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GENERAL COMMITTEES

Public Bill Committee

IMMIGRATION BILL

Fifth Sitting

Tuesday 5 November 2013

(Morning)

CONTENTS

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Saturday 9 November 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: †Sir Roger Gale, Katy Clark

† Bain, Mr William *(Glasgow North East)* (Lab)
† Baker, Norman *(Minister for Crime Prevention)*
Dowd, Jim *(Lewisham West and Penge)* (Lab)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Hanson, Mr David *(Delyn)* (Lab)
† Harper, Mr Mark *(Minister for Immigration)*
† Hillier, Meg *(Hackney South and Shoreditch)* (Lab/Co-op)
† Huppert, Dr Julian *(Cambridge)* (LD)
† Jones, Helen *(Warrington North)* (Lab)
† Kirby, Simon *(Brighton, Kemptown)* (Con)
† McFadden, Mr Pat *(Wolverhampton South East)* (Lab)
† Mills, Nigel *(Amber Valley)* (Con)
† Milton, Anne *(Lord Commissioner of Her Majesty's Treasury)*
† Opperman, Guy *(Hexham)* (Con)
Paisley, Ian *(North Antrim)* (DUP)
† Patel, Priti *(Witham)* (Con)
† Robertson, John *(Glasgow North West)* (Lab)
† Smith, Henry *(Crawley)* (Con)
† Soames, Nicholas *(Mid Sussex)* (Con)
† Syms, Mr Robert *(Poole)* (Con)
† Wilson, Phil *(Sedgefield)* (Lab)

John-Paul Flaherty, Matthew Hamlyn, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 5 November 2013

(Morning)

[Sir Roger Gale *in the Chair*]

Immigration Bill

8.55 am

The Chair: Good morning, ladies and gentlemen. Members may remove their jackets if they wish. Before we start line-by-line consideration, I shall run over the ground rules for the benefit of those who are long in the tooth and have forgotten and those who are short in the tooth and never knew.

The selection list, as always, is available on the table in the room. It shows the amendments that have been grouped together for debate. The grouping is on the basis of amendments being on the same issue and does not reflect where they arise in the Bill. The Member who has tabled the lead amendment in a group—we shall come to grouped amendments later—is called first. Other Members on both sides of the Committee are then free to catch my eye and speak on any of the amendments in the group. You will understand that here, as in evidence sessions, a Member is entitled to speak more than once in a debate.

At the end of the debate on a group, we call for a decision only the amendment that has been moved. There is an assumption that all the amendments in a group are moved; they are not. Only the lead amendment is decided upon. If any Members wishes to move an amendment that is not the lead amendment, they need to let either me or my co-Chair Ms Clark know, otherwise it will not be called. That mistake is often made.

Finally, decisions on grouped amendments are not taken there and then. They are taken when the appropriate point in the Bill is reached. So we may have a group of amendments that are debated together, and a colleague is likely to leap up and say, "I want that one". The answer is, "No, that comes 10 pages later; we will get to it, and it will be called if you have indicated that you wish it to be." I hope that is okay.

We now begin the formal proceedings on the Bill. I gently remind members that there are rules relating to conduct and Members' interests, so hon. Members may feel inclined to declare any interests at the start of their first speech, but not every time.

Clause 1

Removal and other powers

Mr David Hanson (Delyn) (Lab): I beg to move amendment 15, in clause 1, page 1, line 10, after 'it', insert

'and the Secretary of State has given the person written notice of his liability to removal'.

Good morning, Sir Roger. May I welcome you to the Chair, and, in her absence, welcome your co-Chair, Katy Clark? I am sure that we will have a fruitful Committee. I beg your indulgence for a moment, Sir Roger, to welcome the right hon. Member for Mid Sussex to the Committee. Last week he was absent, but I shall place on record the reason. He was paying tribute to his grandfather in the United States. I certainly followed his progress in America, and I hope that he followed ours in Portcullis House. I am sure that he did. I pay tribute to him for the efforts that he made. I know that this is not in order, but it is important that we recognise the service that his grandfather gave and pay tribute to the United States Government for recognising it as well.

Moving away from that consensual note, I turn to amendment 15. Let me say at the outset that I have no objection to people who have exhausted their rights being removed from the United Kingdom, nor to people who are here illegally being removed. In practice, clause 1 will give the Government the opportunity to remove persons who are unlawfully in the United Kingdom by replacing section 10 of the Immigration and Asylum Act 1999 with a new section 10, headed: "Removal of persons unlawfully in the United Kingdom". That is perfectly reasonable, and I do not object to the general principle of the clause.

However—speaking through my cold, which will permeate the room and which I hope not to share with the rest of the Committee—I hope that the Committee will notice that the amendment would insert the simple words

"and the Secretary of State has given the person written notice of his liability to removal".

By "his", of course I also mean "her" liability to removal. As I have said, clause 1 makes new provision for administrative removal from the United Kingdom. Unlike deportation, which is used for those who have committed a criminal offence or whose presence is deemed not conducive to the public good, administrative removal is used for those who are required to have leave but do not have it. That may be because an extension of leave has been refused or leave has been curtailed, because they are overstayers or because they never had leave in the first place.

The proposal in the Bill, as set out in the Government factsheet of October 2013, is that a single decision will be made, so that a person is told that they have no leave and effectively advised to seek advice from a member of Her Majesty's legal profession as a matter of urgency. That in itself is not unfair and not unreasonable. However, the Bill simply renders a person liable to removal if they require leave but do not have it. I think it is a matter of fairness that when removal is due to take place, the person in question is at the very least given notice of their liability to removal and given details of when, where and how that removal will take place. Amendment 15 will hopefully allow that. I do not think that that is unreasonable, and I am not clear why the Government are changing the provisions so as not to allow that notice to be given. In my view, without that we will not bring either efficiency or certainty to the removal process, and there will not be fairness for the individual being removed, who is in a difficult situation.

The Immigration Law Practitioners' Association sent us a number of briefings, for which I thank it, and has raised concerns about this matter. The principle I want to establish, and on which I want to test the Government and the Minister, is whether any decision to remove a person should include a notice being served upon that

individual. Should that be left to guidance or the assessment of the Home Office, or should it be specified in the Bill, as the amendment suggests?

This is not a new issue; it has been considered and discussed before. As the Minister knows, in the case of R. *v.* the Secretary of State for the Home Department in 2003, in House of Lords judgment 36, the noble Lord Steyn said:

> "Notice of a decision is required before it can have the character of a determination with legal effect because the individual concerned must be in a position to challenge the decision in the courts if he or she wishes to do so. This is not a technical rule. It is simply an application of the right of access to justice. That is a fundamental and constitutional principle of our legal system".

I am aware that if later clauses are agreed, the potential to appeal will be changed. We will come on to that later. However, under clause 1 as it is currently constituted, if a decision is taken to remove a person, they will therefore be removed. That is simply my interpretation, and I would welcome the Minister's interpretation, but I believe that no further communication would take place with that person, and that there would be a removal. The Committee needs to decide whether that is fair and equitable or whether that individual should have the right to a notice giving such information as is, for example, currently prescribed under section 105 of the Nationality, Immigration and Asylum Act 2002 and under the Immigration (Notices) Regulations 2003.

As I understand it—again, I would welcome clarification from the Minister—under the current regulations a notice has to be given that states the reasons for which the removal is being undertaken; the state, country or territory that the person will be removed to; the decision maker in the event that an individual could be removed to one or more countries; whether they are to be accompanied by any individual; the reasons for the rejection of any particular claim; and any right of appeal. I accept that under the Bill the right of appeal to a tribunal is being removed, but there is still potentially the right to claim asylum or the right to a judicial review. Those issues are not covered by the clause as it currently stands.

If a notice is given, what will happen to individuals? I ask that genuinely, to give the Minister the chance to provide the Committee with clarification. If the Committee accepts the clause as currently drafted, my reading is that a person could be removed from the United Kingdom without being told, in a language that they understand, to which country they are going, when they are going to be removed, what recourse they have to judicial review, if any, and what their rights of appeal are on asylum or human rights grounds.

It may be that the Government do not want to make provision for any of those things, or it may be that I have misunderstood the clause. I will be open about that, because I want to hear the Government's understanding of how the process will operate if clause 1 is accepted as it currently stands. There are a range of considerations. In certain cases in the past, removal without notice was indeed Home Office practice. That was declared unlawful by the Court of Appeal in R (Medical Justice) *v.* Secretary of State for the Home Department in 2011. The court said that

> "to have effective access to the courts, the person served with removal directions…needs to have a reasonable opportunity to obtain legal advice and assistance."

In that case, the Secretary of State's policy was quashed as unlawful because it

> "abrogated the constitutional right of access to justice".

Will the Minister clarify his position on that with regard to the clause as it is currently drafted?

Members will have received a briefing from Liberty. Liberty and I do not always see eye to eye, and during discussions on a previous Bill I was critical of some the points it made. On this occasion, I want to put some of Liberty's concerns on the record and ask the Minister to address them in his response to the debate. In its briefing, for example, Liberty asked:

> "Will the Home Office take any steps to ensure that those earmarked for removal do not have legitimate pending applications?"

Having to serve a notice telling someone that they will be removed on a certain date at a certain time would at least give the Home Office the opportunity to check those facts. Supporting the points I have just made, Liberty also asked:

> "If individuals are to be removed, how is the fact, time, date, destination of removal (all information currently provided in removal directions) to be communicated to an individual? Will an individual be informed about the fact and details of removal at a time which would allow them to seek legal advice?"

The Minister might be able to clarify that point and so satisfy my concerns about clause 1. However, my reading, and that of outside organisations, is that clause 1 in its current form does not allow for such information to be given to individuals.

I would like clarity on some further points. For example, if a person who requires leave to enter or remain but does not have it is given a notice under clause 1, but that notice is not specific—it does not say, for example, "We intend to remove you at 6 pm on 5 November"—does that person simply have to wait until the Home Office turns up one day and removes them? What process will be in place for removals? Are people to expect a knock on the door at a particular time, or do they wait for it? The purpose of the amendment is to give the Government an opportunity to clarify the process.

The Opposition are not the Home Office; we do not have draftspeople galore to draft our amendments. We draft amendments to create a discussion. If the principle of a removal notice is accepted by the Minister, I am happy to withdraw the amendment to allow him to reflect on the issue and ensure that it is addressed in primary legislation.

My questions to the Minister in our opening gambit are as follows. How and when will an individual know about their removal? How will they be removed? Will they have access to legal advice? Will they be able to judicially review the decision? What will be the process after clause 1 is enacted? None of those decisions seems to have been taken at the moment. The Bill should provide for notices to include information about available remedies, particularly judicial review, and it should ensure that individuals have independent information on when the removal is to take place. Those issues are worthy of debate.

As I have said, I am not against clause 1 in principle. If people have exhausted their right of residence in the United Kingdom, if they do not have such a right, or if they are here illegally, clause 1 introduces a proper and

[Mr David Hanson]

right way to ensure that they are removed. However, it is in the interests of natural justice, and is also a matter of Home Office practice and legal precedent, that some notice is given to individuals.

The Minister for Immigration (Mr Mark Harper): It is a great pleasure to serve under your chairmanship, Sir Roger. I will echo what the right hon. Gentleman said about my right hon. Friend the Member for Mid Sussex; I absolutely agree with him. It is good to see my right hon. Friend here. I am sure that he was following the progress of our Committee in last week's evidence sessions, and I look forward to hearing from him later.

We always prefer people who have no right or valid leave to be in the United Kingdom to return home voluntarily. However, if they do not do so, it is right that they can be removed quickly and easily. The amendment is intended to ensure that a person must be given written notice of their removal. I hope that after I have finished, the right hon. Member for Delyn will accept that his initial reading is neither our intention nor what the Bill says. At the moment, migrants are told that they are not allowed to be here, and we have to tell them separately about their removal.

