (Con): It is obviously necessary that the Bill contain a power to allow for such a transfer, in order to ensure the appropriate removal of a child on attaining their majority, for example, or for any other purpose that might be necessary to ensure implementation of the scheme. The Government expect local authorities to meet their statutory obligations to unaccompanied children from the date of their arrival in the United Kingdom, and that the Home Office step in only sparingly and temporarily. Indeed, an unaccompanied child in scope of the scheme may enter local authority care without first being accommodated by the Home Office under this power. However, it is important that there be legal certainty about the ability of the Home Office to step in to ensure that an unaccompanied child arriving on the south coast can immediately be accommodated and supported.

As we have just discussed, Clause 16 then makes provision for the transfer of an unaccompanied migrant child from Home Office accommodation to a local authority in England. The clause provides a mechanism for the Secretary of State to decide that a child is to cease residing in Home Office accommodation and to then direct a local authority in England to provide accommodation to the child, under Section 20 of the Children Act, after five working days of the direction being made. As was the subject of the intervention a moment ago, the Secretary of State may also direct a local authority in England to cease accommodating an unaccompanied child and to transfer the child into accommodation provided by the Home Office after five working days of the direction being made. This power is the subject of the right reverend Prelate's amendment.

I suggest, with respect to the right reverend Prelate, that this amendment is unnecessary given that protections are already in statute in Section 55 of the 2009 Act, which I have already referred to. The Secretary of State is required to have regard to the interests of children as a primary factor in immigration decisions affecting them. Let me be clear: best interests are not the only factor that must be considered; other relevant factors, such as close consideration of individual

circumstances, must be taken into account. In making decisions and devising policy guidance under this Bill, the Home Office will continue to apply the Section 55 duty.

We are working through the operational processes relating to unaccompanied children and the circumstances in which we will use this power. This includes engaging with stakeholders to understand the concerns they might have about the power to transfer unaccompanied children into Home Office accommodation. We are working very closely with the Department for Education, as we want to deliver the objectives of the Bill while being mindful of the needs of children and young people. I hope this provides some reassurance to noble Lords.

Baroness Berridge (Con): My Lords, I refer my noble friend back to his point about legal certainty and the very narrow question I asked: is it correct that while the Home Office is accommodating these children before they go into local authority accommodation, they actually have no parent?

Lord Murray of Blidworth (Con): It is clearly right that in the situation that arose with the rush of people crossing the channel—which gave rise to this legislation—consideration had to be given to the legislative arrangements. The situation in law is clear and is as my noble friend set out. The Home Office is able, in extreme circumstances, to exercise this power on behalf of local authorities. As I say, the purpose and intention of these provisions is to look after children only for as short a time as possible before transferring them to the care of local authorities. I want to stress that the Home Office is having to accommodate unaccompanied children out of necessity.

Baroness Meacher (CB): My Lords, can the Minister give the House an assurance that he will put in the Bill that these children would not be in the so-called care of the Home Office for more than, let us say, 48 hours—some very limited period of time? If that is the Government's intention, can the Minister assure the House that this will be in the Bill and that it really will be for a very short time?

Lord Murray of Blidworth (Con): No; I am afraid I cannot provide that assurance, and the reason for that is obvious. We are dealing with a situation in which we have thousands of people crossing the channel, and we cannot tie the hands of the Home Office in dealing with this great problem that we all face. I say again that we are having to accommodate unaccompanied children out of necessity. My noble friend Lady Lawlor highlighted in her brave speech the Hobson's choice that we face here. These children will not all immediately enter the care system on arrival in a small boat, simply because the Home Office does not have the powers set out in Clauses 15 and 16. It is right that we take steps to ensure that there is clarity, and I suggest to noble Lords that it is in the best interests of these children that we put in place these measures, which recognise the reality of the current situation.

On the basis of my explanation and the assurances I have given, I hope that the noble Lord, Lord Scriven, will be content to withdraw his amendment, and if the right reverend Prelate the Bishop of Durham is minded to test the opinion of the House on Amendment 89, I invite noble Lords to reject that amendment.

Lord Scriven (LD): My Lords, I am sure that, like everyone who has listened to this debate, I am now more confused than when it started. Clarity has not been brought. I thank all noble Lords for taking part in the debate, including the noble Baroness, Lady Lawlor, who I completely disagree with; she really does not understand the concept of what safeguarding and the rights of the child are once the child is in the UK. That is the issue, and there is no evidence in any impact assessment or anything that the Government have done that says that protecting and safeguarding children under the Children Act 1989 is a pull factor. But I welcome the noble Baroness's intervention and understand that she starts from a position that is, I am sure, very different from that of nearly everybody else in your Lordships' House.

6 pm

I listened to the Minister. I note that he did not answer my question, because it goes to the crux of what this is about. As the noble and learned Baroness, Lady Butler-Sloss, said, the local authority can be the only corporate body in the UK that is the corporate parent. If that corporate parent decides that the Home Office accommodation is not in the best interests of the child or that it is not safe, it is not clear under Clauses 15 and 16 whether the Home Secretary can put that child in the Home Office accommodation if the corporate parent disagrees. There is confusion and, as other noble Lords, such as the noble Baroness, Lady Berridge, said, clarity was not given on other questions either.

Because the wording of my amendment is not perfect, I have come to the view that I will not press it to a vote at the moment, but I reserve my right to bring it back at Third Reading unless before then the Minister can absolutely clarify the interrelationship between the Children Act and Clauses 15 and 16. However, if the right reverend Prelate the Bishop of Durham decides to move his amendment, these Benches will support him. I beg leave to withdraw.

Amendment 87 withdrawn.

Clause 15: Accommodation and other support for unaccompanied migrant children

Amendments 88 and 88A not moved.

Clause 16: Transfer of children from Secretary of State to local authority and vice versa

Amendment 89

Moved by ***The Lord Bishop of Durham***

89: Clause 16, page 24, line 13, at end insert—

"(4A) But the Secretary of State may not make a decision under subsection (4) unless to do so is necessary to safeguard and promote the welfare of the child."

Member's explanatory statement

This amendment limits the Secretary of State's power to transfer a child out of local authority care and into accommodation provided by the Secretary of State, by providing that they may only do so where to do so is necessary to safeguard and promote the welfare of the child.

The Lord Bishop of Durham: It is my wish to test the mind of the House because the Minister has not answered some of the questions, and my concerns remain. Some of us have not seen a copy of the letter that was circulated to some noble Lords, so can the Minister undertake to ensure that it gets circulated to those who have been involved in these debates? We really need the local authority to have the say in this, so I beg leave to test the mind of the House.

6.02 pm

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Wharton of Yarm, L.
Williams of Trafford, B. [Teller]
Wrottesley, L.
Young of Cookham, L.
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6.13 pm

Amendment 89A not moved.

Clause 21: Provisions relating to removal and leave

Amendments 90 to 94

Moved by ***Lord Hunt of Kings Heath***

90: Clause 21, page 26, line 15, leave out "and" and insert "or"

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

91: Clause 21, page 26, line 16, leave out paragraph (b) and insert—

"(b) that person is or may be a modern slavery survivor, save where the exceptions set out in section 21(3) apply."

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

92: Clause 21, page 26, line 28, after "if" insert "any one of the below conditions applies"

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

93: Clause 21, page 26, line 33, leave out "and"

94: Clause 21, page 26, line 37, at end insert—

"(d) a person has been identified by a First Responder as appropriate for referral into the National Referral Mechanism;

(e) a decision by a competent authority regarding reasonable grounds is pending;

(f) a decision has been made by a competent authority that there are reasonable grounds to believe that the person is a victim of slavery or human trafficking (a "positive reasonable grounds decision"), and has not yet received a conclusive grounds decision;

(g) the person is in the course of challenging a negative reasonable grounds decision;

(h) the person has received a positive conclusive grounds decision;

(i) the person is in the course of challenging a negative conclusive grounds decision."

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendments 90 to 94 agreed.

Amendment 95

Moved by ***Lord Randall of Uxbridge***

95: Clause 21, page 26, leave out line 38 and insert—

"(3A) Subsection (2) also does not apply in relation to a person if the relevant exploitation took place in the United Kingdom.

(3B) Where subsection (3) or (3A) applies in relation to a person the following do not apply in relation to the person—

(a) section 22,

(b) section 23, and

(c) section 24.

(4) In this section—"

Member's explanatory statement

This amendment is intended to exempt people who have been unlawfully exploited in the UK from provisions which would otherwise require their removal during the statutory recovery period and prohibit them from being provided with support during the recovery period or being granted limited leave to remain.

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

6.14 pm

Division on Amendment 95

Contents 214; Not-Contents 150.

Amendment 95 agreed.

Division No. 8

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Barker, B.
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6.26 pm

Division on Amendment 96

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Amendment 96 agreed.

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Kennedy of Cradley, B.
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Kennedy of The Shaws, B.
Kramer, B.
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McIntosh of Hudnall, B.
McNally, L.
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Meacher, B.
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Miller of Chilthorne Domer, B.
Monks, L.
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6.37 pm

Amendments 97 and 98

Moved by ***Lord Hunt of Kings Heath***

97: Clause 21, page 27, line 33, leave out subsection (9)

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

98: Clause 21, page 27, line 36, at end insert—

"(10A) A person falling within section 2(1) or section 3(2) will not be treated as a threat to public order solely on the grounds of meeting the conditions set out therein."

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendments 97 and 98 agreed.

Clause 22: Provisions relating to support: England and Wales

Amendment 99

Moved by ***Lord Randall of Uxbridge***

99: Clause 22, page 28, line 15, leave out paragraph (c)

Member's explanatory statement

This amendment is consequential to the amendment to clause 21 in the name of Lord Randall of Uxbridge.

Amendment 99 agreed.

Amendment 100

Moved by ***Lord Hunt of Kings Heath***

100: Leave out Clause 22

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendment 100 agreed.

Clause 23: Provisions relating to support: Scotland

Amendment 101

Moved by ***Lord Randall of Uxbridge***

101: Clause 23, page 28, line 41, leave out subsections (3) to (6)

Member's explanatory statement

This amendment is consequential to the amendment to Clause 21 in the name of Lord Randall of Uxbridge.

Amendment 101 agreed.

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, Amendment 101 pre-empts Amendment 102.

Amendment 102 not moved.

Amendment 102A

Moved by ***Lord Weir of Ballyholme***

102A: Leave out Clause 23

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seeks to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Lord Weir of Ballyholme (DUP): My Lords, this amendment was tabled by my noble friend Lord Morrow, who sends his apologies. He is unable to attend today and has asked me to move it in his place. I beg to move.

Amendment 102A agreed.

Clause 24: Provisions relating to support: Northern Ireland

Amendment 103 not moved.

Amendment 104

Moved by ***Lord Randall of Uxbridge***

104: Clause 24, page 30, line 29, leave out subsections (3) to (6)

Member's explanatory statement

This amendment is consequential to the amendment to Clause 21 in the name of Lord Randall of Uxbridge.

Amendment 104 agreed.

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, Amendment 104 pre-empts Amendment 105.

Amendment 105 not moved.

Amendment 105A

Moved by ***Lord Weir of Ballyholme***

105A: Leave out Clause 24

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seeks to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendment 105A agreed.

Clause 25: Suspension and revival of sections 21 to 24

Amendment 106

Moved by ***Lord Hunt of Kings Heath***

106: Clause 25, page 31, line 40, leave out from second "of" to end of line 41 and insert "12 months from 7 March 2023"

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendment 106 agreed.

Clause 26: Procedure for certain regulations under section 25

Amendment 107

Moved by ***Lord Hunt of Kings Heath***

107: Clause 26, page 32, line 35, leave out subsection (2)

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendment 107 agreed.

Clause 27: Amendments relating to sections 21 to 24

Amendments 108 and 109 not moved.

Amendment 110

Moved by **Lord Hunt of Kings Heath**

110: Clause 27, page 34, line 9, leave out subsection (12)

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendment 110 agreed.

Clause 28: Disapplication of modern slavery provisions

Amendment 111

Moved by **Lord Hunt of Kings Heath**

111: Clause 28, page 34, line 16, leave out subsections (2) and (3)

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendment 111 agreed.

Amendment 112 not moved.

Amendment 113

Moved by **Lord Hunt of Kings Heath**

113: Clause 28, page 34, line 31, after "imprisonment" add "of at least 12 months"

Member's explanatory statement

This amendment, with others in the name of Lord Hunt of Kings Heath, seek to amend the Bill so that potential and recognised victims of trafficking will not be detained or removed before they get the opportunity to submit an application to the NRM and have it duly considered.

Amendment 113 agreed.

Amendment 113A not moved.

Clause 29: Entry into and settlement in the United Kingdom

Amendment 114

Moved by **Baroness Brinton**

114: Clause 29, page 35, line 35, leave out "has ever" and insert "was over the age of 18 at the time they"

Member's explanatory statement

This amendment aims to exclude children from the provisions of Clause 29.

Baroness Brinton (LD): My Lords, my noble friend Lady Ludford is unable to be in her place today. I am introducing her Amendments 114 and 116 in this group, which remove children from the effects of the loss of citizenship pathways under the Bill. On these Benches we welcome the government amendments removing the original Clause 30(4) from the Bill, which would have barred British citizenship children born in the UK after 7 March 2023 if a parent had entered the UK illegally. We also welcome the amendment that removes bars to citizenship under the British Nationality Act 1981—the settled route and the 10-year route. I thank the Minister for the helpful meeting regarding British national (overseas) citizens. I look forward to hearing from him, perhaps on Wednesday, that BNO passport holders will get clearer and correct information from immigration officials in the future.

However, despite the Government's amendments, there are still key risks for children who the Government admit will rarely qualify for citizenship under Clause 2. That is why Amendments 114 and 116 remove children from the loss of routes to UK citizenship. The fundamental problem that needs to be resolved here is that, as we discussed in the debate on the previous group, as children arrive in the UK they are put under the responsibility of a local authority. As minors, our state decrees that these children cannot make decisions for themselves, so the logic must also be that when they were brought into the UK they were not deemed to have the capacity to make that decision. We noted that the Minister said that there is a potential safeguard under Clause 35 if a decision were to breach the UK's obligation under the ECHR, but it was just reported again, on Saturday in the *i* newspaper, that the Government want to remove the UK from the ECHR.

The Government's intention to prevent these children obtaining British citizenship would close off all the major routes to citizenship if their parents were irregular entrants: the discretionary route, the settled route and the 10-year route. On these Benches we believe that children who are deemed by the state not to be able to make decisions about themselves should not be penalised by the Bill, particularly because they are in the care of the state. On these grounds, I beg to move Amendment 114.

Lord Moylan (Con): My Lords, I will speak to Amendments 115 and 117 to 125 in this group, all standing in my name. They have a similar approach to that set out by the noble Baroness, Lady Brinton, but the focus is rather different, as I shall explain.

I support the general thrust of the Bill; the argument for the Bill is that it creates a number of deterrents to people arriving in this country illegally. The principal deterrent is of course that of immediate, or at least rapid, removal to another country. But the Bill goes further than that and also seeks to deprive those who have fallen foul of the tests in Clause 2 of their subsequent right to apply for naturalisation as a British subject or, more crucially and to the point of my amendments, their right to apply for registration as a British subject at any point in the future.

Noble Lords are well aware that there is a great distinction between naturalisation and registration. Naturalisation is a concession by the state to those

who are not British, to allow them to become British. It is perfectly natural that there should be conditions attached to that, and those conditions very often can and do include good behaviour conditions—such as, perhaps, if the Bill passes, not having previously arrived illegally in a small boat.

6.45 pm

Registration is not in the same category, and my first objection is that the Home Office constantly seeks to conflate naturalisation and registration. Registration is a route whereby persons who are entitled to British nationality, but where the circumstances are perhaps slightly dubious or uncertain or documentation is missing, have the right to articulate and vindicate that right and be granted British nationality as of right. It seems cruelly wrong to deprive that right to people of whatever age—adults or children—and the effect of these amendments, taken together, is to remove those clauses entirely from the Bill, so that the right to apply for registration would remain available to those who have it, even after they have been expelled. I do not believe, especially given the numbers involved, that this would in any way diminish the overall deterrent effect of the Bill.

At this point I could sit down, having briefly summarised what was discussed in Committee, but I will go on a little, as this is my first opportunity to respond to what the Minister had to say on that occasion. I am grateful to my noble friend the Minister for the time he has given for a meeting with me on this topic. I should also have said, at an earlier point, that I am grateful to the noble Baroness, Lady Lister of Burtersett, for her support on this occasion, as in Committee.

As I understood it, the thrust of my noble friend's response was that he envisaged a situation in which, on one hand, most people arriving in this country in the manner proscribed would be removed very rapidly but, on the other, some might stay. There might be reasons for them to linger and, in doing so, they would accumulate residence rights in this country. Residence being a condition for some routes to registration, they would get in by the side door, so to speak, simply by being here on these shores over a fairly prolonged period.

I think my noble friend has misunderstood what is happening, because the routes to registration that are set out in these clauses, which my amendments would remove, have nothing to do with residence at all. For example, Sections 5, 10(1) and 13(1) of the British Nationality Act 1981 are each included among the entitlements that are caught by Clause 31(1) of this Bill, but none of these provisions has anything to do with residence. None of the registration provisions caught by Clause 31(2) includes any requirement of residence.

Moreover, Section 3(2) of the British Nationality Act, to which the Minister made particular reference, applies to children born outside the UK to a British citizen by descent in two distinct circumstances. The first is where the child is stateless. In this instance, there is no requirement concerning residence of anyone. The second is where the child is not stateless. In this instance, there is a requirement of previous residence of the British citizen parent—someone with a clear right of entry and residence in the UK—and no requirement of residence upon the child. There is simply nothing in the explanation offered by the Minister, concerning residence, that could apply to either of the circumstances in which Section 3(2) entitles a child to British citizenship.

Similarly, we could refer to Section 3(5) of the British Nationality Act, which concerns children born outside the UK to British citizens by descent. This does require some period of residence of the child with their parents in the UK. To fall foul of this Bill, the child would be brought by their parents, at least one of whom is a British citizen, to the UK. The most likely circumstances in which this entitlement, or that under Section 3(2), might ever come to be barred by this Bill would be if the British parent of a child mistakenly thought that, like them, their child was already a British citizen by birth, or at least did not require permission to come into the UK with them.

The second point I want to make in response to what my noble friend the Minister said is that he was quite clear in response to a point raised by the noble Baroness, Lady Chakrabarti, in rejecting any implication that the intended exclusion of a child's citizenship rights was based on any notion of the child's culpability. That is very welcome. This entirely proper disavowal of culpability raises a more profound question as to the motivation for barring the child's citizenship rights. What is the explanation? If the child is not culpable, who is? Who is being punished and for what reason? It may be the parent, but my noble friend needs to make clear what he thinks he is achieving by that. If the child is not culpable, who is?

I could make more points, but I will rest and simply say that, although I do not intend to press these amendments to a vote, I hope to hear some consolation and comfort from the Minister. The number of people involved in these circumstances is likely to be very small and the deterrent effect of the Bill is not diluted by this. The conflation of registration and naturalisation, to which the Home Office adheres, is exactly the sort of sloppy thinking that underlay the Windrush scandal. There will potentially be scandals, even if individually rather that in great numbers, as a result of this. I urge my noble friend to take this opportunity to think again and to remove registration from the deterrent elements of the Bill.

Baroness Lister of Burtersett (Lab): My Lords, I am grateful to the noble Lord, Lord Moylan, for bringing back these amendments, but I am disappointed that he had to do so given the strong case that he made for them in Committee. They are important from the perspective of both citizenship and the rights of children. I once again declare my interest as a patron of the Project for the Registration of Children as British Citizens.

From reading the exchanges in Committee, it seemed to me that the Minister was not really listening to the arguments put but simply responded by trying to justify what, in our view, is unjustifiable. Once again, children are the main victims, as highlighted by the noble Baroness, Lady Brinton, whose amendments I also support. As the noble Lord, Lord Moylan, said,

[Baroness Lister of Burtersett]
it was welcome that the Minister, when challenged on this point, did not impute any culpability to children. However, the fact remains that children are being punished for the actions of a parent, which is contrary to the refugee and other conventions, as has been pointed out by the UNHCR, JCHR and the Northern Ireland Human Rights Commission, among others. This is yet another instance of where we need to see the child rights impact assessment yet, despite the Government Chief Whip promising it for today "if possible", there is still no sign of it.

It is not an indicator of strength to refuse to countenance any amendments in pursuit of the mythical god of deterrence, regardless of the force of the argument. The main losers are, again, children, whose best interests are being ignored and trampled on. I hope the Minister will think again today.

Lord Murray of Blidworth (Con): My Lords, as we have heard, these amendments relate to the bans on re-entry, settlement and citizenship which are a key part of the deterrent effect of the Bill and send an important message that, if you enter the country illegally, you will not be able to build a life here.

Amendments 114 and 116, in the name of the noble Baroness, Lady Ludford, and spoken to so eloquently by the noble Baroness, Lady Brinton, seek to remove from the scope of the bans those who meet the duty in Clause 2 but who are under the age of 18.

As the Bill is currently constructed, anyone, including children, who meets the criteria of the duty also becomes subject to permanent bans on obtaining leave to remain, settlement, citizenship and re-entry. The application of the bans is irrespective of whether the child was complicit in the act of entering illegally. I hope that addresses the points noble Lords have raised in that regard.

The inclusion of children is to ensure that there is no perverse incentive for parents or others to put children in harm's way by forcing them on to small boats or other dangerous methods in an attempt to gain entry to the UK. We want to send a clear message that children cannot be exploited and forced into making dangerous attempts to gain entry into the UK for the purpose of starting a new life here. Instead, the only way to come to the UK for protection will be through safe and legal routes. This will take the power out of the hands of criminal gangs and protect vulnerable people, including children.

Lord Coaker (Lab): I thank the noble Lord for allowing me to intervene. Could he update the House, in light of what my noble friend Lady Lister said, on where we are with the child rights impact assessment?

Lord Murray of Blidworth (Con): I was saving that until the end of my remarks, which I will do, if I may.

Under our proposals, anyone who has entered illegally will be removed, so it is unlikely that they will qualify for settlement or citizenship on the basis of long and lawful residence. I therefore take my noble friend Lord Moylan's point, in that regard. However, the powers in the Bill provide the Secretary of State with the discretion to waive the bans in specific circumstances, as we discussed in Committee. In practice, these powers mean that the Secretary of State retains the discretion to waive the bans on obtaining settlement as well as to consider an application for citizenship where they consider that failure to do so would result in a breach of the United Kingdom's obligations under the ECHR.

The Bill also provides additional discretionary powers to waive the bans on limited leave to remain and re-entry. The Secretary of State may waive the ban on re-entry if they consider that other exceptional circumstances make it appropriate to allow someone to return; these would include to ensure compliance with international agreements to which the UK is a party. Similarly, in the limited leave to remain area, there is a power allowing the Secretary of State to waive the ban where it is appropriate to ensure compliance with the ECHR or other international agreements to which the UK is a party, as well as where an individual who is seeking to remain in the UK has been allowed to return on the basis of other exceptional circumstances.

I am grateful to my noble friend Lord Moylan for again raising these interesting issues in the amendments he has tabled. They seek to change provisions in Clauses 30 to 36 so that the citizenship ban applies only to naturalisation and not registration routes. I am grateful to my noble friend for meeting me to talk about this. We had a useful discussion, although we did not quite reach agreement on these topics.

Our view is that registration is not just about recognising a person's claim to British citizenship that they do not have the documents to demonstrate. Instead, a number of the registration routes within the British Nationality Act have requirements based on residence and many have good character requirements. It is not a case, as my noble friend has suggested, of merely acknowledging a status that a person already holds, but an opportunity for a person to demonstrate their suitability to become British.

7 pm

As I stated in Committee, not all registration routes are included in the ban. Those that allow people to acquire the British nationality they missed out on because of previous unfairness are not included. Nor are the specific routes for children born in the UK or stateless persons, as the noble Baroness, Lady Brinton, remarked on. However, registration routes that rely on residence or are specifically for children born outside the UK are quite properly included in the ban, as we expect people who want to become citizens here to have followed a compliant pathway, including having entered lawfully.

In particular, Section 4(2) of the 1981 Act is for people who already hold another form of British nationality They can register as a British citizen if they have lived in the UK for five years without significant absences, have not been here unlawfully in that period and have been settled for 12 months. These requirements are exactly the same as the residence requirements that a foreign national would have to meet in order to naturalise if they were not the spouse or civil partner of a British citizen. The only difference in the statutory requirements is that people applying under this route do not need an English language qualification or to pass the Life in the UK Test although, depending on their immigration route, they may need to do so to

become settled in the United Kingdom. I know that my noble friend is in favour of applying the citizenship ban to naturalisation. As the requirements for Section 4(2) are the same as for naturalisation—relying on lawful presence in the UK and meeting a good character requirement—it is fair that the ban should apply to both routes.

As this is Report, I do not propose to go through in detail each of the registration routes caught by the ban. The core point is that my noble friend is, I am sorry to say, mistaken in describing each of these routes as simply an evidence-based process where there is no discretion afforded to the Secretary of State. That is not the case and, as such, I remain firmly of the view that the inclusion of certain registration routes within Clauses 30 to 36 is perfectly proper and not at all at odds with the intent behind the registration process. It is important that we take a consistent approach to the citizenship routes that rely on residence in the UK, and which have a good character requirement. We do not want people to be able to come here illegally and acquire British citizenship and all the benefits that come from that status.

