Vol. 769
No. 126

Tuesday
15 March 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

£4·00

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

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

This issue of the Official Report is also available on the Internet at
www.publications.parliament.uk/pa/ld201516/ldhansrd/index/160315.html

PRICES AND SUBSCRIPTION RATES

DAILY PARTS

Single copies:
Commons, £5; Lords £4

Annual subscriptions:
Commons, £865; Lords £600

LORDS VOLUME INDEX obtainable on standing order only.
Details available on request.

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies:
Commons, £65 (£105 for a two-volume edition); Lords, £60 (£100 for a two-volume edition).
Standing orders will be accepted.

THE INDEX to each Bound Volume of House of Commons Debates is published separately at £9·00 and can be supplied to standing order.

All prices are inclusive of postage.

The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Tuesday 15 March 2016

2.30 pm

Prayers—read by the Lord Bishop of Birmingham.

Oaths and Affirmations

2.35 pm

Lord Alliance made the solemn affirmation, and signed an undertaking to abide by the Code of Conduct.

Prison Reform

Question

2.36 pm

Asked by ***Lord Beith***

To ask Her Majesty's Government what assessment they have made of the impact of the total number of prisoners on their plans for prison reform.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, we do not need to reduce the prison population in order to reform our prisons. We will always provide sufficient prison capacity for those committed by the courts and aim to manage the prison population in a way that gives taxpayers value for money. Prisons must be places where offenders can transform their lives. We are therefore modernising the estate and will give prison staff greater freedom to innovate. Only through better rehabilitation will we reduce reoffending and cut crime.

Lord Beith (LD): My Lords, at least three recent reports by Her Majesty's Inspectorate of Prisons have demonstrated how difficult it is to achieve the Government's worthy objectives of rehabilitation when there is a very large prison population and a much reduced staff managing it. Is it not time that, alongside the rehabilitation policy, Ministers began to look at why we imprison a larger proportion of our population than any other western European country, thus committing huge amounts of taxpayers' money to a system which does not sufficiently reduce reoffending?

Lord Faulks: The Government are always anxious to find out why we imprison so many people. Of course, imprisoning is done by judges, not by government. We believe that the way to reduce the prison population is to tackle reoffending. Fifty per cent of adult prisoners are reconvicted within one year and 60% in less than 12 months. We aim to get to grips with that reoffending, and that will reduce the prison population.

Lord Harris of Haringey (Lab): My Lords, does not that answer indicate precisely why the Government have a problem? If those are the reoffending figures, why is that happening? Is it not true that there are simply insufficient staff in our prisons to escort prisoners to, for example, needed mental health appointments, to the classes for which they are booked or indeed to the exercise and other facilities that would enable them to go along the path towards rehabilitation? How will that rehabilitation take place?

Lord Faulks: In the last year we have recruited 2,250 new prison officers—a net increase of 440—and we are continuing to recruit at that rate. We have given prison officers all that they have asked for in terms of the recommended rate of pay. We very much applaud prison officers in the very difficult task that they have to perform, and I am sure that all noble Lords will join me in offering their condolences to the family and friends of Adrian Ismay, a prison officer from Belfast, who unfortunately died today.

Lord Farmer (Con): My Lords, I read in the *Times* recently that the Secretary of State is going to put family at the heart of prison reforms. Can the Minister expand on those plans and the progress that has been made there?

Lord Faulks: My noble friend is quite right to focus on the importance of family. According to research by my department, families are the single most important factor in helping prisoners to resettle on release. A number of prisons have developed visitor centres and are doing their best to make the contact between families and prisoners as pleasant as possible. This is important because, first, the families are, after all, not doing a prison sentence and, secondly, it encourages prisoners to remember that their roots in the community and in their family are the key to not reoffending.

Lord Phillips of Worth Matravers (CB): My Lords, the Minister has recognised that we cannot hope to tackle prison overcrowding without improving rehabilitation and thereby reducing reoffending. But is it not the fact that we cannot hope to improve rehabilitation without reducing prison numbers? Can the Minister tell us how the Government will break this vicious circle?

Lord Faulks: The noble and learned Lord, with all his experience of the system, will appreciate that we have a duty, and therefore have to have the ability, to house all who are sent to prison by judges. What we are endeavouring to do is to identify the causes of reoffending. Once we have done that, we hope that that will reduce the numbers. If judges feel it is appropriate to sentence offenders to particular sentences, it is not for the Government to reduce those sentences simply to make the figures balance.

Baroness Corston (Lab): My Lords—

Lord Woolf (CB): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I am sorry, but if we are going strictly in turn, it is the turn of the Labour Benches. However, I know that the noble and learned Lord,

[Baroness Stowell of Beeston]
Lord Woolf, has been trying to get in. Therefore, if we go next to Labour, I suggest that we then go to the noble and learned Lord, Lord Woolf.

Baroness Corston: My Lords, the Minister will know that in the nine years since the publication of my report, the reason that the number of women in prison has decreased is because of the establishment of a network of community women's centres, which have been used by the courts to help those women turn their lives around. Under the new community rehabilitation contract regime introduced by the coalition Government one women's centre, Alana House in Reading, has been closed because its CRC, MTC Novo, has refused to fund it. Other women's centres do not even know what their funding is going to be after 1 April. Does the Minister agree that the inevitable result of this will be an increase in the women's prison population?

Lord Faulks: I pay tribute to the noble Baroness's contribution to reducing the population of women prisoners and her concern for them. Of course, she will be pleased that their number is lower than it has been for a decade. We hope that we can reproduce the best practice found in Holloway—albeit it is closing—and in the women's centres in making sure that the arrangements in prison are those best suited for women and their rehabilitation.

Lord Woolf: My Lords, is it not right that the inflation in sentences—they are longer than they have ever been—is caused by action taken by Governments, and not by judges, to impose fixed sentences? These sentences form rocks that the rest of sentencing has to accommodate. If that were not the case, sentences would be shorter, because judges are prevented from imposing the sentences that they otherwise would by the fixed-sentencing policies of the Government of a particular time.

Lord Faulks: I am grateful for the contribution made by the noble and learned Lord. Of course, this Government and the coalition Government before them were very much against fixed sentences. It was the coalition Government who repealed, for example, provision in relation to indeterminate sentences for public protection. In the eight criminal justice Acts that were passed by the Labour Government, extraordinary inflexibility was given to judges in passing sentences—that is one of the results in terms of the prison population. We are endeavouring to give as many resources as we can to the Parole Board to make sure that those prisoners will be released when it is safe to do so.

Education: Henley Review

Question

2.44 pm

Asked by ***Baroness Bonham-Carter of Yarnbury***

To ask Her Majesty's Government what steps they have taken to implement the recommendations of the review by Darren Henley on cultural education in England.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, the Government accepted the vast majority of the recommendations in Darren Henley's review. Our response was published in 2012 and was followed by a cultural education document in 2013. Since 2012, we have invested almost £0.5 billion in music and cultural education programmes. This includes £270 million for music hubs, more than £100 million for the music and dance scheme, £57 million for the dance and drama awards and almost £20 million in a portfolio of cultural education programmes. A further £75 million has been announced for music hubs for 2016-17.

Baroness Bonham-Carter of Yarnbury (LD): I thank the Minister for that Answer, but we have a skills crisis in the creative industries and it starts at school. Why in their written response to the Henley review four years ago did the Government list second of,

"those issues that we will address immediately … A National Plan for Cultural Education",

and why has this "immediately" still not happened? Can the Minister say when the promised national plan will happen?

Lord Nash: The Prime Minister recently announced a cultural enrichment programme through the cultural citizens programme. I think that the noble Baroness should wait to see how that develops.

Lord Winston (Lab): My Lords, I declare an interest as chairman of the Royal College of Music. It is very clear that music does more than merely help to educate people; it provides all sorts of added benefits to education in general and collaboration between people. Have the Government considered helping the conservatoires in the way that Darren Henley has suggested, by doing more outreach in schools and supporting that sort of work which goes on but at the moment is very inadequately supported?

Lord Nash: The noble Lord makes a very good point. It is well documented that music helps not only the cultural development of pupils but in matters such as working together in teams when they work in orchestras and choirs. I shall take back the noble Lord's point and make sure that it is looked at.

Lord Lexden (Con): Does my noble friend agree that arts and music have long been at the centre of partnership schemes between independent and state schools, schemes which are now increasing in number as a result of the recent Schools Together website launch?

Lord Nash: I do. It is true that of the approximately 2,000 independent schools, nearly 800 of them are engaged in activities with state schools—of course, many of those which are not are very small. It is something which should be encouraged and we are doing everything we can to do so.

Baroness Grender (LD): My Lords, the joint ministerial board that the Government said was an immediate priority in response to the review and that was set up

in 2013 is an entirely separate body from the cultural education partnership group, which Ministers do not attend. Can the Minister tell us whether Ministers on that board have met since general election and explain to us why the future of this board is under consideration rather than getting on with this all-important work?

Lord Nash: The noble Baroness is quite right that the board has not met since the general election, but it has achieved a great deal. It has monitored progress against the recommendations from the Henley review; it has evaluated the impact of the programmes which have been funded, some of which I have referred to; and it has been involved in making sure that best practice is shared across the industry.

Baroness Nye (Lab): My Lords, does the Minister accept that government policy has impacted on the value given to art and design in schools and colleges? The National Society for Education in Art and Design survey report shows that learning opportunities in art, craft and design across all key stages have reduced significantly in the past five years and that teachers thought that the introduction of the EBacc was responsible. Will he therefore review the time allocated for the teaching and learning of art and design within the curriculum, which could then be part of the national plan for cultural education, as proposed by Darren Henley?

Lord Nash: I have to take issue with the noble Baroness on this point. The percentage of pupils at state schools entered for at least one GCSE in the arts has actually gone up by 10% since 2011, while the numbers of pupils entered for GCSEs in art and design, music and the performing arts have all increased. Indeed, last year thousands more students took GCSEs in art and design.

Lord Cormack (Con): Does my noble friend agree that a great deal depends upon our cathedrals for the excellence of choral music in this country, and will he take this opportunity to acknowledge that? Also, can he say whether the Government have anything in mind to assist and encourage in this area?

Lord Nash: My noble friend makes a good point, and of course we have the Cathedral Primary School in Bristol, a new free school which opened in 2013. I am very hopeful that we will see more of such free schools.

Baroness McIntosh of Hudnall (Lab): My Lords, does the Minister accept that there is a problem—I know that he is not terribly willing to accept it—which is to do with the extent to which teachers in both primary and secondary schools are under pressure to deliver a fixed curriculum that crowds out opportunities for students of all ages to participate in cultural activities of various kinds, despite the fact that quite a wide range of such activities is available for them to participate in? Is he content that this crowding out is what was intended when the cultural plan was developed?

Lord Nash: I think that noble Lords sometimes forget the appallingly low base we started from in 2010 where fewer than one in five pupils in comprehensive schools were doing any kind of cultural course. The EBacc has within it two very well-known cultural subjects: history and English literature. Moreover, many pupils study drama, music, art and dance without taking exams in them. That is all part of a broad and balanced education.

Lord Aberdare (CB): My Lords, in July 2013 the Government defined six ambitions for world-class cultural education. Can the Minister tell us something more about how they are monitoring progress towards achieving those ambitions and what has actually been achieved, particularly, for example, in targeting young people from disadvantaged backgrounds?

Lord Nash: I think that in order to answer all six points, I will have to write to the noble Lord, which I will happily do. Our pupil premium awards have been particularly focused on the arts. They have involved the Royal Shakespeare Company, the royal schools of music, the Royal Society of Arts and the Arts Council.

Gambling: B2 Gaming Machines

Question

2.52 pm

Asked by ***The Lord Bishop of St Albans***

To ask Her Majesty's Government what assessment they have made of the social impact of category B2 gaming machines.