The right hon. Gentleman was clear that he wanted to ensure that the need to tell someone in writing about a decision was not purely left up to the Government. Section 4 of the Immigration Act 1971 sets out the requirement to give written notice of decisions to give, refuse or vary leave. With clause 1, we want to move to a system whereby we serve only one decision that gives, refuses or vary leave. Following that decision, where notice has been given, those who require leave but who do not have it will be removable without a separate removal decision or notice being required. People have to have notice that they do not have the right to be here in accordance with section 4.

I will spell out what will be in the notice, which should answer the right hon. Gentleman's question. If not, I will of course take his interventions, because I know that he has some concerns. The decision notice will refuse the application, or curtail or revoke any leave where applicable. It will inform the migrant of their destination for removal; advise them to seek early legal advice; and place them under a duty to raise with the Home Office any asylum, human rights or European free movement reasons as to why they believe they are entitled to stay.

The notice will warn the migrant that they will receive no further notification of removal if they do not leave voluntarily. It will set out the options for voluntary departure and the consequences of not doing so.

Mr Pat McFadden (Wolverhampton South East) (Lab): Can I ask the Minister about some of the numbers involved here? How many removals are carried out every year? Can he relate that to the number of people who are told that they have no right to be in the country? It is my impression that those numbers do not tally. A number of people are told that they do not have a right to be in the country but are nevertheless left to linger and are not removed. That is not in the public interest. It would inform this debate and the debate on Report if we knew the numbers we were talking about.

9.15 am

Mr Harper: The right hon. Gentleman makes a good point about those who have no right to be here and the mechanism by which they are removed from the country. There are approximately 14,000 enforced removals a year whereby people are arrested, detained and then removed. Sometimes it involves hiring escorts and is an expensive process. About 29,000 people depart voluntarily. There are different levels of voluntariness; some go completely voluntarily, others we assist in their departure from the United Kingdom but without having to enforce it.

The right hon. Gentleman is right. It could be argued that the first thing we should do with all those whose extension of leave is refused or who have no right to be here is arrest them, detain them and remove them. I would argue that that would not be a sensible use of taxpayer resources, because an enforced removal can cost about £15,000. That does not include the incredibly expensive cases where escorts have to be hired.

When someone is refused leave to be in the United Kingdom or their leave is curtailed and they are told that they have no right to be here, the first option should be for them to leave voluntarily. A significant number do, and we have seen quite a lot of success in encouraging more people to leave the United Kingdom voluntarily. That is much better for them. It saves them having to go through the process of being arrested, detained and removed. It also means that they are much more likely in future to be able to return to the United Kingdom legally. If we have to use taxpayer resources to enforce their removal, we will put in place a 10-year re-entry ban. The limits are much lower if they remove themselves voluntarily.

The right hon. Gentleman makes a good point. Part of what we are trying to do in the Bill is to make it more difficult to remain in the UK voluntarily, so that people who have no right to be here, of whom a significant number come here lawfully and then overstay, choose to leave voluntarily and we do not have to use enormous sums of money, which we get from hard-working families, to remove them.

The final question raised by the right hon. Member for Delyn was about the decision notice. It will be issued at least 72 hours before any removal is attempted, which is the amount of notice we have to give at the moment when we issue a removal decision, a length of time that is calculated to ensure that people can seek legal advice. The right hon. Gentleman will know that we have agreed a procedure with the legal community, which is set out clearly depending on which day of the week the decision is issued to ensure that there is a sufficient period of working days when someone can seek legal advice. We do not propose to change that aspect of the procedure.

Our current system is too complex, requiring a number of separate decisions and notices. It can leave migrants unclear as to when they need to leave the UK—that echoes the point made by the right hon. Member for Wolverhampton South East. People get a notice saying that they have no right to be here, but it is not necessarily as clear as it should be that they should then take steps to leave the United Kingdom. We should make it clear that they are expected to do so and what the consequences are if they do not.

I think I have dealt with the points raised by the right hon. Member for Delyn. The law is clear that people have to receive notice in writing. The decision notice will cover all of the pieces of information that he and others are keen for people to receive. At the point when they receive that notice, they are under an obligation to leave the United Kingdom.

Our proposal will streamline the system. It will make the situation clearer for people, and it will encourage them to leave voluntarily. When they do not, it will be possible, with all the appropriate safeguards, for us to remove them and ensure that people are obeying the law.

Mr Hanson: I am grateful for the Minister's clarification of those points. As I indicated, the concerns about the clarity of the notice were not just mine but those of organisations outside the House that had scrutinised the legislation and wanted the assurances that the Minister has given.

As I understand what the Minister has said, under clause 1, a notice will be given 72 hours in advance of removal and will contain information that will help an individual to plan their enforced removal. Carrying on the consensus that began with discussion of the right hon. Member for Mid Sussex's grandfather, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Hanson: I beg to move amendment 16, in clause 1, page 2, line 32, at end add—

'(7) Regulations under subsection (6)—

(a) shall be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.'.

The amendment is intended to change the way in which the Secretary of State, under clause 1, will make regulations about further provision. If Members look at page 2 of the Bill, at proposed section 10(6) of the Immigration and Asylum Act 1999, they will see that as currently drafted:

"The Secretary of State may by regulations make further provision about the removal of family members under this section or any other provision of the Immigration Acts, and in particular about—

(a) when a person is considered to be a family member;

(b) the time period during which a family member may be removed;

(c) whether a family member to be removed is to be given notice, and, if so—

(i) the effect that being given notice has on the person's leave, and

(ii) how notice is to be served."

In that aspect of clause 1, we are touching on the same issues as those in the previous amendment. Except that, as drafted, proposed section 10(6) says that the Secretary of State may "by regulation" make further provision. The amendment would provide that regulations under this section

"(a) shall be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament."

It would be helpful for the Minister to address two aspects in response to amendment 16. The first would be to give some detail of his thinking, if he has yet thought, about what he intends to do with the regulations under proposed section 10(6), as set out in clause 1. These are quite serious powers for removal of family members, associated with individuals, who will face enforcement under clause 1.

It will be interesting to hear from the Minister if he has given some thought to his definition of a family member. Has he thought through that definition? It would be helpful for him to indicate the time period during which a family member may be removed. I am interested to know if the Home Office has thought about the notices to be served, and how they are to be given for family members, under clause 1.

We are not being asked today to approve the detail of those areas and concerns. We are being asked to approve that the Secretary of State can make those regulations without further reference to Parliament, except by Parliament questioning or discussing those matters. The amendment seeks to ensure that those regulations are subject to statutory instrument, are considered in a Committee, can be scrutinised, accepted or rejected by the Government and Opposition of the day and approved by both Houses of Parliament—and not just the elected House but another place. That will mean there is an opportunity to scrutinise the regulations.

Why does that matter? It matters because the powers under proposed section 10(6) are important for the family member. Under the powers, a family member could face removal from the United Kingdom because their relationship with an individual has been removed under clause 1. "Family member" is a wide definition. Is my uncle a family member? Is my grandfather a family member? Is my cousin a family member? If people live in the same property as me, are they "family members"? What is the definition? If we do not have the opportunity to scrutinise the regulations in an SI considered by both Houses of Parliament, the Minister could under the legislation determine the definition of "family member" without any further reference to Parliament. That may or may not be a good thing and I am not arguing about his right to do so; I am simply saying that the decisions he makes under that right should be scrutinised formally by both Houses of Parliament.

Proposed section 10(6) will allow the Minister to make provision about

"whether a family member to be removed is to be given notice"

and about

"the effect that being given notice has on the person's leave"

and

"how that notice is to be served."

The Minister may be able to clarify completely his intentions and the principles behind the regulations and he may share those regulations for scrutiny so that we can discuss the ins and outs and the impact. It is insufficient, however, for us to say today that we are happy with proposed section 10(6) and that we trust him implicitly to draft regulations and make decisions without further consideration by the House unless we go through torturous procedures, rather than using a procedure by which the Minister must bring regulations to the House for approval.

Legislation should be clear about the people who are subject to the powers it contains. At the moment, the clause does not indicate in any way, shape or form the impact of proposed section 10(6) on the individuals in

[Mr Hanson]

question. I am willing to give the Minister the benefit of the doubt and to allow him to help the Committee to understand his intentions, but it is important that he determines today his view on "family members", on the relationships that apply and on whether a person is given notice, as mentioned in the discussion on amendment 15. In the evidence sessions, the Minister helpfully indicated that clause 1, as a whole, would not apply to British or EU citizens. It would be helpful for him to indicate today that the regulations in proposed section 10(6) will not allow for a British citizen or a citizen of the EU with the right of abode in the UK to be removed simply because they happen to be in a family relationship with somebody who is eligible for removal from the UK under clause 1. He has said that previously, but a reiteration of that point would be helpful for future interpretation now that we are formally scrutinising the Bill

That is my pitch on amendment 16. I welcome the Minister's comments and reserve my right to return to the matter depending on what he says.

Mr Harper: As the right hon. Gentleman set out, amendment 16 seeks to change the parliamentary process for the removal of family members, but I hope that after I have outlined the Government's intentions, he will agree that clause 63 sets out the parliamentary procedure in respect of various order and decision-making powers and specifies that the power

"to make an order or regulations…is exercisable by statutory instrument"

under the normal process, rather than the affirmative procedure.

9.30 am

It is worth saying that the details of what constitutes a family member for the purposes of removal are not currently defined in primary legislation. We are attempting to make the definition of family members for removal purposes the same as for incoming purposes, which of course we define in the immigration rules. Let me set out our intention. The definition of family members will not include—I am happy to repeat this—family members who are British citizens or EEA nationals. It would include people such as fiancés, civil partners, spouses, proposed civil partners, unmarried partners, same-sex partners, children or other dependent relatives—in other words, the same categories of relationship that could allow people to get leave to remain under the immigration rules.

So what we seek is a set of regulations which is analogous to the immigration rules. If someone is able to get leave to remain in the United Kingdom as a dependant of somebody, it is right that if the lead individual is removed from the United Kingdom, so are the dependent family members.

Family members will always be notified if they face an enforced removal, in the same way that the notice would be given to the lead individual. Picking up the right hon. Gentleman's point about his either real or mythical uncle, we will also ensure that people will not be removed if they are no longer in a family relationship, so long as they have valid leave to remain in the UK in their own right. If someone has valid leave to remain here in their own right, just because they happen to be in a family relationship with somebody who no longer has leave to be in the United Kingdom, that does not mean that we would expect them to leave the country.

We would also not seek to remove a family member, if they meet the criteria laid out in the immigration rules, who was a victim of domestic violence. We would also follow our statutory obligations to look to the best interests of the child in making a decision, also our obligations regarding victims of human trafficking. So in terms of our intention, it is clear that the immigration rules that set out who can come to the United Kingdom, and the relevant dependants, are set out in an analogous way to what we have proposed in the Bill. In the light of that, I would ask the right hon. Gentleman—

Mr Hanson: Before the Minister finishes, I am grateful for his clarification. Part of the process of scrutiny is to clarify Government intentions and at the moment he has helpfully indicated some of the intentions on that. But why will he not allow it to be an affirmative procedure rather than the negative procedure currently proposed?

Mr Harper: We normally reserve the affirmative procedure to those orders or regulations that amend or repeal primary legislation, require significant parliamentary debate or where the intention of what the Government are trying to do is not entirely clear. In effect, we are setting out here those people who are able to be removed analogous to the immigration rules. It seems reasonable to me that we go through the same sort of parliamentary process.