I hope that I have been able to go at least some way to reassure the noble Baroness, Lady Ludford, in her absence, the noble Baroness, Lady Brinton, and my noble friend Lord Moylan that safeguards are built into these clauses as they apply to children, and that the application of the citizenship ban to certain registration routes is appropriate. On that basis, I will, in a moment, invite the noble Baroness, Lady Brinton, to withdraw the amendment in the name of the noble Baroness, Lady Ludford.

I will answer the question asked by the noble Baroness, Lady Lister. I regret that the child rights impact assessment is not available today, but I can confirm that it will be published tomorrow.

Baroness Lister of Burtersett (Lab): My Lords, the Government Chief Whip promised that it would be published well before Report concludes. Does the Minister really think that tomorrow is well before Report concludes on Wednesday?

Lord Murray of Blidworth (Con): Yes.

Lord Coaker (Lab): That is clearly not the case. I accept that the Government Chief Whip did not exactly say that it would be put before your Lordships' House today, but the expectation was that it would be. We have reached 7 pm; we are debating children's issues and have done so all the way through Report, and we have not got the children's impact assessment. It is utterly unacceptable for the Government to run a contentious Bill in this way. All the impact assessments were late, by and large. This is particularly late; it is no way to carry on. I can understand my noble friend Lady Lister's upset and anger at this, and my noble friend Lord Kennedy raised it last week. The Minister knows, frankly, the anger and disappointment there is about this. I do not know what else to say, other than: what does "tomorrow" mean? Is it first thing tomorrow morning, or will it turn up at 8 or 9 pm, just before Report finishes? Perhaps the Minister can clarify what tomorrow means, and register the deep anger and upset in this House.

Baroness Butler-Sloss (CB): Before the Minister answers, I will add to what the noble Lord, Lord Coaker, said. Throughout our consideration of the Bill, I have been particularly concerned about children. As far as I can remember, there are no more amendments of any significance in relation to children in the final part of Report. All I have said has been without sight of the impact statement. For me and many other noble Lords who are concerned about children, it is quite simply too late.

Lord Murray of Blidworth (Con): I have looked into the history of child rights impact assessments, and they are a rare document. Tomorrow, when the assessment is provided, noble Lords will see an explanation of the background to these documents. There is an element of opportunism about the timing; clearly, these are difficult documents that need to be prepared with care. I say that it will be published tomorrow, so it will be published tomorrow, and at this point I cannot give any more detail as to the precise timing.

Baroness Brinton (LD): My Lords, I will be very brief because many of the points have been made by others during the debate. Yet again the Minister has not answered the speakers' questions. Yet again we are having a discussion, to discover that the impact assessment on child rights will be with us tomorrow after we have debated some key amendments. He did not respond to the issue I raised about why, if a child is in care when they arrive in this country, they are deemed to be able to make decisions. This is going to end up in the courts if the Government will not listen. Every single part of the response to this group has been an embarrassment and a real shame for children's rights. I will not press this to a vote but the noble Baroness, Lady Ludford, may wish either to bring something back at Third Reading or to communicate directly with the Minister.

Amendment 114 withdrawn.

Clause 30: Persons prevented from obtaining British citizenship etc

Amendments 115 and 116 not moved.

Clause 31: British citizenship

Amendments 117 and 118 not moved.

Clause 32: British overseas territories citizenship

Amendments 119 and 120 not moved.

Clause 33: British overseas citizenship

Amendment 121 not moved.

Clause 34: British subjects

Amendment 122 not moved.

Clause 36: Amendments relating to sections 31 to 35

Amendments 123 to 125 not moved.

Clause 37: Suspensive claims: interpretation

Amendments 126 to 129

Moved by ***Lord Murray of Blidworth***

126: Clause 37, page 41, line 1, leave out "factual" and insert "removal conditions"

Member's explanatory statement

This amendment changes the name of a "factual suspensive claim" to a "removal conditions suspensive claim".

127: Clause 37, page 41, line 2, leave out "Factual" and insert "Removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 1.

128: Clause 37, page 41, line 3, leave out from "the" to end of line 4 and insert "person does not meet the removal conditions"

Member's explanatory statement

This amendment changes the definition of what will become a "removal conditions suspensive claim" so that it includes any claim that a person does not meet the removal conditions.

129: Clause 37, page 41, line 19, leave out subsections (9) and (10)

Member's explanatory statement

This amendment removes the power of the Secretary of State to make regulations which amend the definition of "working day" in clause 37(8).

Amendments 126 to 129 agreed.

Clause 38: Serious harm suspensive claims: interpretation

Amendment 130

Moved by ***Lord Etherton***

130: Leave out Clause 38 and insert the following new Clause—

"Serious harm suspensive claims: interpretation

(1) The definitions in subsections (2) and (3) have effect for the purposes of section 37, this section and sections 39 to 51.

(2) A "serious harm suspensive claim" means a claim by a person ("P") who has been given a third country removal notice that the serious harm condition is met in relation to P.

(3) The "serious harm condition" is that P would face a real risk of serious harm if removed from the United Kingdom under this Act to the country or territory specified in the third country removal notice.

(4) The following are examples of harm that constitute serious harm for the purposes of this Act—

(a) death;

(b) persecution falling within subsection (2)(a) or (b) of section 31 of the Nationality and Borders Act 2022 (read together with subsections (1) and (3) of that section) (Article 1(A)(2) of the Refugee Convention: persecution) where P is not able to avail themselves of protection from that persecution;

(c) torture;

(d) inhuman or degrading treatment or punishment;

(e) onward removal from the country or territory specified in the third country removal notice to another country or territory where P would face a real risk of any harm mentioned in paragraphs (a) to (d).

(5) For the purposes of subsection (4)—

(a) protection from persecution can be provided by—

(i) the government of the relevant country or territory, or

(ii) any party or organisation, including any international organisation, controlling the relevant country or territory or a substantial part of it;

(b) P is to be taken to be able to avail themselves of protection from persecution if—

(i) the government, party or organisation mentioned in paragraph (a) takes reasonable steps to prevent the persecution by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution, and

(ii) P is able to access the protection."

Member's explanatory statement

This revised version of Clause 38: (1) removes any reference to "the relevant period", (2) removes any reference to irreversibility of harm, and (3) removes examples of harm that do not constitute or are unlikely to constitute serious and irreversible harm.

Lord Etherton (CB): My Lords, this amendment relates to serious harm suspensive claims, and it is important because the Government intend that suspensive claims are the only way that removal notices can be challenged. The point I have been concerned with from the beginning is the position of people who are served with a removal notice in respect of a country in which they have a well-founded fear of persecution if removed there, and they would fall within Article 1A(2) of the refugee convention. In other words, vis-à-vis that country, they would be regarded as refugees. Do they have to show in addition, as required by Clause 38(3),

"a real, imminent and foreseeable risk of serious and"—

this is the critical word—"irreversible harm" to succeed on a serious harm suspensive claim? That would be not only novel but against all principle, and the meaning, intent and wording of the refugee convention.

The point has been illustrated—I have tried to illustrate it, and the Government have taken it up—in the particular case of LGBTQ+ claimants. The decision in the case of HJ (Iran) and HG (Cameroon) was that, in order to qualify as a refugee under the convention, it is sufficient that, if they would wish to live openly as LGBTQ, they would face persecution, even if they would not suffer such persecution if they acted discreetly. The question was, if they or somebody from that community were served with a removal notice and it were to a place where members of that particular social group, within the meaning of the convention, would have reasonable fear of persecution, would they have to show in addition that they would suffer irreversible harm, and within a specified period? I urge your Lordships to accept that that would be entirely wrong.

Throughout this debate on the Bill, my understanding has been that the Minister has said that, yes, such a group would have to show in addition that they would suffer irreversible harm. That seems inconsistent with Clause 38(4)(b), which states:

"The following are examples of harm that constitute serious and irreversible harm for the purposes of this Act … (b) persecution falling within … Article 1(A)(2) of the Refugee Convention … where P"—

the refugee—

"is not able to avail themselves of protection from that persecution".

My heart therefore leapt with joy last Wednesday when I heard the noble and learned Lord, Lord Stewart of Dirleton, who stood in as Minister, say:

"The point I am making is that the serious harm suspensive claim in connection with Clause 38 makes it clear that persecution and onward refoulement are examples of harm that constitute serious and irreversible harm for the purposes of such a suspensive claim."—[*Official Report*, 28/6/23; col. 767.]

However, I received a letter sent at 2pm this afternoon from the Minister which seemed to indicate that he was still insisting that, in addition, one would have to show irreversible harm. All I wish to receive from the Minister to avoid a vote on this is an assurance that, where it is clear that there would be persecution of a recognised category within the convention regarding the country specified in the removal notice, that fact alone is sufficient to satisfy the requirements for a serious harm suspensive claim, and that the principle laid down in HJ (Iran) regarding LGBTQ people will continue to apply.

Lord Hope of Craighead (CB): I will speak first to Amendment 131, which would survive even if the amendment to which my noble and learned friend Lord Etherton has spoken were carried and Clause 38 rewritten.

I am seeking to make a very simple point: the power in Clause 39 to

"by regulations amend section 38 to make provision about the meaning of 'serious and irreversible harm' for the purposes of this Act"

is unqualified and wide enough to enable the Secretary of State to remove some of the instances of serious harm set out in Clause 38 as it is or as it may be amended. The examples of serious harm given there are absolutely obvious, and they are indeed very serious. It would be a great misfortune if, by some misadventure, the Secretary of State were to remove one or other example from that list for some reason. I would have thought that the Minister could accept the amendment as a sensible qualification of the otherwise unqualified power in Clause 39. I am simply repeating a point I made in Committee, but it is rather important to have clarity on this. The Minister can give an assurance—no doubt he will—that there is no intention to remove examples from Clause 38, but that is not really good enough. It needs to be set out in terms in Clause 39.

7.15 pm

The other amendments in this group—Amendments 133, 137, 142, 145, 147 and 151—all raise a matter of language and all deal in various situations with the phrase "compelling evidence". The point I made in Committee was directed to the requirement in Clause 41 that:

"A claim under subsection (1) must … contain compelling evidence that the serious harm condition is met in relation to the person".

My point was that "compelling" is addressed to the receiver of the evidence but does not really tell the framer of the claim what he or she should be aiming at. In reply, the Minister expanded—very neatly, I thought—on "compelling", saying said that it really means "reliable, substantial and material". I brought these words back, with thanks to the Minister, as probably a more helpful way of explaining what Clause 41(5) and the other clauses are dealing with when they use the phrase "compelling evidence". It is important that those who are framing these claims under Clauses 41 or 42 know what they are required to do. It is all very well saying that it would be compelling, but you are looking into the mind of the recipient and you want to know exactly what you should be dealing with in order to make the position beyond doubt. If you fail to achieve what "compelling" is describing, your claim fails because that is the effect of the requirement in Clauses 41 and 42.

I ask the Minister to reflect again on whether "compelling" could be more clearly expressed. If it is translated in one of these clauses, it needs to be done in all the others, which I have mentioned in my other amendments. That is my point and I cannot expand on it any further. It is a matter of fairness and proper notice to the person seeking to make these claims, so that they are not caught out by something that fails to achieve what the clauses require.

Lord Paddick (LD): My Lords, for the reasons that both noble and learned Lords have explained, we support all the amendments in this group. Should the noble and learned Lord, Lord Etherton, not get a satisfactory answer from the Minister, we will support him if he divides the House.

Lord Hodgson of Astley Abbotts (Con): My Lords, the House will be aware that I support the direction of travel of the Bill quite strongly. It represents a serious effort—it may be a vain one, and will certainly be so if the Government accept all the loopholes in the amendments we have discussed this afternoon—to address an issue of considerable concern to our fellow citizens. But, although I support the direction of travel, that does not mean that I think it perfect in every sense. I will therefore take a minute to support Amendment 131, in the name of the noble and learned Lord, Lord Hope of Craighead—to which he has just spoken—and the noble Lord, Lord Anderson of Ipswich.

I do not want to add to the background as the noble and learned Lord has obviously explained that very clearly. However, this does come under the issue that the noble Lord, Lord Blencathra, and I tried to draw to the attention of both Houses when we chaired the Delegated Powers Committee and the Secondary Legislation Scrutiny Committee respectively: the way in which power has been slipping through the hands of Parliament, with extensive and wide powers being taken by means of secondary legislation. Some might say that their use is improper, but let us say "extensive" for the purposes of this afternoon. Too often, these issues should have had a degree of scrutiny appropriate for primary legislation, and it is not satisfactory to introduce major issues of policy without that scrutiny.

We have to remember that we do need secondary legislation. Without it, the Government's machine would gum up completely. But we need to make sure that its use is restricted to what it says on the tin—namely, issues of secondary importance. In my view, Clause 39, entitled

"Meaning of 'serious and irreversible harm',"

is of pretty fundamental importance.

I agree with the need for regulation. The world moves on much faster than the rather stately pace of primary legislation. That is why I could not support

[LORD HODGSON OF ASTLEY ABBOTTS]

Amendment 132 in the name of the noble and learned Lord, Lord Etherton, and the noble Lords, Lord Carlile and Lord Paddick, because it seeks to delete the whole clause. We need some regulatory power. In much the same way, I am concerned about Amendment 130, because it opens up a whole series of other loopholes that impede the impact of the Bill as a whole.

In response to the wider powers that the Government are seeking under the present formulation, Parliament is entitled to ask for some limits on future ministerial power. Let me use the analogy of driving down a road. The Government are entitled to drive down the road, but in turn Parliament is entitled to ask for guard-rails—guard-rails that will ensure that a future Minister cannot swerve off into parts of—

Baroness Chakrabarti (Lab): I am grateful to the noble Lord for giving way and for all his remarks thus far. Would he agree with me, in the light of the *Companion*, that this would be a good moment to hear from his noble friend the Minister?

Lord Hodgson of Astley Abbotts (Con): If the noble Baroness had given me another two sentences, I would have finished. I was going to say we need guard-rails to make sure that future Ministers do not swerve off in directions hitherto undreamed of. It is because I think Amendment 131 represents those guard-rails that I support it.

Lord Coaker (Lab): My Lords, we support the comments made by the noble and learned Lord, Lord Hope, and, in particular, the noble and learned Lord, Lord Etherton. Were the noble and learned Lord, Lord Etherton, minded to test the opinion of the House, he would certainly find us supporting him on Amendment 130.

Lord Murray of Blidworth (Con): My Lords, it was remiss of me not to say a little about Amendment 126 and the other government amendments in this group, so I will do so now. These amendments, as I am sure Members of the House have realised, replace a "factual suspensive claim" with a "removal conditions suspensive claim". Clearly, I and the department listened carefully to the contributions from noble Lords in Committee on these topics about these suspensive claims, in particular those helpful contributions from the Cross Benches. The changes in the category of suspensive claim are a direct reflection of what was said during those debates.

Currently, a factual suspensive claim can be raised where a mistake of fact has been made in deciding that a person meets the four removal conditions in Clause 2. This definition would prevent a claim being raised where a person had been incorrectly identified as meeting the four removal conditions due to a mistake of law. A removal conditions suspensive claim will instead provide for a claim to be raised where a person who has been given a removal notice informing them that they are subject to the duty to remove does not consider that they meet the removal conditions in Clause 2. The Secretary of State's or Upper Tribunal's consideration of a removal conditions suspensive claim will be on whether or not the removal conditions were met. I trust these amendments will be welcome, in particular to the noble Lord, Lord Anderson of Ipswich, who queried the scope of these claims in Committee.

I am grateful to the noble and learned Lords, Lord Etherton and Lord Hope, for setting out the case for the other amendments in this group. A serious harm suspensive claim is a claim that a person would, before the end of the relevant period, face a real, imminent and foreseeable risk of serious and irreversible harm if they were removed from the United Kingdom to a country other than their country of origin. The serious and irreversible harm test is designed to be a high threshold and reflects the test applied by the European Court of Human Rights when considering whether to indicate an interim measure under Rule 39 of the rules of court. "Serious" indicates that the harm must meet a minimum level of severity, and "irreversible" means the harm would have a permanent or very long-lasting effect. These amendments seek to change how Clause 38 of the Bill defines the risk of harm, lowering the threshold for a serious harm claim to succeed.

Amendment 130 would remove the requirement for the harm to occur in the period it will take for any human rights claim or judicial review to be determined from the safe third country. I suggest it is reasonable to expect the harm to occur over a defined period. The very purpose of the suspensive claim process is to prevent those persons subject to the duty to remove suffering serious and irreversible harm during the same period that their human rights claims are considered. Without this requirement, it would be difficult for decision-makers properly to assess the likelihood of any risk materialising. It would also risk abusive suspensive claims being made on the basis of a risk of harm that does not currently exist or that may not materialise until months or even years after a person has been removed from the United Kingdom.

Amendment 130 would also remove the requirement for the risk of harm to be irreversible. This would significantly lower the threshold for a serious harm suspensive claim to succeed and undermine the purpose of the Bill to deter illegal entry to the United Kingdom. Again, I would point out that the test applied by the Strasbourg court when considering applications for Rule 39 interim measures is one of serious and irreversible harm. So, the serious harm condition and requirement for the risk of harm to be both serious and irreversible reflects that test.

Lastly, Amendment 130 would also remove specific examples of harm that do not or are unlikely to constitute serious and irreversible harm. Setting out a clear approach regarding the interpretation of serious harm on the face of the Bill will, I suggest to noble Lords, ensure that decision-makers and the courts take a consistent approach in their consideration of what amounts to a risk of serious and irreversible harm. The examples in Clause 38(5) reflect existing case law and go no further than how we currently approach the consideration of these issues when raised in protection claims.

Amendment 131 would prevent amendments to the examples of harm that constitute serious and irreversible harm set out in Clause 38(4), as the noble and learned

Lord, Lord Hope, so eloquently set out. I assure the House that the Government do not intend to diminish or remove the examples of harm listed in Clause 38(4).

Amendment 132 would remove the regulation-making power in Clause 39 to amend the meaning of "serious and irreversible harm". This would result in the Secretary of State being unable to make amendments which reflect developments in case law. It is worth again pointing out that the Delegated Powers Committee raised no issue with this power in its report on the Bill.

Amendment 133 would alter the requirement for a serious harm suspensive claim to include "compelling" evidence of the risk of harm that a person would face if removed to a third country and replace it with a requirement to provide evidence that is "reliable, substantial and material". I am very grateful to the noble and learned Lord for his remarks on the clarity of those three words, which, of course, will be available in *Hansard* should any questions arise as to what might amount to "compelling".

However, although evidence that is compelling may also be defined as evidence that is reliable, substantial and material, a requirement for evidence to be compelling is more appropriate and succinct, given that it is the overall impact of the evidence provided, not any particular element or feature of it, that is relevant. The term "compelling" is sufficiently clear and well understood by decision-makers, and should remain unaltered. It is a term that has use in this area of the law. For example, evidence provided by people raising suspensive claims may differ dramatically in terms of volume and substance, but it is the overall impact of such evidence that is crucial when determining whether any claim has merit. For those reasons, the term "compelling" is more appropriate, providing decision-makers and the courts with the right degree of flexibility when making decisions on suspensive claims and appeals.

Finally, the amendments in the name of the noble Baroness, Lady Meacher, seek to extend the claim and decision periods provided for in Clauses 41 and 45. We consider the periods specified in the Bill to be fair and equitable, affording sufficient time to submit and determine claims, commensurate with the Bill's objective to remove people swiftly from the United Kingdom. However, I remind the noble Baroness that, where the Secretary of State considers it appropriate to do so, it will be possible to extend both the claim period and the decision period.

For the reasons I have outlined, I respectfully ask that the noble Lords do not press their amendments.

Lord Etherton (CB): I am very grateful to the Minister for his reply. I am afraid he has not answered my request for an assurance at all, so I wish to test the opinion of the House.

7.32 pm

Division on Amendment 130

Contents 187; Not-Contents 139.

Amendment 130 agreed.

Division No. 10

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7.42 pm

Clause 39: Meaning of "serious and irreversible harm"

Amendment 131 not moved.

Amendment 132

Moved by **Lord Etherton**

132: Leave out Clause 39

Member's explanatory statement

This amendment removes the power of the Secretary of State to amend section 38 by regulation by making provision about the meaning of "serious and irreversible harm".

Amendment 132 agreed.

Clause 41: Serious harm suspensive claims

Amendments 133 to 133B not moved.

Clause 42: Factual suspensive claims

Amendments 134 to 136

Moved by **Lord Murray of Blidworth**

134: Clause 42, page 45, line 2, leave out "factual" and insert "removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 1.

135: Clause 42, page 45, line 6, leave out paragraphs (a) and (b) and insert—

"(a) that the person does not meet the removal conditions, or

(b) that the person meets the removal conditions."

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 3.

136: Clause 42, page 45, line 13, leave out "factual" and insert "removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 1.

Amendments 134 to 136 agreed.

Amendment 137 not moved.

Amendments 138 to 140

Moved by ***Lord Murray of Blidworth***

138: Clause 42, page 45, line 18, leave out from "the" to end of line 20 and insert "person does not meet the removal conditions,"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 3.

139: Clause 42, page 45, line 26, leave out "factual" and insert "removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 1.

140: Clause 42, page 45, line 33, leave out "factual" and insert "removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 1.

Amendments 138 to 140 agreed.

Clause 43: Appeals in relation to suspensive claims

Amendment 141

Moved by ***Lord Murray of Blidworth***

141: Clause 43, page 46, line 10, leave out paragraph (b) and insert—

"(b) in the case of a removal conditions suspensive claim, the person does not meet the removal conditions,"

Member's explanatory statement

This amendment is consequential on the amendments in the name of Lord Murray of Blidworth at page 41, line 1 and page 41, line 3.

Amendment 141 agreed.

Amendment 142 not moved.

Amendments 143 and 144

Moved by ***Lord Murray of Blidworth***

143: Clause 43, page 46, line 16, leave out "factual" and insert "removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 1.

144: Clause 43, page 46, line 24, leave out paragraph (b) and insert—

"(b) in relation to a removal conditions suspensive claim, whether the person meets the removal conditions."

Member's explanatory statement

This amendment is consequential on the amendments in the name of Lord Murray of Blidworth at page 41, line 1 and pageusb 41, line 3.

Amendments 143 and 144 agreed.

Clause 44: Permission to appeal in relation to suspensive claims certified as clearly unfounded

Amendment 145 not moved.

Amendment 146

Moved by ***Lord Murray of Blidworth***

146: Clause 44, page 47, line 6, leave out "factual" and insert "removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 1.

Amendment 146 agreed.

Amendment 147 not moved.

Amendment 148

Moved by ***Lord Murray of Blidworth***

148: Clause 44, page 47, line 8, leave out from "the" to end of line 10 and insert "person does not meet the removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 3.

Amendment 148 agreed.

Clause 45: Suspensive claims out of time

Amendments 149 and 150

Moved by ***Lord Murray of Blidworth***

149: Clause 45, page 47, line 31, leave out "factual" and insert "removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 1.

150: Clause 45, page 47, line 32, leave out "factual" and insert "removal conditions"

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Murray of Blidworth at page 41, line 1.

Amendments 149 and 150 agreed.

Amendment 151 not moved.

7.45 pm

Baroness Williams of Trafford (Con): My Lords, I suggest that Report be adjourned until not before 8.24 pm.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the noble Baroness has suggested that the House adjourn now. We normally have our dinner break around 7.30 pm, I accept that, but I wonder if it would be convenient for the House to continue with the next group, which is a voting group, and then all sides could release their Members.

Baroness Williams of Trafford (Con): My Lords, we had Agreement with the usual channels. I know the Labour group often wants to break at 7.30 pm. I do not wish to have a dispute at the Dispatch Box but I ask that the noble Lord stick with the agreement that we had earlier and return no later than 8.25 pm.

Lord Kennedy of Southwark (Lab Co-op): My Lords, if the noble Baroness wants to have the dinner break now, that is fine, but I think we should move a Motion that allows that if the business finishes a bit earlier then the House could come back a bit earlier, rather than a rigid arrangement.

Baroness Williams of Trafford (Con): The noble Lord is absolutely right that sometimes the dinner break business finishes a bit earlier, and if it does then

[Baroness Williams of Trafford]
I am happy that Report resumes then. But the time given for a Statement is usually 40 minutes, and that is exactly what I am giving for the Statement today. That is in the Standing Orders.

Lord Kennedy of Southwark (Lab Co-op): I entirely accept the point that it is normally 40 minutes. However, if it finishes earlier then we should move a Motion that will allow us to come back a bit earlier, rather than saying "no earlier than".

Baroness Williams of Trafford (Con): I suggest that we have been arguing for two minutes. Can we just do the Statement in the normal way and leave 40 minutes for it?

Consideration on Report adjourned until not before 8.27 pm.

Mental Health In-patient Services: Improving Safety
Statement

The following Statement was made in the House of Commons on Wednesday 28 June.