The Earl of Courtown (Con): My Lords, the Government draw upon a range of sources to monitor the social impact of gambling, not least the Gambling Commission and the health surveys that are commissioned by the NHS. The Government also evaluate the effects of their own regulations, most recently the £50 gaming machine regulations, which indicate that a large proportion of players on B2 gaming machines may now be making a more conscious choice to control their playing behaviour.

The Lord Bishop of St Albans: I thank the Minister for his reply. These gaming machines, also known as FOBTs, have been dubbed the "crack cocaine of gambling". The Government have consistently said that they would take action on their use if and when evidence of their social and personal harm became readily available. Yet it was reported in the media that last year the Government blocked a targeted review which had been requested by the DCMS. In the light of the tragic stories that continue to appear all too frequently in the media of the harm caused by these machines, will the Government now commit to a full, targeted review of FOBTs and their use?

The Earl of Courtown: My Lords, the right reverend Prelate will be aware that in January of this year we published an evaluation of the impact of the April

[The Earl of Courtown]
2015 regulations. Ministers will consider the findings carefully before deciding on the next steps, including the possible timing of the next review of stakes and prizes.

Lord Collins of Highbury (Lab): My Lords, with casinos on practically every high street and mobile online gambling where there is no limit, it is clear that regulations and legislation need to keep up with technology. What is overdue—the Minister tried to respond to this in the debate last week—is the triennial review of betting limits. He would not commit then but will he commit today? It is overdue. It is important that this issue is addressed, including FOBTs. Will he announce today the start of that triennial review?

The Earl of Courtown: My Lords, the noble Lord, Lord Collins, as well as the noble Lord, Lord Clement-Jones, both mentioned this point towards the end of the speeches in the excellent debate we had on Friday. I have nothing new to add at the moment. I just reiterate that my honourable friend Tracey Crouch, the Minister for Sport, keeps a special eye on this. She has a special interest in this issue. The Government are open-minded on the review and will set out their views in due course.

Lord Strasburger (LD): My Lords, in his article last week in the *Times*, calling for urgent action on FOBTs, Mr Fintan Drury, the former chairman of Paddy Power, said:

"At the heart of the gambling sector, there is a troubling partnership between government and industry".

Is that troubling partnership the reason that the Government do nothing but procrastinate about FOBTs and are trying to defend the indefensible?

The Earl of Courtown: My Lords, I obviously do not agree with the noble Lord, Lord Strasburger. Basically, he will be aware, of course, that in April 2015 we reviewed the regulations to put a limit of £50 on what could be staked at one time without getting added clearance. The Gambling Commission also introduced new social responsibility requirements on the whole industry last year. The industry has also taken action to introduce social responsibility codes, and new planning laws introduced in 2015 now make it harder to open new betting shops on the high street.

Lord Harris of Haringey (Lab): My Lords, the Minister told us that his honourable friend was keeping a close eye on the question of the triennial review. How then can it be a triennial review? Are the Government not breaching the obligations set for them in terms of holding such a triennial review?

The Earl of Courtown: Of course I would not agree with the noble Lord. My honourable friend Tracey Crouch has commented on this issue in another place and is keeping a careful eye on when the triennial review will take place. The first triennial review took place in 2013.

Lord Collins of Highbury: Which means, my Lords, that it is overdue. The last one took 12 months to conduct, so by the time it reaches a conclusion it will be well overdue—it will have taken nearly five years—so it will not be a triennial review any more.

The Earl of Courtown: Well, my Lords, I thank the noble Lord, Lord Collins, for making it perfectly clear. I realise that I have not been able to give any dates on this and I will ensure that the House is made aware as soon as any decision is made.

NHS: Hospital Overcrowding

Question

2.58 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what assessment they have made of the latest NHS performance figures and the concerns expressed by the Society for Acute Medicine that overcrowding in hospitals may result in avoidable deaths.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, a significant increase in emergency demand in January put the NHS under great pressure. Compared to January last year, the NHS had almost 175,000 more attendances in A&E in January 2016. We recognise this rise in demand is not sustainable, which is why we have invested £10 billion in the NHS's five-year forward view.

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the Minister, but he will know that the January performance was the worst A&E performance of the NHS on record. The Society for Acute Medicine has warned that this is bound to have an impact on the number of avoidable deaths that take place. Ministers cannot just blame the public for coming to A&E departments. The fact is: they have cut nurse training places; they have cut social care; they have squeezed the NHS budget; and today the Public Accounts Committee says that the NHS has no chance whatever of clearing the financial deficit. I would simply ask the Minister when he thinks the NHS will next meet the four-hour target.

Lord Prior of Brampton: My Lords, there was a 10% increase in demand in January, which put the NHS under huge pressure. It is much to the credit of A&E services that we saw 111,000 more people within four hours than we did the previous January. It is also worth mentioning that, over the last five years, the number of consultants working in A&E has increased by 49%. The number of people working in emergency care as a whole has increased by 3.7%. It does not alter the fact, which I recognise, that A&E departments are under tremendous pressure—they often are in winter. We hope that that pressure reduces as spring approaches.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend the Minister look very carefully at the reasons for delayed discharges, which lead to

overcrowding, and to the particular role that community hospitals, such as the Lambert Hospital in Thirsk, play in rehabilitating those who have had a fall, an operation or a stroke? Will he look very carefully at the role of, and allocate sufficient resources to, community hospitals to ensure that they remain in service, playing this crucial role of step-down between the acute hospital and going home?

Lord Prior of Brampton: My Lords, clearly, step-down facilities, including community hospitals, have a very important role to play. The whole thrust of the five-year forward view is to treat more people outside acute hospital settings. That is the NHS's plan, which the Government support.

Lord Patel (CB): My Lords, does the Minister agree that there needs to be a reform of the tariff paid for the workload that A&E departments now bear? If there is an appropriate tariff, the hospitals will invest in better facilities and better staffing, such as collocation of out-of-hour GP services, pharmacies, and even mental health assessment services, alongside A&E departments. Does he therefore agree that there needs to be a reform of the tariff paid to A&E?

Lord Prior of Brampton: My Lords, the tariff has been changed. Acute hospitals now receive 70% of the tariff, rather than 50%, for the excess numbers of people coming into A&E departments. The noble Lord is absolutely right, though, that those hospitals that have collocated GPs and A&E departments, and have invested in psychiatry liaison nurses and other people, have seen huge improvement. The question is: do we want to invest? Are A&E departments the right places to invest, or ought we to be putting that investment into primary and community care? That is the big issue that will be decided over the next five years.

Lord Rennard (LD): My Lords, does the Minister agree with the president of the Society for Acute Medicine that there are no more efficiencies to be made and that we must now start to invest in care again to bring us on a par with other developed nations? Does he accept that the planned increases in expenditure for the NHS will not be adequate to deal with the crisis in it, and that we need to consider a hypothecated tax to fund health and social care?

Lord Prior of Brampton: My Lords, a lot of what was said by the person, whose name I cannot remember, to whom the noble Lord refers, was absolutely right, but when he said that there were no more efficiencies to be gained he was completely wrong. We can still achieve huge efficiencies throughout the whole healthcare system, in the context that the NHS is one of the most efficient systems in the world, but it can be better. It would be completely wrong to say that no more efficiencies can be achieved.

Baroness Pitkeathley (Lab): My Lords—

Lord Vinson (Con): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, it is the turn of the Labour Benches. While I am on my feet, I remind noble Lords that we should not be reading out questions at Question Time.

Baroness Pitkeathley: My Lords, will the Minister agree that there is bound to be overcrowding in hospitals if we have a point of entry without any guaranteed point of exit? Therefore, unless social care is adequately funded and organised, we will always have this problem of overcrowding, particularly where old people are concerned. I would be very glad if he did not refer me to the better care fund as the answer to this, because it is already oversubscribed many times.

Lord Prior of Brampton: My Lords, I will not refer to the better care fund, but I agree with the noble Baroness that flow through a hospital is essential. Blockages at the end of the flow can cause problems further down the line in A&E departments. I entirely agree with the noble Baroness's analysis, but it is more complex than just looking at social care. Two-thirds of the delayed transfers of care are caused internally within the NHS, compared with only one-third by social care, but the noble Baroness makes a very strong point.

Lord Vinson: My Lords, is it not a fact that net immigration into this country is running at over 200,000 people a year, and possibly rising? Surely this has a huge bearing on the ability of the National Health Service to meet demand. That factor should be taken into consideration.

Lord Prior of Brampton: My Lords, the demand on the health service is rising for many reasons, of which the growing population is clearly one. However, without the extraordinary contribution made to the NHS by people who have emigrated here from other countries, we would not have an NHS at all.

Baroness Watkins of Tavistock (CB): My Lords, will the Minister comment on how we might prevent people going into hospital through much better structuring of community teams led by nurses? Last week, I was told at the Secretary of State's conference on patient safety that the mean age of patients on a medical ward at Oxford was 83. When I was a ward sister, it was around 50.

Lord Prior of Brampton: My Lords, clearly it must make more sense to provide better treatment for elderly people in their homes, away from hospitals, particularly for those with often multiple long-term conditions. One of the tragedies of government policy since 2000—this goes across both parties—is that, although the rhetoric has been about moving care out of hospitals into the community, it has been extremely difficult to do it.

Lord Watts (Lab): My Lords, does the Minister accept that, although they may not be the only cause, the cuts in social care have had a profound effect on

[Lord Watts]
overcrowding in our hospitals? Would it not be a good idea to reverse those cuts and take some of the pressures away from our hospitals?

Lord Prior of Brampton: My Lords, I think it is well understood that the integration of healthcare and social care is hugely important and that the two cannot be seen in isolation. It will be very interesting to see how things develop in Manchester, where we are going to see an experiment in the integration of health and social care on a very large scale.

Syria
Statement

3.07 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I shall now repeat as a Statement the Answer to an Urgent Question given earlier today by my right honourable friend the Foreign Secretary on Russia's announcement of the withdrawal of its forces from Syria. The Statement is as follows:

"We have, of course, seen the media reports of a Russian withdrawal of forces, including a report this morning that the first group of Russian planes has left the Hmeimim airbase to return to Russia. However, I should tell the House that, as far as I have been able to determine, none of the members of the International Syria Support Group had any advance notice of this Russian announcement, and we have yet to see any detailed plans behind Russia's announcement yesterday.

We do not yet have any independent evidence to verify Russia's claims that military withdrawals have already begun. We are monitoring developments closely, and it will be important to judge Russia by its actions. It is worth remembering that Russia announced a withdrawal of forces in Ukraine which later turned out merely to be a routine rotation of forces. If this announcement represents a genuine decision by Russia to continue to de-escalate the military conflict, ensure compliance with the cessation of hostilities and encourage the Syrian regime to participate in peace negotiations in good faith, it will be welcome.

Now is the time for all parties to focus on the political negotiations, which resumed in Geneva yesterday. Only a political transition away from Assad's rule to a Government representative of all Syrians will deliver the peace Syrians so desperately need and so ardently desire and give us a Government in Damascus able to focus on defeating terrorism and rebuilding Syria. There can be no peace in Syria while Assad remains in power. Russia has unique influence to help to make the negotiations succeed, and we sincerely hope that it will use it.

Since it came into force on 27 February, the cessation of hostilities has resulted in a significant reduction in violence in Syria. However, there has been a significant number of reports of violations, including the continued use of barrel bombs, which we have been discussing with our partners in the ISSG ceasefire task force in Geneva. We have serious concerns that the Assad regime has been using the cessation of hostilities to pursue its military objectives and that it is not serious about political negotiations. Swift action to address these violations is therefore vital to reduce the violence and show the Syrian people, including the Syrian opposition, that both Russia and the Assad regime are abiding by the terms of the cessation of hostilities. Failure to do so threatens the prospects for continued political negotiations.

We look to Russia, as guarantor for the regime and its backers, to use its unique influence to ensure compliance and to make clear to the Assad regime its expectation that it must negotiate in good faith. After investing so much in Assad, Mr Putin must show the world that he can exercise control over his protégé. At the same time, we call for complete and unfettered humanitarian access across Syria and an end to all violations of international humanitarian law, in accordance with UN Security Council Resolution 2254.