There is a parliamentary process here. If people object to any statutory instrument that we make, it is subject to people praying against it and insisting on a debate and a vote in Parliament. I am not asking the right hon. Gentleman to trust me or any future Minister if he is not satisfied with what is proposed. That, of course, applies to the immigration rules.

Mr Hanson: I have been a Minister and the hon. Gentleman has been in opposition. He will know that part of the process of government and opposition is to ensure that there is scrutiny. Part of the problem of opposition is knowing when these matters have been laid and keeping on top of that information. First and foremost, we have to determine that an order has been laid and that it is something we need to consider and pray against. That is something that Oppositions can miss. This has been done in the past on his side and on our side. A substantive, affirmative resolution on such important issues as who is being removed from this country as a family member and other matters, could potentially be subject to affirmative resolution, which would ensure that they were considered formally, without the need to pray against them.

Mr Harper: I take the right hon. Gentleman's point, although I never had any trouble going through the Order Paper and looking at the list of things that had been laid by the Government. It is not as though we could do it secretly. We do have to notify the House that we have laid regulations. The analogous position, and the best way to think about it, is that we are proposing

to remove people allowed leave by the immigration rules to be in the UK as dependants. It seems perfectly sensible to go about it in the way we propose. He is overdoing the belt and braces. Either the belt or the braces is appropriate; we do not need both.

Helen Jones (Warrington North) (Lab): I want to ask about victims of trafficking. The Minister has made it clear that there is no intention to remove people who are trafficked. However, if one is dealing with a family member, it is often difficult for them to make the case that they have been trafficked since they are by definition under someone else's control at the time. That is why, like my right hon. Friend the Member for Delyn, I am concerned that we will not be using the affirmative procedure for the regulations, because we are not going to be allowed fully to debate that kind of issue. Will the Minister comment on how the Government intend to deal with victims of trafficking in that instance?

Mr Harper: It is worth saying that, even if one were setting out the types of family members who could be removed in the way proposed by the right hon. Member for Delyn, it would still not deal with the issue raised by the hon. Member for Warrington North.

We have set out our position on dealing with victims of trafficking. For example, the hon. Lady will know that front-line officers are trained to know if someone is a victim of trafficking. We are not perfect but we are getting better at that. The Crown Prosecution Service has guidance to ensure that someone who has been trafficked and then used for a criminal enterprise is treated as a victim and not an offender. I think we are getting better at recognising that and the CPS has some robust guidance in place.

We also ensure that someone who has been trafficked to the UK, and recognised as such, is given an opportunity to be supported before their future is determined. It is not the case, as the hon. Lady said, that someone who is trafficked to the UK is automatically given leave to remain for ever. They are given a period of care and support and then a decision will be made in all the circumstances about whether it is appropriate for them to remain in the UK. For example, if the person is involved as a witness in a criminal case they may be given leave to remain for the duration of the case, so that they can give evidence against the traffickers.

It may be better for someone who has been trafficked to be returned to their country of origin, if that can be done safely and does not put them in harm's way. The Government are working with a number of source countries for trafficking to ensure that there is appropriate support in those countries for victims of trafficking to ensure that people are not returned to their country of origin and then re-trafficked. That is a perfectly sensible debate but it takes us slightly off the point of the amendment and clause. I am happy to have a debate about trafficking but I do not think it raises issues about the clause, so I ask the right hon. Member for Delyn to withdraw the amendment on that basis.

Mr Hanson: I wish to test the Minister a little further. For the assistance of the Committee and the House, would it be practicable for the Minister, prior to final consideration of the Bill in another place, to produce the draft regulations that he intends to make under proposed section 10(6) in clause 1, so that Members can examine them? Under clause 63 there is no time limit on when those regulations are to be put in place.

If the Bill achieves Royal Assent the Minister could the following day produce some regulations. We are being asked today to agree that the Minister has the power to make those regulations. He has helpfully indicated some of the parameters within which those regulations shall be drawn. However, we do not know. We are allowing him to draw up those regulations post-Royal Assent, and to table them subject to negative procedure, though I accept they could be prayed against. However, they are of such importance it would be helpful for the Minister—he has been helpful elsewhere in the Bill by producing guidance notes beforehand—to consider during the passage of the Bill what the detail means in proposed section 10(6) in clause 1.

Mr Harper: I will not give the right hon. Gentleman an immediate response because if I make a commitment I want to ensure that I can follow it through. I am sure that in his previous guise as a Minister he was never guilty of publishing statutory instruments and draft regulations only after Bills had had Royal Assent. The same cannot be said of all of his colleagues. I frequently looked at Bills where we never saw a whiff of a regulation until they had received Royal Assent. Let me take away the very sensible point and reflect on it. I would like to be able to do so, but I hesitate to make a firm commitment and then be unable to follow it through. If it is humanly possible to produce a set of draft regulations before the provisions are debated further I will endeavour to do so.

Mr Hanson: I am pleased that the Minister is following my lead from when I was a Minister, in trying to be helpful on matters of principle. Sometimes we published things beforehand; sometimes we did not. Usually I trusted my judgment on these matters, but I now have to trust the Government's judgment. As I am not the Government, I have a role in scrutinising what they do. Self-evidently, under proposed section 10(6) in clause 1, the Secretary of State can make regulations on a number of key areas. It is important to get some indication from the Minister of his thinking on these issues, which we have done this morning. We do not give him carte blanche. I welcome his commitment at least to examine the principle of publishing a draft set of regulations—not the final version—so that individuals outside the House can also comment on the impact of proposed section 10(6) on family members. That is a reasonable question to ask; the Minister has given us a reasonable response. Therefore, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Julian Huppert (Cambridge) (LD): I beg to move amendment 39, in clause 1, page 2, line 32, at end add—

'(7) The Secretary of State shall by order—

(a) ensure that children are not detained for immigration purposes; and

(b) ensure that if a child requires accommodation prior to departure for—

(i) a minimal pre-departure period with their family, or

(ii) the period until they can leave the country, where a child arrives at a port of entry without a required visa, and makes no claim for visa or asylum on arrival,

such accommodation must be provided.

[Dr Julian Huppert]

(8) Accommodation set out in subsection (7) should be—

(a) suitable so as to ensure the child's welfare needs can be met, and

(b) for the least amount of time practicably possible.

(9) Where subsection (7)(b) applies, the officer responsible must ensure that children are only separated from their parents and carers for the purposes of child protection.'.

It is a pleasure to serve under your chairmanship, Sir Roger. The amendment aims to ensure that we can write into legislation the success already achieved by the coalition Government in ending the routine detention of children for immigration purposes. That was written into the coalition agreement and is something for which Liberal Democrats fought for many years. It was in our manifesto in 2010, which is why I was delighted that it made it into the coalition agreement and then into reality. The intention is not to go beyond what the Government are already doing with the rules. I accept that the wording does not capture the full complexity and the full details—I do not have access to parliamentary draftsmen to get this right. I hope the Minister can look seriously at this and come up with something that fleshes out the full details rather better. The amendment tries to capture what we have.

Why is the amendment needed? Why do we need to put what is already Government policy and Government actions on to the statute book? My concern is that a future Government could bring child detention back, through the back door as it were, given that that was done in any case, without legislation to support it. We just have to look at the record of the previous Government to see why such an amendment is necessary and why a safeguard and protection are needed. In the last five years of the previous Government, a total of 7,075 children were detained. The UN convention on the rights of the child says that when detention happens, it should be for the shortest time possible, but some of those children were held for many months—I think the record was 190 days. In the last year of that Government, more than 1,000 children were locked up in frankly pretty poor conditions.

John Robertson (Glasgow North West) (Lab): Although I have great sympathy with the line the hon. Gentleman is taking, there are occasions when children cannot be separated from their parents due to their age. I imagine that would apply to some of the cases he is quoting. What does he propose doing under those circumstances? Would he take the child away and put them into care?

Dr Huppert: If the hon. Gentleman looks at my amendment, he will see that that is specifically dealt in the case of immediate pre-departure. There is frankly no reason to detain adults for 190 days waiting for a detention to be arranged. That seems wholly inappropriate. He should reflect on the fact that the Government have managed to resolve the problems.

9.45 am

We had huge international criticism. The Council of Europe's commissioner for human rights repeatedly warned the previous Government that the detention of children was worryingly frequent and that there was a lack of transparency. There was official criticism about scant regard for basic welfare needs, serious child protection risks and routine detention that was harmful to children and young people. That is why I am so pleased that that has ended.

The hon. Gentleman is absolutely right that there are a few special cases. I have picked up two of them, which I wrote into the amendment. The first is where there is a minimal pre-departure period with family, to which I will return. We obviously need to ensure that people leave at the end of the process, but we want to ensure that that is a short time spent in appropriate accommodation.

The other special case is where a child arrives in the country with no visa or asylum claim, and the next flight or ship back to where they have come from does not appear in the next few hours. If someone has to wait overnight or a couple of days before they leave, that is a different sort of accommodation. We should look after children in that situation. It would not make sense to say that any child who arrives with no visa or asylum claim can simply come into the country, but we need to ensure that their circumstances are good. Those are the two principal exceptions that I have written into the amendment.

The minimal pre-departure period is a complex issue. The Government's approach has been extremely successful and a huge improvement on what we had previously, not only on the scale and numbers of people, but on time periods, which are limited, except in exceptional circumstances, to 72 hours. The conditions are totally different from what we saw previously at Yarl's Wood. There is a completely different intent. The involvement of Barnardo's has been particularly strong.

It is not just me or the Government saying that the conditions have changed. The independent inspector published a report in 2012 looking at Cedars. It said:

"Most of what we saw from the point of arrival at the centre was good and it was clear that it had been designed around the needs of children and families. Families were welcomed and their immediate needs were met. Children were well occupied and told us they enjoyed the care and stimulation they received at the centre. The physical environment was clean, well maintained and attractive, and the level of care provided by the enthusiastic staff group was exceptional. Health care staff were accessible, though specialist provision for those with mental health problems was limited. Families told us they felt safe in the centre and had confidence in staff. Barnardo's staff played an important role in the centre and their involvement was a major factor in securing the safety and wellbeing of children while they were held."

That is a glowing comment. There are a few criticisms elsewhere in the report, and I am sure that the Government have already looked at the point on mental care. One of the most interesting comments in the report was:

"The circumstances of detention and removal were clearly traumatic for parents and their children but, unlike our consistent finding at Yarl's Wood, the conditions and length of detention at Cedars could not be said to cause distress to children and parents. In fact, parents told us that if they were to be removed forcibly, they would rather be held in Cedars for a short time, both to provide time for applications for judicial review, and to help them settle and prepare their children."

That is an astonishingly glowing report for something that is never going to be a nice or easy situation.

I have outlined what the Government have already done, and I am pleased to see that we have been able to implement the change. I have also outlined what happened before, and why it is important that we find a way of

writing the provisions into legislation, so that no future Government will drag us back to the old days of detaining thousands of children for long periods.

Meg Hillier (Hackney South and Shoreditch) (Lab/Co-op): I want to speak to the amendment, because I have quite a long-standing interest in the matter. I represent one of the youngest constituencies in the country, where many families with children do not wish to leave at the end of the line and are therefore subject to some of the issues that we are discussing today.

What we have heard from the hon. Gentleman is some serious grandstanding—he was having his cake and eating it to the greatest degree. I am disappointed that he has chosen to make politics out of a serious issue, which, if we do not get it right, can lead to serious implications for trafficked children in particular, to whom I will come on.

The previous Government's record has been mentioned. Several changes were introduced—it is not appropriate to discuss them in detail now—to ensure that named local authorities provided support for unaccompanied asylum-seeking children, and to consider the most appropriate action to take when a parent says that they will not leave the country. On my watch, under the previous Government, we did not want to see children forcibly separated from their parents, except in the most extreme circumstances, such as where the parent was an abuser. The hon. Gentleman has somewhat reassured me that he agrees with that view. It is an important basic principle that children remain with their parents in such difficult circumstances.