"With permission, Mr Speaker, I would like to make a statement on improving safety in mental health in-patient services across England. Before doing so, I want to thank all the right honourable and honourable Members from across the country who have campaigned tirelessly on behalf of their constituents to improve mental health care. Too many people have experienced care in mental health in-patient settings that has been well below the high standard that we all deserve when we are at our most vulnerable. I would also like to put on record my sincere condolences to the families and friends of those who have lost their lives.

First, I will update the House on the independent inquiry into mental health in-patient care across NHS trusts in Essex between 2000 and 2020. I thank my right honourable friend the Member for Chelmsford (Vicky Ford) for tabling a Westminster Hall debate on the Essex mental health inquiry earlier this year. She and colleagues, including our honourable friend the Member for Rochford and Southend East (Sir James Duddridge) and our right honourable friends the Members for Witham (Priti Patel) and for Maldon (Sir John Whittingdale), all spoke passionately about the need to get justice for patients and their families. I know that my honourable friend the Member for South Suffolk (James Cartlidge) also tabled an adjournment debate on mental health in-patient care in Essex before the independent inquiry was launched in 2021.

I also pay tribute to my right honourable friend the Member for Saffron Walden (Kemi Badenoch) and my honourable friends the Members for Clacton (Giles Watling), for Brentwood and Ongar (Alex Burghart), for Castle Point (Rebecca Harris), and for Southend West (Anna Firth) for their determined campaigning on behalf of their constituents. Of course, we should all remember the important contribution of the former Member for Southend West, and a great friend to many across this house, the late Sir David Amess. He tabled a Westminster Hall debate on mental health services in Essex back in 2014, and he was a passionate campaigner for improving mental health care. I know he is very much in our thoughts.

In 2021 we launched the independent inquiry to investigate the deaths of mental health in-patients across NHS trusts in Essex between 2000 and 2020. The Government appointed Dr Geraldine Strathdee, a former national clinical director for mental health for NHS England, to chair the inquiry. I want to place on the record my thanks to Dr Strathdee and her team, because a lot of good work has been done. I applaud the bravery of all the victims and their families who have come forward to tell their stories.

I also recognise the work that the Essex Partnership University NHS Foundation Trust—EPUT—has done to assist with the inquiry. The trust has been in the spotlight, and progress has already been made to learn lessons and improve in-patient mental health care. EPUT's chief executive, Paul Scott, joined in 2020, and since then the trust has invested £20 million in its mental health in-patient wards and a further £20 million in community services. Compared with 2019, patients absconding from care has decreased by more than 60%, and the use of inappropriate restraint has fallen by 88%.

However, in January Dr Strathdee raised concerns with me about a lack of engagement with the inquiry by current and former EPUT staff. I know that many right hon. and hon. Members share her concerns. Since then, the inquiry and the trust have worked together in a concerted effort to increase staff engagement. None the less, I have listened to Dr Strathdee's concerns that the inquiry still needs further staff engagement to get victims' families the answers they deserve. In a letter to me in March, she said that

'30% of named staff, those essential witnesses involved in deaths we are investigating, have agreed to attend evidence sessions. In my assessment, I cannot properly investigate matters with this level of engagement'.

She has also raised with me concerns about ongoing safety issues at the trust. To quote from her letter once again, she said:

'I am very concerned that there are serious, ongoing risks to patient safety. Due to the nature of these issues, I am confident that these cannot be properly investigated by the Inquiry without statutory powers'.

The Government take both concerns extremely seriously, and I agree with Dr Strathdee that we have now reached the point where the only appropriate course of action is to give the inquiry statutory powers.

Statutory inquiries do take longer, but this does not mean that work will start from scratch. Dr Strathdee's existing findings will inform the next phase of the inquiry. She has informed me that, owing to personal reasons, she will not be continuing as the inquiry's chair, so I want to thank her once again for all her commitment and hard work. I am sure the House will agree that she is a true public servant. Our work to find her successor is proceeding at pace, and I will update the House on the progress of setting up the inquiry in due course.

I recognise that Members' concerns about mental health in-patient facilities are not confined to Essex. The Government are committed to improving mental health care across England, which is why we are boosting

mental health funding by at least £2.3 billion this year compared with four years ago, why we are making urgent mental health support available through 111, and why we are delivering three new mental health hospitals to provide specialist care and cut waiting lists.

In January, we commissioned a rapid review of how data is used in in-patient mental health settings in England. More effective use of data has the potential to reduce duplication, ensuring that healthcare professionals can spend more of their valuable time with patients. The review team—well led again by Dr Strathdee—heard from more than 300 people representing every part of the in-patient mental health sector, including former patients and frontline staff. Dr Strathdee has made recommendations for how data and evidence can be used to identify risks to patient safety and failures in care more quickly and effectively. The findings and recommendations of the rapid review will be published today, and I will deposit a copy in the Libraries of both Houses. The Government will consider its findings carefully and respond in due course.

We recognise, however, that patients and families want to know how their concerns will be taken forward as soon as possible, and I also recognise that a wide-ranging statutory inquiry relating to other settings, or covering multiple patient safety issues, would not deliver those answers quickly. My Department has therefore agreed to work alongside the Healthcare Safety Investigation Branch to prepare for the launch of a national investigation of mental health in-patient services, which will commence in October, when the HSIB receives new powers under the Health and Care Act 2022.

The new Health Services Safety Investigations Body will investigate the following themes: how providers learn from deaths in their care and use that learning to improve services, including post-discharge services; how young people are cared for in mental health in-patient services and how that care can be improved; how out-of-area placements are handled; and how to develop a safe staffing model for all mental health in-patient services. Across all those areas, it will explore the way in which providers use data. I want to reassure the House that the new body will have teeth and will work at speed, that it will have the power to fine those who refuse to give evidence when they are required to do so, and that its predecessor's investigations were typically concluded within a year.

I hope that today's announcements will be of some comfort to the bereaved families who have done so much to raise awareness of the failings of mental health care in Essex and elsewhere. I want them to know that the Government are committed to obtaining for them the answers that they deserve, and to improving mental health across the country. I commend this Statement to the House."

7.47 pm

Baroness Merron (Lab): My Lords, I welcome the announcement in this Statement that the inquiry to investigate the deaths of mental health in-patients across Essex between 2000 and 2020, chaired by Dr Strathdee, will now be given vital statutory powers. This is an important and long overdue development. Not only have the grieving families suffered the pain and anguish of bereavement, and how they have felt in their fight for answers over so many years, but all of this has been compounded by an inquiry that lacked the necessary powers to seek the truth. It would be helpful for your Lordships' House if the Minister could shed some light on why it has taken so long to allow the inquiry to do its job thoroughly.

More broadly, and connected with this issue, are repeated scandals in in-patient mental health settings involving abuse, dehumanising behaviour and needless loss of life, such that more than one in three people say they do not have faith that a loved one would be safe if they needed mental health care in a hospital. How will the Government seek to restore essential public confidence?

The situation set out in the Statement is against a backdrop of some 1.6 million people on waiting lists for mental health treatment. Their condition is deteriorating and can reach crisis point. At the same time, the incidence of poor mental health continues to rise. Those in poverty or financial difficulty are particularly at risk, to mention just one group. With the cost of living crisis continuing unabated and children from the poorest 20% of households four times more likely to develop serious mental health difficulties by the age of 11 when compared with the wealthiest 20%, this is an upward and unequal trend that the Government have to tackle. I hope the Minister can comment on how this will be properly dealt with.

I will pick up some particular aspects. Families of patients in Essex will welcome the news that this inquiry will be put on a statutory footing, but across the country those failed by inadequate mental health services are in desperate need of answers and need change. In March 2022 the CQC released its *Out of Sight* report to identify what progress the Government have made in addressing the culture, behaviour and design of services for patients in mental health in-patient settings. Will the Minister tell your Lordships' House what progress has been made in implementing the recommendations in full?

If we are to bring about change, it is very important that the rapid review of data in mental health in-patient settings translates into action and the report does not simply sit on a shelf in the department. Can the Minister tell your Lordships' House when the Government's response to the review will be published and whether he will set out a timetable for when the recommendations are to be implemented?

Over the past year there has been a flurry of reports, as we know only too well in this House, of patients being failed in the care of mental health trusts around the country. Have Ministers actually met the leaders of those trusts to find out what has gone wrong? If not, do they plan to meet and when?

The Government have shelved the 10-year mental health strategy and, despite promises first made in 2018 to reform the outdated Mental Health Act, legislation has repeatedly been delayed. The Joint Committee on the Draft Mental Health Bill published recommendations for improving legislation in January, but thus far Ministers have still not responded to the report and the Bill is yet to be introduced to the House of Commons. Will the Minister please update the House on when it can be expected?

[Baroness Merron]

When it comes to mental health, taking a preventive approach would mean fewer patients needing to use in-patient services in future. Have the Government considered shifting the system towards prevention by providing mental health support in every school, for example, and a mental health hub for young people in every community? Ensuring that there are enough staff to provide adequate services is vital to improving patient outcomes, so can the Minister say some more about what plans the Government have to retain staff, to recruit new staff and to expand access to mental health treatment? I look forward to hearing from the Minister on these points.

Lord Allan of Hallam (LD): My Lords, I am grateful to have an opportunity to discuss mental health provision, and my comments will very much follow on from those of the noble Baroness, Lady Merron. We are also interested in the Government's latest thinking about the draft mental health Bill. Now that the workforce plan is out—we will discuss it tomorrow—our new refrain may be, "When will the Government get on with the mental health Bill?". It is long overdue, and a huge amount of work has gone in that is clearly fundamental to trying to deal with some of the structural issues.

Turning to some of the issues raised in the Statement, I first want to ask about people's journeys when they are in need of mental health support. The Statement said that 111 will now provide mental health advice, which is very welcome, but can I ask the Minister for his thoughts on what is happening in primary care? My understanding is that at the moment mental health nursing provision is not a requirement of all general practices—some offer it and others do not. Can the Minister, who I know cares about joined-up, seamless services, give us some insights into the Government's thinking on ensuring that people who present with mental health problems to general practice—which is the first port of call for many of them, before they even get to 111 or 999—see more consistency of support available at that level?

Thinking about the review—a major part of what is in the Statement—a significant proportion of providers of mental health in-patient services are private sector, which has been the case for some time. Can the Minister confirm that they will be included in the review and comment on whether the inspectorate's powers will be applied equally to the private and public sectors? That is critical to understanding what is happening in all settings.

Will the Minister also talk a little about the input the review may get from related services? Again, we know that the police, local authorities and accident and emergency departments often pick up the pieces where mental health provision has not been made available. Can the Minister assure us that the review will also look at all those other parties to this journey of care that people require? Can he also comment on the data questions? I have seen evidence from freedom of information requests to the Office for National Statistics asking about deaths of people in mental health in-patient settings. My understanding is that the data is not recorded consistently. If we are to have a review and to understand what is happening in the mental health sector, it would be helpful to know what measures the Government will take to improve the consistency of data collection so that, when someone unfortunately suffers a tragic incident, we know where they were at the time and have the data available to build up the national pattern.

The final issue I want to ask for the Minister's comments on is out-of-area placements. Will he acknowledge that it remains a serious issue that many people with serious mental health conditions are able to get treatment only in places that are far from home and therefore far from their families and support networks? I note from the Statement that the Government are providing three new hospitals. This is of course welcome, but I hope the Minister will also be able to confirm that there is a locality-based strategy, with the Government thinking hard about matching local facilities to local need so that we can end the situation in which people at a time of extreme distress are sent very far away from home, which can only add to the crisis they are facing.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): I thank noble Lords for their questions and their general welcome for the Statement. On timing, we had hoped that doing it on a non-statutory basis would have been sufficient. The advantage is that you get the results that much quicker; you can often get them within a year, versus three years. We have many examples of where it has worked quite well, such as the Kirkup report. To answer the question of why it is taking so long, in the first place we had hoped that doing it on a statutory basis would not have been necessary. There was a course correction in January, when we were not getting the response we needed and not enough staff were making themselves accessible. There was some improvement at that point, but it was felt by the chair that it was not sufficient, hence the decision now.

We believe that we can build on the work that has been done so far, so we are not starting again from zero. However, there are some lessons. On a number of occasions, trusts and staff have responded well to a non-statutory inquiry, but we have learned from this that sometimes it needs to have the teeth of a statutory inquiry so that it is taken seriously enough. Somehow, there was an impression that, because the inquiry was not statutory, it was not seen as serious enough to trigger that. There is a key lesson to learn from all of that.

How we can seek to restore confidence is absolutely the right question to be asking. We believe that the additional investment of £2.3 billion that we are putting into this space is a key part of that, and the increase of 27,000 staff is another. We are learning from the reviews that we are doing, and we are quickly learning from the rapid review. We are working fast, so I cannot give an exact date for those results. We asked for it to be a rapid review so that we could get on with it and make the most of the findings.

The other key part of this is the Healthcare Safety Investigation Branch. We are asking it to look into a number of questions, one of those being out-of-area in-patients and the impact that has. I think we all

agree that it is best if people can have in-patient services locally. That is one of the key parts that it will be asked to review. On the timing of that review, it will start in October and should be able to conclude within a year. We should get results back quite quickly.

On the timing of the mental health Bill, we are working through the parliamentary calendar now. We do not know the timings yet, but the scheduling is being looked at.

The noble Baroness mentioned the prevention agenda. I completely agree that care in the community and the training of staff in GP settings and schools are vital to this. As noble Lords have heard me say at the Dispatch Box before, we are making good progress: about 35% of schools are trained up in mental health support. Last year it was only 24% and next year we think we will be pushing 50%. Those are big increases, but I freely accept that 50% is not 100%. A lot of progress is being made in that area but we accept that a lot more needs to be done.

As for the private sector being included in the review, I have every reason to think that it should be and that there should be equal powers, but I will check that. I am talking off the top of my head now as it seems perfectly sensible, but I will come back properly on that.

I will do likewise with the comments on the recording of and use of data. Again, one of the rapid review findings was that we do not have enough real-time data. That is very much the direction of travel but, again, I will come back with more detail. As ever, noble Lords will know that I like to bring all these things together in a lengthy letter where I hope I am able to cover any points I did not cover here.

There are steps in the right direction, and the investment I talked about is another step in the right direction. I completely agree with the emphasis that it is vital we restore confidence in this area.

8.04 pm

Baroness Buscombe (Con): My Lords, I would like to begin the questions, as chair of the recent Joint Committee on the Draft Mental Health Bill. I say to my noble friend the Minister that we accept—I accept, certainly—that this Government are committed to improving mental health care across England. However, there is a strong sense of disappointment. Having published this report on 15 January, after a huge amount of work—I am proud to say it was an incredibly collegiate cross-party committee, across both Houses, and we came up with 55 recommendations with great care—we have had one short note from the Minister in another place, Maria Caulfield MP. It said that there was much consideration going on, and obviously both the Department of Health and Social Care and the Ministry of Justice are involved. The note said the response was in an advanced state and that we would be hearing from her in due course. However, we are now in July.

I believe it is hugely important that the Government demonstrate, rather more than they have so far, their commitment to improvements across the piece in mental health care. We are in a good place on support, but that support will wane unless the Government can really show commitment. I know there is an issue with the parliamentary timetable and so on, but the Government could at least respond to our 55 recommendations.

In addition, I have suggested to the Secretary of State a couple of things that could be done prior to legislation—in fact, a number of things in our report could be implemented without primary legislation. For example, on 26 February, I was actually quite unwell but I still met some civil servants at the Department of Health to discuss an incredible app that has already been developed for the palliative care world to support people in crisis. This app could be easily translated at very reasonable cost to support people having a mental health crisis. I was accompanied by—

Noble Lords: Question!

Baroness Buscombe (Con): A question is coming. I was accompanied by a brilliant consultant, Julia Riley. She has not even had a cursory note of thanks from those civil servants. Could the Minister therefore please respond by giving a little more detail on the timing? Could he also let me know whether there has been any progress on developing that particular app? I would also like to know about the implementation of safe places, where people can go when they are in crisis.

Lord Markham (Con): I thank my noble friend for her tireless work in this space. We believe that a number of constructive points were made in the committee report, which I know Maria Caulfield is working on and looking to get a timely response to. Maybe that is something on which we can meet up and discuss later.

Baroness Uddin (Non-Afl): My Lords, I raise the issue of the mental well-being of men from black and Asian backgrounds. I particularly raise the issue of the care they are receiving at the hands of very poorly qualified, untrained, unsympathetic people, who do not adequately understand the complexity not just of mental health and well-being but the way that they should be operating. They are not working in tandem with the families, which is one of the requirements. There have been suggestions from a number of community organisations that black and Asian men are four times more likely to be detained, and sometimes it is more than likely that there has not been any consultation with their families, which is one of the prerequisites. Can the Minister assure this House that any formal forward-thinking and examination of these issues is looking at the disproportionality of the effects and the causes of very poor services, particularly for men from black and Asian minority backgrounds?

Lord Markham (Con): Yes, we are very aware of the points made very well by the noble Baroness, including some of the stats on the community treatment orders and the fact, I believe, that if you are a black male, you are eight times more likely to be detained. I know that that led to some of the recommendations from the pre-legislative scrutiny committee. I can give an undertaking that that will be fundamental to what we are trying to do here.

Baroness Watkins of Tavistock (CB): My Lords, I welcome the Statement, but I will raise two issues. First, it seems that several different bodies will look at what the problem is, yet the ombudsman has just said that it is absolutely imperative that

"The Department of Health and Social Care should commission an independent review of what an effective set of patient safety oversight bodies would look like".

Could the Minister comment on how that will be considered in tandem with the proposals outlined in the Statement?

Secondly, will the proposals look at a safe staffing model for all in-patient mental health services? In fact, in-patient services are really looking after only those people who have severe mental health problems; they are almost the equivalent of an intensive care unit in a general hospital. Increasingly, staff do not have time for proper continuity of handover when they leave shifts, and that needs to be examined. It is relatively easy to describe somebody's blood pressure and blood stats in an intensive care unit as you hand over in a general area, but to describe the complexities you have been working with, for example with somebody who has severe schizophrenia and is deluded and paranoid, takes a good 10 minutes in a handover. I would welcome the Minister's comments on how we will look at ensuring that that is considered when measuring safe staffing.

Lord Markham (Con): I thank the noble Baroness. The points she rightly makes are exactly what we believe is the remit of the new HSSIB review starting from October. One of the specific points is about developing safe therapeutic staffing models for all mental health in-patient services. I think and hope that the exact points raised by the noble Baroness will be addressed by the review.

Lord Bradley (Lab): My Lords, the Government's draft mental health Bill proposes—and I and the Joint Committee support this—the banning of prisons as a place of safety and the transfer of patients within 28 days of the mental health assessment to a safe mental health secure unit. Will the Minister ensure that this is included in the national review, so that there are sufficient local safe secure facilities to implement the 28-day recommendation and that these patients are cared for in genuine places of safety?

Lord Markham (Con): I understand the concern brought, quite rightly, by the noble Lord. It would be best for me to write on that, so that I can give the specific position and he can have the detail he requires.

Baroness Berridge (Con): My Lords, I am a member of the Joint Committee. We heard compelling evidence from the Independent Advisory Panel on Deaths in Custody that, although there is always an inquest into an unexplained death, there is the unique situation where if you die detained, in effect, by the state but in a secure mental health institution—as opposed to a prison, police cell or immigration detention centre—there is no independent investigative body to investigate the circumstances around your death. Given that this independent inquiry will look at a series of deaths over 20 years, will it be within its remit to look at whether or not, had there been some kind of independent investigation of those deaths, the themes and problems faced by the trust might have been spotted earlier?

Lord Markham (Con): We see that as being very much in the remit of the Health Services Safety Investigations Body. In fact, the first thing we are asking it to do is to consider how we can learn from those unfortunate deaths, where they have taken place, in terms of their care. The intention is that it will report back. It will start in October and will report back on that within a year, so that we can get some rapid findings.

Lord Hunt of Kings Heath (Lab): My Lords, can the Minister return to the contribution from the noble Baroness, Lady Watkins? I note that the HSSIB has been asked to look at and develop a safe staffing model for in-patient services, but I re-emphasise the point made by the noble Baroness: you cannot look at in-patient services only; you have to look at the whole spectrum. Surely, he accepts that. For instance, with young people, the huge waiting times for CAMHS services, which eventually lead to some of them being out-of-area placements, is shocking. Surely, HSSIB should be looking at the whole picture. Can he also say how this will relate to the workforce plan? In other words, will the conclusions of HSSIB's report go forward into the workforce plan, so that for the future we are developing enough people in the mental health field?

Lord Markham (Con): As I am sure the noble Lord is aware, the second thing that the HSSIB is being asked to look at is exactly the point about how people are cared for as in-patients and how we can improve that approach. On staffing—again, we will debate this more tomorrow night following the Statement repeat—it is vital that there is a feedback loop in terms of the long-term workforce plan. That feedback loop, as I am sure noble Lords are aware, is built into it, so that when new data comes along, as will potentially be the case with the HSSIB, there is a way for that to feed back in again.

Lord Harris of Haringey (Lab): My Lords, I will follow on from the point made by the noble Baroness, Lady Berridge. Until 2015, I chaired the Independent Advisory Panel on Deaths in Custody, which covered the more high-profile areas of deaths in police and prison custody. However, the largest number of deaths under the care of the state was in mental health institutions. The noble Baroness, Lady Berridge, asked about independent investigations and the Minister said that the review will look at what lessons can be drawn. The point is, however, that over the last 20 to 30 years, there have not been independent investigations into the individual deaths, so how will there be an evidence base to decide whether proper lessons were drawn at the time and whether those were acted on?

Secondly, my noble friend Lord Hunt of Kings Heath talked about the difficulties with CAMHS. There is a gulf at age 18 between people being treated under CAMHS and then going into adult mental health services. What are the Government doing to

bridge that gap? People who may have received some support from CAMHS then lose it when they go into the adult sector.

Finally—I know I should not ask three questions, but I want to—one of the striking things about the number of deaths that occurred in mental health institutions is that many arose from physical causes. It was not about people committing suicide or their mental health crisis; it was the fact that in a hospital, a place of medical provision, they were not getting adequate physical healthcare. What are the Government doing about that?

Lord Markham (Con): I thank the noble Lord for his commitment in this area over the years. With regard to the first question about past evidence, clearly the HSSIB will be looking at what evidence exists. As the noble Lord said, some investigations go back 30 years, so there will not always be circumstances where it can pick out that evidence, unfortunately. However, where there is that information, we are trying to make sure that we pull it out and learn from it. That is very much the direction of travel. Clearly, if part of the HSSIB's findings is that we need to make sure that every death in such circumstances is investigated under a certain pathway, then I am sure that will come into its recommendations. In terms of the other questions, I think it is best that I write to the noble Lord, if I may.

Baroness Bennett of Manor Castle (GP): My Lords, the Statement includes a number of themes which it is expected the new Health Services Safety Investigations Body will consider. Not included in that list, however, is the growing role of private provision in NHS mental health care services. This is something that patient groups and others are expressing considerable concerns about. Take, for example, the Priory, where the Care Quality Commission reported that the number of deaths at its sites rose nearly 50% from 2017 to 2020. One of those was the tragic death of 23 year-old Matthew Caseby. An inquest jury concluded that his death was contributed to by neglect, and the coroner issued a prevention of future death report because of continuing risks.

The Priory Group earns more than £400 million from the NHS, and much more from social services. It is now owned by a Dutch private equity firm after it was sold by its former owner at a loss and is financed by a sale and leaseback deal of 35 properties with rents subjected to annual inflation-based escalators. Through the mechanisms in this Statement or others, are the Government going to consider the risks presented by private ownership—particularly private equity ownership—of mental health care services?

Lord Markham (Con): As noble Lords are aware from some of my previous answers, I think the key thing is the quality of output rather than the ownership of an institution. Around the House, we have very good examples of where we believe the Government need the help of the independent sector to increase supply and capacity. That always needs to be done with the right quality of regulatory regime, and that is what we have put in place. From my point of view, I am always going to be looking at the quality of the output and not the ownership of a company.

Baroness McIntosh of Hudnall (Lab): My Lords, on the Minister's last observation, I think there are a number of noble Lords here who would say that the quality of the output has not been that great from some private providers. It is just an observation.

However, the question I want to ask will take us back to the original observations by the noble Baroness, Lady Buscombe—I was also a member of the Joint Committee. The Minister gave a very brief reply to her questions about what has happened to the many recommendations, the vast amount of evidence and a great deal of hard work that went into producing that report. He even mentioned that it was going to be responded to in a "timely" manner. I think the moment for that has passed. Will the Minister have another go at explaining what has happened to the report and when there will be a response to it?

Lord Markham (Con): I am afraid I do not have the timing of a response on that. Minister Caulfield is very engaged in this area. A number of things have been mentioned. I mentioned the community treatment orders, where we are very mindful of the point made earlier by the noble Baroness, Lady Uddin, about black males being eight times more likely to be given one, and the recommendation that they should be abolished altogether. Those recommendations are very much in our thinking and our knowledge base. I know that Maria Caulfield is working on them, but I am afraid I cannot give the noble Baroness an exact time yet.

8.23 pm

Sitting suspended.

Illegal Migration Bill

Report (2nd Day) (Continued)

8.27 pm

Amendment 151A not moved.