We are relieved that desperately needed aid convoys are now arriving in some besieged areas of Syria, including some of those named in the International Syria Support Group agreement of 11 February in Munich. It is imperative that that continues and, in particular, that access is provided to Darayya, which has not yet seen any deliveries. The Assad regime must lift all sieges and grant full and sustained humanitarian access across Syria.

No one will be more delighted than I if, after five months of relentless bombing, Russia is genuinely winding down its military support for the brutal Assad regime. But, as in all matters relating to Russia, it is the actions rather than the words that count. We shall be watching carefully over the coming days to see whether the announcement's potential promise turns into reality".

My Lords, that concludes the Statement.

3.12 pm

Baroness Morgan of Ely (Lab): My Lords, we were all concerned by reports of indiscriminate attacks by the Russians in Syria, which, according to some human rights organisations, have caused the deaths of more than 1,700 civilians. The current cessation of hostilities, and the announcement of the withdrawal by Russian troops, therefore comes as a welcome break in a war that has lasted longer than the First World War and claimed the lives of more than 250,000 people.

What is being done to monitor the ceasefire? Will the withdrawal of Russian aircraft change the type of missions which the RAF and others in the anti-Daesh coalition are undertaking in Syria—and, if so, how? Finally, the UN Commission of Inquiry on Syria is due this week to present its report on war crimes committed by all sides. What prospect does the Minister see for any suspected war crimes being referred to the International Criminal Court, given that Syria is not a signatory to the Rome statute?

Earl Howe: My Lords, I am grateful to the noble Baroness. As the Statement makes clear, we have issued a cautious welcome to the Russian announcement. But it remains to be seen, over the coming days, how that announcement will convert into practical action—

and, if so, what action. The noble Baroness is quite right that we have seen the predominance of Russian air strikes directed against targets other than Daesh. To that extent, we welcome Russia's announcement of the withdrawal of its air forces. It is, however, fair to say that, since the ceasefire was announced some days ago, we have seen an adherence to it, as regards the moderate Syrian opposition, by Russian forces. We shall, of course, monitor the ceasefire very closely and there are various systems in place to do this. To the extent that we are aware of violations, we shall make sure to raise those in the appropriate quarters, not least in Geneva as the talks proceed.

As regards the RAF, we do not see the Russian announcement as affecting the objectives that the RAF has been given or the extent of its operations over both Iraq and Syria. What the Russian action may do, however, is make that situation slightly less complicated than it has been hitherto in terms of the crowded airspace that we have seen.

War crimes have been very much in our sights since the start of the Syrian hostilities. While they are not the prime focus of the negotiations in Geneva—there are other hurdles to get over before we reach that point—the noble Baroness can be sure that the issue will not be off our list of actions.

Baroness Jolly (LD): My Lords, I thank the Minister for repeating the Answer and welcome the promising news of aid convoys. Russia has confirmed that it will still be operating from its naval and air bases in Syria, so might air operations still be anticipated against opposition forces?

Earl Howe: This is the very question that we are wrestling with. It is too early, frankly, to say what the Russians will be leaving behind in the way of assets. As the noble Baroness rightly points out, the Russians still have their naval base at Tartus and the Hmeimim air base, with a significant air defence network in place, and, no doubt, protective forces for all those installations. Whether the Russians will be in a position to resume air activities and strikes at will is something that we shall need to assess as the picture becomes clearer.

Lord Howell of Guildford (Con): Will my noble friend accept that nothing in Russia is, or ever has been, what it seems, and that the principle of maskirovka—that is, saying one thing and doing something quite different—is very well established? Can he tell us whether there has been any direct attempt at any level in government in the past 24 hours to find out from either Mr Putin, Mr Lavrov or the Kremlin policymakers exactly what they intend and are aiming to do? There are times when a direct dialogue, confusing though it is, is the most valuable way of deciding what steps next to take.

Earl Howe: It may be possible for me to give a more substantive answer to my noble friend as the days proceed. But he is absolutely right in what he says about our experience of the Russians, which is why I made it clear earlier that we need to judge Russia by its actions and not by its words. President Putin has committed to a political resolution to the conflict through UN Security Council Resolution 2254. Russia's co-chairmanship of the International Syria Support Group is further evidence of that. President Putin told European leaders on 4 March that he agreed that now was the time to focus on the political process. He backed the timetable agreed in Vienna of a political agreement within six months and a schedule for the preparation of a new constitution and elections within 18 months. We are saying to Russia that it must use its influence to end the conflict once and for all, rather than prolong it, and we hope it chooses to do so.

Lord Alton of Liverpool (CB): My Lords, reverting to the question that was asked by the noble Baroness from the Opposition Front Bench a few moments ago, has the Minister had a chance to consider the unanimous resolution passed yesterday by the House of Representatives of the American Congress, declaring events to be a genocide, following in the footsteps of both the European Parliament and the Parliamentary Assembly of the Council of Europe? Does he not agree that the time now is right for this country to consider passing such a resolution, invoking whatever judicial procedures are necessary to bring that about, and to bring the matter up at the Security Council, pressing for a referral to the International Criminal Court, in the light of the monstrous acts of barbarism by ISIS and others that have taken place?

Earl Howe: My Lords, we have noted with deep concern and condemnation the actions to which the noble Lord refers. We have also noted the resolution that he mentioned. As he knows, however, it has been the consistent position of the Government, and that of Governments before us, that any resolution declaring genocide is a matter for the judicial system rather than the Government. But that does not alter the facts on the ground, which are truly dire. We are very concerned that these matters should be given the due weight and prominence that they undoubtedly deserve in the negotiations.

Lord Anderson of Swansea (Lab): My Lords, it is early days yet, but what is the Government's best analysis of the fact that there was no consultation, which hardly suggests that the Russians are prepared to play the team game in respect of the peace process? Is there not a danger that the Russians' withdrawal, and possibly political differences with the Assad regime, might embolden ISIL and push back Assad's forces?

Earl Howe: The noble Lord is quite right that there are a number of possible explanations for the Russians' decision. We cannot yet read the correct one. All we can do at the moment is to say publicly, as we have, that if President Putin means what he says and Russia truly puts its weight behind holding the Assad regime and its allies to the terms of the cessation of hostilities, and to participating in the peace negotiations in good faith, then we hope that rapid progress towards a peaceful resolution can be achieved. I am afraid that it is too early for us to diagnose the precise trigger for the Russian actions; we can only monitor.

Lord Campbell of Pittenweem (LD): My Lords, is it not necessary to retain a sense of realism about these matters, not least because Mr Putin has achieved all his strategic objectives? He has managed to buttress the Assad regime, at least for the moment. As has already been pointed out, he has retained the military base at Latakia and the port of Tartus. There can be no settlement of the Syrian question without the endorsement of Russia. It may not be game, set and match to Mr Putin, but it is most certainly game and set.

Earl Howe: My Lords, I can only agree with a great deal of what the noble Lord has said, but one cannot help observing at the same time that Russia's stated aims and its actions in Syria have been at odds with one another. It remains to be seen whether its withdrawal leaves the Syrian regime in a stronger or weaker position. I am not so sure that the noble Lord is right that the Russians have left at an optimal moment from the point of view of the Assad regime. Certainly, Assad is stronger than he was six months ago, but his position is by no means secure.

Trade Union Bill

Order of Consideration Motion

3.22 pm

Tabled by ***Baroness Neville-Rolfe***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 15, Schedules 1 and 2, Clauses 16 and 17, Schedule 3, Clauses 18 and 19, Schedule 4, Clauses 20 to 23, Title.

The Earl of Courtown (Con): My Lords, on behalf of my noble friend Lady Neville-Rolfe, I beg to move the Motion in her name on the Order Paper.

Motion agreed.

Immigration Bill

Report (2nd Day)

3.24 pm

Clause 37: Offence of leasing premises

Amendment 59

Moved by ***Baroness Hamwee***

59: Clause 37, page 23, line 14, leave out "and second" and insert ", second and third"

Baroness Hamwee (LD): My Lords, my noble friend Lord Paddick and I have a number of amendments in this group. Underlying all of them is a concern about all the so-called right-to-rent provisions—and indeed those provisions in the 2014 Act—and our view that there should be much longer experience of the current regime before criminalising non-compliance with it. My Amendment 67, which is more specific than Amendment 66, in the name of the noble Lord, Lord Rosser, and more robust, in particular deals with this. Noble Lords will be familiar with the short piloting of the requirements in the 2014 Act, the announcement of their rollout beyond the West Midlands pilot area before the six-month pilot came to an end and the publication of the evaluation of the pilot merely hours before these clauses were debated in Committee in the Commons.

My Amendment 67 picks up on concerns and criticisms of the scheme from the evaluation by the Home Office and on work done in particular by the Joint Council for the Welfare of Immigrants. The proposed new Section 33C(8) lists issues which were highlighted and which would be impacted. The amendment would require an independent assessment,

"based on information from a representative sample".

The 2014-15 pilot was much criticised on this score, as it comprised substantially students, with few people who actually moved during the period, so they had not experienced the new rules.

My amendment would also require an assessment over an adequate period, with publication not before five years from the start of the pilot. Noble Lords will also be aware of the panel co-chaired by the noble Lord, Lord Best, which continues to oversee the scheme and which has instigated changes. I do not for a moment doubt what the noble Lord, Lord Best, has told us of the workings of the committee, but since the minutes of its meetings are not published, we are not able to look at them in the way that we would want to. The evaluation should of course be based on rigorous data collection.

The regime affects tenants and would-be tenants, landlords and landlords' agents, and when it was rolled out some months ago there were very many negative comments. It was interesting that when we had a debate a couple of weeks ago in this Chamber, it was apparent that some Members of your Lordships' House who were landlords did not know of the requirements. So it seems to us that the scheme should be as dependable and defensible as possible before a landlord becomes liable to be criminalised, and this amendment allows for that. Criminalisation is very significant: a fine is qualitatively different from a civil penalty of the same amount.

Our Amendments 59, 60 and 61 would protect landlords. New Section 33A, which we are presented with in the Bill, sets out two conditions or matters which would give rise to an offence. My amendment would add a third—that previously the landlord should have been required to pay a penalty, so that a landlord is not liable to be criminalised on the first occasion he infringes. I am aware of course that there would be an assessment by the Crown Prosecution Service as to whether it is in the public interest to prosecute and so on, but I simply do not think that an individual in that situation should be subject to criminalisation. The Minister may respond by saying, "What about the flagrantly bad landlords—those who overcrowd, force people into substandard conditions and so on?". But we have other housing legislation and we should not be using immigration legislation to deal with this abuse.

The second condition deals with premises being—including becoming—occupied by an adult who is not qualified to have the right to rent and the landlord's knowledge. I hope that the Minister can explain whether there is a distinction between the obligations of a landlord and of a landlord's agent, because the equivalent provision in the 2014 Act, at Section 22(6), requires reasonable inquiries to be made. I find it difficult to see how this fits with new Section 33A.

The Minister's Amendment 62 does not deal with the positive action of authorising occupation. If we are not to have that, I support Amendment 65, tabled by the noble Lord, Lord Howard of Rising. The defence of having taken reasonable steps to terminate the tenancy within a reasonable period is an improvement, as far as it goes, but that is not nearly far enough. What is reasonable is to be determined by the court, which is fine, but having regard to the Secretary of State's guidance, which, to me at any rate, is not fine. My Amendment 63 would remove new subsections (5B) and (5C). What is reasonable should speak for itself, and the courts are not short of experience in assessing what is reasonable. But if something is reasonable only subject to certain matters, they should be set out in legislation, not unamendable guidance—or at any rate guidance that will be amendable by the Government and will not be certain.