I have also seen, close to, difficult cases of parents who wilfully refused to acknowledge that they had reached the end of the line in legal terms and that there was a prospect of detention. Some of them were, frankly, using their children as pawns in that game. I had to deal with cases of children who had been detained for 28 days. Some of those were the most distressing social services cases that I have dealt with in my nearly 20-year career as a politician—a career in which I have dealt with cases of children who died at the hands of abusers and children who were neglected. Some of the children who had been detained were among the most traumatised children I have ever encountered, as a result of how their parents had behaved. I do not mean to say that that was true in every case, but that group of people contained some of the most distressing cases I have ever dealt with.

It is extremely important to ensure that we have transparency—I hope the Minister will comment on that. Child protection must be at the heart of the approach. In addition, however, we need to see what alternatives there are. On that topic, the hon. Member for Cambridge has been grandstanding without any knowledge, because we looked intensively at alternative options. A model in Kent, in which people were asked to stay in accommodation that was not entirely secure, did not work, so we moved on to a model in Glasgow, whereby two social workers worked intensively with four families to try to persuade them that they had reached the end of the line and there was no alternative. They tried to help those families to find a way to return home, perhaps with financial support to set up a business, to educate the children or to get a new home. One of my last acts as a Minister dealing with the matter was to authorise the removal of a family who had received more than five months' intense support, after previous intense support in that setting.

Many of my constituents who are here legally—and, indeed, some who are not, but who are going through the process—have great need of intensive social services support, but they do not get the same level of support as somebody who wilfully refuses to leave the country, despite all their legal appeals having been refused. In this country we have, quite rightly, separation of powers so that judges ultimately decide whether someone has a right to stay here. As constituency MPs, we might not always agree with the judges' decisions, but we respect the law, and the law will decide the outcome of a case.

John Robertson: My hon. Friend makes a powerful case. Does she agree that children in many of these cases are tools? They are often used, for whatever reason, as excuses to remain in the country. My fear is that they are the same children who are abused, but that is very difficult to prove. I appreciate the work done in Glasgow to get rid of people under those circumstances who had every option to go, but it is very difficult when children are involved.

Meg Hillier: As a Glasgow MP, my hon. Friend speaks knowledgeably about the experiment and the challenges that were faced. I plead with the Minister and the Government to be robust. Children must not become a ticket to more lenient treatment for immigration offenders, because if that happens, we will see a rise in trafficking. I am the chairman of the all-party group on Nigeria and I represent a constituency with one of the largest Nigerian diasporas in the country. The Minister does not need me to tell him that trafficking from Nigeria and, in particular, Benin is a significant problem. I was out there in July looking at the issue and talking to the trafficking unit there, and it is a real problem. Week in, week out, I see young people in my surgeries who were trafficked as children—a fact that does not emerge until they need some sort of paperwork to prove that they are who they say they are and that they have a right to stay in the country. They tell me that they were brought in by an auntie or a friend. Some of them been abused in different ways. Some have been domestic slaves.

I may well not have seen the worst cases, and I have also seen adults who have been trafficked, but we must make sure that children are not a ticket to special treatment, because if they are, as we know, there are bad people in every country in the world who will try to use them as a way of getting immigration status. We must stand robust, and I would like the Minister to be clear about the Government's position on that issue.

We also need to be clear about when accommodation is accommodation and not detention. That is what really riles me about the amendment tabled by the hon. Member for Cambridge. It talks about requiring "accommodation prior to departure". It is sophistry, is it not? Accommodation that someone cannot leave is detention by another name. He is trying to sit on the fence. In difficult cases when a family refuses to leave, there is sometimes the need for detention.

When I was looking at this issue I held a couple of round tables, working with a number of community groups and also with the hon. Member for North East Bedfordshire (Alistair Burt), as Yarl's Wood is in his

[Meg Hillier]

constituency, to look at what the barriers to people leaving were. My conclusion was that the problem came much earlier in the process. I hope to discuss this point in greater detail later in Committee, but we need better legal advice up front so that families are not kidding themselves and are not kidded by bad legal advisers in the early stages into thinking that there is a really strong change of getting leave to remain. From the work I do in Hackney and through my personal contacts, I know how many people think, "Oh, if I just hang on a long while and keep bumbling through the system, I will get to stay eventually."

Mr McFadden: My hon. Friend has a lot of experience on this issue both as a constituency MP and from her time as a Minister. I want to reinforce her point about repeated applications. We have been talking this morning about removals, but there is a stage before that during which, as a lot of us know from experience, people make repeated applications and are repeatedly refused. That is not in the public interest. Those people are often getting bad advice from the legal world. They are told that if they just put in another application or apply on different grounds, they can spin out the process and keep it going. In the end, the system should be fair both to applicants and to taxpayers and the general public. A system that allows repeated applications on a whole range of different grounds, going on often for a decade or more, is not working efficiently or fairly.

Meg Hillier: I thank my right hon. Friend for making that point. The situation is not fair, either, on those of my constituents who are bounced through the system. Their children settle and get established, and then suddenly they have to be removed. No wonder it is distressing, and no wonder families fight hard to stay once their children have established family relationships and so on.

Another area we looked at in government was ensuring that there was better support from community groups. There were some good examples of cases in which people who had been given bad advice were then supported by community groups so that when they eventually came to the point of departure, the church that they had belonged to or that had worked with them in the UK made a connection with a church in the country that those people were going to be returned to. There was a farewell event, and a link in the country they were going to, so that those people were received better, felt safer and felt welcomed. Often, that occurred with financial support from the Government. Let us not misunderstand the situation: anyone who has sought asylum gets a substantial amount of money per family member for resettlement in the country they are returned to if they go voluntarily. Deportation should be thought about in that context as well.

We need swifter decisions, because the current system is not fair. We also need fair decisions, and there will be complicated cases that last longer than the average for good reason. Will the Minister tell us the speed at which decisions for initial applications are currently being made? Some progress had been made on that, but I am not up to date with the latest figures.

The key question is what we do when a family refuses to leave. I would say that we should not separate the children from the family. There needs, of course, to be a minimum period for cases, but if there are repeated legal challenges there has to be a judgment about how many times we bounce a child and a family in and out of an accommodation setting, given what that does to a child. Some centres are a long way from where an individual was living, which could mean that children are put in a van and shipped backwards and forwards overnight or during the day on a journey of several hours, only to be put back into pre-deportation detention if the latest legal application is refused. There needs to be much better streamlining; to pretend that all is rosy in the garden is not reasonable or accurate.

10 am

We must remember that no matter who runs a centre where children are detained, whether Barnardo's or a Government centre, it is still a detention centre. I visited Yarl's Wood and while many of my constituents who live in less good circumstances would be to some degree envious of the facilities, they were behind locked doors. That is the case whether Barnardo's, Yarl's Wood, Cedars or wherever.

I am aware that I have spoken at some length, but we need to be clear that better legal advice up front is important to ensure that families understand reality. We must do everything we can to guard against trafficking, particularly of children. I seek the Minister's reassurance that that is foremost in his mind and that on his watch he will not allow children to become a ticket for people at the end of the legal process who want to stay in this country.

Mr Harper: We have had a good debate, begun by my hon. Friend the Member for Cambridge on the back of his amendment. I welcome much of what he said. The hon. Member for Hackney South and Shoreditch also made sensible points, which I will deal with.

My hon. Friend the Member for Cambridge is right to say that the Government have delivered on their commitment to end the widespread detention of children for immigration purposes. We have seen a significant drop in the number of children being held for long periods of time. The latest figures show that some children are still being held, but most of those are being held with their families for a short period at the port where they were refused entry before being put on a flight. We also have some cases—this is an important point—of unaccompanied children and it would not be right to let those children wander off. We hold them until they can be put into the safe hands of social workers and given the proper support.

Our UK Border Force officers at the ports take seriously human trafficking, which is the point the hon. Member for Hackney South and Shoreditch quite rightly raised. We are always alert to such issues.

Meg Hillier: The Minister might not be able to answer this at the moment, but will he update us on how Operation Paladin is working and whether that will be extended beyond Gatwick airport to other airports and ports?

Mr Harper: I will see whether inspiration strikes me on the extent of that, but that process continues in co-operation with the Metropolitan Police Service. To pick up on the point made by my hon. Friend the Member for Cambridge, we have significantly reduced the number of children held routinely and the number held before deportation is now small.

I agree with the hon. Member for Hackney South and Shoreditch, though, that children should not become a trump card. I hesitate to use this word because of its other context, but it borders on abuse when parents use their children as pawns specifically to frustrate a legal process. In those cases, section 55 of the UK Borders Act 2007 gives the state the right to look after the child's best interests. It is a shame that in many cases I saw and, it would sound, those that she saw, the parents did not have their children's best interests at heart when they were using them as a mechanism to try to delay their removal from the United Kingdom. We must not allow people to abuse children in that way. Parents, as well as the state, should have the children's best interests at heart.

Meg Hillier: The Minister talks about the number of children detained. When inspiration strikes, will he provide us with figures on families with children who have been detained repeatedly? Perhaps such families could have been in detention, let out for a legal application and then put back in again. Figures can mask that yo-yoing.

Mr Harper: I have in front of me a pretty graph indicating what my hon. Friend the Member for Cambridge and I said, but as the pretty graph does not have numbers on it, it is rather difficult to convert into a form that *Hansard* can report. Given that the hon. Member for Hackney South and Shoreditch has asked a specific question about families who have effectively frustrated their removal and gone through the process a number of times, and given that I know I do not have those statistics to hand, let me see what I can lay my hands on. Perhaps I can then circulate that information to all Committee members to help them as we continue our considerations, because the issue of removal will come up as we debate appeals and other parts of the Bill. Even if we cannot consider it this morning, it will come up later.

To return to the objective of my hon. Friend the Member for Cambridge, he referred to the new family returns process set up by the Government in March 2011. We set it up in order to recognise the fact that even if the parents in such families are engaged in trying to frustrate the rule of law, their children did not make that decision. It tries to get the balance right between dealing robustly with parents who have no right to be in the United Kingdom and are refusing to leave voluntarily, which I argue would almost certainly be in their children's best interests, and recognising that if we treated such parents exactly the same as we treat all other immigration offenders, it would affect their children, who are not willing participants in the process, particularly if they are very young.

That was the thinking behind the Government's policy. It was implemented after extensive consultation across Government and with a wide range of experts on children's issues. It gives families with no right to be in the UK every opportunity to leave without the need for enforcement action, which, as the hon. Member for Hackney South and Shoreditch said, involves extensive work involving legal advice and social workers. I have met some of the immigration officers involved in such work, and I am sure that in a previous life she did too. They are skilled in and used to dealing with families and children, and they try to make the process of removal from the United Kingdom and return to the country of origin unthreatening for the children and as untraumatic, if that is a word, as possible. Some of the points that she made about the involvement of community groups at both ends of the process are welcome.

The hon. Lady rightly said that we therefore encourage families to co-operate, but where they do not, as she said and my hon. Friend the Member for Cambridge acknowledges—he has tried to reflect it in his amendment, and I will say a little more about the drafting and how we might proceed—there are cases where we must enforce removal. We have an independent family returns panel comprising safeguarding and medical experts, which then carefully considers their history—the hon. Member for Hackney South and Shoreditch is right that sometimes it is a long history—and makes recommendations about how we will seek the family's removal.

In the final analysis, the return plan may include a stay in the pre-departure accommodation at Cedars. There are restrictions: the stay can last only up to 72 hours. If it is longer than that, it must be authorised personally by a Minister, usually the Immigration Minister. When I look at such cases, I look carefully at the history and the thought processes of the returns panel to ensure that I am satisfied that it is necessary to hold the family there. As my hon. Friend the Member for Cambridge mentioned, we work in partnership with Barnardo's in running Cedars to ensure that the welfare and support provided to the family, and most particularly to the children, make the process as smooth as possible, and to consider how the children will integrate into the country to which we are removing them.