Clause 53: Interim remedies

Amendment 152

Moved by ***Baroness Chakrabarti***

152: Leave out Clause 53

Baroness Chakrabarti (Lab): My Lords, the rule of law requires that Ministers are subject to the same rules as everyone else. This includes the possibility of discretionary interim relief in circumstances where courts believe that irreparable harm to one side in any litigation needs to be prevented while both parties await the final determination of an issue. Some noble Lords, including businesspeople and their lawyers, are perhaps more familiar with commercial than human rights litigation. However, the same principle applies. If I propose to dump or destroy the precious cargo entrusted to me because of alleged breaches by my customer, a court must obviously have the power to delay such drastic action pending crucial determinations of fact and law.

However, Clauses 53 and 54 would, first, completely oust the ability of UK courts to issue interim injunctions temporarily preventing a person's expulsion to potential peril. Secondly, they would allow Ministers to ignore interim measures of the European Court of Human Rights, of the kind issued in the Rwanda case and those currently in place to prevent Russia executing Ukrainian prisoners of war. My Amendments 152 and 153 would remove these clauses, so as to respect domestic courts and the Strasbourg court. They are in no way wrecking amendments, as these courts only very rarely issue such measures against trustworthy, law-respecting jurisdictions such as we have been historically.

8.30 pm

Once more, Amendment 152 is essential to most other protections which your Lordships propose. As for Amendment 153, I believe Clause 54 to be a negotiating position on the part of the Government, who are trying to negotiate with the Strasbourg court to improve the fairness of the Rule 39 jurisdiction. This speech was two and a half minutes long, and I beg to move.

Baroness Hamwee (LD): My Lords, my noble friend Lady Ludford, who is unable to be here today, has her name to these amendments so I am speaking on her behalf, as it were, and on behalf of these Benches.

I make the general point that interim relief is an intrinsic and sensible part of our law. Injunctions are generally to prevent something happening, to maintain the status quo until there can be thorough consideration of a case. It is that way round because the person who wants to prevent that something happening is at risk of an action which would have a major effect on him—the other way round does not work in the same way. In this case, the action—removal from the UK—would effectively be the end of the story for the claimant and, if not that, it would at least make pursuit of claim from outside the UK very difficult indeed. That is quite different from the depiction we heard last week of a witness on a video link from another room or another building with all the normal support and access to his representatives.

This afternoon, I received an email from the Bingham Centre for the Rule of Law—I stress "Bingham" and "rule of law"; noble Lords will note that title—with quite a long summary of a report on this subject which I understand is to be published tomorrow. It concludes that although improvements could be made to the process in the European Court of Human Rights, they do not affect the court's jurisdiction to indicate binding interim measures. It makes the point that, when states signed up to the European convention, they expressly accepted that:

"In the event of dispute as to whether the Court has jurisdiction, the Court shall decide".

So as not to detain your Lordships from making another trip to increase your steps through the Lobbies this evening, I will not read the whole of the summary. However, I make the point that the UK Government have proactively promoted the binding force of interim measures, advocating that other states, such as Russia, treat them as binding and comply with them. Given the provenance of that advice, I take it—and I hope your Lordships take it—very seriously.

Lord Green of Deddington (CB): My Lords, I hope that the Minister when he speaks in a moment will explain what this is intended to deal with. It is only specific to these circumstances; is it that a certain number of lawyers are making a certain amount of money and he thinks that that is not helpful to the policy that the Government intend to put forward?

Lord Coaker (Lab): My Lords, we support my noble friend Lady Chakrabarti in her defence of the rule of law and interim relief in cases involving the alleged expulsion of people to unsafe places. The Government were happy to support the court's decision not to grant such relief in the current Rwanda cases, but now they want to take away this jurisdiction, forcing more applicants to Strasbourg pending a final UK judicial determination. If the Government are right that Strasbourg interim measures are not binding, Clause 54 is unnecessary. If the European Court of Human Rights is correct that they are binding, our amended Clause 1 should be enough to safeguard international law. With respect to those comments, I urge my noble friend if she is so minded to test the opinion of the House on her Amendment 152, which we would support rather than Amendment 153.

The Parliamentary Under-Secretary of State for Migration and Borders (Lord Murray of Blidworth) (Con): My Lords, the Bill establishes a bespoke claims and appeals process which provides for a person subject to the duty to remove to challenge their removal to a safe third country. The duty to remove will be temporarily suspended while consideration is given to any suspensive claim or appeal resulting from the refusal of that suspensive claim. That is of itself an effective remedy for those subject to the duty to remove, and these measures will ensure that all suspensive claims raised in response to a removal notice under the Bill will receive full judicial scrutiny.

Clause 53 is critical to the success of the Bill in preventing the United Kingdom's domestic courts from granting interim remedies in relation to legal challenges which would prevent or delay the removal of a person who meets the removal conditions under Clause 2. Were other human rights claims and legal challenges to be made, they would be considered after a person has been removed. Clause 53 provides a necessary and effective safeguard against the endless merry-go-round of legal challenges that those with no right to be here use to thwart their removal.

Amendment 152 tabled by the noble Baroness, Lady Chakrabarti, would incentivise people to obtain injunctions or submit judicial reviews to delay or prevent removal, negating the carefully crafted and balanced provisions we have set out in the Bill, which I have just described. We cannot allow that to happen. The amendment would substantially undermine the Government's ability promptly to remove those who enter the UK illegally, and our overall objective of stopping the dangerous small-boat crossings.

Amendment 153 similarly seeks to weaken the Bill by striking out Clause 54, which relates to interim measures of the European Court of Human Rights. Let me be clear: it is not the Government's intention to ignore a Rule 39 interim measure. Indeed, Clause 54 provides a clear framework for a Minister to exercise discretion where a Rule 39 interim measure is indicated. That will mean that a Minister may suspend removal in response to a Rule 39 interim measure but, crucially, is not bound by UK law so to do. This will be dependent on the facts of each case.

As I have said before, the Government take their international obligations very seriously. Nothing in the clause requires the Government to act in breach of international law. I reassure the noble Baroness that reflections within the Strasbourg court are ongoing, and we are closely following the process. We are confident that they will lead to meaningful change.

The inclusion of Clause 54 in the Bill reflects our concerns about the interim measures process. We believe that there needs to be greater transparency and fairness in the process to ensure the proper administration of justice. We cannot allow our ability to control our borders to be undermined by an opaque process which does not give the United Kingdom Government a formal opportunity to make representations or appeal the decision. This process risks derailing our efforts to tackle the people smugglers and stop people from making the dangerous, illegal and unnecessary journeys across the channel.

For the reasons I have set out, I therefore invite the noble Baroness to withdraw her amendment and, if she is minded to test the opinion of the House on Amendment 152 or 153, I strongly urge noble Lords to reject the amendment.

Baroness Chakrabarti (Lab): My Lords, I am so grateful to all noble Lords who have stayed. I say to all noble Lords that the length of debate does not indicate its importance. I am particularly grateful to the Minister for his indication that productive discussions are still in train between His Majesty's Government and the Strasbourg jurisdiction; I take from that a suggestion to reinforce my suspicion that Clause 54 was always a negotiating position to attempt to improve the due process position in relation to interim measures in the Strasbourg court. On that basis, I want to allow the Government more time to proceed with those negotiations before Third Reading.

However, in relation to Clause 53 and my Amendment 152, on depriving His Majesty's domestic judges of the inherent jurisdiction to grant interim relief, that jurisdiction does not come from any government or party statute; it comes from the common law. To deprive His Majesty's judges of the ability to grant interim relief is anathema to our common-law system. With gratitude, again, to all noble Lords who stayed—perhaps even more to those who did not speak than to those who did—I would like to test the opinion of the House.

8.41 pm

Division on Amendment 152

Contents 153; Not-Contents 128.

Amendment 152 agreed.

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8.52 pm

Clause 54: Interim measures of the European Court of Human Rights

Amendment 153 not moved.

Clause 55: Legal aid

Amendment 154

Moved by ***Lord Bellamy***

154: Clause 55, page 58, line 19, at end insert—

"(6) The Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)) is amended in accordance with subsections (7) and (8).

(7) In Article 14 (decisions about provision of funded services), after paragraph (2A) insert—

"(2AA) But paragraph (2A) does not apply to a grant of representation for the purposes of—

(a) proceedings before the Upper Tribunal mentioned in paragraph 2(ic) of Schedule 2 (proceedings under or for the purposes of the Illegal Migration Act 2023),

(b) proceedings before the Special Immigration Appeals Commission under or by virtue of section 2AA of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals in relation to the Illegal Migration Act 2023), or under rules under section 5 of that Act made for the purposes of that section, or

(c) an appeal to the Court of Appeal or the Supreme Court in respect of proceedings mentioned in sub-paragraph (a) or (b)."

(8) In paragraph 2 of Schedule 2 (civil legal services: exceptions to excluded services), after paragraph (ib) insert—

"(ic) proceedings before the Upper Tribunal under any of sections 43 to 48 of the Illegal Migration Act 2023, or under Tribunal Procedure Rules made for the purposes of any of those sections,

(id) proceedings before the Upper Tribunal on an application for judicial review within the meaning of the Illegal Migration Act 2023 (see section 4(6) of that Act), where the application relates to that Act,"

(9) The Civil Legal Services (General) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 195) are amended in accordance with subsections (10) to (14).

(10) In regulation 2 (interpretation), in the definition of "representation (higher courts)", in paragraph (f), after "2(ib)" insert ", (ic) or (id)".

(11) In regulation 31 (applications for advice and assistance)—

(a) in paragraph (1), after "Subject to" insert "paragraph (1A) and",

(b) after paragraph (1), insert—

"(1A) An application for advice and assistance may be made to a supplier by an applicant by telephone where the applicant is being detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer for the purposes of the Illegal Migration Act 2023) or section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of Secretary of State for the purposes of the Illegal Migration Act 2023).", and

(c) in paragraph (3), after "except where" insert "paragraph (1A),"

(12) In regulation 32 (extensions)—

(a) in paragraph (1), for "paragraph (2)" substitute "paragraphs (2) and (2A)", and

(b) after paragraph (2) insert—

"(2A) No extension shall be required under paragraph (1) if the advice and assistance is advice and assistance mentioned in regulation 4(1)(n) of the Financial Regulations (advice and assistance relating to removal notices under the Illegal Migration Act 2023)."

(13) In regulation 41 (applications for certificates)—

(a) in paragraph (2), after "Subject to" insert "paragraph (2A) and",

(b) after paragraph (2), insert—

"(2A) An application for a certificate under this Part may be made to a supplier by an applicant by telephone where the applicant is being detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer for the purposes of the Illegal Migration Act 2023) or section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of Secretary of State for the purposes of the Illegal Migration Act 2023).",

(c) in paragraph (3), after "The applicant shall" insert ", except where paragraph (2A) applies,", and

(d) in paragraph (3)(b), after "met" insert "(where they apply)".

(14) In regulation 43 (determination of applications for certificates)—

(a) in paragraph (1), for "paragraph (2)" substitute "paragraphs (2) and (3)", and

(b) after paragraph (2) insert—

"(3) But paragraphs (1) and (2) do not apply to an application for a certificate in respect of—

(a) proceedings before the Upper Tribunal mentioned in paragraph 2(ic) of Schedule 2 to the Order (proceedings under or for the purposes of the Illegal Migration Act 2023),

(b) proceedings before the Special Immigration Appeals Commission under or by virtue of section 2AA of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals in relation to the Illegal Migration Act 2023), or under rules under section 5 of that Act made for the purposes of that section, or

(c) an appeal to the Court of Appeal or the Supreme Court in respect of proceedings mentioned in sub-paragraph (a) or (b)."

(15) In regulation 4 of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 196) (exceptions from requirement to make a determination in respect of an individual's financial resources)—

(a) in paragraph (1), after sub-paragraph (m) insert—

"(n) advice and assistance provided to an individual who has received a removal notice, in relation to the removal notice, and such advice and assistance—

(i) includes advice and assistance in relation to a suspensive claim relating to the removal notice, and an application under section 45(4) of the Illegal Migration Act 2023 as regards such a claim, but

(ii) does not include advice and assistance in relation to an application for judicial review within the meaning of the Illegal Migration Act 2023 (see section 4(6) of that Act) relating to the removal notice;

(o) representation in respect of—

(i) proceedings before the Upper Tribunal mentioned in paragraph 2(ic) of Schedule 2 to the Order (proceedings under or for the purposes of the Illegal Migration Act 2023),

(ii) proceedings before the Special Immigration Appeals Commission under or by virtue of section 2AA of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals in relation to the Illegal Migration Act 2023), or under rules under section 5 of that Act made for the purposes of that section, or

(iii) an appeal to the Court of Appeal or the Supreme Court in respect of proceedings mentioned in paragraph (i) or (ii)."

(b) in paragraph (3), at the appropriate places insert—

""removal notice" has the meaning given by section 37 of the Illegal Migration Act 2023;"

""suspensive claim" has the meaning given by section 37 of the Illegal Migration Act 2023;""

Member's explanatory statement

This amendment makes provision about legal aid in Northern Ireland for the purposes of the Bill.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, Clause 55 will ensure that individuals who receive a removal notice under the Bill have access to free legal advice. The clause at present applies only to England and Wales. In Committee, the noble Lord, Lord Ponsonby, properly asked what the position is regarding Scotland and Northern Ireland. The Scottish Government advise that legislative provision is not required to ensure persons issued with a removal notice can access free legal advice in Scotland. Legislative changes are required, however, in Northern Ireland. Amendment 154 ensures analogous provision in Northern Ireland to that already applicable to those seeking legal advice in England and Wales. It is simply an extension to Northern Ireland of the provisions of the Bill. That is the content of government Amendment 154. The noble Lord, Lord Bach, has an amendment in this group and I defer to him at this point. I beg to move.

Lord Bach (Lab): My Lords, I will speak to my Amendment 155, which is in the same terms as it was in Committee. I am extremely grateful to the noble Baronesses, Lady Ludford and Lady Prashar, and of course to the noble Lord, Lord Carlile of Berriew, for putting their names to this amendment and adding some lustre to it. I am also grateful for a superb briefing note from Bail for Immigration Detainees, ILPA and the Public Law Project.

In my view, ensuring that those who are detained have legal advice at an early stage is of fundamental importance. Obviously and above all, it is important to the detainees themselves, but it is also important to the reputation of our much-vaunted legal system. I ask the House to think about it for a moment: the proposition that, in our country, any person, whether adult, child, pregnant woman or victim of trafficking, can be deprived of their liberty and, at the same time, of proper legal advice is horrific, unconscionable and unconstitutional.

Clause 55 provides for insufficient access to civil legal services. It is concerned with free legal advice and representation only in relation to removal notices. It makes access contingent upon receipt of a removal notice and does not ensure that the necessary services will be made available shortly after a person has been detained. I remind the House that there is no set

[Lord Bach]

timeframe in the Bill for the Home Secretary to serve a removal notice under Clause 7. It is therefore not unrealistic to suggest that an individual could be left to linger in detention for days and even weeks before a removal notice is served by the Home Secretary and thus before they are able to access legal aid under Clause 55. Accordingly, the Bill does not provide for people trapped in its provisions assurance of access to free civil legal services before a removal notice has been served on them.

Clause 55 also does nothing to address the reality that it is practically impossible for many people to access legal aid under existing entitlements. There are, as I think the House knows, vast numbers of unrepresented individuals seeking asylum and in detention due to the current unsustainability of and lack of capacity within the immigration and asylum legal aid sector.

Our Amendment 155 introduces a new clause—a duty to make legal aid available to detained persons, which would address this issue in England and Wales by supplementing what the Government intend to achieve in their Clause 55. It would place a duty on the Lord Chancellor to make civil legal aid available to detained persons in relation to already in-scope judicial review and immigration matters, and suspensive claims, within 48 hours of their detention. This is crucial, given that the Bill gives the Home Secretary wide powers to detain families indefinitely, to detain children who are alone and to detain vulnerable people such as pregnant women, while also placing a duty on the Home Secretary to remove them, with short timeframes to make suspensive claims with compelling evidence to prevent such removal.

I hardly need to remind this House of Parliament that the provision of legal aid is a key component of ensuring the constitutional right of access to justice—itself inherent in the rule of law. The courts have repeatedly upheld the principle that a failure to provide legal aid can amount to a breach of fundamental rights. Legal aid is essential to ensure that people without means can secure effective access to justice and redress.

So why is this amendment needed? As I think the House knows, legal aid was, in effect, decimated in this area of law by the legal aid cuts of 2013. Most non-asylum immigration matters are excluded, which has damaged the entire immigration and legal aid sector and the ability of everyone, including individuals seeking asylum and those in detention, to access reliable, quality legal aid immigration advice. Immigration law is highly complex and extremely difficult, if not impossible, to navigate without a lawyer.

It is unrealistic to believe that individuals seeking asylum, who have just arrived in the UK and who may be traumatised or vulnerable and who may speak little or no English, can understand our complex laws and make effective representations without professional legal assistance. As stated by Lord Justice Underhill in last week's decision on the Rwanda scheme, cases where decisions are fair and where there has been no access to legal assistance are "likely to be exceptional". I pray that in aid of this amendment. Amendment 155 would help to secure timely access to legal assistance, which is crucial to the fairness of decision-making.

9 pm

The Ministry of Justice has accepted the strict timelines implemented through the IMB, and the anticipated high volume of cases poses a unique challenge, particularly in the light of the challenges provided by the existing caseload and the capacity constraints within the sector. In Committee, we discussed the lack of capacity in this area, and it is absolutely enormous—I could waste the House's time by repeating some of those quite astonishing facts. There are no legal aid solicitors doing immigration work in Lincolnshire, which may cause a bit of a problem at Scampton airbase which is planned to be a place of detention. This is the case not just in Lincolnshire; there are none in Norfolk or, moving south, in Suffolk, or, further south, in Essex—what an astonishing position that is. There are other examples but I am not going to go into them tonight. I am aware that the Government are having a short consultation in order that it may be possible to put up the rates for immigration legal aid lawyers by up to £15. I welcome that, but if the Government really think that that is going to effect change around the issue of our capacity they are clearly wrong. Capacity has worn down over the last few years because of LASPO and its consequences.

Amendment 155 would ensure that a detained person will be able to access civil legal aid services, including legal aid assistance to prepare properly a human rights or asylum claim before their claim is declared inadmissible and they are served with a removal notice. The Bill provides an extremely short timeframe of seven days for an individual to seek and find legal advice and representation and provide sufficient instructions for a representative to submit a suspensive claim with compelling evidence against removal. As a result, the vast number of inadmissible applicants which the Home Secretary will have a duty to remove will simply not be able to find a legal representative to challenge their detention.

That is where I will end my speech in moving this amendment, which goes to an essential principle of English law: that everyone who comes under the auspices of English law should have the right to have legal representation and advice at the earliest possible opportunity. The Bill does not give them that; this amendment does. I beg to move.

Lord Carlile of Berriew (CB): My Lords, it is a pleasure to follow the noble Lord, Lord Bach, who moved this amendment with great skill. I am not going to make a long speech in support of him, because he does not need it. My observation, from refugees and asylum seekers whom I have met in a particular role during the last year, is that many complain that the legal advice they were able to obtain locally, wherever they were placed, was often not accurate, and they had to go through a second round of legal advice.

It is essential that people have access to competent, accurate and correct legal advice, or at least legal advice that might be correct, to enable them to challenge the case made against them. Many of the cohort of people we are talking about are numbed by the experience they have had. They did not expect to be treated as they have been by the United Kingdom. Perhaps, as the Government claim, one might argue that there are

some good reasons for their being treated in that way, but to deprive them of the most basic legal advice will cause offence not only to lawyers in your Lordships' House but to many others.

Baroness Hamwee (LD): My Lords, my noble friend Lady Ludford has put her name to the amendment in the name of the noble Lord, Lord Bach, which he explained very fully, and these Benches support. One often hears that immigration law is too complex for non-lawyers to understand—I have long held the view that it should not be—but, frankly, it is too complex for many lawyers as well. You need to be a specialist, and that is recognised by the system, but one still hears some horror stories.

The realities of legal advice for anyone in detention in the immigration system have long been bleak. There may be advice sessions but they are 30 minutes long, and it takes a long time for the client to be brought to meet the solicitor, which eats into the 30 minutes. Even with the most articulate client, it can take quite a long time to take instructions. I was a practising solicitor for many years and this cohort, as the noble Lord, Lord Carlile, said, consists of individuals whose English may be inadequate. Interpretation is therefore required, which is cumbersome and difficult for everyone. In any event, they have a story that takes support to tell, and that requires a lot in the telling.

Given the relentless speed of the processes under the Bill, this amendment is very necessary. The Government have recognised that legal aid has a place here, given what they have done so far in the Bill and the consultation on the rates. Raising concerns about legal aid became even more relevant with last week's impact assessment, which drew attention to the problems of accessing legal aid and legal aid services, especially outside London and the south-east. We are very happy to support this amendment.

Lord Hacking (Lab): My Lords, I am a Member of this House whose memory of legal aid probably goes back to before others were here. I was called to the Bar in 1963 and took an active part in legal aid, being not only a recipient of legal aid cases but sitting on legal aid committees. I view it as one of the great social achievements of the Labour Government ending in 1951, and it has been a matter of great sadness that its extent and benefit has been so diminished over the years.

We have here a very important need for legal aid. Most if not all of those needing legal aid will not be able to speak English, will have no knowledge of English law and will be left isolated without that assistance. For that reason, I strongly support the amendment of my noble friend Lord Bach—although, most regrettably, he is not putting it to a Division.

Baroness Lawlor (Con): My Lords, I am glad to follow the noble Lord, Lord Hacking. I think the 1949 measure was a good measure following the Rushcliffe report. It had cross-party support then, and legal aid continues to have cross-party support.

I agree in principle with the noble Lord, Lord Bach, that it would be a very good thing for us to be able to revisit the legal aid budget and ensure that many of the cuts, both to scope and to litigants, could be reviewed with a view to being more generous and trying to revisit the consequences of both the 1999 and the 2012 Acts. I am with the noble Lord there.

However, because we have seen such cuts right across the board and a reduction in scope across the board, I have concerns about this particular amendment for these cases unless and until we can grant similar support to many of the cases in this country that are left without support as a result of what has happened over more than 20 years. I know that noble Lords would say that this is a different case, but many of these cases are claims of great merit, but Governments have to make decisions. For my money, I would prefer to have a fair redistribution of the legal aid budget between people who have been cut out of it—many of whom would have been eligible right throughout the 20th century—and other cases that noble Lords have mentioned.

Lord Ponsonby of Shulbrede (Lab): My Lords, I open by thanking the noble and learned Lord, Lord Bellamy, for moving government Amendment 154, which, as he said, includes Northern Ireland for the purposes of this Bill.

Regarding my noble friend Lord Bach's Amendment 155, I agree with every word he has said. He introduced it by saying that legal advice is a fundamental right for the asylum seekers themselves. To address the point the noble Baroness, Lady Lawlor, made, it is about the way we should see ourselves as a country: making sure that people in the most desperate situation can avail themselves of the right to access our laws. The only way of doing that is with appropriate legal aid. Of course, I agree with the noble Lord, Lord Carlile, on the point he made, as well as with the noble Baroness, Lady Hamwee.

Access to high-quality legal aid within 48 hours would increase the effectiveness and efficiency of the immigration and asylum system. With adequate legal aid, people would be better able to make timely claims, increasing efficiency within the Home Office and the justice system. They would know what evidence they needed to produce and understand their prospects of success to enable them to make an informed decision regarding whether and how to proceed with their claim.

Amendment 155 would build on current legal aid arrangements. I understand that a good precedent for this is the facility for people detained at police stations. When a person is taken to a police station and it is decided that there is no criminal element to their case, they are allowed to access an immigration lawyer to obtain immigration advice. The police call the duty solicitor call centre, and there are lawyers on a duty rota to take up the case, provide immigration advice and decide on the merits of the case. A new 48-hour system would involve allocating a solicitor to an individual upon them entering detention.

For these reasons, I support my noble friend Lord Bach and believe that his amendment is a necessary measure to ensure access to justice for those in the immigration and detention system. I urge the Minister—who has particular expertise, it has to be said, in the

[LORD PONSONBY OF SHULBREDE]

field of legal aid in the civil courts—to consider this as favourably as he can. I understand that there is a review under way, but the amendment spoken to by my noble friend Lord Bach goes to the heart of the way that we, as a society, should treat the most vulnerable people when they come to our shores.

9.15 pm

Lord Bellamy (Con): My Lords, clearly, the Government entirely accept that legal advice is fundamentally important in the present context. That is why we introduced Clause 55. The Government are well aware that, if the procedures for obtaining legal advice under the Bill are not appropriate, legal challenge will follow. That is constraint enough to ensure that those procedures are sufficient to ensure the system works as fairly as possible. That is the approach of the ministry and, as I will say in a moment, that is how we are developing procedures to ensure that appropriate legal advice is available, and why the Government, while entirely understanding the points that have been made, respectfully feel that Amendment 155 is not the correct way to achieve the desired result, which is certainly one that is shared by everyone: that there should be appropriate legal advice.