Amendments 67A to 71 deal with evictions. The new section in Clause 38 is headed, "Termination of agreement where all occupiers disqualified". In the Commons Public Bill Committee, the Minister said that Home Office notices would be issued only when it is clear that all the occupiers are illegal migrants. I do not doubt that that is the intention, but I am concerned that new Section 33D(2)(b)—I apologise to noble Lords for all the cross-references—might be read as referring to particular occupiers, as long as they were the subject of notices, especially as in the preceding paragraph, paragraph (a), there is a reference to "all".

3.30 pm

Amendment 67B provides that notice to quit should be enforceable as if it were by the county court, not the High Court. The reason for this is that I understand that High Court enforcement officers, unlike county court bailiffs, do not give notice that they are going to turn up. Noble Lords who have dealt with situations of eviction will know that it is important to make arrangements for children of a household not to be present at the time of eviction.

My other amendments repeat Committee amendments tabled by the Labour Front Bench, which we supported and which would make eviction discretionary for the court, not mandatory. For instance, what if an asylum claim fails but the person is unable to return to his country of origin? What if the tenant cannot evidence his right to rent? The Home Office checking service cannot be accessed by tenants; it is available only to landlords and their agents. The tenant's circumstances cannot be taken into account if the eviction is mandatory.

The Minister told the Public Bill Committee that a reference to a,

"Home Office notice is a clear statement of immigration status".—[*Official Report*, Commons, Immigration Bill Committee, 29/10/15; col. 263.]

But it does not extend to the tenant's circumstances of, for instance, disability, pregnancy or having a family including very young children. I should tell the House that the Equality and Human Rights Commission supports these amendments, providing safeguards against breaches of Articles 8 and 14 of the convention.

I do not want to leave it to the Home Office to decide not to require eviction. Once the eviction process starts, it will tend to roll onwards in an inevitable fashion. The court should have the discretion to take account of varied and difficult situations. Nor—and I say this about all the provisions—do I want to see landlords or their agents made criminals because they do not fulfil all the duties of immigration enforcement imposed on them by this Bill. I beg to move.

Lord Rosser (Lab): We have an amendment in this group which would prevent the new offences that could be committed by landlords and their agents coming into effect until an evaluation of the Immigration Act right-to-rent provisions has been made and laid before Parliament. As has been said, the Bill creates new criminal offences for landlords and letting agents who do not comply with the right-to-rent scheme, under which they are required to check immigration status documents to avoid unlawful letting or landlords and letting agents who fail to evict tenants who do not have the right to rent, with a maximum sentence of five years.

The Government have put down an amendment that provides a defence for a landlord accused of renting to a disqualified person—that they did not know or have "reasonable cause to believe" that the person was disqualified. That is a defence that is available if the landlord, if discovering or coming to have reasonable cause to believe this has taken "reasonable steps" to end the tenancy "within a reasonable period". While we welcome the government amendment, it does not of course address the problem that the new offences are likely to create—that they will probably result in at least some landlords taking a risk-averse approach by letting primarily to white British persons with passports. Could the Minister indicate, as regards the government amendment, what kind of guidance, covering what questions or considerations, will be issued by the Secretary of State under proposed new subsection (5B), in government Amendment 62?

The Home Office has carried out an evaluation of the proposed national scheme, which was first introduced in the West Midlands. It was published last October. The Joint Council for the Welfare of Immigrants carried out an independent evaluation, which was published in September last year and showed that some 42% of landlords said that the right-to-rent provisions made them less likely to consider accommodating someone who did not have a British passport. The Home Office evaluation of the West Midlands pilot was limited in its scope; just 68 tenants were interviewed, nearly all of whom were students. It still found that a higher proportion of BME mystery shoppers were asked to provide more information during rental inquiries than other mystery shoppers. Polling last year has already shown that among landlords making decisions on who to let to, around half say that the Immigration Act right-to-rent checks will

[LORD ROSSER]
make them less likely to consider letting to people who do not hold British passports or who "appear to be migrants". There is a real danger that families who have every right to rent will be passed over by landlords because they lack passports or other obvious documentation of their immigration status.

The right-to-rent scheme was extended across the UK from the West Midlands from the beginning of last month. Is it really too much to ask, in view of the possible adverse consequences of these new criminal offences, under the right-to-rent scheme, that the introduction of the new criminal offences should be delayed until a full evaluation of the impact of the right-to-rent scheme nationally has been carried out?

The reality is that without such an evaluation the Government can give no meaningful or evidence-based assurances that the concerns that have been and are being voiced about the potential adverse impact on many of the one in four families in England who now rent privately of the introduction of the new criminal offences under the right-to-rent scheme will not materialise if more landlords adopt a risk-averse approach to letting. I hope that the Minister will be able to give a sympathetic response to this issue when he replies.

Lord Howard of Rising (Con): My Lords, I rise to speak to my Amendment 65 in this group, and I declare an interest as the owner of rented accommodation. I made the point in Committee that it can be difficult for the owners of rented property to continually monitor what is happening in their property. It is fine to carry out checks when letting a property, but for a landlord to know on a continual basis who is living in that property can, depending on the circumstances, be very difficult, if not impossible. If it were that easy, there would not be a problem in the first place; the authorities would have prevented the illegal immigration.

The Minister said in Committee that new Section 33A(3) of the Immigration Bill 2014 provides adequate protection to landlords. The Explanatory Notes state that the offences in the provision apply,

"where any adult is occupying the premises, regardless of whether the adult is a tenant under or is named in the agreement".

I do not quite have the noble Lord's confidence that there is adequate protection for the landlord. The Minister said in Committee that this legislation is,

"not intended to be used against reputable landlords who may have made a genuine mistake".—[*Official Report,* 20/1/16; col. 892.]

As time goes by, it is the legislation that governs actions, not the intentions behind the legislation. The good intentions to which the Minister referred may have been long forgotten and therefore may not prevent the overzealous pursuing the small reputable landlord, against whom the legislation is not intended to be directed.

Can the Minister explain a bit further how the protection about which he spoke in Committee would work? After all, 58% of the rented property in this country is let by people with fewer than five properties—the small property owners—and I do not believe that those smaller landlords should be exposed to a disproportionate or unreasonable risk.

Earl Cathcart (Con): My Lords, I thank my noble friend Lord Bates for tabling his government amendments. In my mind, it certainly makes the situation better, but maybe not perfect. I understand that the Government wish to tackle the rogue landlords who deliberately flout the law by knowingly taking in illegals as tenants. However, the Bill, as written, uses a sledgehammer to crack a nut by criminalising all landlords, even if they have done everything reasonably possible to confirm the status of a tenant and are actively seeking to evict a tenant they have been told does not have the right to rent.

I would like to explore how the government amendments would work in practice. I am happy to say that in my 30-odd years of being a landlord, I have never had to evict anybody, so this is new territory for me. Suppose one of my tenants in Norfolk was of Middle Eastern extraction with a Greek passport. As I do not know what a valid Greek passport looks like—other than like my British passport, but all in Greek—I send it off to one of those passport verification agencies. It gives me the all-clear and the tenant moves in. Subsequently, I receive a letter from the Immigration Enforcement office—in King's Lynn, in my case—giving me notice that the tenant is an illegal with a fake passport. The government amendments say that I have a defence if I have,

"taken reasonable steps to terminate the residential tenancy agreement … within a reasonable period",

beginning with the time when I first knew that he was illegal. Therefore I write to the tenant to evict him, with reasons, giving him so many days or weeks to vacate the premises. However, the tenant, realising that he has been rumbled, scarpers at once and disappears into another part of the country to become a tenant of some other unsuspecting landlord.

3.45 pm

This cannot be the right answer. I would have thought that the immigration enforcement officers would want to interview the tenant before I made him aware that his collar was being felt. Would not the enforcement officer want to confiscate the forged documents and maybe take the illegal to some holding camp? In which case, the job is done for me: the illegal has been removed from my property. If not, what is the point of it all—of allowing or giving the illegal the opportunity to escape into another area? Therefore there needs to be some joined-up thinking to ensure that the Government achieve their stated aims.

Government amendment 62 says that,

"the court must have regard to any guidance",

but it says little about what the guidance will contain and what it will be directed to. Will it say what the steps to terminate a tenancy are? Will the enforcement officers ask the landlord not to send the eviction letter until after they have interviewed and maybe taken the tenant into custody? What is a reasonable timescale? I have to give two months' notice to evict a legal tenant to give them sufficient time to find another home to rent. However, for an illegal, it should surely be a matter of days, not weeks. Will the guidance be clear about the circumstances in which financial or criminal sanctions would or would not be made against a landlord?

I thank my noble friend for bringing forward these government amendments. They are an improvement but some questions still remain unanswered.

Baroness Lister of Burtersett (Lab): My Lords, I will speak in support of Amendment 66 in particular. It is telling that the Equality and Human Rights Commission has expressed its support for this and other amendments in this grouping because of its concerns that the Government have not complied with the public sector equality duty with reference to this clause.

I will come back to a couple of issues which I raised earlier and which I do not feel have been adequately addressed. The first is the issue raised by the late and much missed Lord Avebury, which concerned asylum seekers who live in the private rented sector but who lack the necessary documentary proof that they are entitled to be here. According to ILPA, which has been pursuing this issue, a commitment by the Minister's predecessor to provide necessary documentation to show that they have a right to rent was not followed through.

In the Immigration Act 2014 order debate on 24 February, the Minister referred to special procedures to ensure that they are protected. However, JCWI already has evidence that these are not working, and argues that a clear policy on this is vital. From reading its latest briefing, I realise that there is a wider problem here, which also affects individuals who face barriers to removal from the UK. There is no clear policy from the Secretary of State that enables them to obtain permission to rent. The same is true of those with outstanding applications whose documents are likely to be with the Home Office, so they are unable to provide landlords with the necessary documentation.

JCWI cites a freedom of information request which elicited that the Home Office has no plans to enable individuals to obtain evidence of the right to rent. JCWI states:

"The absence of a defined process by which individuals can obtain permission to rent, or evidence it, increases the risk of discrimination and limits their access to the private rental market".

It argues:

"A clear policy must be put in place outlining when an how permission to rent is to be granted, as well as confirmation of the 'right to rent' where tenants have an outstanding application, and a process through which tenants can request written proof from the Secretary of State. Where a person is made destitute as a result, this could amount to a breach of their Articles 8, 14 and even Article 3 rights under the European Convention of Human Rights".

I urge the Minister to take this away and look at what may be a marginal issue but is very important for a highly vulnerable group. I urge him to come back, either in a letter or at Third Reading, with some assurances that the kind of policy called for by the JCWI will be established.

The other issue that I want to come back to was raised in Committee, in particular by the noble Lord, Lord Deben, who I do not think is in his place, in a demolition job of the whole policy. I refer to the impact on lodgers—an even less professional group perhaps than the small landlords whom noble Lords opposite have talked about—and on those opening up their homes to lodgers, possibly because of the bedroom tax.

After raising this issue previously, I received an email from Matt Hutchinson of SpareRoom, who works with hundreds and thousands of people living in shared rented accommodation each year and with landlords and homeowners taking in lodgers. He believes that the complex issues thrown up by the legislation are not being adequately addressed. First, he is concerned about the potential discriminatory impact. He says that he has already had one request from a landlord to make it compulsory for tenants to state their nationality on SpareRoom to make it easier to discount non-UK tenants.

Secondly, he is concerned about the likely reduction in the supply of rooms just as the new rent-a-room tax threshold was supposed to encourage people to rent out rooms. How many home owners will want to carry out the necessary checks on just one individual coming into their home?

Thirdly, he is concerned about the lack of information for this sector. What steps are the Government taking to ensure that non-professional landlords, who probably do not even think of themselves as landlords, and those taking in lodgers are aware of their new duties? Mr Hutchinson raises the situation of flat-sharers. If in a group situation, say, one person moves out and the others sublet to a new tenant, are they jointly and severally liable? How can they tell? How will they be expected to carry out meaningful checks with any degree of certainty? Thinking back to my own days of flat-sharing when I first came to London many years ago, the whole thing seems totally unrealistic.