Both the hon. Member for Hackney South and Shoreditch and the right hon. Member for Wolverhampton South East mentioned the use of repeated applications to frustrate the process. Part of what we are doing more widely in the Bill is ensuring—this is one of the things that we will say in the notice that we give people—that they are under an obligation. What happens at the moment is that they make an application, get an appeal and then throw in all sorts of new issues at the appeal stage about human rights and so on. Sometimes if a migration decision has been refused people then decide that they should be asking for asylum. We have said that if there are human rights reasons why someone should not be moved from the UK, they will have to make an application on that basis and the Secretary of State can then make a decision. It is not for the courts to become the first-instance decision makers when people dream up human rights or asylum claims which they did not make in the first place.

I must say that often decisions are made quite quickly, but because people then make subsequent decisions or, in the case of asylum, make repeated applications, they frustrate decision making and the cases become very complicated. There was some talk about how long people spend in detention. I am slightly off the point here, but most people who are in detention for significant periods are there because they themselves are trying to

[Mr Harper]

frustrate removal. They are not complying in identifying their nationality or in getting travel documents and they are not complying with their country of origin. They themselves could actually leave the United Kingdom and be out of detention at a moment's notice if they chose to depart voluntarily.

Meg Hillier: The Minister referred to decisions being made more quickly. I wonder if he could furnish the Committee with the full set of figures, including decisions made on new arrivals and on reapplications, including European spouse applications. In our surgeries we see that every time one bit of decision making improves slightly, another bit goes way beyond the scale. Perhaps the Minister could supply this information for the period that he has been in government.

Mr Harper: I know that the hon. Lady has a fairly heavy immigration caseload in her constituency. It is worth saying—as I have said in the House, although perhaps not in her presence—that in the financial year 2012-13 our out-of-country entry clearance performance has remained consistently good. However, in the 2012-13 financial year our in-country performance on both temporary and permanent migration across—frankly—most of the routes fell below what was required. We had a backlog in decision making. That has been raised in the House and I have been very frank about it.

We have put a lot of work into fixing that across almost all of the routes, and we are now consistently back within service standard for cases where we are able to make decisions. Of course, there are cases which are put on hold because we are awaiting further information from the applicant or their embassy. However, in cases where we are able to make decisions, we are back within our service standards in most areas. I will look at what information we have for the most recent period, which I may be able to circulate to the Committee.

The hon. Lady is absolutely right that she has constituents who have waited for too long over the last year. This links very closely to what was said by the right hon. Member for Wolverhampton South East. In family cases, for example where someone applied for a spousal visa, they were dealt with by the same team which also dealt with family cases in which people were using complex arguments about human rights. Effectively, people had reached the end of their ability to stay in the United Kingdom and were using their last-ditch throw of the dice on a human rights application. Those cases were gumming up the works, and this meant that people making quite straightforward applications for spousal visas were being held up.

We have now split those out. Spousal visa decisions are being made more quickly and complex cases are being worked through in a determined way, while recognising that they are complex because they are sometimes the culmination of a rather complex set of circumstances in which someone has made a managed migration decision. For example, someone may have been here as a student or to work and has failed to have their leave applications renewed. They finally resort to making an application on some human rights grounds, and they do so in order to frustrate the process. The right hon. Gentleman is quite right to warn about that.

Returning to the amendment from my hon. Friend the Member for Cambridge, I finish by paying tribute to the work of Barnardo's. It is worth saying that I am grateful for its work, because it has made a real difference to our provision of a better environment for families and children. It was not without some challenges for Barnardo's. It was criticised by others for working with us to try to produce a better environment, but I want to pay tribute to it. There are many organisations that often criticise what the Government do. They criticise us and they criticised the Government of which the hon. Member for Hackney South and Shoreditch was a member, but when you actually challenge them to roll up their sleeves and help improve the process not all organisations are prepared to do that.

Barnardo's should be congratulated. It is an organisation for improving the welfare of children. It was prepared to roll up its sleeves and work with us on putting in place a process that I think everybody agrees is better for the welfare of the children involved. We should therefore thank Barnardo's for the fact that, unlike many organisations, it was prepared to roll up its sleeves and try to improve the process practically, rather than carping from the sidelines.

10.15 am

As will come as no surprise to the hon. Member for Cambridge—the usual caveat applies that those who are not members of the Government do not have the same access to skilled parliamentary draftsmen—the amendment, as drafted, does not correctly turn our current policy into law. As currently drafted, it would have unintended consequences in not allowing us to detain children. The famous lawyers we are all so keen about—some provide excellent immigration advice and some do not—could argue in ways that might, for example, mean we could not keep children correctly in detention to stop their falling into the hands of traffickers.

The hon. Member for Hackney South and Shoreditch is quite right to say that some people do not look at children as children, but as potential traffickees whom they can traffick either to abuse—for forced labour and servitude, or for sexual purposes—or as mechanisms for changing the legal basis on which they or other adults can enter or remain in the United Kingdom. We must absolutely be vigilant to make sure that children are not used for that purpose. They may be parents' own children or, as she said, children sent here from another country, perhaps with family members, and there have been tragic cases of such children subsequently being abused. Those children are not seen as children, but as methods of getting benefits or of changing somebody's legal ability to remain in the country.

It is very important for the benefit of children that we protect them properly, and do not allow them to be misused by people. I give the hon. Lady that assurance. As she will know from what my right hon. Friend the Home Secretary has said about our publishing a draft Bill on modern slavery, the Government want to strengthen some of our legal tools for dealing with trafficking.

It is sometimes necessary to detain a young offender approaching the age of 18 when they are coming towards the period in which they are due to be deported, although they are technically children. We do our best to get right the age assessment of children, but that is another issue because there are adults who say they are children to

frustrate the process. The proper procedure is for the local authority to conduct an age assessment, and if it determines that the person detained, who was thought to be an adult, is a child, they will normally be released. It would not of course have been known that such a person was a child, but they would have been detained, and the way the amendment is drafted might leave the Government open for legal action for having unintentionally detained a child.

The Government policy is clear, so I undertake to consider whether it is possible to come back with alternative drafting that will implement our current policy in law, but also deal with the complexities rightly flagged up by the hon. Member for Hackney South and Shoreditch, although that may not be straightforward. It is not always as easy to put such things in primary legislation, given that the area is very litigious and will be leaped on by lawyers looking for loopholes either for the best of motives or, as she counselled us, sometimes not for the best of motives.

Let me go away and see whether it is possible, either in whole or in part, to put some or all of current Government policy into primary legislation in a way that gives my hon. Friend the Member for Cambridge the comfort he seeks. We must, however, be mindful, as I said to the hon. Member for Hackney South and Shoreditch, that we do nothing that leads to children—after all, this debate is about their protection—becoming more vulnerable to abuse by those who do not have their best interests at heart.

Dr Huppert: I thank the Minister for his comments, particularly for undertaking to consider whether the Bill can better reflect my concerns. I totally accept that my drafting is not perfect. I intended the issue of trafficking, which we all take very seriously, to be covered in relation to child protection, but I accept that a better way can be found. I am sure that the Minister and his team will be able to rise to the challenge of capturing Government policy extremely well in this legislation. I thank him for that and look forward to seeing the outcome on Report. It is important to get something into primary legislation, because there is the risk of drift. I heard nothing in the debate that justifies locking up over 1,000 children a year, in particular not for periods of more than a month, as we have seen. I look forward to progress being made. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: I am satisfied that the matters arising from the clause have been satisfactorily debated, so I do not propose to permit a stand part debate.

Clause 1 ordered to stand part of the Bill.

The Chair: Before we proceed, I should perhaps have said at the start that I take a relaxed view on stand part debates. It is sometimes helpful to have a broad debate on a clause at the start of its consideration rather than at the end, but please do not think that it can happen twice.

Clause 2

Enforcement powers

Mr Hanson: I beg to move amendment 40, in clause 2, page 2, line 35, at end add—

'(2) The enforcement powers provided for in Schedule 1 are subject to oversight by—

(a) the Chief Inspector of Borders and Immigration,

(b) the Independent Police Complaints Commission, and

(c) HM Inspector of Prisons.'.

I hope, Sir Roger, that you will allow me leeway to drift into the principles of schedule 1 during our discussion of clause 2 because, although the clause gives effect to it, schedule 1 is scheduled for a separate debate later on.

The Chair: Order. I have just told the right hon. Gentleman the ground rules. He knows better than I that it is either/or, but not both.

Mr Hanson: Thank you, Sir Roger. I will attempt to achieve a mutually acceptable conclusion.

Amendment 40 would provide that the principles and powers in schedule 1, which we will discuss later, are subject to oversight by three bodies: the chief inspector of borders and immigration; the Independent Police Complaints Commission; and Her Majesty's inspectorate of prisons. I expect the Minister to say that the powers are indeed subject to oversight by those bodies, but I want to explore a couple of related areas, because it is important that we test some aspects of the enforcement powers.

The powers introduced by schedule 1 include escorting and searching detained persons, and entering and searching premises. Importantly, there is a wider interpretation of the general power to use reasonable force compared with that in not only previous immigration Acts, but clause 1. The purpose of amendment 40 is to get the Minister to guarantee that the exercise of the powers in schedule 1 by immigration officers is subject to the three statutory oversight bodies. I have no principled objection to the powers in schedule 1, which we will endorse or otherwise shortly, but we need to explore how they will be regulated, because the schedule adds significant powers to the armoury of immigration officers, including, most importantly, with regard to the power to use reasonable force.

I am willing to be corrected by the Minister, but my interpretation and that of others outside the Committee is that the powers in the schedule are broader than what is permissible regarding the use of force by police, who are subject to higher levels of training and accountability. From time to time, however, incidents sadly do occur where things go wrong.

We need to examine the oversight of these matters carefully—*[Interruption.]* May I say to the hon. Member for Hexham: "Bless you"? I thought he was making an urgent intervention, but it turns out that during the hour and 30 minutes in which we have considered the Bill, I have transmitted my cold from this side of the Committee to the Parliamentary Private Secretary. The hon. Gentleman made a semi-intervention, if not a deliberate one.

The powers in schedule 1 are important. I accept that the use of reasonable force is necessary and proportionate in relation to some of the immigration powers, but we need to hear from the Minister about several key areas, the first of which is what training and support will be given to the immigration officers who exercise them to ensure that standards are met.

[Mr Hanson]

I pray in aid the recent inquest into the death of Jimmy Mubenga in October 2010, following his restraint. When an eight-week inquest completed its consideration in August 2013, the coroner determined that Mr Mubenga's death was an unlawful killing. I do not wish to go into too much detail about the particulars of the case, but the coroner agreed that the killing was unlawful under existing provisions of immigration law. Paragraph 5 of schedule 1 extends the powers on the use of reasonable force to previous immigration Acts. The schedule also gives additional powers to immigration officers on escort, search and entry.

What efforts are being made to ensure that the new powers of schedule 1 are understood by the chiefs of the Independent Police Complaints Commission and of HM inspectorate of prisons? What liaison is the Minister having with those bodies to ensure that the powers in schedule 1 come under their oversight? What training will he offer current and future immigration officers if the schedule becomes law? I would welcome clarity from the Minister about whether the private sector, on behalf of the state, will be covered by the chief inspectors of borders and immigration, the Independent Police Complaints Commission and HM inspectorate of prisons when it exercises powers?