I am grateful to the noble Lord, Lord Hacking, for his comments on the importance of legal advice, and to my noble friend Lady Lawlor for the reservations that she expressed. In the longer run, the whole area of legal advice, not just on immigration, is for review, as the noble Lord, Lord Ponsonby, just said. The Government regard this as being at the heart of a fair justice system.

However, on this particular amendment, we already have established procedures, both at Manston and immigration removal centres, for individuals to access legal advice. I understand that, at Manston, there is scope for unlimited free phone calls to be made. There are notices and other bits of information about how you contact a lawyer: the names are given and the rotas change. Those procedures are there. Similarly, at immigration removal centres there is already a procedure similar to the police station procedure. It is not exactly the same, but there is the detained duty advice scheme, under which solicitors provides immigration advice on a rota system. That will be expanded as necessary. I was sorry to hear the noble Lord, Lord Carlile, say that people have sometimes been misadvised; I hope that will not happen in the future, because the Ministry of Justice is determined that the system to be introduced will be coherent, joined up and, above all, fair. That is what the House and the country would expect.

We are engaging closely with legal aid providers, and we believe that our proposed capacity-boosting measures will enable us to attract sufficient providers. As the noble Lord, Lord Bach, observed, we are out to consultation on increasing fees for this kind of immigration work. An ongoing Legal Aid Agency tender has been out since March, I think, which I understand has had an encouraging response so far. We are seeing an uptick in providers coming forward. Those procedures remain to be completed and it remains to be seen exactly how that works out, but that is at least encouraging. Other key areas of focus include the provision of remote advice—that might well go some way towards addressing the problems in Lincolnshire, Norwich or wherever it happens to be, but I am given to understand that there will be on-site advice at immigration removal centres—paying for travel times for providers, and various options for signposting and connecting up individuals to ensure that they actually receive appropriate legal advice.

The Ministry of Justice is working very closely with the Home Office on the detail of this. It is a ministerial responsibility to follow closely and ensure that these measures cut the mustard, if I may use that expression, and come up to proof—to mix my metaphors somewhat dramatically. In that regard, and for those reasons, I invite the House to accept that Amendment 155 is not necessary because we are thoroughly on the case and our objective, which the noble Lord, Lord Bach, rightly drew attention to, is shared.

Amendment 154 agreed.

Amendment 155

Tabled by ***Lord Bach***

155: After Clause 55, insert the following new Clause—

"Duty to make legal aid available to certain detained persons

(1) The Lord Chancellor must secure that civil legal services in relation to—

(a) a suspensive claim within the meaning of section 37(2) of this Act, and

(b) any of the matters set out in paragraphs 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 31A, 31C, 32 or 32A of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012

are made available to any person who is detained under a relevant detention power within 48 hours of the day on which they are first detained under that power.

(2) The Lord Chancellor may make such arrangements as they consider necessary for the performance of their duty under subsection (1).

(3) The duty under subsection (1) is subject to—

(a) section 11 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (qualifying for civil legal aid) and any regulations made under that section, and

(b) section 21 of that Act (financial resources) and any regulations made under that section.

(4) In this section—

"civil legal services" has the same meaning as in section 8 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

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

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

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

(c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State), or

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

Member's explanatory statement

This amendment places a duty on the Lord Chancellor to make civil legal aid available to certain detained persons in relation to judicial review and immigration matters within 48 hours of their detention.

Lord Bach (Lab): My Lords, as far as Amendment 155 is concerned, I thank all noble Lords who have spoken in this fairly short debate. The person who took much the longest was me, and I am not going to make any apology for that because this is an important subject in the context of the Bill.

Still, I thank everyone for their comments, not least the Minister himself, who I personally believe is quite sympathetic to the ideas put forward in this debate. I do not want to embarrass him unduly by going on, but he has been very helpful in discussions outside the Chamber. His contribution today was a little harsher than I had hoped, but we will see what the consultation does. I must say that much more active work will be needed by the department, perhaps over a period of time, before we get to a satisfactory position.

On parallels with other, existing schemes, it is important to realise that, as I understand it, many of them involve half-hour telephone conversations. It will not surprise the House to hear that half-hour telephone conversations are not satisfactory for people who do not speak good English and are perhaps extremely vulnerable at the time. Such conversations are not really enough and, as I say, many of them are on the phone rather than face to face.

Something the Government will have to think about is that the new establishments that we hear will house many of those who are detained, if and when the Bill becomes law, will be quite strange places, such as barges and places like Scampton. Getting legal advice into those places—and face to face is pretty important here—will cause quite a lot of problems for the Government. It will involve extra resource, as I think the Minister understands.

Tempted as I would normally be to test the opinion of the House, I appreciate that we are here pretty late after a full day, and I do not think the House would thank me for dividing it at this stage. That is not to say for a moment that the issues we have been debating for the last few minutes are not crucial to what sort of country we are. Detaining individuals—the state depriving people of their liberty—is an issue that this House has always taken incredibly seriously. Even though I am not going to press the amendment, and while I will not say that I am warning the Minister, he will not be surprised to hear me say that we will be coming back to this issue and watching very closely over the next few months to see how it develops.

Consideration on Report adjourned.

Oaths and Affirmations

9.24 pm

Baroness Quin made the solemn affirmation.

House adjourned at 9.24 pm.

Grand Committee

Monday 3 July 2023

4.04 pm

Arrangement of Business

Announcement

The Deputy Chairman of Committees (Lord Ashton of Hyde) (Con): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Non-Domestic Rating Bill

Committee

4.05 pm

Clause 1: Local rating: liability and mandatory reliefs for occupied hereditaments

Amendment 1

Moved by ***Lord Ravensdale***

1: Clause 1, page 2, line 25, at end insert—

"(za) the chargeable day falls after the day on which qualifying energy efficiency improvements are completed,"

Member's explanatory statement

This amendment, and others to Clause 1 in the name of Lord Ravensdale, would allow qualifying energy efficiency improvements a time-unlimited level of improvement rate relief.

Lord Ravensdale (CB): My Lords, I will speak to my Amendments 1, 3 and 4. I apologise to noble Lords for not being present for the opening speeches of Second Reading and therefore being unable to make my points then. However, I was present for the rest of the debate and wrote to the Minister with the points I would have made, so I hope that I may be forgiven. I declare my interests as a project director for Atkins and as a director of Peers for the Planet. I certainly support the aims of the Bill and the measures contained within it, which will support businesses and high streets across our country and the economy.

My amendments in this group are very straightforward. They relate to the application of improvement relief. I listened with great interest at Second Reading to the remarks on this topic from noble Lords and the Minister, who said:

"The Government consider that a 12-month relief will allow time for the benefits of the property investments to flow through into businesses. We will keep this under review".—[*Official Report*, 19/6/23; cols. 83-84.]

Although the 12-month relief is very welcome, there is a strong case for the Government to remove such constraints from a specific class of improvement—energy-efficiency improvements. I will explain why.

The Government have already made the great move of exempting renewable energy generation and storage from rateable value through regulations introduced in 2022. However, energy efficiency does not receive a matching exemption, despite the efficacy of energy-efficiency measures in increasing the energy security of the UK and reducing carbon emissions, not to mention in reducing costs for businesses and supporting economic growth. Energy efficiency has been raised many times recently in your Lordships' House, so I will not bore the Minister and other noble Lords with an extended analysis of why we need to do more in this area.

As to the effect of the Bill as written, we know that all but the simplest energy-efficiency measures have longer payback periods, so it is likely that a 12-month exemption will continue to disincentivise improvements. To be adopted by business, energy-efficiency measures must make clear financial sense and have a low net cost. As a simple illustration, it is unlikely that a household would contemplate insulating their home if there was a risk that the savings would be outweighed by the introduction of a higher council tax band after only a year of relief.

My amendments seek simply to align energy-efficiency measures more closely with the existing reliefs for renewable energy generation and storage so that we have a coherent approach in this area. They represent a great opportunity for the Government to help increase investment in energy-efficiency improvements across business and to contribute to critical national goals in energy security and net zero, as well as lowering bills for businesses at a time when this is needed more than ever. Fatih Birol of the International Energy Agency warned recently that we may see another surge in gas prices this winter. The amendments would extend improvement rate relief for energy efficiency to 1 April 2029; the Government could then decide whether to extend any reliefs beyond then. I beg to move Amendment 1.

The Earl of Lytton (CB): My Lords, I have two amendments in this group, to which the noble and learned Lord, Lord Etherton, who cannot be with us because he is arguing his case across the way in the Chamber, has added his name. I declare that I am a member of the Rating Surveyors' Association, which, together with Luke Wilcox, barrister of Landmark Chambers, has been helping me formulate my views on these amendments.

The purpose of the two amendments in my name in this group, Amendments 2 and 6, is to extend the application of improvement relief, so, to some extent, they follow the lead of the noble Lord, Lord Ravensdale. Without discussing it with him, I opted for extending the application to works carried out within a five-year period. The amendments follow up on the comments made at Second Reading.

The expected lifespan of the many types of improvement may extend to decades. If, as one supposes, the relief is intended to incentivise improvements—not just mandatory compliance works but those which add materially to utility, convenience and annual value—it needs to be an altogether bigger quantum; otherwise, as matters stand at the moment, we will be in a situation where, maybe 13 months after the work is carried out, the rateable value will increase by some 50% of the additional annual value of the works. This may not be so much for the purposes of adding value as of preserving value in the face of decline, so this dynamic needs to be whittled down.

[The Earl of Lytton]

We have issues with the definition of "relief" and whether it will count for anything at all in practice, and of "improvement", of which other noble Lords may seek to define certain aspects more clearly—I agree with that. Unfortunately, the Government's protestations about the sums they claim to have earmarked for this relief do not disguise the fact that the design of these things is often such that none of it is ever called on in practice. I will leave that bit of cynicism to one side, but if this relief is to mean anything beyond a fig leaf, it has to be large enough in quantum and long enough in duration to be commercially noticeable and relevant. Some types of improvement may take a considerable time to translate into a business benefit.

Although I understand, for instance, not including developers in the benefits of this measure, I maintain that the net effect of excluding any otherwise qualifying works carried out by landlords for the tenant, for which there may be a higher rent payable, is based mainly on groupthink rather than objective balance. That is the reason behind Amendments 2 and 6.

Baroness Hayman of Ullock (Lab): My Lords, I have Amendment 5 in this group. Its purpose is to probe the expiration date for heat network relief. For example, why have the Government come up with 2030 in this respect? As I said at Second Reading, we very much welcome the introduction of heat network relief but, as I asked then, as the exemption of renewable energy plant machinery is permanent, why has a similar approach not been taken to heat networks?

Also, the heat network relief applies only to what are described as "occupied" heat networks, so it would be helpful to have some clarification of the definition of "occupied". For example, if the networks apply as a mix of properties, some of which are traditionally occupied and others are unoccupied, is that still considered to be an occupied property, or does the whole property have to be occupied?

More broadly, the aims of this amendment are also to do with the fact that we believe that the reform of business rates as a whole should have the underlying principle and aim to encourage green improvements to business properties, if, as the noble Lord, Lord Ravensdale, talked about, the targets are around net zero and emissions. We feel that all the proposals should have as their aim—at their centre—ways of meeting those targets.

I thank the noble Lord, Lord Ravensdale, for his introduction of this group of amendments. His amendments are very sensible, and I hope that the Minister will look at them carefully. I also take this opportunity to thank the Minister for her letter to all Peers following Second Reading, in which she gave quite detailed clarification of a number of issues, which I am sure we will discuss further today. I put on record that that was extremely helpful.

As for the other amendments in the group, clearly, improvement relief has been designed so that no business will face higher business rate bills for 12 months following qualifying improvements. We also heard from the Minister in her letter and at Second Reading that the Government consider 12 months sufficient for the benefits to flow through but, clearly, noble Lords who have spoken previously have reservations about this—in particular the noble Earl, Lord Lytton.

4.15 pm

I was pleased to see in the Minister's letter that the scheme will be reviewed in 2028 but, having heard the concerns raised, perhaps that date could be revisited. Are the Government completely confident in their rationale that within 12 months that will be the case?

The noble Lord, Lord Ravensdale, said that energy-efficiency measures should be considered differently from other measures, which comes back to what I said about meeting our national target by, for example, treating energy-efficiency improvements in the same way as renewable energy installations and exempting them from rateable value entirely. Excluding them from business rates calculations would incentivise business to make those improvements.

I also noted in the helpful briefing provided by the Chartered Institute of Taxation that it is asking why the new relief for improvements will not be introduced until 2024. Its concern is that leaving it until then will incentivise a delay in undertaking improvements. I will be interested in the Minister's response on that.

Baroness Pinnock (LD): My Lords, at the outset of the debate I remind the Committee that I have relevant interests as a councillor and as a vice-president of the Local Government Association.

This group of amendments is significant because it focuses our attention on energy efficiency and on how the business rates system could be adjusted to encourage more businesses to improve the energy efficiency of their premises. Amendment 1, in the name of the noble Lord, Lord Ravensdale, is important in that regard. As he said, an earlier Bill on non-domestic rating focused on relief for energy generation and storage, but not energy efficiency. Energy efficiency is the non-glamorous side of getting to net zero. It is about improving the general energy efficiency of buildings through loft and cavity wall insulation, putting in more efficient heating systems and so on.

I have a high regard for Amendment 1 for the reason that the noble Lord outlined, which is that the payback period for energy-efficiency improvements can be very long. Therefore, giving just one year's relief is a drop in the ocean. If we want to encourage businesses to make these improvements and to invest in their property by improving their energy efficiency, there must be relief on business rates. This is a positive amendment and, if the noble Lord, Lord Ravensdale, wants to pursue it on Report, I am sure that we will give it positive consideration.

The other amendments in this group, in the name of the noble Earl, Lord Lytton, suggest five years of relief. That is another way forward. I think that we will have to debate five years of relief or unlimited relief. If we are really concerned about getting to net zero, there has to be a real incentive to do so.

I co-signed Amendment 5, in the name of the noble Baroness, Lady Hayman of Ullock, about heat networks because I thought that it was important in itself. The

Government have a scheme—the heat network efficiency scheme—which gives grant funding to communal heat networks or district heating schemes. This amendment matches well with that. If the Government are giving with the one hand but taking with the other, that seems a negative approach to encouraging heat network schemes. That is why I very much support Amendment 5 in particular.

Maybe when we get to Report the amendment will not say "2050" but will be unlimited, matching the other amendments in this group, which are making a positive push towards getting businesses, via the relief through the business rates system, to become more energy efficient. These are all good, probing amendments. I know that the Minister is supportive of energy-efficiency schemes and moving towards net zero, so I look forward to her positive response to this group of amendments.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, I start by welcoming our new Deputy Chairman of Committees on his first outing today. I think that I am allowed to say that—anyway, I have said it.

These amendments from the noble Lord, Lord Ravensdale, the noble Earl, Lord Lytton, the noble and learned Lord, Lord Etherton, and the noble Baronesses, Lady Hayman and Lady Pinnock, concern the two new business rate reliefs introduced by the Bill: the new improvement relief and a relief for low-carbon heat networks.

First, on the improvement relief, during the review of business rates a key ask from ratepayers was support for those businesses looking to improve their property. Clause 1 delivers on that ask by introducing the improvement relief. The noble Earl, Lord Lytton, asked about the definitions of "improvement" and "relief". These definitions are in the draft regulations, on which we are consulting. We will consider those matters following consultation.

Clause 1 will ensure that from 1 April 2024 no business will face higher business rates bills as a result of qualifying improvements it makes to a property it occupies, in the 12 months following those improvements. When a ratepayer makes improvements to the rateable part of their property, that is likely to increase its rateable value and, therefore, the rates bill. To deliver the relief, Clause 1 will ensure that, where that happens and the qualifying conditions for improvement relief have been met, that increase in the rateable value will be delayed for 12 months. Clause 3 does the same for the central rating list.

As is common for business rate reliefs, the detailed rules will be in regulations made under the powers in these clauses. My department has published those regulations in draft so that the House may see during the passage of the Bill how we intend to use these powers.

The amendments we are considering in relation to improvement relief, from the noble Lord, Lord Ravensdale, the noble Earl, Lord Lytton, and the noble and learned Lord, Lord Etherton, seek to extend the period of relief from one year to five years and to allow unlimited relief for energy-efficiency improvements.

Of course, I understand the concerns we have heard and why some consider that the relief should be extended. It is a question we face when we come to consider and review all the reliefs in the business rates system. We recognise the importance of energy-efficiency improvements to properties. We have already ensured that eligible plant and machinery used in onsite renewable energy generation and storage, such as rooftop solar panels, wind turbines and battery storage, are exempt from business rates from 1 April 2022 until 31 March 2035. Onsite storage used with electric vehicle charging points is also exempt. We have done this using existing powers.

However, as with all tax breaks, we must balance the need for support with the need to fund the vital public services that those taxes support. In the case of improvement relief, we considered these matters at length during our review and, following extensive engagement with business groups, settled on a 12-month relief.

Under the current system, as one would expect for a tax based on the value of property, businesses may see an immediate increase in their rates bill for improvements they make to their property, where those improvements increase the value of the property, but they may see a lag in the return or income that flows from that investment.

4.25 pm

Sitting suspended for a Division in the House.

4.33 pm

Baroness Scott of Bybrook (Con): My Lords, I will continue. The 12-month relief will provide a breathing space for the investment to start to generate returns before business rates have to be paid. I know that some feel that 12 months is not long enough to incentivise the types of major refurbishment and improvement often made to properties by landlords and developers. However, as I explained to the House at Second Reading, this relief is designed to help occupiers make improvements to their existing premises rather than subsidising general commercial property development.

The noble Baroness, Lady Hayman of Ullock, asked what "occupied" meant. We already have a current discretionary heat network scheme that we have worked up with full guidance in partnership with the heat network sector and local government. That guidance is already published. Once the Bill receives Royal Assent, we intend to translate that guidance into regulations and to make those in good time to ensure a seamless transition between the current discretionary scheme and the new mandatory scheme. I suggest that noble Lords look now at the guidance as it will make it clear what will go forward. In the meantime, we will work with the heat network sector on the regulations in case they need any tweaking.

Nevertheless, as this is a new relief, it is right that the Government evaluate whether it is working and delivers value for money. Therefore, the Bill as currently drafted includes powers to extend the duration of the improvement relief and in 2028 the Government will review the scheme. That will be the appropriate time to consider whether to continue with the scheme and

[Baroness Scott of Bybrook]
how effectively the relief is operating. As part of that review, we will consider whether 12 months remains the correct duration for the relief. We have, however, allowed for a longer period of relief for low-carbon heat networks, given the particular role that they play in reducing our dependence on natural gas. That relief runs until 2035. Amendment 5, from the noble Baronesses, Lady Hayman and Lady Pinnock, would extend that to 2050. As with improvement relief, we have to balance the need for support with maintaining the services funded from the tax, as I have said. The end date in the Bill aligns with our ambition to phase out new natural gas boilers by 2035. By that date, new low-carbon heat networks will no longer have to compete with natural gas alternatives. Under those circumstances, we hope that the relief will no longer be necessary and, therefore, 2035 will be the right time to end the relief. However, as with the improvement relief, we will keep this under review and the Bill includes powers for us to extend the 2035 date, if it is necessary at the time.

I hope I have given noble Lords the explanations and assurances that they were seeking and that the noble Lord is able to consider withdrawing his amendment.

The Earl of Lytton (CB): The Minister mentioned regulations following Royal Assent and I am happy with that, but could she confirm that this will have a consultation process attached to it? She also referred to something that I interpreted as a post-legislative review. What is the framework for that in this instance?

Baroness Scott of Bybrook (Con): On the regulations, we are consulting at the moment and that will be discussed afterwards. If noble Lords want to put anything in, I suggest they look on GOV.UK. I shall sit down so that the noble Earl can ask his second question because I did not quite pick it up.

The Earl of Lytton (CB): It was about the post-legislative review and its framework, in so far as it would apply to the workings of the Bill once it gets Royal Assent.

Baroness Scott of Bybrook (Con): As far as I know, we do not have a framework yet, but as soon as we have—I assume it will go out to some sort of consultation—I shall make sure that noble Lords are aware of when it is issued.

Lord Ravensdale (CB): My Lords, the noble Earl, Lord Lytton, made a compelling argument for a general extension of improvement relief, as did the noble Baronesses, Lady Pinnock and Lady Hayman, for extending heat network relief. For me, this is all about joining the dots across the legislation, so that we have a coherent picture. As the Minister said, we already have a permanent exemption for renewable energy and storage. All these factors feed into our overall strategic targets, so we need a coherent picture across the legislation. The Minister rightly talked about fiscal responsibility and the need to bear it in mind.

The other side of the picture, to counter that, are all the benefits to increasing private investment—in the case of energy efficiency, lower bills—and the benefits from overall economic growth that would flow from that. I look forward to further discussions with the Minister leading up to Report, but for now I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendments 2 to 5 not moved.

Clause 1 agreed.

Clause 2 agreed.

Clause 3: Central rating: liability and mandatory reliefs

Amendment 6 not moved.

Clause 3 agreed.

Clause 4 agreed.

Clause 5: Frequency with which lists are compiled

Amendment 7

Moved by ***Baroness Pinnock***

7: Clause 5, page 16, line 4, leave out “third” and insert “second”

Member’s explanatory statement

This amendment would require central non-domestic rating lists to be compiled every two years.

Baroness Pinnock (LD): My Lords, my noble friend Lord Shipley and I have Amendments 7, 9 and 11 in this group, all of which seek to achieve the same end; namely, that the revaluation period be reduced to two years. The Minister and the Bill team have been very generous with their time and that has enabled a discussion of the time gap between revaluations. The Government have decided on a three-year gap. We are suggesting that a shorter gap may enable a valuation that more closely reflects business confidence and thus rental values.

There is a revaluation this year, which will be based on rental values in 2021. Under the Government’s proposal, the next revaluation will be in 2026 and based, therefore, on rental values in 2024. In the Government’s own business rate review of 2020, respondents wanted a shorter gap between the assessment of revaluations and implementation. Hence the amendments to Clause 5, which reduce the three-year gap to two years, as this will result in a closer alignment between business confidence and the revaluation. Businesses, as we are all very aware, are facing considerable challenges as a result of factors well outside their control. The significant fluctuation in economic outlook, reflected, for instance, in the level of inflation and the rise in interest rates, creates uncertainty for businesses. A narrower gap between revaluations is one step that will help businesses.

In our discussions with the Minister, it became clear that there are no administrative barriers to a two-year gap. Indeed, the Netherlands has for many

years managed a similar system with annual revaluations. Other amendments in this group are designed to achieve the same outcome and come from noble Lords who have considerable experience in these matters. The noble Earl, Lord Lytton, the noble and learned Lord, Lord Etherton, and the noble Lord, Lord Thurlow, all have considerable expertise and knowledge in practice and have picked up the same issue of the period between revaluations.

It seems to me, an amateur in these things, having read the reports from businesses asking for a shorter period between revaluations, that the Government should go back and go for two-yearly revaluations. It would be better for everybody. If we have, as the Government say they have, a priority to support businesses and give them greater certainty and confidence in the system, I am sure the Minister will again respond positively to this set of amendments. I beg to move.

4.45 pm

The Earl of Lytton (CB): My Lords, I have four amendments in this group, of which Amendments 8, 10 and 13 relate to the matter explained by the noble Baroness, Lady Pinnock. Amendment 14 is a little different and to do with downward-only transition.

Before I go any further, I should have thanked the Minister earlier for her drop-in sessions and her willingness to engage on the Bill. To some extent, it is a joint venture between business, professions and the Government in trying to wrestle with the issues of local government revenues. I understand that.

The purpose of Amendments 8, 10 and 13 is to create an ability for the Secretary of State to adopt a shorter cycle, be it of one year or two years, but they are not prescriptive as to what that might be. That is simply because, having considered the situation and how things have bedded in, the Government should at least have the ability to do so without then seeking a legislative slot later. Although it is counterintuitive to suggest anything that might smack of a Henry VIII clause, this is a sort of Henry VIII clause that I think might be useful in this particular instance.

I pick up something that the Minister said at Second Reading, which the noble Baroness, Lady Pinnock, mentioned, namely the potential instability of more frequent revaluations. However, this does not seem to be a problem in Hong Kong or Scotland; why should it be here? The noble Baroness, Lady Pinnock, alluded to my next point, which is that the stability of the system is within the gift of the Government in terms of their wider policies. I would argue that it is the level of business rates—levied at around 50p in the pound at the assessed rateable value—that is itself the harbinger and cause of a degree of instability. Professionals and businesses just need to feel that there is a better commitment—a more bankable expression of intent—about this. That is why these amendments would serve to allow the shortening of the revaluation gap and, of course, its attendant antecedent date.

I now turn to Amendment 14, which, had I spotted it before, I might have disaggregated from this group because it relates to downward-only transition. Although the Minister made some hopeful noises at Second Reading, I have not yet persuaded her to signpost the permanence of what is otherwise a very welcome item in this Bill; namely, the removal for the next revaluation of downward transition. It always seemed to me invidious that those whose rateable values were reduced should see the benefit only by such minimal and curmudgeonly means as to deprive them of the effect of a significant reduction, not just for many years but, sometimes, for many revaluations. Now that the principle is established that the transition no longer has to equal and offset the transitional phasing of increases by those who should be paying, it is time to confine this rather dishonourable measure to oblivion, if I may so suggest.