The fears that many of us raised at Second Reading about the discriminatory effects of these clauses have not been allayed. Instead, we are receiving briefings from the EHCR, the Residential Landlords Association, SpareRoom, those working with immigrants and civil liberty groups, all expressing deep concern. It is adding criminal insult to civil injury to go ahead with this clause without much better information about how the current scheme works when it is rolled out nationally.

Baroness Ludford (LD): My Lords, I fully support the amendments in the names of my noble friends Lady Hamwee and Lord Paddick and other noble Lords, which would require an evaluation before the scheme is fully rolled out. The remarks of the noble Earl, Lord Cathcart, certainly illustrated the absurdity of the fact that immigration enforcement might be undermined. If the top priority is to make sure that people who do not have a legal status in the country are removed, that immigration control will be completely undermined by requiring an eviction, whereby people might scarper elsewhere before the immigration authorities have a chance to catch up with them. That shows the absurdity of trying to outsource immigration control, because you end up tripping up over it. I am very interested to hear the Minister's response on that.

I want to ask the Minister about the practicalities. I confess that I am not familiar with all the different documentation, but I have looked at a three year-old Home Office document about biometric residence permits. I do not know the extent of the rollout of biometric residence permits, but the document says that migrants applying successfully in categories in which they do

[Baroness Ludford]
not have to enrol their biometrics will continue to receive a sticker, a vignette, in their passport. Can the Minister give us an idea of what proportion of legal migrants are getting biometric residence permits, those who still have stickers in their passports and those who do not have either, such as asylum seekers who might have an array of letters from the Home Office? I am not up to speed with the practicalities, so perhaps the Minister can give us an idea.

My underlying concern is the practical difficulties for people, such as landlords, who are not immigration specialists to know how they are supposed to recognise this. The point was made by the noble Earl, Lord Cathcart, about the possibility of a passport having been checked but it is fake. Even without that happening, how are people supposed to recognise through the documentation and be really clear about whether someone has legal status or not?

Baroness Sheehan (LD): My Lords, racial discrimination is a funny thing, I have found. It takes many varied and sometimes surprising forms. For instance, I recall a time when I was with a school friend at my house. An aunt happened to be with us, and her words were probably my first brush with colour prejudice. They were addressed to my mother and they were this: "Do you allow black people into your house?". Another recollection that may be useful here was a couple of decades later, when, in chatting to a friend, I mentioned how frustrating it was sometimes to have a Pakistani name. Her response was surprising. She said that she thought I suffered much less prejudice than she did. She felt that her strong northern accent and working-class roots—she was a miner's daughter from Mansfield—worked against her more than my name worked against me. I mention these two cases to illustrate that the way you look and the way you sound influence the way people judge you, consciously or not. It is government's job to put in place legislation that discourages rather than reinforces our prejudices. This entire Bill seems determined to do the reverse.

At this stage, I am going to confine the rest of my remarks to the measures in the right-to-rent clause. The fears expressed about this clause during discussions about what is now the Immigration Act 2014 included discrimination against black and ethnic-minority communities; discrimination against the 17% of British citizens who do not have a passport, among them some of the most vulnerable people in society, including homeless people and those fleeing domestic violence, as the noble Baroness, Lady Lister, has noted on several occasions; victims of modern-day slavery; and those caught in the mangle of the Home Office's systems. These concerns were supposed to be evaluated by the West Midlands pilot, with its remit to test the effects and the effectiveness of these measures. However, these concerns are enhanced by the proposed escalation in the penalties faced by landlords, who now potentially face up to five years in prison. The fear is that they will be further incentivised to err on the side of caution and favour renting to those who present the least risk and who can produce immediately paperwork that they recognise. I repeat: vulnerable people with the right to rent who cannot immediately provide necessary documentation will find themselves and their families without a roof over their heads. To take up a point made by the noble Baroness, Lady Lister: what about the charitable families who offer a spare room free of charge to refugees or homeless migrants? Will they, too, be treated as criminals?

4 pm

Assurances were given to Parliament that any decision on further rollout would take place only after a transparent public evaluation. The evaluation was anything but satisfactory. The Home Office's own statement acknowledges that sample sizes were small; that only a limited number of voluntary sector and housing associations were interviewed; and that the majority of tenants had not moved properties since the start of the pilot and would not therefore have had any experience of the scheme. Nor does the pilot definitively conclude that it has met the aims set out by the Government. In fact, the Government's analysis of the effectiveness of the right-to-rent scheme in identifying illegal immigrants was flawed by the lack of "before" and "after" data. They have no baseline against which to declare that the draconian measures were in any way justified. So I ask the Minister whether between now and Third Reading he will provide satisfactory evidence that shows that the pilot evaluated the effectiveness of the scheme in identifying and apprehending illegal immigrants.

The Earl of Listowel (CB): My Lords, as the vice-chair of the parliamentary group for children and young people in care and leaving care, and in declaring my interest as a residential landlord, I want briefly to follow up on the remarks made by the noble Baroness, Lady Lister—in the absence of Lord Avebury—regarding those people who may have difficulty returning to their home country but who have perhaps exhausted appeals so far in the immigration arrangements. The Minister is well aware that this Bill changes the circumstances for about 750 young people who have been in foster care or in children's homes and who have turned the age of 18, and takes them out of the normal care-leaving protections that are offered generally.

The Minister has been very helpful and recognises the vulnerability of this group—we have met to discuss them. I have amendments relating to them which we will deal with on our next day on Report. In that discussion, I would be grateful if the Minister could reassure me that no young people leaving care who may be exempted from the normal care-leaver protections and have difficulty returning home will have difficulty in finding a place to rent because they cannot prove that it is safe for a landlord to rent to them.

Lord Hylton (CB): Before the Minister replies, can he link the request from my noble friend with Amendment 113 in the name of the noble Lord, Lord Roberts of Llandudno?

The Minister of State, Home Office (Lord Bates) (Con): My Lords, I thank noble Lords for this short debate. As this is a fresh part of the Bill, perhaps I may put on record that my wife is a small-scale private sector landlord. I will structure my response first by

speaking to the government amendments in this group which stand in my name and then seek to devote the rest of the time, which I think will be needed, to addressing the many points which have been raised.

It is important that we place this debate in some context. We had a significant debate on this issue at Second Reading. Following that, I wrote extensively to noble Lords seeking to provide some reassurances. We revisited the issue in Committee and further letters were sent. We also had what I thought was a very productive meeting on 11 February at the Home Office to which all interested Peers were invited, and we were delighted to have with us at that point the noble Lord, Lord Best, who cannot be with us today but who co-chairs the landlords consultative panel, to guide us through some of the working. A lot of reassurances were offered then but there were some outstanding issues of concern. In that context I will be referring to a letter I sent on 7 March to my noble friend Lord Howard of Rising, a copy of which is in the Library, which provides further reassurances on certain specific points that were made. Lastly, we are bringing forward today government amendments within this group. I have set this out as context to reassure all noble Lords that the Government are listening carefully to the concerns being raised and will continue to do so as the scheme is rolled out.

As I say, the Government have listened to the concerns about the effect that these provisions could have, which is a fear of prosecution on the part of genuine landlords. Government Amendment 62 provides a further defence for landlords who, once they know that they are renting to an illegal migrant or have reasonable cause to believe that that is the case, take steps to end a tenancy within a reasonable period. The amendment also provides that the courts must have regard to any statutory guidance issued by the Secretary of State in determining whether the landlord has proved that the defence applies on the balance of probabilities. This guidance must be laid before Parliament before being issued subject to the negative resolution procedure. The guidance will provide reassurance to landlords about the sorts of steps and periods of time which the Home Office considers reasonable and unreasonable in these circumstances. I understand that the Residential Landlords Association warmly welcomes the amendment, so I hope that it offers some reassurance.

Government Amendment 64 makes a minor change to the drafting, the effect of which will mean that, where an offence has been committed, it will not serve to render the terms of any tenancy agreement invalid or unenforceable on the grounds of illegality.

Government Amendment 72 seeks to remove a provision in Clause 40 that permits the Secretary of State to amend, repeal or revoke any enactment contained in this Bill. This follows a recommendation made by the Delegated Powers and Regulatory Reform Committee, to which we wrote in response to its report, which of course the Government fully accept. I shall be moving the government amendments in due course.

I turn now to the points that were raised in the debate by my noble friends Lord Howard of Rising and Lord Cathcart. In my letter dated 7 March, I wrote as follows:

"The 'reasonable cause to believe' threshold is a very high one. Its inclusion in addition to the 'knows' threshold arguably makes it easier to successfully prosecute the landlord who is fully aware that there are illegal migrants in his or her property and deliberately turns a blind eye, or the landlord who has all the pieces at their disposal to know that he or she is renting to an illegal migrant. For a successful prosecution in such cases, the fact that the landlord is renting to a disqualified person would still have to be the only reasonable conclusion the landlord could draw from the information available to them. For example, a landlord who had undertaken all of the relevant right to rent checks in accordance with his obligations under the scheme"—

including Greek passports in the example given—

"but had no idea that he had been deceived by a good quality fraudulent document, or a landlord whose tenants had subsequently moved occupiers who were disqualified from renting into the property without his knowledge, would never satisfy the mens rea for commission of this offence".

I hope that that offers some reassurance to my noble friends.

The noble Earl, Lord Listowel, asked about care leavers. If they have lawful status, they will have the right to rent. If not, but there are genuine obstacles to their return, permission to rent is likely to apply.

The noble Baroness, Lady Sheehan, raised a number of issues relating to prejudice. I was particularly concerned about prejudice against people with northern accents in this regard.

Baroness Sheehan: I just want to say that my good friend is now a judge, so it was not an insurmountable barrier.

Lord Bates: What a sweet prospect—a judge with a northern accent. That is a very fine example of social mobility under the modern government procedures that we have—I should quickly move on.

The noble Baroness asked how the scheme is working in terms of the detention of illegal migrants, and the serving of penalty notices. The scheme has now been in operation for over a year and has led to the detection of illegal migrants. The evaluation document that was produced, to which I draw the noble Baroness's attention, pointed to 37 immigration enforcement visits which took place during that time. More than a hundred individuals were identified who did not have the required legal documentation to be here. The scheme is now in operation. The extension of the scheme across England has worked smoothly, and further illegal migrants have been detected.

In terms of restrictions that are already in place to access social housing, it is reasonable to expect that migrants who remain here without permission should regularise their position or leave the UK. Successive Governments have sought to ensure that the immigration system is fair. In fact, we discussed this in Committee when the point was made that for some time—from about 1999—it has been a requirement on social landlords in the public sector to carry out checks that the person has the right to be here. We are now extending that into the private sector.

The noble Baroness, Lady Ludford, asked about the evaluation and said that she did not feel that it demonstrated that the scheme had achieved its aim. The statement in the evaluation report that just "26 referrals" of irregular migrants were specifically

[LORD BATES]
related to the scheme is a partial and selective quotation of the research report. As the evaluation report makes clear, this number specifically related to referrals,

"formally recorded on the Home Office's intelligence database within the first six months of the scheme. More intelligence referrals had been received but were not recorded in this database as they were sent directly to enforcement teams".

As stated in the evaluation report, in the first six months of the scheme in phase one,

"109 individuals … were identified, of whom 63 were previously unknown to the Home Office".

The noble Lord, Lord Rosser, and the noble Baroness, Lady Ludford, raised the issue of the evaluation that was carried out by JCWI and the YouGov poll. These findings are at odds with the Home Office's wide-ranging evaluation—specifically the mystery-shopping exercise carried out by independent contractors examining discrimination and documentation issues as one of the mystery-shopping scenarios involved a prospective tenant who did not hold a passport.

My noble friend Lord Howard asked what would happen if a person moves into a property without the landlord's knowledge. I think I have dealt with this already, but the landlord will fall liable for the offence only if they have knowingly let the property to an illegal immigrant and have done so having reasonable cause to believe that the tenant or occupant is a disqualified person, or where they have subsequently become aware that someone disqualified is renting or occupying their property.