In the case of Jimmy Mubenga, the restraint methods used as part of his deportation were undertaken by a private sector company. The coroner in that case highlighted several areas of concern: a lack of training in scenario planning in relation to the use of force by private sector companies; her view that dangerous restraint techniques were used at that time; a lack of accreditation of particular officers; and a range of other concerns that the Minister at least needs to consider in the context of the schedule. Given that schedule 1 extends the powers of immigration officers, it is important that we are clear that those three bodies, which regulate a range of things and have powers of inspection, can at least be still responsible for such matters under the Bill.

10.30 am

I say that because, in our evidence session on 31 October, Rachel Robinson from Liberty responded to my question about reasonable force by saying:

"Our concern is that while police officers get rigorous training and have safeguards on the use of reasonable force, we have seen many high-profile examples with immigration officials of the use of force going seriously wrong. Before a blanket, open-ended power is added to the statute book—we know that the rate of immigration powers being added to the statute book has been high in recent years—that makes it okay for immigration officers to use reasonable force, we need serious scrutiny of how things are working in practice at the moment…It is irresponsible to put such an open-ended provision on the statute book at this stage. I hope that that deals with our position on reasonable force."—[*Official Report, Immigration Public Bill Committee,* 31 October 2013; c. 94, Q202.]

I do not agree with everything she said, but the important point is that if the schedule is to work effectively, the Minister needs to indicate that there is judicial oversight by the three bodies cited in amendment 40. He needs to say how he intends to implement the additional powers under schedule 1, and that there will be training and organisation, so that we can be assured that when immigration officers exercise the powers on our behalf, they do so under the scrutiny of those three bodies. Moreover, the Home Office must say whether it is satisfied with the extent of training. Will the Minister outline the relationship between the three bodies and the Home Office's proposals for ensuring that standards are met?

We will come on to debate schedule 1, albeit perhaps not in great detail, but given that it adds such substantial powers to the existing powers of immigration officers, I want to ensure that as we give those powers, to which we do not object, there will be oversight and independent scrutiny so that standards are regulated, monitored and met.

Mr Harper: Given the right hon. Gentleman's comments about transmitting his cold across the room, I am pleased and grateful that my Parliamentary Private Secretary went above and beyond his duty by grabbing those germs and making sure that they missed me.

I listened carefully to what you said, Sir Roger, about a stand part debate. The debate is specifically about amendment 40, although we have gambolled on to schedule 1. The right hon. Gentleman did not mention amendment 29, which has been tabled to schedule 1—

The Chair: Order. It might be helpful if I clarify this. I gave my permission for that approach, but in view of the ground that has already been covered, although clearly amendment 29 will be moved separately, we had better treat this as a general stand part debate on clause 2 and schedule 1, if both sides of the Committee are happy with that—I suspect that they are.

Mr Harper: I am grateful to you, Sir Roger; that was where I was going. As the right hon. Member for Delyn spent quite a lot of time talking about schedule 1, I thought I would cover his points, and then we would probably have dealt with most of it.

Amendment 40 would ensure that the enforcements powers given to immigration officers under schedule 1 were subject to a number of existing oversight bodies, namely the Independent Police Complaints Commission, Her Majesty's inspectorate of prisons and the chief inspector of borders and immigration. The schedule makes several amendments to schedule 2 to the Immigration Act 1971 regarding immigration officers' powers to take enforcement action against persons illegally in the UK. Our proposals will amend existing powers to escort a detained person and give immigration officers the power to search a detained person for items that might cause physical harm to themselves or others. They will extend existing powers to search for passports and travel documents to include premises belonging to a third party, with a warrant, and will allow the power to use reasonable force to apply to immigration legislation enacted after 1999. I can reassure the right hon. Gentleman that there is already effective regulatory oversight of the way in which the powers are exercised. The amendment is therefore unnecessary, although I think he tabled it to ensure that point was on record.

Since February 2008, the Independent Police Complaints Commission has provided oversight of serious complaints, conduct matters and incidents involving immigration

officers and officials of the Secretary of State when exercising immigration and asylum enforcement powers in England and Wales.

Dr Huppert: The Minister is right to highlight the role of the IPCC, but it has said regarding several cases that it is not sure that it has sufficient resource to do everything it should be doing. Has the Minister had any conversations with the IPCC about whether it needs more resources to do this work properly?

Mr Harper: Without turning this into a debate about the IPCC, the hon. Gentleman will know—with his Select Committee on Home Affairs hat on, he has focused on this recently—that my right hon. Friend the Home Secretary has made more resources and powers available to the IPCC so that it can properly carry out its role and improve the scrutiny of the police. We obviously have regular conversations with the IPCC and I am not aware of any areas in which it requires more resources to carry out its work. Knowing the IPCC as I and the Home Office do, I am sure that if it felt it needed more resources to carry out its proper oversight work, it would ask for them, and we would take such a request seriously. The IPCC's remit was extended to officials exercising relevant customs and customs revenue functions from the date when those officials transferred from Her Majesty's Revenue and Customs to the then UK Border Agency in 2009.

On Scotland, the Crown Office and Procurator Fiscal Service have the remit to investigate deaths and allegations of criminality in respect of immigration and customs matters. That is also supplemented by the Police Investigations and Review Commissioner, which has the power to investigate all complaints about immigration officers and officials of the Secretary of State exercising immigration and asylum enforcement powers in Scotland.

The one lacuna that Members may have spotted relates to Northern Ireland. We have tabled an amendment to the Bill to enable the Police Ombudsman for Northern Ireland to provide oversight of serious incidents, complaints and conduct matters in Northern Ireland when immigration and customs enforcement powers are exercised. We tabled an amendment rather than including the provision in the original Bill because we wanted to agree our plans with the Northern Ireland Executive, given that justice matters are devolved, as it was important to go forward with agreement. It is helpful to know that the proposal has the support of the Executive across the community in Northern Ireland.

In all parts of the UK, there is therefore proper oversight of the operation of our immigration enforcement officers. The chief inspector of borders and immigration already provides independent scrutiny of our border and immigration functions. Members will know that, although a couple of his more recent reports had good things to say about processes, some of them do not always make happy reading. We welcome that independent challenge, however, because it will be known that when he produces a report, he will have properly looked at an issue and then been frank about what we are doing well and what we are not. That makes for good independent scrutiny of our border and immigration functions. A main area of his inspection includes the use of enforcement powers and that will automatically extend to those set out in schedule 1. Her Majesty's inspectorate of prisons has a statutory responsibility to report on the conditions and treatment in all places of immigration detention in the UK. I therefore think that measures are in place to address all the concerns raised by the right hon. Member for Delyn, so I urge him to withdraw the amendment.

Mr Hanson: I am grateful for the Minister's clarification. As he said, the purpose of the amendment was to cover that base. However, will he respond to my point about private sector companies working on behalf of the Home Office, as opposed to immigration officers?

Mr Harper: I am grateful to the right hon. Gentleman, because I suppose it could be argued that that was not covered. To be clear, I did mention officials of the Secretary of State exercising immigration and asylum enforcement powers, so anybody acting on behalf of the Secretary of State would be covered. The schedule is distinct from the powers available to private contractors who are responsible for immigration detention—it is about the powers of immigration officers—but the chief inspector covers contractors who are exercising powers on behalf of the Secretary of State. For example, the chief inspector carries out investigations into how immigration detention, escorts and removals are carried out, while HMIP has responsibility for anything relating to immigration detention.

It is therefore not possible to evade the oversight bodies purely by virtue of the fact that a particular role may be carried out by a private contractor. If such roles are being carried out on behalf of the Secretary of State, they are covered by the various scrutiny mechanisms in place, as is right and proper. Private contractors running our immigration removal centres fall under the oversight of HMIP, which has responsibility for detention, rather than the chief inspector, but the oversight bodies between them cover the waterfront and do not leave any gaps.

The right hon. Gentleman specifically asked whether the powers on the use of force were broader than those for the police. Such a point was also raised during our oral evidence sessions, but I do not think that that is the case. The police have the power to use reasonable force when exercising any of their powers under the Police and Criminal Evidence Act 1984. The measure effectively provides the same power in respect of all relevant immigration legislation to make sure there are no gaps; I do not think it provides extra powers.

The right hon. Gentleman raised a sensible point about training. There is guidance on the use of force in the enforcement instructions that makes it clear that the use of force must be proportionate, lawful, and necessary. Immigration officers are trained in the use of their powers, including the use of force, and they have to pass a refresher training course every year to continue being able to use those coercive powers. Any use of force must be according to an approved technique taught during officer safety training, or something that can be shown in some other way to be reasonable. Specialist training is available in methods of entry techniques. The practice requires separate certification and is subject to a requirement to recertify through attendance at an authorised refresher training course.

Any use of force and its justification must be recorded, and that record must be kept for seven years in case of complaint or legal proceedings. There is also an internal regime to monitor the use of force. Complaints may be

[Mr Harper]

raised locally to a senior officer within our immigration enforcement and compliance teams. Complaints about serious misconduct are allocated and investigated by a central professional standards unit. Individuals can obviously raise complaints via their Members of Parliament, and if a complaint relates to the exercise of a coercive power, the case can be referred to the Independent Police Complaints Commission. The exercise of enforcement powers generally is subject to the inspection role of the independent chief inspector of borders and immigration.

The right hon. Gentleman mentioned the Mubenga case. The inquest has now concluded and we will respond to the coroner's points. The general weakness highlighted in that case, which we acknowledge, was about the training provided for safely removing someone on an aircraft. There is no authorised training package for removing someone on an aircraft. Members who think of their own experience on an aircraft will realise that that particular environment makes the use of existing techniques challenging. We have accepted that we need to develop a better training package for officers who have to remove people on an aircraft. We have asked the National Offender Management Service to work with us on that, but we have also set up an independent panel of experts to consider the training package and to advise me and the Home Secretary on whether it adequately reflects risk, whether it is useful and whether it gives officers confidence that they are properly trained in the exercise of their powers.

10.45 am

I will circulate to figures on the use of force to members of the Committee, as they are not available to me now. The right hon. Gentleman's quote from Liberty implied that there is a significant number of incidents involving the inappropriate use of force, but I do not think that that is the case. I looked at the matter carefully when Citizens UK came to see me about the Mubenga case. The data show that we do not have to use force in many cases. When force is used, there are very few complaints and, when there are complaints, very few are upheld. Thankfully, cases in which the use of force leads to a death are incredibly rare, tragic though the Mubenga case was.

The evidence shows that when our officers have to use force, whether for removal or in exercising another aspect of their powers, they do so proportionately, lawfully and reasonably. We see very few problems, but I will furnish the Committee with the relevant requirements. In light of my response, I hope that the right hon. Gentleman will withdraw his amendment.

Mr Hanson: The purpose of amendment 40 was to test the premise that the three bodies will retain the ability to consider the additional enforcement powers given to immigration officers by schedule 1. The Minister's response has addressed my concerns, for which I am grateful. I am also pleased that the Minister has reached agreement on the key issue of the Police Ombudsman for Northern Ireland. That is in stark contrast to situation during our consideration of the Crime and Courts Act 2013 and the Anti-social Behaviour, Crime and Policing Bill, on which we discussed the power of asset recovery and the operation of the National Crime Agency in Northern Ireland, although agreement on those points has not yet been reached. I am pleased the Executive in Northern Ireland have agreed on that point, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 2 ordered to stand part of the Bill.

Schedule 1

ENFORCEMENT POWERS

Mr Hanson: I beg to move amendment 29, page 51, line 23, after 'premises', insert

'within 24 hours of application.'.

Again, this is a simple probing amendment that seeks clarity on one aspect of schedule 1. Paragraph 3, which addresses entry and search of premises, allows immigration officers to apply to a justice of the peace for a warrant to enter and search premises if a number of conditions are met. That is perfectly reasonable.