Let us not forget that, for every measure of palpable unfairness, perceived or actual, in the business rates, there will be an unknown number of potential entrepreneurs who simply will not lay themselves open to such practices because they see the system as unfair and operating unfairly against them. To that extent, the system is not as elastic an economic function as may be supposed. That is the background to my amendments.

Lord Thurlow (CB): I take a slightly different position. I support these amendments, but I want to introduce a brief note of caution. The case for a reduction in the frequency of updating rateable values has been extremely well made, but I think experts should have a voice in the proposal. I think we should wait until the three-year review process has bedded in and all interested parties should then be free to comment, before reducing that interval further from three to two years, or even one year. Clearly, the VOA has a central role—the most important role—but ordinary ratepayers have a role too. It is possible that an annual or biannual revaluation will become unworkable. That is unlikely with digitisation and the wider use of technology, but any period longer than one year between revaluations is, by definition, quickly out of date. We saw that in high relief with volatile rental markets during and following Covid.

My amendment suggests that the Government listen to the view of the VOA, of course, but also to the RICS, the Rating Surveyors' Association and the Institute of Revenues Rating and Valuation, together with other accredited advisory groups, before making a decision on these further reductions. I ask the Government to write into the Bill that they will listen to the voices of these experts before further reductions are agreed to.

Lord Shipley (LD): My name appears on three of the amendments in this group. I think that the case made by the noble Lord, Lord Thurlow, is very strong. We have to be certain. I believe a reduction from three years to two years—and, in an ideal world, to one year—would be the right thing to do.

I should state for the Committee stage, however long that lasts, that I am a vice-president of the Local Government Association.

I am convinced that currently revaluations are too infrequent. The Government have accepted that case. We are going to three years, and that is indeed better, but to reduce appeals and to ensure a fairer system requires two years or fewer. Like my noble friend Lady Pinnock, I will be very interested to know why we cannot draw on the comparator of the Netherlands since it does a revaluation every year.

[Lord Shipley]

There are clearly advantages to more frequent revaluations. We will have fewer appeals because the valuation would be more accurate. It would be fairer to businesses and reduce complaints about the system. I read very carefully the letter the Minister wrote after Second Reading, but it is not clear to me that there are any administrative barriers to moving from three years to two years.

We support Amendments 8 and 10, which suggest that the Government introduce a change to two-year revaluation or to one-year revaluation by order, as long as the affirmative procedure is used. As I said a moment ago, I think the points made by the noble Lord, Lord Thurlow, matter. I hope the Government will pay particular attention to Amendment 12 because it would enable us to be certain that it would not be a mistake to move to two years. We are sufficiently open to say that we want to go to two years and would like to go to one year, but we are very happy to build in a timescale which enables that to happen securely.

Baroness Hayman of Ullock (Lab): My Lords, I thank the noble Baroness, Lady Pinnock, for introducing this group with Amendment 7, which seeks to change the Bill so that lists must be produced every two years instead of three. Today's discussion has demonstrated that noble Lords think that this needs to be revisited and that perhaps three years is too long.

I am quite interested in Amendment 9 in the name of the noble Earl, Lord Lytton, which would allow SIs to be introduced to change it to one or two years. Bringing in flexibility to adopt a shorter cycle without that kind of prescription is a really interesting idea and approach. In principle, we would support that; my only concern is that the SI procedure has not exactly gone entirely smoothly in recent years. To get our full support to move in that direction, we would need to ensure that SIs are managed better than they have been recently.

The noble Baroness, Lady Pinnock, made some important points about the need for business confidence regarding valuations. That is incredibly important, particularly given the uncertainty resulting from inflation, various costs—of energy, for example—going through the roof, the challenges following the pandemic, the business rate holidays that have moved or not moved, and the differences resulting from where in the country you may be. None of that helps with certainty for businesses, particularly those that have retail in different parts of the country.

Another really good point was made about the fact that a small but perfect group is taking part in these discussions. Here we have noble Lords with real and practical experience and knowledge, which I hope will be helpful as we move through Committee.

The Chartered Institute of Taxation has agreed that moving initially to three-year revaluations would provide a balance between the administrative costs and the need for regular revaluation to reflect the economic conditions of business. But it also said that, given the rapidity of changes in business and shopping practices, the Government should consider a phased approach to achieving more frequent revaluations, and that this should remain under evaluation. Given the different amendments we have today and the discussions that we have had, will the Minister consider taking back to her department the introduction of a phased approach? I know that in the letter to noble Lords following Second Reading, she said that the Government will

"carefully consider the case for even greater frequency of revaluations once the new system changes have bedded in".

That brings us to the point made by the noble Lord, Lord Thurlow, who suggested that waiting for that three-year cycle to bed in might be very helpful. He made the point that we need to listen to the experts and advisory groups and make sure that we get this right, because anything over two years goes out of date very quickly. The Labour Party position is that we should have more frequent valuations. We have talked about them being annual, but of course this has to be right, and it has to work for business.

Finally, on Amendment 14, tabled by the noble Earl, Lord Lytton, on the abolition of downward caps, it is concerning that the downward caps can prevent savings being passed on to businesses and could mean that they unnecessarily pay more in business rates. It is an important amendment, and I would be interested to hear what reassurances the Minister can give the noble Earl.

Baroness Scott of Bybrook (Con): My Lords, this group of amendments takes us to the heart of the Bill; namely, our commitment to modernise the business rates system through more frequent revaluations. Amendments 7 to 13, from the noble Baroness, Lady Pinnock, the noble Lords, Lord Shipley and Lord Thurlow, the noble Earl, Lord Lytton, and the noble and learned Lord, Lord Etherton, are concerned with the frequency of revaluations. They provide for either the revaluation cycle to move to every two years or for the Government to adopt a two-year cycle by order. The Government fully understand the desire to keep business rates as accurate and responsive as possible. That is why the frequency of revaluations was a key part of our review.

Regular revaluations update rateable values, and so rates bills, to reflect changes in the property market. During the business rates review, we heard from businesses that they overwhelmingly favoured more frequent revaluations. Interestingly, a majority of respondents to the review supported a three-year revaluation cycle. The noble Earl, Lord Lytton, mentioned countries that had annual revaluations, but it is not straightforward or accurate to simply compare our revaluation cycles with places such as the Netherlands. Evidently, a single property tax there covers both residential and commercial properties, so it is a very different system from the one in this country. We also considered annual revaluations, but some stakeholders raised concerns about an annual cycle, such as the increased volatility of bills and potential impacts on valuation accuracy. We therefore concluded that we should move to a three-year cycle of revaluations, and the Bill provides for that, with the next one to take place on 1 April 2026.

5 pm

As I said at Second Reading, we can consider further increasing the frequency of revaluations in the future. We would need to—and always do—consult

with ratepayers and local government about whether they would like this. But I assure the noble Earl, Lord Lytton, and the noble Lord, Lord Thurlow, that we would also ask our other stakeholders, which they mentioned. We would need to ensure that more frequent revaluations could be delivered—the noble Lord, Lord Thurlow, is absolutely right: we want to make sure that the system works. Currently, we do not believe that this is possible without significant changes to how ratepayers engage with the VOA, including the VOA duty under Clause 13. So we would need to consider this once those reforms are all in place.

I understand concerns that, were we to decide to move to a two-yearly or even an annual cycle, we would require primary legislation. However, we do not think that this is a good reason to take a power in this case. The date of the revaluation is a very significant matter for all occupiers of business properties, and it has always been set by Parliament, not delegated into a power, going back to the General Rate Act 1967. Such a power would therefore be significant and unprecedented, and it would not be appropriate here. The Government have always shown that, when important changes to the rating system are needed, they will bring forward the necessary primary legislation. They have done that here, as they have with previous Bills in this and previous Parliaments. We will continue to do so in the future.

Amendment 14, tabled by the noble Earl, Lord Lytton, and the noble and learned Lord, Lord Etherton, seeks assurances that we will end the practice of downward caps—the capping of reductions in bills to fund the transitional relief scheme. I thought I had given assurances on this at Second Reading, but I am happy to do so again. Our policy is clear: we are abolishing downward transition. That is now in *Hansard*. Business groups raised this with us as an issue of real concern, and, at the Autumn Statement last year, the Government announced that we would propose legislation to permanently remove the requirement for revenue neutrality from transitional relief, enabling us to permanently scrap downward transition.

The Bill does just that: we are removing the constraint that has required us to impose downward transition, and we are putting in place an Exchequer-funded scheme for the current revaluation. We will use that freedom to permanently deliver all future transitional relief schemes without using downward caps. The detail for the transitional arrangements is set out in regulations rather than in the Act, but those regulations are themselves subject to parliamentary scrutiny and approval. I hope I have given noble Lords some reassurance both that we can return to the question of more frequent revaluations and that we are now abolishing downward transition.

The Earl of Lytton (CB): I am delighted about what the Minister has just said. I thank her for that and apologise for making her say it twice, if I did. It is my understanding that this is now a permanent abolition of downward relief, which is extremely welcome.

Baroness Pinnock (LD): My Lords, I thank the Minister for her response. As she rightly said, this is at the heart of the changes being introduced in the Bill. I thank her for recognising that there could indeed be a further review to reduce the gap between revaluations. However, although I may have misheard her, I thought that the Minister said that the review conducted by the Treasury was—

5.05 pm

Sitting suspended for a Division in the House.

5.15 pm

Baroness Pinnock (LD): I shall try to pick up from where I left off. I may or may not have heard the Minister aright so this is just to check. The very good Library briefing on the Bill references the Treasury review into business rates. I shall refer to the Library briefing, then the Minister can say whether or not I have misunderstood. It says:

> "On the longer-term proposals, most respondents stated that … revaluations should happen more often"—

we agree with that. But then it says that

> "the gap between when the revaluations were assessed and when they came into force should be shorter than the current two years",

which was one of the points that I was trying to make.

I may have misheard the Minister—if I have, I apologise—but the point that the review was making was to say yes to a shorter gap than five years, and the Government have pitched on to three. At the same time, the assessment year should be shorter than the two years that it currently is—that is what I think the review was saying, and I was trying to say that part of the argument for reducing the gap between the assessment year and the revaluation year is to make it narrower.

Baroness Scott of Bybrook (Con): The response was three years, because of the reasons that I put forward—but, yes, we have aspirations to squeeze that to two years. That is the issue that we are discussing, and it is absolutely right that we are trying to do that. It is where we would like to get to, but it will take the changes that we are making to the Valuation Office Agency to do that—and then there is the digital aspect, and things like that, which we have already talked about.

Baroness Pinnock (LD): I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Amendments 8 to 13 not moved.

Clause 5 agreed.

Clause 6: Transitional relief

Amendment 14 not moved.

Clause 6 agreed.

Clauses 7 to 9 agreed.

Clause 10: Disclosure of valuation information to ratepayers

Amendment 15

Moved by ***Lord Thurlow***

15: Clause 10, page 19, leave out lines 4 and 5 and insert—

"(2) V must disclose the information to P without delay if requested by P."

Member's explanatory statement

This adds an obligation on the Valuation Office Agency to reveal their rental comparables/evidence used in arriving at a Rateable Value when challenged in the interests of transparency. This may satisfy ratepayer concerns at fairness early in the process and reduce the numbers resorting to appeal.

Lord Thurlow (CB): I declare my interest as a former chartered surveyor. I should have done so earlier, and I apologise. I, too, join in the chorus of thanks to the Minister and her Bill team for the help and meetings a week ago. I also thank the noble and learned Lord, Lord Etherton, who is absent, for adding his name to my amendments in this group. I am sorry that he is not here to add his voice. This group of amendments is focused on the operation of the VOA and rooted in the desire for transparency for the ratepayer. It is a matter of simple public interest.

The current arrangements require registration for the check, challenge, appeal process before the VOA reveals the evidence it relied upon in assessing rental value. Amendment 15 questions why the VOA should be so secretive. There is no need for it. On appeal, the evidence is revealed, so why not admit it on first inquiry without the need for the CCA registration process? We all hope that the VOA's figures are correct when assessing new rateable values and that its assumptions in arriving at them are well founded. It is hoped that, by the evidence being shown at the outset of any inquiry, most ratepayers would agree with the VOA's evidence and accept its valuation. This would avoid the cost, resourcing and administration of the CCA process for the VOA and ratepayers.

With the help of the RICS, I have looked at some of the statistics for recent check, challenge, appeal numbers. In the quarter to March this year, more than 10,000 CCA notices were received. This is the first stage in the appeal process. Fortunately, 90% of them came from interested persons, and I believe that means ordinary people, not agents acting on behalf of ratepayers, so the leaseholder or the freeholder. It is a good thing in the absence of a requirement to use accredited agents, which we will come on to. But 10,000 registrations is an unusually high number. It is to some extent the result of the publication of the latest business rates revaluation. It must put great pressure on VOA resources.

If I am reading the VOA's published data correctly, in the rating list period 2017-23, 30% of challenges resulted in a reduction. That is far too high. It suggests that the VOA may be taking a bullish view of estimated rental value, rather than an objective one. The VOA translates from estimated rental value to rateable value. This is very likely to lead to a growing trend towards challenges of the fairness of assessments, which is a concern. I do not want to overlook the fact that 70% of CCAs were found in the VOA's favour, but 30% is still too high for successful appeals. My amendment seeks to reduce the volume of CCAs by thousands of appeals through applicants withdrawing at an early stage in the process.

My other amendment in his group is Amendment 17. It is a simple matter concerning confidentiality of information. Occasionally there is a confidentiality clause in a rent review or a new letting. There may be a means by which the VOA can obtain that detail but the ratepayer cannot. There may be other reasons for confidentiality. Why should the VOA be allowed to factor this evidence into its assessment if the ratepayer may not? It is akin to the VOA informing the ratepayer that it has information it cannot reveal which supports its figures. My amendment does not dispute the reasons for confidentiality being protected—not a bit—but requires simply that any information which cannot be shared with the ratepayer must be disregarded. The ratepayer must be empowered to challenge all the evidence used against them. I beg to move.

The Earl of Lytton (CB): My Lords, I have five amendments in this group. I support the noble Lord, Lord Thurlow, in what he has just said in relation to Amendments 15 and 17. My Amendment 16 follows on from that, and for that reason I will be quite brief about it. The amendments tabled by the noble Lord, Lord Thurlow, and my Amendment 16 seek to provide a duty on the Valuation Office Agency to provide such information, subject only to data protection legislation.

This addresses something that has been a bone of contention for many years, namely that a target and tax revenue focus in HMRC seems to have affected areas of Valuation Office Agency practice to the point where—or where the appearance has been that—evidence has been withheld, right up to tribunal-stage appeals. Over the years, as I have monitored the updates from the Rating Surveyors' Association and others, I have noted with alarm some examples—I hope these instances are few and far between—of appalling and unprofessional practice, not, as one might suppose, from rating agents of an indifferent moral persuasion and possibly no professional training at all, but from the VOA itself. I worked for the VOA's predecessor body, the Inland Revenue Valuation Office, for nearly seven years. Then, it was held in universally high esteem for its ethical and professional principles. It would be highly regrettable if, as time has gone on, that were no longer a given—I want to stress that.

This amendment does no more than insist on the same standards for disclosure and candour from the VOA that it requires of private sector agents acting for ratepayers. If this or something similar is not agreed to, there will be not only a rising tide of criticism within the profession but some sort of backlash from the First-tier Tribunal and Upper Tribunal, which will ultimately force the issue. We need to deal with that at this stage.

I move on to Amendments 18 to 20 in my name. Again, I can deal with these quite briefly. All three interlinked amendments try to remove the requirement for an annual return. The principle is that the requirement for notification arises only when there is a change in that status requiring the notification. At Second Reading, there was some consensus that the proposed volume

and frequency of making returns to the Valuation Office Agency in relation to changes was misconceived. We heard that it would bring into scope some 700,000 hereditaments on which an additional return-making duty will fall—we are talking about a return per hereditament, not a blanket return per operator. If you are, for instance, an outdoor advertising company—that trade body has been in touch with me, as it has with many other noble Lords—with thousands of billboards, or an operator of cashpoints, this starts to matter. I do not know whether the latter is a good or bad example.

I accept that, if we move to two-yearly or yearly valuation, the real-time provision of data capture becomes that much more important. But why, in all logic and seriousness, if a return is required for a change within 60 days after the event, is it also necessary to make an end-of-year return in addition for the same hereditament, especially as a form of return can be requested at any time by the VOA? To put it another way: the desire for real-time notification and coherence of VOA record-keeping cannot be a justification for unnecessary duplication of duties on the ratepayer. I really do not think that this should be a matter for negotiation; it is a matter of straightforward common sense.

I move on to Amendment 21 in my name. It seeks to ensure that ratepayers do not receive retrospective increases in their rating liabilities where the Valuation Office Agency has not acted promptly on the receipt of ratepayer-provided information. It is to prevent retrospectivity where there is delay in acting on the ratepayer's provision of information on a notifiable event. Its intention is to cover all situations where the rateable value is likely to be affected, including entering a new hereditament into the rating list. I think it is basically self-explanatory, but it is the counterpart to the duties on the ratepayer to furnish information in a timely manner and, of course, the penalties for failing to do so—about which more in due course.

5.30 pm

Lord Shipley (LD): My Lords, my name is on Amendments 28, 33 and 34 in this group. I will come to the accreditation of rating advisers in a moment.

There are a range of issues here which relate to the performance of the Valuation Office Agency. I agree entirely with all that the noble Earl, Lord Lytton, has said about the amendment to which his name is attached and with Amendment 15 in the name of the noble Lord, Lord Thurlow, which is about the proposed requirement on the Valuation Office Agency to reveal rental comparables and the evidence used in arriving at a rateable value. A lot of these issues meet the test of reasonable common sense. If I were challenging a business rates bill or valuation, I would want to be certain that it was at the correct level.

The amendments in my name relate to annual reporting and, jointly with the noble Baroness, Lady Hayman of Ullock, to whether the Valuation Office Agency has a problem with its resourcing. We need to be clear whether it has a problem and cannot do things because it does not have the resources. However, the principle that this group of amendments tries to establish is that the Valuation Office Agency should meet the same performance standards that it requires of business rate payers. It should have a duty to provide information requested, in particular comparable evidence on valuations, as I said earlier. That comment relates to Amendments 15 and 16.

It is very important that the burden of the regulatory requirements on business rate payers is re-examined to make sure that all that business rate payers are now being asked to do is valid. It is said that all the proposed increases in workload are required because of the reduction of the valuation time period from five years to three. I am unconvinced by that and I hope that the Minister might be able to explain why that statement applies. Maybe, as I said a moment ago, it relates to resources. However, the Valuation Office Agency should meet the same performance standards that it requires of business rate payers. That is a very important principle.

My Amendment 34 relates to the Secretary of State being required to consult on the benefits and practicability of a system of accreditation for rating advisers. It seeks to explore an avenue for combating the rogue and unprofessional practices of some rating advisers. It is a simple issue. The new duty to notify will give rise to demand for professional help among business rate payers and, therefore, a serious risk of there being a rise in unqualified advisers offering services, so I conclude that there should be a licensing or accreditation system. At the very least, the Government should consult on that.

The context is simple: there is to be more work for business rate payers, the system is more complex, more will seek professional help and, when they do so, they will expect expert advice. If they do not get expert advice and mistakes are made which perhaps cost the business rate payer a substantial sum as a consequence, whose fault will that be? Of course, the immediate fault will not lie with the Government or the Valuation Office Agency, but behind that failure will be the fact that the Government could have done something to ensure that those who are giving advice are competent to do so.

This is simply a proposal that the Government set up a consultation for a system of accreditation. I hope that the Minister will take it seriously; it is a big issue. The changes in the Bill are welcome in so many ways but, as the noble Earl, Lord Lytton, said a moment ago, there is a danger of unintended consequences, which will cause some to feel that they have not been properly attended to. Setting up a consultation on the issue of accreditation of advisers seems an appropriate measure that the Government could take.

Baroness Hayman of Ullock (Lab): My Lords, as we have just heard, I have Amendment 28 in this group. I thank the noble Lord, Lord Shipley, for his support for my amendment. We tabled this because we are concerned that the VOA may not be sufficiently resourced, particularly as the Bill gives the agency additional responsibilities. The noble Lord, Lord Shipley, has clearly expressed many of the concerns behind the amendment.

I looked at some recent data about the number of staff employed by the agency. The latest figures that I could find showed that it has a full-time equivalent of 3,698 staff, which is not huge, to be honest, particularly

[Baroness Hayman of Ullock]
as a large number of new responsibilities is being brought its way. The global property consultancy, Colliers International, has described the Government's plan to reduce the number of VOA offices from 56 to 26 as "a shambles", and said that it will be a

"nightmare for businesses wanting to appeal their business rates".

That is another reason why I was concerned enough to table this amendment.

We also know that there have been problems with the VOA managing the number of appeals and the time taken for resolution. I very much support what the noble Lord, Lord Thurlow, said in his excellent introduction to this debate, about the importance of transparency. He also talked about the number of challenges—30%—resulting in reduction. Clearly, that is too high and needs to be addressed—and the VOA needs sufficient resources to be able to do so.

We also know that, often, the number of challenges and the time taken for resolution relate to the number of rogue agents, many of which want to make a fast buck out of this. That is why we support Amendment 34 in the name of the noble Lord, Lord Shipley, which looks to address this. Again, we had discussions about it at Second Reading. We support his amendment and that of the noble Baroness, Lady Pinnock, in this group. In the letter that the Minister sent to noble Lords after Second Reading, she acknowledged that rogue agents need to be looked at and that this would be part of a government consultation. I hope that the Government will take this seriously enough to consider action on this following the consultation, because it seems genuinely to be a problem.

We very much support what Amendments 15 and 17, in the name of the noble Lord, Lord Thurlow, are trying to do to increase transparency in the revaluation process. We hope that that transparency would also reduce the number of appeals, as the noble Lord so eloquently said. Amendment 16, tabled by the noble Earl, Lord Lytton, would also increase transparency, and we would be happy to support it. Clearly, increasing transparency is important, but we have to be careful that amendments we put down on transparency do not have the unintended consequence of adding to the valuation office's workload without it having sufficient resources—this comes back full circle to what I said at the beginning.

There is also the risk of a major bottleneck in the system, through the new online portal. It would be good to have reassurances from the Minister about how that will be resourced and managed. It is human nature that a large proportion of ratepayers will put in requests for their rental evidence soon after the 1 April date, when the new rating system is published. It would be helpful if the Minister could give assurances that the VOA will be able to respond in time to allow ratepayers and their agents to construct and submit challenges by 30 September—the six-month deadline—because that six-month window for a challenge is a fundamental change to the rating system. We need greater clarity and certainty about exactly how that window will operate, particularly in relation to new tenants and the changes in the list that occur during and after the six-month window. Where is that flexibility?

The Bill states that a ratepayer must provide "annual confirmation" that they have, first, provided "all notifiable information required" or, secondly, that they are "not required to provide" any such notifiable information. Is this confirmation likely to be digital, to fit in with the online system? Will accessible formats be reduced, and will any mitigating circumstances be considered, if a person is unable to complete that confirmation?

As the noble Earl, Lord Lytton, described it, his Amendments 18 to 20 remove the requirements for the annual return. He talked about duplication and unnecessary returns, and it would be helpful if the Minister could provide clarification on that, because a number of changes to how this is done are coming in, and it is important that it works smoothly from the start.

Baroness Scott of Bybrook (Con): My Lords, group 3 concerns information sharing between the Valuation Office Agency and ratepayers, the performance and capacity of the VOA, and the behaviour of some of our rating agents. Central to this part of the Bill is our commitment to move to more frequent revaluations, delivered by Clause 5. As we have discussed, sustainably delivering this important goal is contingent on increasing the timeliness and quality of the information received by the VOA.

To ensure that the VOA has that timely and complete flow of information, Clause 13 introduces a duty on ratepayers to provide notifiable information to the VOA and to confirm each year that they have met their obligations under that duty. In return, Clause 10 provides the means for ratepayers to access an analysis of evidence used to set the rateable value for their property, which should reduce the need for ratepayers to make a challenge. Ratepayers will be able to access guidance from the VOA, provide information on their property and request evidence on their own valuations, all through an online service. This will be the same online portal through which ratepayers will also be able to provide their taxpayer reference number to meet the other duty introduced by Clause 13.

The noble Earl, Lord Lytton, asked about information if you have more than one property. The VOA will seek to enable ratepayers with multiple properties to provide information about their properties at the same time every 30 days, to limit their administrative burden. We have listened to requests from stakeholders for this functionality, and we recognise that there is also a benefit for the VOA from receiving information in this way. We will work with businesses, agents and software suppliers to rebuild a robust and effective system for ratepayers. The deadline for notification of the underlying changes will remain at the now-increased 60 days, and the same deadline will apply to all, regardless of the means of notification.

I turn to Amendments 18 to 20. As I have set out, Clause 13 includes a requirement on the ratepayers to confirm once a year that they have provided the information required of them—this will be digitally, to respond to the noble Baroness, Lady Hayman—under the VOA duty. Amendments 18, 19 and 20 from the noble Earl, Lord Lytton, and the noble and learned Lord, Lord Etherton, would remove that requirement. I shall explain why this part of the duty is necessary.