The noble Baroness, Lady Lister, asked a fair question about permission-to-rent guidelines and advised me to write to her on that. I am very happy to give an undertaking that I will do so and hope that that will be helpful. We do not accept the suggestion that the policy conflicts with the public sector equality duty. The Home Office prepared a policy equality statement and took into consideration the results of a thorough evaluation of the scheme in discharging this duty. Both the statement and the evaluation focused on the potential for discrimination; the findings of both are in the public domain. Having set out our criteria, we consider that it should, in most cases, be clear to migrants whether they have a right to rent or are likely to be given permission to rent. It is not something that we expect people to apply for, but it is open to any migrant to contact the Home Office about their case.

4.15 pm

The noble Baroness, Lady Hamwee, asked about the eviction of families with children. The new powers of eviction are invoked only where the Home Office has served the required notice. The provisions that allow eviction without a court process can be utilised only where there is a Home Office notice in respect of each of the known occupants, including any children. A landlord will have to give the family 28 days' notice and the Home Office will be in contact with families so that the eviction will not come as a surprise. A landlord may still evict using the existing routes to eviction, such as the so-called no-fault process under Section 21 of the Housing Act 1998, or where they have other grounds for eviction under Section 8 of that Act. Even under these existing routes for eviction, a landlord may apply for the possession order to be enforced by High Court enforcement officers, rather than by county court bailiffs, which was a particular point that the noble Baroness referred to.

The noble Lord, Lord Rosser, asked what "reasonable" meant regarding the steps and period of time taken. Guidance and guidelines will be provided on the actions that constitute "reasonable steps" or a reasonable period of time to terminate the agreement. They will cover a range of different situations in which a landlord may find himself or herself. The question of what is reasonable will be affected by factors such as the nature of the residential tenancy agreement and the particular obstacles to the termination of an agreement in a particular case. The guidance will provide reassurance to landlords where they are taking reasonable steps to end a residential tenancy agreement in a timely way. It will be laid in draft before Parliament and brought into force by regulations subject to the negative procedure.

The noble Baroness, Lady Hamwee, raised a point on awareness of the scheme. Since the announcement on 20 October that the right-to-rent scheme would be extended across England, Home Office representatives have attended, and delivered presentations at, around 40 events across England, directly reaching almost 1,000 landlords and letting agents. Those are estimates from local figures. The events ranged in size from 15 to 150 delegates. They have included a wide range of delegates, including those from local authorities, housing associations and letting agencies, and private landlords. There are now trained experts on right to rent in each immigration compliance and enforcement team in England, who will lead local engagement in the coming months alongside the network of local partnership managers in the interventions and sanctions directorate. A survey conducted in June and July 2015 found that more than half of landlords surveyed were aware of the right-to-rent scheme. This was many months before the Government announced the rollout across England and the associated communications strategy.

On the suggestion that the evaluation sample sizes were small, the surveys carried out by the Home Office and its contractors need to be seen as part of a much broader research design, which also encompassed focus groups with landlords, agents, tenants and 332 mystery-shopping encounters. We understand the criticism of our contractors' survey that the majority of tenants were students. However, issues for prospective tenants, especially on discrimination, were explored through the mystery-shopping exercise, which was based on 332 encounters.

I have answered the point on reasonable timescales. My noble friend Lord Cathcart asked about illegal situations. Illegal migrants cannot go somewhere else in England to rent because they would fail the right-to-rent checks. It is also a requirement on landlords to report to the Home Office if a tenant disappears. The noble Earl asked about migrants evading detection. The right-to-rent scheme and the offences both penalise landlords and agents for failure to notify the Home Office once they detect someone disqualified from renting in their property.

The noble Baroness, Lady Lister, asked about the JCWI's briefing, which I think I dealt with.

The noble Baroness, Lady Hamwee, asked about the Home Office's evaluation of the first six months. That is published. We have produced about 173 pages of evaluation over three documents and are also using outside organisations to do this.

On the distinction between agent and landlord obligations, the right to rent requires responsible landlords and agents to make reasonable inquiries when entering into tenancies. Landlord offences concern failure to terminate tenancies or to notify. The new agent offences concern failure only to notify.

On Clauses 38 and 39 and permission to rent, it is open to tenants to contact the Home Office about any notice served on them by a landlord where they consider that there is a question about their status.

The noble Baroness, Lady Hamwee, asked about the defence of reasonable steps. It is important to ensure that we can modify guidance in the light of experience. Doing so in statutory guidance with proper scrutiny by Parliament is the best way to achieve that.

On opposition Amendments 68 to 71 and mandatory grounds for eviction, the question was whether this would not simply encourage illegal evictions. Landlords will need to comply with the law and any attempts to remove tenants by force, duress or threat would constitute illegal eviction. Further, in order to evict with reliance on this ground, the court would need to be satisfied not only that the Home Office had served notice in respect of the person but also that the person was disqualified from renting by virtue of their immigration status.

Finally, a number of serious points were raised around the area of potential discrimination. The Government take this extremely seriously. The point we made through the evaluation was certainly not that discrimination does not occur. However, when we compared the discrimination that was there, sadly, in the system in the area where we carried out the pilot, the rate of discrimination was, using mystery shopping, comparable to that in a control area—another area. As the noble Lord, Lord Rosser, reminded us, it is extremely important to remind landlords of their existing obligation, which is underpinned by the code of practice on avoiding discriminatory behaviour. The guidance available to landlords makes it very clear that discrimination is unlawful. In any respect of this, that is the one matter we would like to make sure is abundantly clear.

If there are any issues that I have failed to cover, of course I will write. However, I think I have covered most of the issues raised. On that basis, I hope the noble Baroness might consider withdrawing her amendment.

The Earl of Listowel: I welcome what the Minister said about the guidance with regard to families and landlords. I am sure he is aware of the increasing evidence that the early bond between mother and child is vital in the later development of children. Perhaps next time he looks at the guidance in this area, he could look at any particular stipulations around pregnant women and women with children under two, just to be absolutely sure that we are doing the very best to keep them under the minimum stress at this particularly important time of family life.

Lord Bates: It is absolutely right for the noble Earl to draw attention to that. I certainly give him that undertaking. We will bear in mind those particular points precisely when we construct the guidance which will be laid before Parliament.

Baroness Hamwee: My Lords, I am grateful to everyone who piled in on this. Again, there is an awful lot that we are not going to agree on—but I will not repeat all the arguments I made in moving my amendment. However, I should make it clear that I was asking not about publication of the Home Office's evaluation but about the work of the panel of the noble Lord, Lord Bates. I think that that is a separate issue.

Lord Bates: The noble Baroness raised that point in Committee. I went back to James Brokenshire and asked him whether the minutes could be published. That issue will be raised at the next meeting of the consultative panel. Because other private sector groups are involved there is, of course, a need to get their permission before any action of that kind could be taken. But that issue will be on the agenda for the next meeting of the consultative panel.

Baroness Hamwee: I am glad to hear that because it means that the last hour may not have been in vain. I still have concerns about mandatory conviction, discrimination—whether because or in spite of my intermittent Mancunian accent, I am not sure—and criminalisation. My amendment and that of the noble Lord, Lord Rosser, cover very much the same ground and we have discussed this. He asked for sympathy from the Minister. He always gets sympathy from this Minister. Therefore, I assume that he will not lead the troops to support the continuing pilot, if you like, which is the subject of both our amendments. Therefore, very sadly, as I do not want to take up the time of the House, I beg leave to withdraw the amendment.

Amendment 59 withdrawn.

Amendments 60 and 61 not moved.

Amendment 62

Moved by ***Lord Bates***

62: Clause 37, page 23, line 35, at end insert—

"(5A) It is a defence for a person charged with an offence under subsection (1) to prove that—

(a) the person has taken reasonable steps to terminate the residential tenancy agreement, and

(b) the person has taken such steps within a reasonable period beginning with the time when the person first knew or had reasonable cause to believe that the premises were occupied by the adult mentioned in subsections (2) and (3).

(5B) In determining whether subsection (5A)(a) or (b) applies to a person, the court must have regard to any guidance which, at the time in question, had been issued by the Secretary of State for the purposes of that subsection and was in force at that time.

(5C) Guidance issued for the purposes of subsection (5A)—

(a) must be laid before Parliament in draft before being issued, and

(b) comes into force in accordance with regulations made by the Secretary of State."

Amendment 63 (to Amendment 62) not moved.

Amendment 62 agreed.

Amendment 64

Moved by ***Lord Bates***

64: Clause 37, page 23, line 36, leave out "subsections (1) to (5)" and insert "subsection (1)"

Amendment 64 agreed.

Amendments 65 to 67 not moved.

Clause 38: Eviction

Amendments 67A and 67B not moved.

Clause 39: Order for possession of dwelling-house

Amendments 68 to 71 not moved.

Clause 40: Extension to Wales, Scotland and Northern Ireland

Amendment 72

Moved by ***Lord Bates***

72: Clause 40, page 31, line 18, leave out "(including an enactment contained in this Act)"

Amendment 72 agreed.

Amendment 73

Moved by ***Lord Hope of Craighead***

73: Clause 40, page 31, line 20, at end insert—

"( ) Regulations under subsection (2) which relate to Scotland may only be made with the consent of the Scottish Parliament."

Lord Hope of Craighead (CB): My Lords, this amendment seeks to introduce a new paragraph into Clause 40. I will speak also to Amendment 140, which raises essentially the same point in relation to Clause 68. With both these amendments I seek to introduce a provision to the effect that the regulations referred to in those clauses which apply to Scotland may be made only with the consent of the Scottish Parliament.

Before I develop the reasoning behind these amendments, I owe the Ministers an apology for not having raised this issue in Committee. I am afraid that frankly I did not notice it until we reached this stage. It was prompted by the debates which took place on the Scotland Bill, to which I shall refer in a moment, which raised a point which bears on the significance of the legislation in this Bill which I am seeking to deal with.

I should add that the same point arose in relation to Clause 34. I tabled an amendment earlier on Report but, due to other business as Convenor, I was not able to attend and could not move it. In a way, it does not matter, because the point was essentially the same. Because of the way in which the Bill is framed, one point links all three clauses in the same way.

4.30 pm

It is a feature of the Bill that the provisions which apply to England and Wales are set out in full and we are debating them, line by line, as we ordinarily do; but although the Bill applies to Scotland, Wales and Northern Ireland, it does not set out the measures which deal with certain devolved matters relating to those Administrations. That has three consequences. First, this House—or, indeed, this Parliament—is not able to debate the detail of the legislation. As one can see in Clause 40(1), the Secretary of State is seeking to be given power, by regulations, to make such provision as he considers appropriate to enable any of the provisions to apply in relation to Wales, Scotland and Northern Ireland. These provisions are not set out in the Bill.

Secondly, as I understand the purpose of these provisions, it is not intended that the devolved legislatures should legislate on these matters either. I have checked the website so far as Scotland is concerned and I cannot see any legislation before the Scottish Parliament seeking to reproduce what we have in this Bill. Thirdly, the measures which seek to apply these provisions in relation to Wales, Scotland and Northern Ireland are to be contained in a statutory instrument. As we all know, we cannot amend a statutory instrument in any respect. We have to take simply what is on the face of the instrument and say either yes or no to it. A troubling aspect of the Bill is the inability of this House, or the devolved legislatures, to debate in detail what the Secretary of State is proposing to do to give similar effect to its provisions in those legislatures.

I will develop this a little bit more, to emphasise that these three chapters—I will leave aside the first one, apart from a quick reference to it—are dealing with devolved matters. Clause 34 in Part 1, which I was not able to deal with, relates to the labour market and makes particular provision regarding illegal working in licensed premises. The legislation for England and Wales, which the Bill seeks to amend, is to be found in the Licensing Act 2003; it has a parallel in Scotland in the Licensing (Scotland) Act 2005. The Scottish Act traces, more or less chapter by chapter, section by section, what one finds in the Licensing Act 2003. It is not too difficult to see how the provisions which this Bill seeks to put into the 2003 Act could be fitted into the 2005 Act to make parallel provision. However, we are not seeing that in this Bill, and we would not have the power to discuss any amendments to it if it came up in a statutory instrument.