The amendment is not perfectly drafted, but I have moved it for a number of reasons: to test the period for which a warrant agreed by a justice of the peace is applicable; to test whether a warrant may be exercised speedily; and to test whether it has a definitive lifespan. I have used the words

"within 24 hours of application"

because, again, I would imagine that, if an immigration officer is making an entry request, they would want to gain entry speedily. The purpose of the amendment is to test when, how and under what circumstances the immigration officer would exercise that power.

Although this is not specifically addressed by the amendment, I also want to test what happens and how available a justice of the peace might be to agree an immigration officer's request. What are the time constraints on the said justice of the peace and the said immigration officer? For example, an immigration officer might want a power of entry on a Saturday, Sunday or bank holiday, over Christmas, on new year's day or at Easter. What is the Minister's understanding of the ability of justices of the peace to deliver that entry warrant? Does schedule 1 or previous legislation apply to such circumstances?

Those, then, are my two queries, which I hope will be answered quickly. Is there any time limit on the exercise of the application, once it is agreed? Does the availability of justices of the peace place any constraint on the approval of a warrant?

Mr Harper: I hope I can be relatively brief. On the right hon. Gentleman's first question, about time limits, there is already a statutory safeguard for the application and execution of immigration warrants in the Immigration Act 1971, which sets the time limit for executing a warrant at a month from the date of issue. That is a reasonable period, whereas the 24 hours that he has proposed in what I accept is a probing amendment would not be practicable, given the way in which immigration enforcement officers carry out their work.

I should say, by the way, that a month is rather shorter than the period available to the police. Under the Police and Criminal Evidence Act 1984, entry and searches by warrant must be made within three months

of the date of issue, rather than one month. As regards a 24-hour limit, I know from my experience of going out with immigration enforcement officers that they have a range of addresses they hope to visit, but individual jobs sometimes take longer than expected, so officers want to be able to carry them over to a subsequent date.

On the availability of magistrates to issue warrants, magistrates are always available, if necessary. Clearly, we are mindful of the urgency of the requirement. In most cases, we will be able to seek a warrant during the normal sitting hours of a court, and there would not be a particular sense of urgency. However, in the same way that the police sometimes need to seek an urgent warrant, there is a process whereby we can apply to a magistrate out of hours for a warrant if there is good reason for doing so. That would rather depend on the circumstances of the case.

It is worth saying that we often operate in concert with other public bodies. In some operations to enforce our immigration laws, we might work with a local authority, which might apply to a magistrate for a warrant under its powers under the Housing Act 2004. There might also be some criminality involved in an immigration offence, and it might be the police who are seeking a warrant.

I hope I have answered the right hon. Gentleman's questions and that he will therefore withdraw amendment 29.

Mr Hanson: Again, this was a probing amendment to test two premises, and we have discussed them with the Minister. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 1 agreed to.

Clause 3

PENALTY NOTICES: LANDLORDS

Helen Jones: I beg to move amendment 18, in clause 3, page 3, line 6, at end insert—

'(5) In deciding whether to give consent to bail the Secretary of State will consider whether the applicant is pregnant.".'.

It is a pleasure to be here under your chairmanship, Sir Roger. Amendment 18, in the names of my right hon. Friend the Member for Delyn, my hon. Friend the Member for Sedgefield and myself, is a probing amendment to test the Government's intentions with regard to when the Home Secretary will and will not approve bail. We could have listed a lot of other factors that should be, and indeed are, taken into consideration by the tribunal, but one will suffice for us to try to tease out the Government's intentions.

The Opposition do not want people to abscond when they should be removed from the UK. However, we are unsure why the Government need to make this change, given that the risk of a person absconding is already a factor the tribunal would consider when deciding whether to grant bail. Of course, bail can be granted subject to conditions: a surety, living at a certain address or even electronic tagging. Considering some of the recent problems with tags, that is perhaps not the best example to cite. However, what concerns us is that allowing a politician—any politician—to decide on bail is quite a fundamental change to make. Bail has always been a matter of judicial process, rather than a political decision, and we want to test the Government's case for changing that.

Clause 3 amends the Immigration Act 1971 to ensure that in certain circumstances—very limited circumstances, I accept—the Home Secretary must consent before a person is released on bail. Those provisions would apply when directions for a person's removal had been made and they were required to be removed within 14 days. What I want to hear from the Minister in response to what I am saying is whether it is common for bail even to be granted in those circumstances, because we would suggest that it is granted only when particular exceptions apply.

I have read the Government's statement of intent, but it is not clear to me—or, I suspect, to many other people—in what circumstances the Home Secretary's power of veto will be used. We want some clarification on that and on what factors would be taken into account before use of the veto. The Government's statement of intent says that

"the Secretary of State considers that bail should not normally be granted in such cases because removal is imminent and the risk of absconding is therefore increased."

I do not disagree with the position that bail should not normally be granted in those circumstances, and the risk of absconding is something that the tribunal, as it exists, must take into account.

However, the Government go on to give examples of exceptional circumstances in which the Secretary of State might consent to a release. The statement refers to

"persons who are recently bereaved, or have complex medical requirements."

We give in our amendment another factor—pregnancy. I do not think that anyone here believes that keeping pregnant women in detention is desirable, and Government policy as it stands is not to detain pregnant women or people with serious medical conditions or mental health problems, except in exceptional circumstances. There are, of course, exceptional circumstances in which it is necessary to keep such people in detention. We accept that, but during our evidence sessions we heard from Mr Adrian Berry of the Immigration Law Practitioners' Association, who believed that the use of such a power by the Home Secretary, rather than by a judge, could constitute an unlawful detention and result in a case being brought in the High Court.

Such applications would obviously be expensive and time consuming, in effect displacing bail hearings from the first-tier tribunal to the High Court, so I would like to hear from the Minister whether the Government have thought about that and what legal advice they have been given on it. We want a system that works, and our fear with this proposal is that we may be in danger of getting to a system that causes more delays and imposes more cost on the taxpayer, because bail applications would in effect be displaced. The Government themselves say that the legality will be

"challengeable by way of judicial review or habeas corpus applications."

I am not sure that we really want to get to that on a simple decision of whether to grant bail.

If the Minister's argument is that people are being granted bail in these circumstances when they should not be and are absconding as a result, we need to hear some figures from him; we need to have that demonstrated.

[Helen Jones]

However, what follows from that is another question. If the Government think that bail is being granted when it should not be, what are the factors that they believe the tribunal should be taking into account that are not being taken into account now? Why have the Government not changed the rules for the tribunals, rather than going for political involvement in the process? There is already guidance for immigration judges by the first-tier tribunal. If the Government believe that guidance is wrong or is leading to people being granted bail when they should not be, surely it would have been possible to discuss changing that guidance?

11 am

Given that, under the Bill, the final decision will be taken by the Home Secretary, we want to know how that decision will be taken and exactly what the Home Secretary will be looking at. We have listed one possible consideration in our amendment but there will obviously be others. The drafting of the Bill raises some serious questions. Are the factors that the Home Secretary will take into account the same as those that the tribunal would consider? Is the Home Secretary, in effect, going to reassess the evidence put to the tribunal and reach a different decision? Or will national security considerations or the risk of absconding come into play here? We would support making those considerations an important factor in any decision, but although schedule 8 provides for similar changes to bail hearings in the Special Immigration Appeals Commission the Bill does not make the situation clear.

We all remember the case of Abu Qatada being released on bail. In my view, the Special Immigrations Appeals Commission made the wrong decision in that case. From time to time all courts and tribunals make decisions that some of us think are wrong—in my own area just recently a magistrate released someone on bail in a decision that I thought was quite wrong—but it has always been the court's decision. We have an independent legal system. The Secretary of State said at the time of Abu Qatada's release on bail that the commission had applied the wrong legal test. The Court of Appeal, however, held that the commission had not misinterpreted or misapplied the law—although I have to say I still think that decision was remarkable and cannot see how it was reached under current law, given that Abu Qatada had been freed on bail and rearrested for breaching his bail conditions before.

Although no one on the Committee would want such a dangerous and unpleasant person released on to our streets, there is a "but", and it is a big "but". Not everyone who is here illegally or who needs to be removed from this country is an Abu Qatada. We want people who have no right to be in this country to be removed, and we want to see them being dealt with fairly, quickly and according to the law. The Opposition's concern here is not about that aim. We are not concerned about whether people who should not be here are deported quickly but about whether what the Government are proposing will work. That is why we have tabled the amendment.

If the Home Secretary looks again at evidence that has already been before a tribunal and reaches a different conclusion about that evidence, will that not lead to cases alleging unlawful detention, delaying the process further and costing us all more? We do not want to end up in that position, and would be happy to discuss with the Government whether there is a better way of dealing with this matter. On the other hand, will the Home Secretary be thinking of factors that are not currently brought before a tribunal? If so, why not have them brought before the tribunal—why not have them in the rules?

We want to know more about when the power will be used, and we want to ensure that it will work. Having powers in a Bill that look tough but could turn out to cause more delays in the system will not actually solve our problems. When the Minister responds, I hope to hear exactly what is intended. Is it a re-examination of the evidence put before a tribunal or the exercise of the Home Secretary's power on other grounds? If it is the first, we need to be reassured that it will not lead to further cost and delays. If it is the second, we need to know whether we are talking about factors that the Government believe cannot be put before the tribunal, or a court if necessary, and if so, why they cannot be put before the tribunal. I hope that the Minister can clear up those points for us, to reassure me on this issue.

The Chair: This is already a fairly wide-ranging debate on clause 3, and therefore I feel obliged to indicate now that it is unlikely that I shall grant a stand part debate at the end of it.

Meg Hillier: I will not repeat the very well argued points made by my hon. Friend the Member for Warrington North. However, the Minister needs to explain a bit more about the thinking behind this measure. It seems to be an embodiment of the current Home Secretary's deep frustration with some of the bad decisions—as she sees them—that the law courts have made. I suspect that there have probably been other Home Secretaries who have been equally frustrated sometimes that the law of the land does not allow a politician to do exactly what they feel is right. But we have the law of the land for a reason, and we are discussing a widely drawn power that could affect a lot of people.

As my hon. Friend said, if we can be given more detailed arguments about why this measure is as it is, there may be less of an objection to it, but if those detailed arguments exist it is odd that they are not in the Bill. Clause 3 will provide an incredible power, and it comes from a Government who have taken a lot of powers away from politicians and passed them on to independent bodies, with great fanfare. I am puzzled about why it is in the Bill without the necessary caveats and protections to ensure that we do not routinely see a politician refusing people the liberty that the courts have granted them.

I look forward to hearing the Minister's explanation, but I am concerned that this measure is so widely drawn that it will catch more people than I suspect he intends. I would be glad if he could outline what the intention behind it is.

The Minister for Crime Prevention (Norman Baker): Good morning, Sir Roger. I will try to respond to the points that Opposition Members have made.

The hon. Member for Warrington North said that she wants a system that works; I am sure she does, and so do we. That is part of the motivation for introducing these particular proposals. She also said that she wanted to ensure that the system did not cost more, and I will deal with that point first. It is important to stress that this discussion leads on inevitably to the amendment, which I must refer to in order to address her point.

The current system costs a great deal of money. I will refer to one particular case study. Between April 2007 and January 2011, one particular individual was convicted a total of 28 times for a range of offences, from being drunk and disorderly to being racially abusive to common assault. He received 210 days' imprisonment for common assault and 225 days' imprisonment for racially aggravated assault. A decision was taken to deport him, and he was detained. He then made multiple bail applications that were all heard by the tribunal, on 31 July, 7 August, 8 November, 16 November, 23 November, 29 November and 18 December in 2012, and on 20 February, 3 June, 11 June and 21 June in 2013. Each application was refused. Further bail applications were made and withdrawn on 4 March and 8 March. There were five applications in 40 days in November and December 2012, which was a big waste of taxpayers' money.