5.45 pm

Annual confirmation will support ratepayers to comply with the new VOA duty by providing an opportunity to supply, correct or update any information they should have provided during the year. This is part of a range of measures that will ensure the VOA has enough data to deliver more accurate and more frequent valuations. It is important that all ratepayers participate in providing information, so that the VOA has the information it needs to value comparable properties accurately and to ensure that ratepayers are paying the right tax and benefiting from any reliefs they may be entitled to.

For most ratepayers, annual confirmation should be very straightforward, simply requiring them to confirm that they have complied with the duty. Where there have been no changes, this should take only a few minutes, and ratepayers will not have to resubmit information already provided. The annual confirmation process will not be introduced until we have ensured that it will be sufficiently straightforward for ratepayers to complete. The commencement powers allow us to commence annual confirmation separately from and later than the rest of the information duty.

I turn to Amendments 15 and 17 from the noble Lord, Lord Thurlow, and the noble and learned Lord, Lord Etherton, and Amendment 16 from the noble Earl, Lord Lytton, and the noble and learned Lord, which relate to Clause 10. As I have said, this clause will allow valuation officers to share information with ratepayers to help them understand the rateable value of their property and how it has been determined. Amendments 15 and 16 would make it obligatory for the VOA to share information used in valuation. Amendment 17 provides that the VOA can use as valuation evidence only information which it is prepared to share with ratepayers in the interests of transparency. I fully understand the instinct for maximum transparency, but I will briefly explain why we have drafted the Bill in this way.

First, improving transparency is an important part of the reform of business rates, because it will allow the VOA to go further in demystifying and explaining the rating valuation system. Access to the evidence underpinning their valuation will allow ratepayers to make an informed judgment as to whether to make a challenge. This measure, therefore, has widespread support from stakeholders and is seen as an essential step in business rate reform. However, it is important to strike the right balance between sharing valuation information and protecting sensitive and personal data.

Currently, the VOA is barred from sharing this information outside of a formal challenge because it is data belonging to taxpayers. Release of such information may constitute wrongful disclosure under the Commissioners for Revenue and Customs Act 2005. In amending the law, we have not lost sight of the fact that this remains taxpayer data and may be sensitive or commercially important to landlords and other ratepayers.

That is why we have included safeguards to recognise the potentially sensitive nature of some of this data. In particular, it is important that the gateway is "permissive" so that the valuation officer is not under a duty to share the information but is permitted to do so. The VOA recently consulted to invite views on how it might best make use of this permissive power, in a way that balances transparency with the protection of sensitive taxpayer data. Clause 10 also includes the safeguards that disclosure cannot happen if it would contravene data protection legislation, protecting personal data rights, and that information is available on request via a secure online service. I trust that my answer explains why these safeguards are appropriate.

Amendment 28, tabled by the noble Baroness, Lady Hayman, and the noble Lord, Lord Shipley, and Amendment 33, tabled by the noble Baroness, Lady Pinnock, and the noble Lord, are focused on the performance of the VOA and its resourcing. I assure the Committee that the VOA is being fully resourced to deliver the additional responsibilities that it will have as a result of the reforms in the Bill. The agency received half a billion pounds of funding at the last spending review—and I can tell the noble Baroness, Lady Hayman, that that included funding for upgrades to its IT infrastructure and digital capabilities. It has also been provided with £80 million pounds of funding for the 2026 revaluation.

The VOA is already subject to extensive reporting requirements. As an executive agency of HMRC reporting to the Treasury, the VOA has a legal obligation to prepare an annual report and accounts, which are laid in Parliament. In the annual report, the VOA reports against its performance measures and targets as well as its statutory deadlines for check and challenge. The report for 2021-22 was published in December 2022 and is available on the VOA's website. The VOA met or exceeded all its targets in respect of business rates. Throughout the 2017 lists the VOA resolved the vast majority of its cases within the statutory deadlines, more than 99.9% of checks within the 12-month target and more than 98% of challenge cases within the 18-month target. The current targets are of course based around its existing business. I assure the Committee that the Government will review the targets with the introduction of the new duty to ensure they continue to drive strong performance from the VOA effectively.

Finally, Amendment 34, tabled by the noble Lord, Lord Shipley, raises the issue of rogue agents. The amendment would require the Secretary of State to consult on the implications of putting in place a system of accreditation for business rates advisers. This is primarily aimed at exploring ways to combat the rogue and unprofessional practices of some rating advisers. Most rating agents are legitimate organisations registered with a professional body; they provide a valuable service to their clients and contribute to the effective operation of the tax. Nevertheless, we know that some agents seek to take advantage of their clients through predatory practices, using exploitative contracts or actively promoting rate mitigation strategies. We therefore provide advice on GOV.UK on appointing an agent. In this, we make it clear that ratepayers should take care in ensuring they appoint a reputable agent. We say in that guidance that the Rating Surveyors' Association, the Royal Institution of Chartered Surveyors and the Institute of Revenues Rating and Valuation all work to a set of standards. We repeat this advice whenever appropriate throughout government material

[Baroness Scott of Bybrook]
on business rates, and the new duty in this Bill will give the VOA new contacts with ratepayers with which to relay this message.

In addition, the Government will very shortly be consulting on avoidance and evasion in the business rates system, meeting the commitment made by the Chancellor at the Spring Budget. As I clarified at Second Reading, this consultation will include agent behaviour in its scope. The consultation will seek to understand evidence of the nature and scale of any rogue or unprofessional practices in the business rates system and identify action the Government could take to combat this behaviour within the system.

I trust that I have addressed the many points raised by noble Lords, and I am grateful for the engagement we have had previously on the issues. I ask the noble Lord to withdraw his amendment.

Baroness Pinnock (LD): I think that I have listened very carefully but, on the digitisation of business rates, which I support, did the Minister explain the arrangements that could be made for businesses in remote locations where there is little or no mobile signal and where broadband has yet to reach them, despite what I accept are the Government's best intentions that that should be the case? I live in the upper Pennines region, where there are businesses and remote farming communities. So far, they do not have either. Ditto in the Yorkshire Dales; I know of businesses there with neither a mobile signal—one that works, anyway—or a broadband connection. What arrangements will be made for such businesses?

Baroness Scott of Bybrook (Con): I am told that there will be a non-digital availability. I will get all the details for the noble Baroness and I will write a letter, which will also go to the Library.

The Earl of Lytton (CB): I would like to tease out a little more information following the Minister's response on Amendment 17. What happens, in effect, is that the evidence is part of an adjudication process. In my professional line of business, there are various stipulations about surveyors acting as expert witnesses and the way in which these things are to be handled. Amendment 17 is particularly important because, when one gets into a situation where there is an appeal pending, there is this little thing about equality of arms. If one party is able to use information that is held confidentially, to the exclusion of the other party, I do not think that equality—that transparency standard—is met. We are talking about what is ultimately something that leads to an appeal before the valuation tribunal.

Can the Minister say whether I have got it right that the VOA can have a protected category of evidence, as it were, that it is not prepared to share? This is something that has come up on my radar when looking at some of the blogs that have come out of the rating surveying world. It is a matter of fundamental importance in terms of the administration of any sort of justice system and adjudication, which is what this is. I would therefore like to pin down the Minister a little more on that point.

Baroness Scott of Bybrook (Con): I think we made it very clear that the information that can be shared is the information that does not affect the data protection. Therefore, there will be information that cannot be shared because it will affect data protection. Because this is quite a legal issue, I will offer noble Lords a further, in-depth meeting, with lawyers there. If we are to get to the bottom of this, it is better to do that with a lawyer with us talking about the data protection law. Would the noble Earl be happy with that?

The Earl of Lytton (CB): I thank the Minister; that would be very helpful.

Baroness Scott of Bybrook (Con): We will be in touch.

Lord Thurlow (CB): I thank all noble Lords who have taken part in this group. I thought that the reference made by the noble Earl, Lord Lytton, to a timely VOA response was particularly apt, and I was grateful for his support just now on Amendment 17 on confidentiality. I thank the Minister for the offer to follow up.

The comment from the noble Lord, Lord Shipley, that the amendments in this group are simple common sense was one of the most powerful pieces of oratory that I have heard this afternoon, and I hope that it materialises very soon. I admired his well-made comments about the rogue agents, and once again I thank the Minister for her comments in that regard, as to how the Government intend to protect the public. I thank the noble Baroness, Lady Hayman, for identifying a number of concerns over the VOA's resourcing, which tie in directly.

6 pm

Finally, there is considerable overlap in some of these amendments, and I think we will distil those as necessary. I thank the Minister for her wide-ranging response. I do not get the feeling that the CCA appeal process will improve, but perhaps *Hansard* will improve my understanding. Some of our questions remain unanswered, but perhaps we will try to progress some of these in advance of Report, along with the confidentiality subject. Meanwhile, I beg leave to withdraw.

Amendment 15 withdrawn.

Amendments 16 and 17 not moved.

Clause 10 agreed.

Clauses 11 and 12 agreed.

Clause 13: Requirements for ratepayers etc to provide information

Amendments 18 to 21 not moved.

Amendment 22

Moved by ***The Earl of Lytton***

22: Clause 13, page 25, line 26, at end insert—

"(3A) No penalty notice may be imposed pursuant to paragraph 5ZC(1) or (3), and no offence is committed pursuant to paragraph 5ZC(2) (as the case may be), where P's failure to comply, or P's provision of false information, was made in reasonable reliance on

any relevant guidance published by or on behalf of the valuation officer, or any advice provided to P by or on behalf of the valuation officer."

Member's explanatory statement

This would prevent the imposition of penalties where ratepayers' errors or omissions are the result of reasonable reliance on VOA guidance or advice.

The Earl of Lytton (CB): My Lords, this is the first of a series of amendments relating to penalties. Amendment 22 tries to create a defence to a penalty. I say straightaway that I do not have any principled objection to penalties as such, but the amendment tries to make sure that, when a penalty demand is made, if the ratepayer had reasonably relied on published Valuation Office Agency guidance or specific advice given about what was not relevant, that should be a relevant defence.

6.02 pm

Sitting suspended for Divisions in the House.

6.36 pm

The Earl of Lytton (CB): My Lords, I was making the point that it should be a defence for a business rate payer to say that they had reasonably relied on published VOA or other guidance in respect of anything to do with being made liable for a penalty. Failure by a ratepayer to notify carries with it a number of penalties, at least one of which is entirely open-ended—more of that in a minute. The implementation of this will depend very much on the extent and quality of the guidance issued, especially as it is supposed that this will be comprehensible to unrepresented ratepayers. I particularly make that point because we are trying to make sure that this does not trigger a requirement across the board for more ratepayers to seek professional advice.

I appreciate that the VOA will not bring in notification and penalty measures until it is satisfied that they work smoothly and seamlessly. That is my understanding—my words, I stress, not necessarily the ones that the Minister would use. My submission is that no government body should be at liberty to state one thing in guidance and then do something quite different or to reinterpret established understandings at its own whim and caprice to the detriment, in this instance, of a ratepayer.

I shall deal with Amendments 23 to 26 as a job lot because their purpose is to fix a number of issues that appear to me to be typos or errors of construction or perception to do with the way in which the penalty regime will work. First, the fixed penalty minimums for incorrect information provided to the VOA appear to be the wrong way round and Amendments 23 and 24 serve to remedy that. I think the figures have just been transposed.

Secondly, unlike the penalties in relation to the provision of information to HMRC as opposed to the VOA, there is no cap whatever for non-compliance on the VOA notification. This seems contrary to legal principle in general and at odds with non-compliance with, for instance, the form of return under Schedule 9 to the 1988 Act, which is subject to a cap, so Amendment 25 seeks to address that.

Finally, there is the question of the Valuation Tribunal for England's—VTE's—determination of penalties, which the VOA has imposed in lieu of prosecution for false information. As drafted in the Bill, the burden of criminal proof is inverted, with the ratepayer having to prove "beyond reasonable doubt" that they did not commit the offence. That cannot be right or reasonable. I suspect that it is not intended, either—I hope I am correct. Amendment 26 seeks to deal with that.

That summarises my amendments in this group. I beg to move.

Baroness Pinnock (LD): My Lords, the noble Earl, Lord Lytton, has raised an important group of issues regarding the penalties that could be imposed on ratepayers who do not provide accurate, timely information. I hope that the Minister will be able to respond to that and explain how ratepayers seem to have more and more imposed on them. They must provide the information annually to the VOA—in the last group we debated the VOA's transparency in relation to that—and the noble Earl has just raised the quite significant penalties imposed if the information is not accurate, even if, as he pointed out, there is a genuine error. It seems that, in the previous group and this one, we do not have the right balance of responsibilities between the VOA requiring information, what business rate payers are required to provide and where the final duty lies.

The VOA is serving two masters: the Treasury on one hand and business rate payers on the other. It seems that the VOA is responding to its Treasury master and is not giving sufficient cognisance to the customers—the business rate payers. The noble Earl raised some important points regarding that. We must get this balance right. The VOA needs to be more transparent and responsive to business rate payers. It also needs to be accountable to them—and the reverse is also true, as the noble Earl said. The VOA demands penalties if the ratepayer gets the information wrong but—hang on—the VOA makes errors all the time. Where is the accountability and compensation to business rate payers for those errors? The noble Earl raised that issue and I hope that the Minister will be able to get the balance right when she responds.

Baroness Hayman of Ullock (Lab): I thank the noble Earl, Lord Lytton, for bringing the amendments on penalties forward because a number of questions around compliance and the penalties regime have been drawn to our attention. One is how it aligns with the wider UK tax regime generally. Another is that a new criminal offence is being created here, but is that actually necessary? Is this not covered by existing legislation and existing criminal charges, for example? I am more broadly probing why we need a new offence here.

6.45 pm

Of course, valuation officers can apply a civil penalty by serving a penalty notice, providing that they are satisfied beyond reasonable doubt that the person has committed the offence. Again, the question is whether that valuation officer the right person to make that judgment. How are they being supported in making

[Baroness Hayman of Ullock]
that judgment, for example? How are they getting information, and how do we guarantee that that judgment is being exercised in a consistent manner? We would be interested to have some clarification of that.

The summary of responses in the technical consultation says that the penalties have to be a "last resort", with earlier steps taken to support ratepayers in meeting their obligations. It lists things such as the "electronic reminder", hard-copy and digital warnings, and so on. It is welcome that we have these safeguards before that penalty route, but my concern is that none of that is set in the legislation, and I wonder why it was not clearly laid out in the Bill. If we are going to build trust in the VOA, it is important that people have a clear understanding and clarification of exactly how the penalty system will operate and that it is clear and consistent right across the board.

I asked about the definition of "occupied" and "unoccupied" earlier, so I will ask for one clarification. For unoccupied properties, the technical consultation noted that the VOA may need

"information about … intended use and how it is expected to be occupied",

with the extent of the information required depending on the nature of the property. So, unless the use of the building is relatively restricted, and therefore its future use is apparent—a storage unit, for example—the intended use could span a number of different uses. So the question is what would the consequences be if the intended and actual use differed in relation to the terms of the penalties? I can see someone frowning—I hope I am being clear. Perhaps we can pick this up at a later date if I am not being completely clear about this. It is just in case there is a difference between what you say you will use it for and then, ultimately, what you do use it for.

Baroness Scott of Bybrook (Con): Group 4 consists of Amendments 22 to 26, tabled by the noble Earl, Lord Lytton, and the noble and learned Lord, Lord Etherton. They are concerned with the application of penalties for non-compliance with the VOA duty. As we have said, we will not initiate the VOA duty until we are satisfied that all ratepayers can reasonably and efficiently comply. There will be a soft launch of the duty, during which time no penalties for non-compliance will be issued and the VOA will raise awareness and expand its engagement with sector bodies and businesses of all sizes. As was said, issuing penalties will be the last resort. The VOA and HMRC will ensure that the new online service is simple to use and will take multiple steps to encourage ratepayers to comply, through reminders and warnings, before issuing a penalty.

Amendment 22 seeks to prevent the imposition of penalties where ratepayers' errors or omissions are the result of reasonable reliance on VOA guidance. However, it is already the case that the VOA is able to apply penalties only where the ratepayer could reasonably be expected to know that the information would assist the VOA. All ratepayers will need to do to ensure that they are complying is follow guided steps on GOV.UK. If the ratepayer follows this guidance, the VOA will not, under the existing provisions of the Bill, be able to apply penalties. Thus, we do not think that this amendment adds anything of substance to the position as it already stands. If a penalty is issued in error where a ratepayer has relied on VOA guidance, the Bill gives the VOA the power to remit it. Ratepayers will also be able to appeal any penalty applied, and this will be independently reviewed by the valuation tribunal.

Amendments 23 to 25 are designed to address the penalty tariffs applicable to instances where a ratepayer has either failed to notify the VOA or provided false information. I will briefly explain the Government's approach here. The Bill sets out the maximum level of penalty which the VOA may apply depending on the nature of the failure to comply. Our intention, as set out in our response to the technical consultation, is for the VOA sometimes to levy lower penalties than are set out by the framework of the Bill. Penalties will be levied as a percentage of the change in the rateable value rather than the entire rateable value and, where penalties are issued for a failure to provide information, the minimum penalty will be reduced for those on lower rateable values.

The Bill also introduces an offence where a ratepayer has knowingly or recklessly made a false statement. In these cases, a ratepayer could be subject to criminal sanction. Alternatively, making a false statement will lead to a civil penalty, the amount of which is provided by new paragraph 5ZD. Where the civil penalty is applied, in practice the maximum penalty will be 3% of the change in the property's rateable value plus a fixed penalty of £500. To address the amendment, the Bill rightly provides a more severe penalty for knowingly or recklessly providing false information.

The point has been made that there should be a cap on daily penalties following an initial instance of failure to provide information. This information can have a direct impact on tax liability, so it is crucial that the duty is underpinned by a fair and proportionate but robust compliance regime. However, I can provide the reassurance that, even after the initial 60-day deadline, ratepayers will receive a reminder, warning and final warning before a penalty is applied. Only after an additional 30 days would the first daily penalty of £60 be issued. Ratepayers will be able to request a review and appeal of any penalties imposed. The daily penalties will be stopped when the ratepayer provides the required information, so as soon as the ratepayer complies, the penalties are effectively capped.

Applying daily penalties in this way is not an uncommon feature of taxation penalty regimes. For example, Schedule 36 to the Finance Act 2008 deals with powers for HMRC to request information from taxpayers and imposes penalties for a failure to provide such information. It includes penalties of up to £60 per day for as long as the non-compliance continues, without an overall cap on liability.

Amendment 26 seeks to alter the burden of proof which the valuation tribunal should apply when deciding whether to uphold a penalty decision. Of course, when considering a higher penalty for a ratepayer who has provided false information, the VOA must in the first place be satisfied beyond reasonable doubt that the information was provided knowingly or recklessly. There is considerable protection for ratepayers already.

Nevertheless, I am grateful to the noble Earl, Lord Lytton, and the noble and learned Lord, Lord Etherton, for raising questions about the appeals process. We will of course review the relevant text. I hope that, given that I have explained why the system of penalties is designed as it is, noble Lords will agree the amendments are not necessary.

The Earl of Lytton (CB): My Lords, I thank the noble Baronesses, Lady Pinnock and Lady Hayman, for their contributions on this group of amendments. The noble Baroness, Lady Pinnock, referred to the necessary balance here, and I agree. The noble Baroness, Lady Hayman, queried whether the application of criminal charges is properly introduced here, whether the Valuation Office Agency is the right outfit to make that call and whether it will be given the necessary guidance and assistance to make consistent rulings in that respect.

It seems to me that the question is about the discretion of the VOA to do things—its ability to do or not do—as opposed to a legal duty. It seems to me that some sort of duty on the VOA is part and parcel of its overarching statutory duty to, for instance, maintain a correct valuation list. It also seems to me that those duties should mirror the obligations and penalties imposed on the ratepayer, otherwise it is a very asymmetric situation. That is, to some extent, what I was trying to deal with in Amendment 16.

The Minister has given various explanations of the Government's position here. On Amendment 22 and the question of "reasonably be expected to know", she said that this covers the guidance given and therefore the amendment does not add anything of substance and that there is a right of appeal. I think I will have to consider carefully what she said. With regard to Amendments 23 and 25, I felt that I had detected a series of typographical errors, but I understand the Minister to have said that they are not errors and that the Bill is deliberately worded that way. I am not sure that on a fair reading that is likely to be the case, so I hope they may be looked into at some stage or other.

On the cap or no cap, I have already pointed out that there is a degree of asymmetry between the approach that has been adopted in the Bill in this respect and what happens with failure to deal with the form of return. I appreciate that there is the "knowingly or recklessly" test, but we have a rather circular argument here because, if the VOA is again the sole arbiter of "knowingly or recklessly" and the thing then proceeds to a tribunal that says something different, I would hope that we could have got to a situation well before then where the ground rules were understood. Is the Minister saying that the wording of the Bill is in all respects what was intended and that there are no typographical errors in it as I had supposed? Will she please clarify that point?

Baroness Scott of Bybrook (Con): No, there are no typographical errors in the Bill. I think the noble Earl asked that question earlier, and there were none.

Just to be clear on criminal offences and why they are necessary, there is already a criminal offence for providing false information in response to a request for information by the VOA. So we are not putting in a criminal offence—there is already one there as it stands now. It is interesting that criminal charges will be only for "knowingly or recklessly" giving false information. If it is just a false statement, for whatever reason, that would still be a civil penalty.

7 pm

The Earl of Lytton (CB): My Lords, I see a point here, and I shall have to reflect further on what the Minister has said in this respect and may well need to return to the issue at a later stage of the Bill. For the time being, I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Amendments 23 to 26 not moved.

Clause 13 agreed.

Clause 14: Alterations to lists: matters not to be taken into account in valuation

Amendment 27

Moved by ***The Earl of Lytton***

27: Clause 14, page 32, line 21, leave out "2023" and insert "2026"

Member's explanatory statement

This would delay the commencement of the alteration to the reality principle until the 2026 List enters force.

The Earl of Lytton (CB): My Lords, I must admit that this amendment is something of a stalking horse—a bit like asking a Prime Minister on a Wednesday morning what is in the diary for the coming week. What I am really saying is that Clause 14 should be deleted and I thought that, rather than moving that the clause do not stand part, it was better to seek an explanation. That is why it has been done this way.

The amendment relates to material changes in circumstances of hereditament. This is not the same as physical alteration to the hereditament itself. A standard alteration to its extent, and an extension to or improvement of the physical fabric, will continue to be taken into account, as I understand it, as and when it occurs. There is no attempt in the Bill, as I read it, to fetter that—rather, this is to do with matters that do not change the measurable physical attributes of the hereditament itself but none the less patently affect its physical enjoyment.

I am particularly indebted to Luke Wilcox of Landmark Chambers for some very pertinent guidance on this issue. I have a note from him that he has given me permission to share with other noble Lords, and I may well do that, as it goes into more detail about what I am trying to explain.

In non-domestic rating, there is a hypothetical landlord and tenant and a hypothetical lease between the two as well as an assumed obligation for certain states of repair, none of which necessarily mirrors the actual state of affairs relating to the property. However, the hereditament itself is real, measurable and a physically determinable entity, and how it is to be regarded has always been subject to what in legal jargon used to be referred to as the rebus sic stantibus principle. In simple terms, that means that one had to value the

[The Earl of Lytton]
hereditament and its environment as it physically is. That is in essence what is now known as the reality principle.

There are two legs to the reality principle. The first is the physical extent—the construction, age, layout and other physical characteristics, fixtures and fittings and general suitability and fitness of purpose of the hereditament for its intended or actual use. The second relates to the local circumstances affecting the area where the physical hereditament is situated. Put another way, it is the local business environment that underpins its physical enjoyment, as distinct from its physical extent. This could be location in relation to other complementary trades, whether there is or is not good customer accessibility, the relevance of parking restrictions, proximity to public transport, levels of shopper footfall and all those sorts of things, which are not related to the physical nature of the hereditament itself but are part of its market environment and, therefore, its rental value.

The current position is that, where there is a change in a matter affecting the physical enjoyment of the property, such as a regulatory change to its planning status or a change in a matter which is physically manifest in the locality—in the past, Government Ministers referred to changed bus routes; I would add a change in road layout to that category—those matters, to the extent that they are evident and quantifiable, are material changes in circumstances, or MCCs, and can trigger a mid-list change in rateable value. Such factors are a part of the reality principle, which is one of the most fundamental concepts in rating law and, to my certain knowledge, has been so for over five decades.

What is proposed here is that Clause 14 would amend the rules that govern when a mid-list alteration to a property's rating assessment is permitted by changing the definition of what may constitute "material changes of circumstances". Under the Government's proposals, those matters, even though manifestly affecting physical enjoyment, would no longer be MCCs, wherever and whenever they are directly or indirectly attributable to legislation or official guidance. Under the relevant portion of the Bill, new paragraph 2ZA(2)(a) of Schedule 6, inserted by Clause 14, an MCC is something that is

"directly or indirectly attributable to a relevant factor".

New paragraph 2ZA(3) goes on to say what the relevant factors are:

"legislation of any country or territory … provision that … is made under, and given effect by, legislation of any country or territory … advice or guidance given by a public authority of any country or territory … anything done by a person with a view to compliance with anything within paragraph (a), (b) or (c)".