Amendment 73 deals with Clause 40, which appears in a part of the Act which is concerned with access to services. As we heard in earlier debates this afternoon, it also deals with residential tenancies. Those are the subject of legislation for England and Wales found in the Housing Act 1988 and the Rent Act 1977 and they have their parallels in Scotland in the Housing (Scotland) Act 1988 and the Rent (Scotland) Act 1984. Once again, one can see exactly how the provisions that come in for England and Wales, in relation to the English legislation, could be fitted in to the Scottish legislation as well to give similar effect to it. Of course, we have the deficits, which I have drawn attention to, in being able to examine, criticise and comment upon what might be forthcoming when we have detail.

Part 5 of the Bill concerns support for certain categories of migrants. Amendment 140 relates to Clause 68, which deals with the transfer of responsibility, I think between local authorities, for people who are described as "relevant children". The way this is to be done, so far as this Bill is concerned, is by making amendments, which are found in Schedules 10 and 11 to the Bill, to the Children Act 1989, with the parallel provisions in Scotland to be found in the Children (Scotland) Act 1995.

We are not dealing with trivial details here. If you look at the Children Act, for example, in the schedules, this occupies nearly 20 pages of legislation—a very considerable package of legislation, which, if we follow the provision in the clause, will be reproduced in a statutory instrument. Similarly, in the Licensing Act matter, it was 20 pages of legislation. The material in the Housing Act is set out in four clauses, which are considerable in their detail. So these are not trivial matters; they are very considerable matters, which, as we have been hearing in relation to residential tenancies, may have very considerable consequences in regard to penalties, the risk of discrimination and so on. There is a real issue here about the way in which the Government are seeking to legislate on these important matters.

Those of your Lordships who have been following the Scotland Bill will be aware that in Clause 2 there is a provision dealing with the Sewel convention, which has attracted a good deal of discussion. As it stands in the Scotland Bill as amended on Report, the clause states that,

"it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament".

The word "normally" has attracted some criticism and in a way it gives me a very good justification for asking questions about the legislation we see in this Bill. Is this a normal situation, where the consent of the Scottish Parliament will be sought, or is it not? There has been very little clarification in the debates on the Scotland Bill as to what exactly is intended by the clause.

So far, rather to my dismay, the Government show no sign of introducing any kind of amendment to Clause 2 to deal with another matter, which the noble and learned Lord, Lord McCluskey, who I am glad to see in his place, raised about the possible justiciability of a failure to observe the Sewel convention. I hope the noble and learned Lord, Lord McCluskey, can hear what I am saying because exactly that problem arises in regard to what we see in this legislation. Here the Minister is proposing to take measures in relation to Scotland with regard to devolved matters. If he was not to seek the consent of the Scottish Parliament, there may be really considerable consequences. Perhaps I should pause while the Minister confers with his colleague but the point is sharply raised as to exactly what we are dealing with here.

There are two stages at which one has to consider the problem. First, because this Bill falls within the formula in the Scotland Bill, I would have expected—but I do not know—that the legislative consent of the Scottish Parliament will be sought in relation to this Bill because it contains provisions, such as the clauses that I referred to, which are of very considerable interest to those who are concerned with devolved matters in Scotland. Secondly, there is the stage of the statutory instrument, which is perhaps the more important stage, as to whether it is the intention of the Government that the consent of the Scottish Parliament should be sought to the instruments—there will be three of them, no doubt—that the Minister is proposing to put before this Parliament for its approval. There are really at least two features. The first is the rather second-hand way in which the legislation for Scotland is proposed in the Bill, and the second is the very considerable concern as to the consequences for the Bill if the formula in the Scotland Bill about legislative consent is not followed in both of these two stages.

I have been speaking about Scotland but I have been greatly encouraged that the noble Lord, Lord Wigley, has used exactly the same formula in relation to Wales in tabling amendments to Clauses 40 and 68. He is not concerned, rightly, with Clause 34 because Wales is not mentioned in it. But it is mentioned to exactly the same effect in relation to residential tenancies and relevant children, which are matters in the devolved area for Wales. I am not speaking for Northern Ireland but I imagine that the same point arises in relation to it on all three clauses, as it is mentioned in Clauses 34, 40 and 68.

There are quite important issues here that require explanation. I have apologised for not bringing this forward before but I would be grateful if the Minister will tell us more about what is going on. If he finds it easier, it might be better if he writes to me to explain exactly what is proposed so that, at the first stage, when the Scottish Parliament wonders whether it should give legislative approval to this Bill, it knows exactly what it has to expect and whether it will have a chance to look at the detail when that is formulated. For those reasons, I beg to move.

Lord Wigley (PC): My Lords, I shall speak to Amendments 73A and 140A, which stand in my name, and briefly to Amendment 144A, which is on a different matter. The noble and learned Lord, Lord Hope, referred to the fact that my amendments follow his form. I believe that the greatest compliment is emulation and I gladly took his form of words to pursue these matters. In raising this subject, I make it clear that I support in all ways the maximisation of assistance that can be given by all parts of the United Kingdom to children and others who need help in the difficult circumstances facing them. This is a question not of raising any complications in that way but of making sure that the legislative arrangements are appropriate.

It is particularly apposite that these issues should be raised at this point because we have a draft Wales Bill in the pipeline, following the Scotland Bill which the noble and learned Lord mentioned a moment ago. Some trouble has already brewed up in the context of the draft Wales Bill, which has led to it being brought back and run at a slightly later time, because of the insistence on so many potential uses of Henry VIII-type powers. Those arose in the context of other legislation in this Chamber only a few weeks ago. There are difficulties with that, as has been mentioned, not least the impossibility of amending statutory instruments and orders and, often, the lack of focus on changes

[LORD WIGLEY]
that can be extremely far-reaching. There are also questions with regard to clarity on where responsibility lies—an issue which has arisen perhaps more in the Welsh context than in the Scottish context. Cases have been going to the High Court for resolution because of a lack of clarity about the powers that rest with Ministers in Westminster or in Cardiff respectively. It is just possible that we could be stoking those fires unless it is sorted out in this Bill.

As far as Wales is concerned, the National Assembly has responsibility for most of the public services which may be needed to assist "relevant children", to use the terminology of the Bill. For example, local government, social care, housing and education are all more or less totally devolved. Those are the areas in which there might be a need to resort to the powers put forward in the various parts of the Bill, particularly in Clauses 40 and 68, which these amendments refer to.

It is reasonable that the Secretary of State should be required to discuss and agree with Welsh Ministers or, indeed, the National Assembly as a whole—as with Scotland and Northern Ireland—ahead of pushing such powers through to be applied to the statute book and used. My belief is that this should be built into the legislation that we are passing. We need to ensure that the system is flexible so that Welsh local authorities can link up with English local authorities.

4.45 pm

I am not entirely certain whether that flexibility is built into the wording of the legislation as it presently stands. Clause 40(3)(a) and Clause 68(3)(a) give the Secretary of State rights to,

"amend, repeal or revoke any enactment",

made by the National Assembly for Wales. As drafted, that seems a very draconian power, even if it is only meant to apply to the provisions on residential tenancies in Clause 37 and the transfer provisions in Clauses 64 to 67. As worded, these are still very far-reaching powers, and there is therefore a need for that safeguard to be built in so that the Assembly and Ministers in Cardiff at least know that if the powers are going to be used, they will be brought into the discussion. At the very least, there is a need for greater clarity.

I will just touch very briefly on Amendment 144A, relating to language provisions. I do not intend to move this amendment, and do not intend to speak for very long on it now, after having a very constructive conversation with one of the Bill team earlier today. My worries were about the applicability, where appropriate, for the Welsh language in Wales, and this would cover the need for competence in both languages in some circumstances. I have had it explained to me that this can in fact be covered by the code of practice. That being so, I do not intend to speak any longer on this amendment. However, the earlier ones cover issues that are of concern to Wales, to Scotland and to Northern Ireland, and I hope that they can be somehow resolved, even at this late stage.

Lord McCluskey (CB): My Lords, I support the amendment proposed by my noble and learned friend Lord Hope of Craighead and would like the Minister to explain the assumption behind this clause as drafted. Is the assumption that the Sewel convention, as it is called, would be in force and therefore there would be flexibility, or is the assumption that the Scotland Bill will be passed in its present form, where the word "normally" is used, which virtually abolishes the Sewel convention? If "normally" is to remain part of the Scotland Bill and so become part of the Scotland Act, will that then be justiciable in relation to this particular matter?

Lord Bates: My Lords, I am very grateful to the noble and learned Lord, Lord Hope, for moving his amendment and leading this debate. I concur with the view that these are very important issues: they are not trivial issues but are very substantial. They were raised and commented on by the Delegated Powers and Regulatory Reform Committee in its 17th report, and were also raised by the Constitution Committee in its report. I will come back to those responses later, but I certainly accept that this is a welcome opportunity to get some reassurances and some comments on the record in relation to these matters.

This Bill is intended to apply to the whole of the UK, including Scotland and Wales. Where the law differs between different parts of the UK, the Bill makes special provision. The Government have sought to be open and clear on how the Bill applies to the rest of the UK. Making the Bill work effectively across the UK is complex, and we have consulted with lawyers and officials in the devolved Administrations to make sure that we get this right. That takes time. I should say at this point that there has been a substantial body of exchanges between the Scottish Government and the Home Office on this Bill—between James Brokenshire and Nicola Sturgeon—dating back to 13 August, with some 13 different iterations. I am happy to make the list available to the noble and learned Lord to show that that consultation has been going on.

In Committee, we amended the Bill in respect of illegal working in relation to private hire vehicles, so provision for the whole of the UK now appears in the Bill. In respect of illegal working in licensed premises, to which the noble and learned Lord referred, we have not had time to amend the Bill but have published draft regulations so that our method and intent are clear.

Amendment 73 concerns the mechanism to extend the residential tenancies provisions to Scotland, Wales and Northern Ireland. As with the right-to-rent scheme in the 2014 Act, we believe that the extension of these provisions to the whole of the UK has only consequential impact on devolved legislation and remains for an immigration purpose.

We have not sought to put the residential tenancies provisions for Scotland or Wales in the Bill or to publish draft regulations. This is because both the Scottish Parliament and the Welsh Assembly have been legislating in this space. The Private Housing (Tenancies) (Scotland) Bill was introduced into the Scottish Parliament last October, three weeks after we brought the Immigration Bill to Parliament. Stage 3 proceedings are scheduled to take place in the Scottish Parliament on Thursday 17 March. In Wales, to respond to the noble Lord, Lord Wigley, the Assembly has been considering to the Renting Homes (Wales) Bill,

which finally became law on 18 January. With the law in flux in Wales and Scotland, we had to decide whether it was worth amending the law only to need to re-amend it a few months later, and we thought that once was better.

Amendments 140 and 140A relate to the provision in Part 5 which will make it easier to transfer unaccompanied migrant and asylum-seeking children from one local authority to another, and will enable the Secretary of State to require local authorities to co-operate in the transfer of unaccompanied migrant children from one local authority to another, should voluntary arrangements fail. Of course, as the noble Lord said, we all hope that the voluntary arrangements will succeed and that the power will therefore not need to be exercised.

However, the dispersal of migrant children is not an area in which Wales, Scotland or Northern Ireland have competence to legislate, and their consent is therefore, in our opinion, not required for the UK Government to legislate in this area. Immigration legislation already provides a UK-wide framework for migrants' access to local authority services. As I mentioned, the Government have been liaising with the devolved Administrations on participating in dispersal on a voluntary basis, and are grateful for the positive engagement which we have received to date. However, we must avoid a repetition of the situation that we saw in Kent last summer, so we will enforce the arrangements if necessary.