I am sure that the hon. Lady does not in any way condone that behaviour, but what we are trying to do is to bring in a system that is not only fairer but saves the public purse money by eliminating some unnecessary appeals.

Helen Jones: The Minister appears to be talking about the second half of the clause, which we will discuss shortly. However, the point that I was trying to raise, which I would be grateful if he could try to address, was this. If the Home Secretary is the person who denies bail, would that not lead to a further application in a higher court, which would actually cost more money, because it would constitute an unlawful detention under common law? Has the Minister had legal advice on that and, if so, can he share it with the Committee?

Norman Baker: I will go through the process in a moment, but I will address the cost point first, to demonstrate that the present system—

Helen Jones: It is a cost.

Norman Baker: It is indeed. I will demonstrate that the present system is not very cost-effective, therefore I believe that, apart from anything else, our proposals would be more cost-effective. However, that is, of course, not the main justification for them.

The hon. Lady is right that the comments I made largely referred to the second half of the clause, but I wanted to put that amendment in context. The first change that we are making provides that the Secretary of State's consent is required for a person to be released on bail where removal directions are in force and removal is due to take place within 14 days of the date of the decision to grant or refuse bail. As the hon. Lady said, amendment 18 would require the Secretary of State to consider whether the applicant was pregnant when deciding whether that person may be released. I accept fully that she picked those circumstances for her probing amendment and that she could have picked others.

I understand why Members might want to raise the specific case of pregnancy and include a safeguard for that. We consider that unnecessary because a person's circumstances, including pregnancy and health, are taken into account during the detention and removal process, including when a bail application is received. Given the hon. Lady's genuine concerns, however, it may be helpful if I set out how applying for bail is currently managed in the immigration and detention process. The Home Office has a presumption against detention for immigration purposes and will seek to detain an individual under immigration powers only if there is a reasonable prospect of removal within a reasonable time frame.

There is well established case law in this area, known as Hardial Singh, which I am sure the hon. Lady is familiar with, where the courts have held that it is appropriate to consider the risks of absconding, reoffending and subsequent harm to the public in making detention decisions. The Home Office must undertake regular reviews of an individual's detention to ensure that it remains legal and proportionate. A review of detention is required at least every 28 days, and reviews must occur sooner if there is a major development in the individual's circumstances. The longer the period of detention, the more senior the level of sign-off required internally to approve continued detention.

Additionally, an individual can make an application for bail to the immigration tribunal. If an individual considers that their detention is unlawful, either because the Home Office has not released them in a timely manner or because an immigration judge has not granted bail, the individual can seek judicial review of their detention and have a High Court judge declare it unlawful. The coalition Government takes matters of liberty extremely seriously. I stress that none of the changes proposed in the Bill will reduce the protection available to an individual detained under immigration powers.

Helen Jones: The Minister is being generous in giving way. What he says is correct: the possibility of absconding is taken into account in the current process. I am trying to ascertain why he wants the Home Secretary to take that decision rather than a tribunal. If he thinks that the tribunal rules are wrong, why does he not strengthen those rather than send the decision to a politician?

Norman Baker: I am trying to explain the situation as it pertains now to give context to the changes that we want to make. I will get to the hon. Lady's perfectly legitimate point if she is a bit more patient.

It is Government policy that when an individual is due to be removed in the near future, and therefore there is a greater risk of them absconding, release from immigration detention on bail is not appropriate, save in the most exceptional circumstances. I hope that the hon. Lady agrees with that. The Government's expectation is that the tribunal should not currently grant bail when removal is imminent, owing to the heightened risk of absconding, except in exceptional circumstances.

To pick up on the hon. Lady's probing amendment, when a woman reaches the later stages of pregnancy and cannot travel to the country of return, imminent removal would not be considered, so the provision would not be relevant. I hope that that reassures her and her colleagues that safeguards they seek are already in place without the need for additional legislation.

Meg Hillier: I speak, dare I say, with perhaps a little more direct knowledge of pregnancy than the Minister—that is not intended as a criticism. The early stages of pregnancy can be problematic and some women may require medical attention at that point. Clearly, there are flight restrictions in the later stages of pregnancy, but problems can arise in the first few weeks. Will the Minister respond on what would happen in those circumstances?

Norman Baker: I agree that I do not have the same experience of pregnancy, but I do have some experience as a father. I fully accept that complications can arise early on in a pregnancy, but the discretion that we propose allows for complex medical conditions to be taken into account. Therefore, if medical evidence were provided, that would be taken into account; it is not simply a matter of physical observation. I should say that we do not have the right to test for pregnancies; it is a matter for the individual concerned to provide evidence that demonstrates that an issue of medical importance should be taken into account at that stage.

11.15 am

The hon. Member for Warrington North was concerned about the Secretary of State considering matters not available to the tribunal, a point she raised in her opening remarks. The Secretary of State will consider the same factors as a tribunal, but she has ultimate responsibility for enforcing immigration action. She may of course disagree when removal is imminent, but there is recourse to the courts via judicial review and habeas corpus, so the matter is not without a judicial answer. Of course, it is important that the Secretary of State has that overall power. The hon. Lady referred to Abu Qatada, but there have been many instances in which individuals very close to deportation have absconded. It is important to the public good that these matters are taken into account.

A particular case that I asked for as part of the evidence for this session concerned a woman who was sentenced to two years and six months for two counts of possessing a class A drug with intent to supply. In 2005 she was served a deportation order, and she absconded later that year. Seven years after absconding she was arrested for attempting to obtain a British passport via deception, and in May 2013 she was detained pending removal. The removal directions were set for June 2013, yet on 6 June bail was granted, despite a history of absconding and removal directions being in place. That demonstrates to me that the system is not working as fully as we might want.

Meg Hillier: I fully appreciate that there can be challenges, and clearly I would defend detention to prevent that sort of absconding, but why the Home Secretary rather than a judge? If the system is not working, it suggests that the law and the issues that the tribunal needs to take into account are not appropriate. Why not have a judicial solution to the problems that the hon. Gentleman professes, rather than getting the politicians involved? Or is this just a political gimmick to make the Home Secretary look more powerful than she is already?

Norman Baker: I am sure that she does not need any gimmicks to make her look more powerful than she is already, and it is certainly not a gimmick. The fact of the matter is that whether we like it or not these things are highly political, and Abu Qatada is an example. Such cases are discussed by the public at large, they are in newspapers and on television, and decisions such as this are very finely balanced. Ultimately, the Secretary of State is responsible for the operation of immigration law. It is perfectly proper that she should have that reserved power in these limited circumstances. I am sure that she would not wish to interfere on a daily basis, but she has to have that backstop power, for the reasons that we have given.

It is also important to make the point that this power replaces a much broader power, which is in paragraph 30 of schedule 2 to the Immigration Act 1971. That broader power is not limited to 14 days before removal. In other words, if that is what Opposition Members are worried about, then they may be reassured by the fact that we are actually narrowing the power from that which we inherited from the previous Government. I am happy to go through the processes whereby individuals can challenge detention to put them on the record, if hon. Members feel that that would be helpful. However, I hope that in the light of the answers I have given, the hon. Member for Warrington North will feel able to withdraw the amendment.

Helen Jones: I am concerned that the Minister did not really answer many of the questions put to him from by Opposition Members, particularly on the issue of why the Government chose to do things this way rather than to strengthen the rules for the tribunal. I also note that although the Minister mentioned someone absconding—and of course we want to stop people absconding—he cannot give us any figures for that. Although I will withdraw the amendment, we reserve the right to return to the matter on Report, because we have not really had a satisfactory answer from the Minister today. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Huppert: I beg to move amendment 32, in clause 3, page 3, leave out paragraph (3).

The Chair: With this it will be convenient to discuss amendment 33, in clause 3, page 3, leave out paragraph (6).

Dr Huppert: I do not intend to detain the Committee long. We have had a detailed discussion of the broad themes, but there is a particular issue on which I would like clarity from the Government.

The amendments, which are probing, are intended to allow us to look at the requirement not to allow bail if there is another application within 28 days. There are a few edge cases on which I would be grateful for the Minister's comments, particularly if there was an error with the first decision on procedural grounds, or an error of another sort. In such a case it does not seem that there would have been the material change in circumstances that the Bill requires, but it is odd to make somebody wait four weeks. In cases put to me by various people, the tribunal has done something contrary

to how the procedures are supposed to work, such as relying in decision making on evidence that was not made available to both parties or was not provided by the Home Office to the tribunal in sufficient detail for the tribunal to consider. Neither of those things should ever happen, but sadly, I am told that they are common. They are errors in the process, and there should be an opportunity for them to be corrected.

Similarly, there are cases in which the tribunal has failed to follow last year's bail guidance for judges or to deploy the case management options available in that guidance, such as the use of bail in principle. Finally, there are cases in which the tribunal has failed to understand the local or specialist knowledge required, jeopardising the fairness of a bail decision. For example, the tribunal may not have been aware or correctly informed about an available mental health treatment or electronic monitoring options.

I do not seek to eliminate the entire principle of repeated applications, but we can all see why there is a problem. I hope to hear some clarification from the Minister. There should be some space, where an error has been made or the tribunal has not been able to act properly in a case, for quick reconsideration without proof of a material change in circumstances other than a few more days' detention.

Helen Jones: The Opposition would not go as far as the hon. Gentleman's amendment, but I want to find out the Government's view on what constitutes a material change in circumstances and how it might work in practice. Let us take the issue that we first raised in relation to the earlier part of the clause, about a woman who was discovered to be pregnant but who was not known to be so at the time of the previous bail hearing. That would clearly be a material change in circumstances. It might not be the only factor to be considered, but it would be one that had not been taken into account on first application.

However, the question is how a woman could demonstrate on paper that she had not known that she was pregnant at the first hearing but knew at the time of reapplication. It may not be as easy as it sounds. She may not have seen a doctor before her first bail hearing. An estimate of how many weeks pregnant someone is in the early stages of pregnancy is precisely that: an estimate. How is someone meant to demonstrate that on paper submitted to the tribunal, when getting another bail hearing depends solely on the paper evidence? There is no opportunity for a woman in that position to be heard in person, and there is no opportunity to test the evidence.

Current guidance places restrictions on the length of the hearing, the right to the hearing and so on if there is no new evidence. I accept absolutely that it is necessary to stop constant repeat applications for bail, but it is not quite as simple as it might sound. When we took oral evidence, we were told that one example of a material change in circumstances might be that there was no reasonable prospect of removal, caused for example by a lack of documentation, a change in circumstances in the country to which the person would have been removed or other factors. Demonstrating such things on paper is much more difficult. It would require evidence not just from the person detained but from the people responsible for securing their removal.

There is another issue to consider. The provision applies when someone is to be removed from Britain within 14 days. The problem, as we all know, is that such removals, which should be done as swiftly as possible, are not always carried out within the time limit. Simply cutting down on bail hearings will not solve the problem, although I accept that they may be a factor. The Government must ensure that people who do not have the right to remain in this country are removed from it. The last set of Home Office statistics show that although the number of voluntary departures remained roughly the same, there were 7% fewer forced removals. If more people are not leaving voluntarily, despite the fact that detentions are up 5%, we can conclude that we are not doing terribly well at removals. In fact, research from Oxford university shows that between 2010 and 2011, the number of foreign nationals removed from the UK or known to have departed under threat of removal declined.

When the Minister replies, I would like to hear not only an answer to the question about repeat bail applications but what he will do, in circumstances in which repeat applications are not allowed, to ensure that people who have no right to be here are removed within the time limit.

The Chair: Order. Members may leave their papers in the room if they wish to. The room will be locked until 2 o'clock, when we shall sit again.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.