New paragraph 2ZA(5) states that

"'legislation' includes any provision of a legislative character … 'public authority' includes any person exercising functions of a public nature".

This, to my mind, is a substantial change to what has long been understood. What is proposed here is that this category of what has always been understood to be a material change in circumstances should be removed.

It appears that this is a response to matters that arose during Covid. The various Covid lockdown regulations significantly altered the way in which occupiers could occupy their premises. This in turn gave rise to a number of requests for mid-list alterations, since the regulations affected the ability of occupiers physically to enjoy their properties. The Government considered that general legislation should be part of the general market conditions considered at revaluations—this is the case being made—and so should not count as MCCs. However, the Government's view in this regard differs not only from their own internal guidance, which I checked only yesterday on their website, but from that of the Valuation Office Agency, which regarded, and still regards, legislative changes as MCCs where they are physically manifest. That much is evident from the paperwork.

The Government passed the Coronavirus Act 2020, which prevented matters directly or indirectly attributable to the coronavirus regulations from being MCCs. This was a very specific and nationwide response to an emergency situation and was promoted as such. Clause 14, however, seeks to extend that principle to all events arising from legislation or regulation of all kinds and in all normal times, which is a very different construct.

The Government claim that Clause 14 is intended to restore the law to its originally intended state and condition and that its purpose is to require general legislation and guidance to be treated as part of the general market conditions which are thought to be considered only when a new list is compiled—which, under the Bill, would be every three years. However, under Clause 14 we are considering not necessarily nationwide or even emergency situations but much more mundane changes, often of a local or per-property specific nature. Some are harmless and insignificant but others would have significant effects on individual businesses and the physical enjoyment of the premises. These measures could deny a beneficial use which underpins the operation being run from a hereditament. Clause 14 is not the same thing at all as restoring the situation to what was always understood in rating practice but, in fact, a material departure from it.

The audit trail of legislation that brought in what is now Section 2(7) of the Local Government Finance Act 1988 does not support the Government's claim either. In fact, it reveals quite a different narrative, and an examination of Addis Ltd v Clement (VO), which has long been and remains the benchmark legal decision that the 1988 Act sought to enshrine, demonstrates this. Not only that but its antecedents go back to the 1920s and have been reaffirmed at senior judicial level as recently as 2020. I repeat: the Government's guidance on their website and the guidance issued by the VOA make it clear that changes which affect the physical enjoyment of the hereditament, as distinct from changes to the physical hereditament itself, are indeed in scope of material change of circumstances.

This means that Clause 14 will have a far wider effect than the Government's stated intention. That is because, if something can be so loosely defined as being "indirectly attributable" to a change in legislation, and thereby no longer treated as a material change of circumstances of the relevant type, this opens up a vast array of circumstances in which the causative measure and the non-MCC status may apply. Many things would come into play which affect perhaps only

one property or a discrete group, such as a change in planning permission, a premises licence or a road layout change. These are changes which in many cases—in fact, almost invariably—can be made only by dint of legislative authority but none the less would henceforward be "indirectly attributable" to legislation, and thus no longer material changes of circumstances.

There is no sense in which a change in, say, the planning status of an individual property or the exercise of administrative authority resulting in something which patently affects the physical enjoyment of a single property or a locally identifiable property type, can be regarded as part of general market conditions, falling to be dealt with only at revaluation, yet those changes will be excluded under Clause 14 as currently drafted. I do not think that such an approach could ever be justified even on an annual revaluation basis. They are not general market shifts but the result of specific, conscious measures by an authority exercising powers.

Why is this a problem? If the planning or licensing position of a property, or its accessibility or commercial standing in its locality, have changed early in the life of a list, under Clause 14 the ratepayer will continue to pay rates on what would be an incorrect valuation, possibly for almost three years. This gives rise to clear unfairness and inequity. On my reading of the Bill, a billing authority would presumably be in no position to require the rateable value to be reviewed if it implements a scheme under a statutory power which could increase the rateable value of a hereditament in like circumstances.

7.15 pm

I assume that it is not the Government's intention that this should be the effect of the Bill, but that is what will happen as it is currently drafted, based on the expert and legal advice I have received. It will have significant—and, I hope, unintended—consequences for a fundamental aspect of the law of rating. It needs to be rethought. With apologies for a lengthy technical explanation, I will listen with care to the Minister's response and her reasoned justification. I beg to move.

Lord Shipley (LD): My Lords, I think the wise course of action now would be to listen to what the Minister has to say. I am very supportive of what the noble Earl, Lord Lytton, has said. He called this amendment a stalking horse; we clearly need a definition of the Government's intention and there is clearly a legal question that must be sorted out. I said at Second Reading that I had concerns about material change of circumstances being altered in the way the Government are proposing, not least to exclude legislation such as licensing laws and guidance from public bodies. As a layman, in legal terms, in this area, it seems to me that legislation can cause a material change in circumstance, particularly if licensing or planning laws are altered. There is a case for that to be considered. These Benches would very much like to hear the Minister's justification for what is being proposed. If that requires a letter to explain the legal issues involved, that would be helpful. The noble Earl has raised a set of very important questions.

Baroness Hayman of Ullock (Lab): My Lords, I will be very brief. The noble Earl, Lord Lytton, has laid out his concerns very clearly and in great detail. At the least, we need clarification. We have talked about the problems around licensing conditions; the hospitality sector in particular is very concerned about the implications of being stuck with a valuation for three years that, bluntly, may not be correct. It would be very helpful to hear what the Minister has to say and for her to give reassurances to the licensing sector that its circumstances will be taken into account.

Baroness Scott of Bybrook (Con): My Lords, I am grateful to the noble Earl, Lord Lytton, and the noble and learned Lord, Lord Etherton, for their amendment. I understand the concerns around this clause; I will take the opportunity to explain why we consider this measure to be necessary and to set out the limits of its application.

As we have heard throughout the passage of the Bill, more frequent revaluations and the measures we are introducing to support them are central to the reform of the business rates system. It is through those revaluations that the rating system is able to track and reflect changing economic circumstances. In property valuation terms, rateable values are updated at revaluations to reflect changes in economic factors, market conditions and changes in the general level of rents.

Of course, that does not mean that rateable values never change between revaluations. It would hardly be fair if, for example, a ratepayer demolished part of their property but this was not reflected until the next revaluation, or if a new property were built but escaped rates until the next revaluation. Therefore, some changes are reflected in rateable values as and when they happen. Examples include changes to the physical state of the property, the mode or category of occupation of the property or matters affecting the physical state of the locality. These matters, reflected as and when they occur, are called material changes of circumstances—MCCs.

The MCC system has been operating in this way for many years, but, during the coronavirus pandemic, we found that it was not working as intended. Large numbers of challenges were made, seeking reductions between revaluations for the effects of the pandemic, which by their nature were part of the general market conditions. Such general market matters should be considered at general revaluations.

Therefore, the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021 clarified the law to ensure that coronavirus and the Government's response to it were not an appropriate use of MCC provisions. Specifically, that Act ensured that anything done to comply with legislation, advice or guidance given by a public authority and attributable to coronavirus should not be an MCC, subject to some exclusions. The principle in that Act was approved by both Houses, and it received Royal Assent on 15 December 2021.

Clause 14 of the Bill merely takes that principle, clarified and accepted by this House in the 2021 Act in relation to coronavirus, and applies it more generally to all legislation, guidance and advice from public bodies. Changes in such matters are part of the economic factors and market conditions for a property and

[Baroness Scott of Bybrook]
should be reflected at a general revaluation. This clause will protect the integrity of the rating system and ensure that more frequent revaluations can proceed smoothly. It will protect the system not just for central government but for local government, which relies on the revenue from business rates. The Local Government Association supports this clause and agrees that these matters should be reflected at general revaluations. But this does not mean that these matters are not reflected in rateable values; it just means that they are reflected only at the set date of each revaluation, along with all other economic and general market factors present at that date.

Furthermore, we have limited the scope of Clause 14 to three aspects of the MCC system to ensure that it operates fairly. This is to ensure that physical changes to the property or the state of the locality are still reflected. Therefore, Clause 14 will bite on only three types of MCCs. First, it will catch matters affecting the physical enjoyment of the property but not the physical state. This might include changes in how the property can be used following new legislation or guidance. Secondly, it will catch matters that are physically manifest in the locality but not matters affecting the physical state of the locality. This might include changes to traffic flows and bus or transport services. Thirdly, it will catch the use or occupation of other premises in the locality, which might include the change in use of a nearby property where, for example, the original use has been prohibited by new legislation.

Clause 14 will ensure that matters such as physical changes to a property or to the state of the locality continue to be immediately reflected in valuations, even if they are a result of new legislation or guidance. Clause 14 will also not bite on whether the property is non-domestic or domestic or whether it is exempt. Overall, Clause 14 will preserve a long-established principle by ensuring that matters that go more to the market conditions and general level of rents of a property belong in the general revaluation process. Of course, with more frequent revaluations, these factors will still be updated more often than ever before.

The clause will provide important stability and certainty to the rating list and, therefore, to the vital revenue for local government that flows from the list. Therefore, it would not be prudent to delay the introduction of the clause, as this amendment seeks. I know that the noble Earl will be disappointed that we are unable to agree to this, but I hope that I have set out the basis for taking this measure and also given him some assurances regarding its scope. I will look at *Hansard* tomorrow and will write to noble Lords with further explanations if I feel that they are required.

The Earl of Lytton (CB): My Lords, I thank the noble Lord, Lord Shipley, and the noble Baroness, Lady Hayman, for their support in connection with this. Although I understand what the Minister says is the intention of Clause 14, having been taken through it in some detail by more than one expert, I am bound to say that I do not agree with her about the effect of the clause. There is a difference in understanding, and I wonder whether it could be dealt with by a further discussion—the Minister is nodding, which I am grateful for. It is very difficult if somebody reads this in one way and says, "This could cover a multitude of things that could be excluded", and the Minister says, "Actually, it is not intended to do that and these are the safeguards that we have built in".

All I can say at this juncture is that I will certainly return to this on Report. I hope that there can be a meaningful dialogue on this in the meantime. It would be wrong for me to go into a detailed unpicking of what the Minister said at this hour and given the other pressures on us. To that end, I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Clause 14 agreed.

Clause 15 agreed.

Amendment 28 not moved.

Amendment 29

Moved by ***Baroness Hayman of Ullock***

29: After Clause 15, insert the following new Clause—

"Threshold for small business rate relief adjustment: impact assessment

Within 90 days of this Act receiving Royal Assent, a Minister of the Crown must lay before Parliament an assessment of the impact of reducing the threshold for small business rate relief on the future of the high streets."

Member's explanatory statement

This is intended to probe the possibility of reducing the threshold for small business rate relief.

Baroness Hayman of Ullock (Lab): My Lords, Amendment 29 was tabled just to probe the possibility of reducing the threshold for small business rate relief, particularly in consideration of our high streets. We know that business rates remain one of the largest fixed costs for retailers and that they fundamentally impact business planning and investment decisions; for example, the convenience sector's business rates liabilities are over £274 million, despite the small business rate relief. We also know that retailers are facing a particularly difficult time at the moment: we have increased commodity prices, skyrocketing energy bills and structural changes to the labour market—there is an awful lot going on and a lot of instability.

We are concerned that the current revaluation of business rates, which was implemented in April this year, will hit smaller high street stores in particular. They struggled during the pandemic and afterwards, and, combining that with a winter ahead with higher energy bills, we have particular concerns. We have called for short-term support through an increase in the threshold for the small business rate relief. We suggested that the current threshold of £15,000 be increased to £20,000 in order to give SMEs a discount on their business rate bill for 2023-24.

7.30 pm

I am aware that, in the letter that the Minister sent to noble Lords after Second Reading, she set out in quite some detail the action around small business rate relief and the additional support. When we look at reducing the amount of rates that businesses pay, we need to look at the impact on local government and

its resources. We need to look at this in the round. So we welcome the action that has been taken. We think that more action needs to be taken, but we must not forget the impact on local authorities.

We also think that the reduction in business relief should be funded by an increase in the digital services tax, which is charged on the global revenues of the global tech giants—basically, the online shopping argument against the high street argument, which we had at some length at Second Reading and which I am sure we will continue to have. In her letter, the Minister said that the Government have increased the total business rates bills for large distribution warehouses to reflect the growth of the online sales sector. Again, we welcome that, but we feel that we need to do more to resolve the imbalance between the amount of taxes paid online and in store.

I will be brief because it would be nice to finish, although a vote is coming. We very much support Amendment 31 in the name of the noble Lord, Lord Shipley. The hospitality sector has clearly laid out its particular concerns about how it may not come off so well from the improvement relief, the material changes to circumstances and the duty to notify. I am sure that the noble Lord, Lord Shipley, will mention them, so I beg to move.

Baroness Pinnock (LD): My Lords, Amendments 30, 32 and 35 are in my name—

7.32 pm

Sitting suspended for a Division in the House.

7.41 pm

Baroness Pinnock (LD): My Lords, Amendments 30, 32 and 35 are in my name in this group. They cover two issues. One is reform and the other is review. The reform amendment is Amendment 30 because, as many of us said at Second Reading, we are tinkering at the edges of business rate reform and change. What is needed is, in fact, what the Conservative manifesto promised in 2019—a fundamental review of the system. Amendment 30 asks for a review and reform of the non-domestic rateable value system between different parts of the retail sector. It focuses particularly on the retail sector.

In Amendment 30, paragraphs (a), (b) and (c) of proposed new subsection (3) identify the different sectors: single-shop businesses in high streets,

"chain stores with multiple premises in city centres and out-of-centre shopping malls"

and "mainly online operations" by global businesses, which do not pay their fair share of taxation in any case and seem to be taxed very lightly in business rates compared to the sectors mentioned in proposed new paragraphs (a) and (b).

I would like the Government to agree to the amendment, as they already recognise that the system is not fair and equitable. For example, the current system acknowledges that small businesses are overtaxed by the existing system of assessment and responds to that by creating a plethora of business rate reliefs, such as small business rate relief, charitable relief and so on. The Treasury funds those reliefs, but how much better would it be if the system was designed from the outset to be more equitable between different parts of the retail sector? It would encourage more activity on our high streets, which benefits local businesses and the communities that they serve, and would also extract more money from those who have most and who have avoided taxation the best—global online retail businesses.

At this point I shall say, for brevity, that Amendment 36 in the name of the noble Lord, Lord Thurlow, is an excellent expression of what I have just tried to achieve with my Amendment 30, so I obviously totally support that and look forward to the noble Lord describing exactly how it will be achieved.

7.45 pm

Amendments 32 and 35 in my name are asking for reviews of the impact of these changes. On Amendment 32, as I raised at Second Reading, I am concerned that the impact of these changes may be a fall in business rate income, which would impact on local authorities' funding, because business rates income transfers to local government. At Second Reading, the Minister confirmed that there would be new-burdens funding for the changes described in the Bill; however, it was not confirmed that there would be compensation for loss of income due to reduction in business rate income. Local authorities are on the edge of their financial viability and, if there is a loss of business rate income, it will significantly harm local authorities. I have outlined other impacts in that amendment that I would like to see reviewed, but I will take them as read, in the interests of brevity.

The final review I ask for, in Amendment 35, is simply for an impact assessment. Do these changes actually incentivise improvements to business premises? Will business benefit from more frequent valuations? The amendment asks the question about devolving more powers over business rates to local authorities. These are important changes. Reform and review are at the heart of the amendments, and I look forward to hearing how the Minister will respond, especially to Amendment 36 in the name of the noble Lord, Lord Thurlow.

Lord Thurlow (CB): That was an impressive introduction. I apologise for bringing this up so late. I was not going to table it, as it was too difficult, but I just could not not do so. I give great thanks to the Table Office for drafting and help.

This group is listed as reliefs and reviews, and I feel strongly that we should dwell more on reviews than reliefs. While injustices should be addressed in the short term with financial relief, the non-domestic rating system is broken, and it seems that the attempts to fix it have become too difficult and it has become easier to throw taxpayers' money at reliefs than to review it. I believe that the attempts to resolve the injustices in the system have simply been considered too difficult—as I did until last night, or Friday—and have been kicked into the long grass. I would like nothing more at all than to hear from the Minister that action is expected very soon.

[Lord Thurlow]

One particular injustice, perhaps the most trumpeted, is that of the small high street retailers we have heard about, struggling to survive against the onslaught of internet shopping. In ordinary business terms, the free-market economy dictates the survival rate of businesses, but in this case there is an important further dimension—so much more important—which is the public interest case for healthy high streets. They provide a social necessity to our communities, a valuable asset in the social fabric. We know the subject is complex. A number of high street retailers and major supermarkets have websites; some SMEs may rely on them. These and other good reasons simply complicate the matter; they do not make it impossible.

There is a fiscal irony here. The growing turnover and profitability of internet retail is directly felt in the high street by falling demand. Falling demand translates as falling rental value. It follows that the rateable value will fall. Without this amendment or something similar to it, net tax receipts will also fall. Introducing fairness to the rates paid by internet retailers will go some way—possibly a very long way—to making up for the loss of high street rate contributions.

The solution lies in a new property use class for the purposes of assessing NDR—not to overlap with use classes in the planning Acts; I would run a mile from that. This would be purely for rating. It would correct the current major imbalance between retailers paying warehouse rates and high street retailers paying high street rates. Warehouse rates are a fraction of high street equivalents. Internet retailers know this, and their profits swell by the artificial discount the system supports.

The amendment proposes that the Government conduct a review to make recommendations for a new rating use class. It would harness expertise from the commercial property sector. The amendment gives the Government 12 months to bring a new Bill before Parliament with recommendations to correct this widely recognised injustice.

The Earl of Lytton (CB): My Lords, I support the amendments in this group. At one of my meetings with the Minister and her Bill team I was told that it was not HMRC—or they may have said Treasury—practice to produce an impact assessment as such, and I was directed to a series of notes in lieu. But business rates have an impact on business, employment, entrepreneurial activity and the health of our high streets, and have long seemed a substantial tipping point in decisions about taking on premises, where the tax levied is 50% of the determined market rental value. That puts into shade the collective cost of things such as insurance service charges and other occupational outgoings.

There is a basic imbalance here; I have said so on many occasions in the House and elsewhere. Upfront impact assessments and post-legislative review are exactly what is missing here. I agree with the noble Baroness, Lady Pinnock, that small business relief and small business exemptions are almost an admission of the failure of the system we have.

Turning to Amendment 36, tabled by the noble Lord, Lord Thurlow, I totally agree with its underlying principle that the tax base for local government finance needs to be broadened, with proportionately less of a burden falling on what we might call the traditional business rate payer. This is becoming an impediment. What are termed fundamental reviews have been a great deal less fundamental than they ought to have been. The system has been creaking for some time and one should take notice when things start to creak; it usually means that something is wrong. I very much relate to these amendments, and I look forward to the Minister's comments.

Lord Shipley (LD): My Lords, my name appears on two of the amendments in this group. Underlying the whole group is a major issue: the Treasury now sees business rates as a source of general income to government, but many small businesses see them as a contribution to local services. That has got out of balance.

I strongly support Amendment 36, in the name of the noble Lord, Lord Thurlow, who has just spoken. He talked about the impact of online shopping on small high street outlets and said that there was a public interest case to be made. Indeed, Amendment 29, moved by the noble Baroness, Lady Hayman of Ullock, probes the possibility of reducing the threshold for small business rate relief on high streets. A number of us raised that issue at Second Reading.

A number of issues are raised in this group. I have an amendment on the hospitality sector. It is not clear to me what reason there would be for not having a hospitality sector review, as I propose. It is about assessing the consistency of approach; we have spoken a lot about high streets, but this applies to the hospitality sector as well. There needs to be an assessment of whether there is a consistent approach for setting non-domestic rateable values between hospitality businesses occupying premises of similar size and trading style. I cite public houses, restaurants, live performance theatres and exhibition spaces as examples. This is the kind of thing that government should be doing anyway, but there is a huge policy issue now around what business rates are for and how we make sure that they are being fairly charged.

Baroness Scott of Bybrook (Con): My Lords, group 6 covers several amendments probing the Government's support for high street businesses and the wider impact of the Bill. I am grateful for the useful discussions that I have had with noble Lords on what are, undoubtedly, significant issues.

Amendments 30 and 31, from the noble Baroness, Lady Pinnock, and the noble Lord, Lord Shipley, seek a review of the effect of business rates on the retail and hospitality sectors. I recognise that the conditions for businesses in town centres and high streets are concerning for many noble Lords. The Government take these concerns seriously and recognise the impact that increased competition from online businesses, changing consumer behaviour and Covid-19 has had on the fortunes of some high street businesses.

That is why the Government have taken decisive action to ensure that business rates are manageable for ratepayers on the high street. First, 720,000 properties, including many smaller retailers, pay no rates as a result of small business rates relief. Additional support has also been provided for those that do have rates bills: at the Autumn Statement, the Chancellor announced a package of business rates measures worth £13.6 billion. This included a general freeze of the multipliers for all properties, as well as increased support—from 50% to 75% relief—for retail, hospitality and leisure properties, which is worth over £2.1 billion. As we heard, the Government also scrapped downward caps and, as we move to more frequent revaluations through the Bill, we will see a business rates system that better reflects real market values, which was the leading ask of businesses in our review.

I understand that the noble Earl, Lord Lytton, and the noble and learned Lord, Lord Etherton, tabled Amendment 26 to encourage the Government to more actively intervene in how different types of property used in the retail sector are valued. Valuation is, of course, conducted independently by the VOA. All properties subject to business rates are assessed to the same standard of rateable value, which is, broadly speaking, the annual rental value. Properties are valued by reference to the evidence on the level of rents, which is agreed by landlords and tenants for that specific property class. If, at the most recent revaluation, the evidence shows that those open market rental values have increased, rateable values will change with them. Nevertheless, in all cases, the method must result in the common standard of rateable values.

In our review of business rates, the Government sought views on many different ways in which the valuation system could be changed. However, there was strong majority support for retaining the existing basis of rateable value. Therefore, we do not support significant changes to the industry-recognised valuation methodology, as was suggested.

8 pm

Amendment 29, tabled by the noble Baroness, Lady Hayman, seeks an assessment of the impact of reducing the threshold for small business rate relief. As I have set out, the Government's small business rate relief scheme already sees more than one-third of properties pay no business rates at all, with an additional 76,000 benefiting from reduced bills. The eligibility criteria for small business rate relief ensures that it effectively targets the smallest businesses, where help is needed most, and provides a good balance between support and the cost to the Exchequer. Further increases in the threshold for small business rate relief would be a broad-based and indiscriminate way to provide support and would therefore be a poorly targeted form of relief, so we do not agree that this amendment is necessary. However, the Government keep all taxes under review, and any future decisions regarding the tax system will be taken in line with the normal Budget process.

Finally, Amendments 32 and 35, tabled by the noble Baroness, Lady Pinnock, would require an assessment of: the impact of three-yearly revaluations on business rates revenue and the financial resilience of local government; the impact of the VOA duty on ratepayers; the impact of the Act on the VOA's resources; and the impact of temporary rate reliefs in the Bill on the UK's net-zero targets. I will begin with local government. Local authorities will receive new burdens funding for the additional costs they face as administrators of the system, and I assure noble Lords that we will undertake a new burdens assessment of the measures in the Bill. I also assure noble Lords that local authorities are protected from the effects of the revaluation.

Revaluations update the rateable value of all properties across the country, meaning that some will see increases and others reductions. Unmitigated, this would lead to changes in the amount of business rates income collected and retained by individual local authorities under the business rates retention system. The Government have adjusted the business rates retention system to strip out as far as practicable the impact of the revaluation on local authority income via the adjustment to local authority top-ups and tariffs. This is a mechanism that we have discussed and consulted upon with local government and it worked effectively in the 2017 and 2023 revaluations.

Regarding the VOA duty, the Government have already published their estimates of the impact of complying with the duty on ratepayers. We will continue to monitor this as we design the system and engage with ratepayers. I have already spoken about the VOA's resources and the funding the Government have provided to ensure that these changes are delivered. The VOA is investing considerably in its resourcing, particularly around the recruitment of surveyors.

Finally, it is of course right that we review the effectiveness of the new improvement and heat network reliefs at a suitable juncture. We have said that we will do so ahead of their 2035 expiry date and have kept a power in the Bill to extend the reliefs based on that review.

Having only recently conducted a comprehensive review of the rates system, and having set out our plans for monitoring and reviewing the measures in the Bill and the protections for local government in our administration of the system, I trust that noble Lords will agree that these amendments are unnecessary.

Baroness Hayman of Ullock (Lab): I thank noble Lords for the debate we have had on this, and I thank the Minister for her thorough response to the debate. I thank her particularly for her assurances regarding the impact of the revaluation on local authorities. It is important that that is taken into account. There are still outstanding issues in this area, particularly around the impact on the hospitality industry and other specific groups that will be affected and how we manage online versus high street and get an equitable position. I should have mentioned in my opening speech that we support the amendment tabled by the noble Lord, Lord Thurlow, and I thank him for his introduction to it. I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

Amendments 30 to 36 not moved.

Clauses 16 and 17 agreed.

Schedule 1 agreed.

Clauses 18 to 20 agreed.

Bill reported without amendment.

Committee adjourned at 8.05 pm.