The regulations in Clause 68 are subject to the affirmative resolution procedure, so will be scrutinised in Parliament before they become law. In that context, I should say that the point about their affirmative or negative nature was precisely the one raised by the Delegated Powers and Regulatory Reform Committee. In response, we said that we would make them subject to the affirmative procedure, which will give the House a greater degree of scrutiny.

On the point raised by the former Solicitor-General, the noble and learned Lord, Lord McCluskey, about the Sewel convention, I am happy to provide copies to the noble and learned Lords and the noble Lord, Lord Wigley, of my letter to my noble friend Lord Lang of Monkton on 1 March this year in response to the Constitution Committee's concern about the use of the Sewel convention. Perhaps I may read into the record a small section of it from the third paragraph on page 1. I wrote:

"We note that you have drawn the attention of the House in particular to the powers for providing an extension of clauses 10, 11, 16 and 43 to Wales, Scotland and Northern Ireland (now clauses 34, 35, 40 and 68 respectively). We are clear that these provisions relate to the reserved matter of immigration and so we believe that it is entirely appropriate that the Legislative Consent Motions are not needed. We are also clear that it can be appropriate for these matters to be addressed in secondary legislation, which will allow us to ensure that the legislation reflects the differing legislative frameworks across the United Kingdom, including forthcoming changes to those frameworks".

On the particular point raised by the noble and learned Lord, Lord McCluskey, on the assumption lying behind this point, I wonder if I might write to him. I willingly accept the invitation from the noble and learned Lord to write further to address the specific points that he raised—but I hope that what I have set out so far will provide him with some reassurance that, while accepting that this is not an ideal situation, it is a genuine factor that we are respecting the devolved institutions in the work going through in the areas in which they have competence and seeking to make the intention clear at a later date to avoid having to change it.

Lord McCluskey: Would the Minister be good enough to include me in the correspondence that he sends to the noble and learned Lord, Lord Hope, because this is a live and important matter that we have to discuss on Monday when the Scotland Bill comes back to this House for Third Reading.

Lord Bates: I certainly give an undertaking. All the correspondence is there, in a trail to the noble and learned Lord, stretching back to August. I shall make sure that that is all with the noble and learned Lords by the end of the week, so they have time to consider that for next week.

Lord Hope of Craighead: My Lords, I am grateful to the Minister for his reply, which has helped to clarify matters to some extent. Rather like the noble Lord, Lord Wigley, I emphasise that I do not seek in any way to criticise the intention behind the legislation, particularly in regard to children. It is a very important matter, and no criticism is intended on the intention to extend these provisions to Scotland and, no doubt, to the other devolved institutions so that the same protection for children is available. That is absolutely understood—and I understand the immigration policy impetus behind wanting to extend the legislation with regard to residential tenancies to the devolved areas as well. But it is a curious feature that the way in which this will be sought to be done, which is fairly plain from what is being done in England and Wales, is by amending Scottish legislation. It is all very well to say that this is a reserved matter because it deals with immigration, but you cannot get away from the fact that the areas in which legislation requires change are in devolved matters. That is why the relationship with the Sewel convention is very important.

I have always been a little puzzled as to how the Sewel convention extends to discussions between Ministers, and I was very glad to hear that that dialogue has been taking place. In a way that is just as effective—perhaps even more effective—than having a matter before the Scottish Parliament for its consent, because it is a far more constructive dialogue, which can be begun early and help to frame the legislation from an earlier stage. That is not the Sewel convention as expressed in the Scotland Bill, but it is a useful way in which to communicate, which I welcome very much, and I am glad to hear that it has been going on. But there is still the Sewel point, which requires attention, because of the fact that the Scottish legislation is in the target for the statutory instrument.

The noble Lord, Lord Wigley, mentioned the Henry VIII aspect of the provisions, which requires explanation, because it is very wide-ranging. The power is to,

"amend, repeal or revoke any enactment"—

[Lord Hope of Craighead]
that is, any

"enactment contained in, or in an instrument made under, an Act of the Scottish Parliament".

There has been no attempt in this legislation to focus on the Scottish legislation, which is quite easily identified, which requires amendment. It would have been more helpful if the Bill had been framed in a way that made it clear which particular statutes required amendment, or at least the areas of law that we are dealing with, instead of having a wide-ranging Henry VIII power to, as it were, demolish all the legislation embraced in these very broad phrases.

I hope that when the Minister writes, he can explain a little more what is intended and what has taken place to reassure people about this. From what he has been saying, I take it that it is not intended that this Bill should go before the Scottish Parliament for a legislative consent Motion. Nor do I think he is suggesting that the instruments themselves should go before the Scottish Parliament; I do not see how they could. But no doubt there are people in Scotland who are listening very carefully to what is being discussed in relation to this matter, as there will be in Wales. It is therefore very important that the matter is fully clarified. I hope that we do not have to come back to discuss it more on Third Reading, so I look forward to what the Minister is going to tell us in writing. I see that the Minister would like to say something.

Lord Bates: Very briefly, I just want to clarify, to manage expectations here. What I have undertaken to provide by Monday for the convenience of the noble and learned Lords are copies of the correspondence, which are already in existence, to aid that part of the discussion. With the very hard-working constitutional lawyers and cross-government committees necessary to sign off on such communications, we might be able to generate that by Monday—certainly as soon as possible. But those letters to which I referred will be with the noble and learned Lord before the end of the week.

Lord Hope of Craighead: My Lords, I am most grateful to the Minister. I fully understand the problems due to a shortage of time and will look forward to what can best be achieved. For the time being, I beg leave to withdraw the amendment.

Amendment 73 withdrawn.

Amendment 73A not moved.

Clause 41: Powers to carry out searches relating to driving licences

Amendment 74

Moved by ***Lord Paddick***

74: Clause 41, leave out Clause 41

Lord Paddick (LD): My Lords, this amendment is also in the names of my noble friend Lady Sheehan and the noble Baroness, Lady Lawrence of Clarendon. We also have Amendment 78 in this group. I spoke on these issues in Committee, and the Minister has subsequently written to noble Lords on the issues raised both in Committee and at a meeting with the Minister and officials on 22 February.

In essence, these clauses create a new offence of driving when unlawfully in the UK, powers to detain the motor vehicle being driven by someone committing such an offence, including powers to enter premises to seize the vehicle, and powers to dispose of the vehicle on conviction. In addition, there are powers to enter and search premises, and to search an individual and a vehicle in order to seize and retain a driving licence if there are reasonable grounds for believing that the person has a driving licence and is not lawfully in the UK.

Noble Lords will recall my concern and the concern of other noble Lords that these provisions were likely to change a dynamic in police/community relations because of something that was abandoned decades ago when the police decided not to be proactive in enforcing immigration law because of the seriously damaging impact it was having on police/community relations. Clearly, the police will inform immigration authorities if someone who has been arrested for a criminal offence is suspected of being illegally in the UK, so that immigration officers can take the necessary action. But the days of police officers arresting black drivers on the spurious grounds that they were suspected of being an overstayer had, I hoped, thankfully been consigned to the history books.

My concern and the concern of other noble Lords who spoke in Committee, and the concern of the National Black Police Association, is that these clauses will take us back to the bad old days of poor police/race relations. The National Black Police Association says:

"The potential impact of this legislation will be an undermining of community cohesion and a stirring up of hatred and suspicion between different racial and religious groups … and will result in the police becoming the whipping boy for the immigration service".

Those are not the words of what some people might regard as an out-of-date, out-of-touch former police officer but the views of an organisation representing currently serving police officers.

I am very grateful to the Minister for meeting with me and other noble Lords, and for writing on these issues. I regret to say that his letter on the subject raises more questions than answers. First, the Minister says that the Home Office will consult publicly on the draft guidance. Can he say whether there will be parliamentary scrutiny of such guidance? The letter goes on to say that these clauses do not provide the police with any new power to stop people or vehicles. That is true, but it gives new powers to search an individual, a vehicle or the person's home address without a warrant, as well as creating a new criminal offence.

The letter goes on to say:

"The Government has made clear that no one should be stopped on the basis of their race or ethnicity; this would be unlawful under the Equality Act".

I remind the Minister of the survey commissioned by Her Majesty's Inspectorate of Constabulary, published in March last year, where 10,094 members of the public were asked whether they had been stopped by the police while driving in the previous two years.

Between 7% and 8% of white drivers who responded said that they had, whereas 10% to 14% of black drivers who responded said that they had been stopped in their vehicles.

Black drivers were more likely not to be told the reason for the stop and were less likely to be arrested or prosecuted. This is how the police use their existing power to stop motor vehicles. Black drivers were almost twice as likely to be stopped and were less likely to have done anything wrong. The exercise of the power to stop vehicles under Section 163 of the Road Traffic Act is not recorded by the police, so, apart from the HMIC survey, we have no idea how disproportionate the use of this power against black and other minority ethnic people is.

The Minister in his letter goes on to talk about the fall in stop and search in 2014-15 compared with 2013-14. He states:

"The number of stops on those of black ethnicity has fallen at a faster rate than stops on those who were white".

First, motorists stopped under Section 163 of the Road Traffic Act are not included in the stop-and-search figures, as I have already said. Secondly, according to the Institute of Race Relations, in 2014:

"Black people specifically are 4.2 times as likely as white people to be stopped and searched by the police".

It also reports that 86% of stop and searches did not lead to an arrest.

Does the Minister seriously expect the House to be relaxed about giving the police even more powers to search people and their homes and to arrest people for driving while illegally in the UK because the Home Office will issue guidance and because to discriminate against black and other minority ethnic people would be unlawful under the Equality Act?

In his letter the Minister goes on to say that,

"the police will use the powers contained in clauses 41 and 42 where they have stopped a vehicle for an objective reason".

The HMIC survey and the stop-and-search survey suggest that the police are stopping black people driving vehicles and stopping and searching black people for no objective reason—"for a reason other than race and ethnicity" is a more accurate description than "objective".

I know from 30 years in the police service that you can do anything to Elvis Presley apart from tread on his blue suede shoes, and you can accuse the police of anything except racism. What did the Government expect Chief Superintendent Dave Snelling to say to the Public Bill Committee other than that the police would not abuse this power?

The letter goes on:

"A search of premises for a driving licence can only be carried out where: 'The officer has reasonable grounds for believing that a person is in possession of a driving licence and is not lawfully resident'. In practice, this would require the police to perform a check with the Home Office".

All the evidence that we have to date points to the fact that this is what should happen in theory and not what will happen in practice.

The Home Secretary has done a lot of good work on stop and search, but clearly a lot more needs to be done if you are still over four times as likely to be stopped and searched if you are black than if you are white. All the evidence, including a survey by HMIC, shows that the police cannot yet be trusted to do what the Government "make clear", even when their actions are unlawful under the Equality Act. All the evidence indicates that the police are not yet ready, despite baby steps in the right direction, to be given more search powers and a power to arrest drivers suspected of being illegally in the UK. The fact that these powers are focused around immigration means that they are even more likely than general stop-and-search powers to be used disproportionately against the black and minority ethnic community.

Liberal Democrats want effective border security to prevent illegal immigrants coming into the UK in the first place, effective exit checks so that we know when someone has overstayed their visa, and an effective immigration service that tracks down overstayers and others who are working in the UK illegally. These are all the responsibility of the Immigration Service. The police have already suffered significant cuts to their budgets and community policing has been hit hard. They have a front-line role in liaising with communities to build the kind of trust and confidence that leads to vital information about serious crime and terrorism being passed on to them by the public. Anything that is likely to put them in conflict with the public, and with black and minority ethnic communities in particular, will make us all less safe. That is exactly what this legislation is likely to do.

I am not making this point from a politically motivated point of view; this is an honestly held, personal belief based on my experience of policing and my knowledge of police culture. I have great respect for colleagues in the police service, who put their lives on the line to keep us safe every day, but these are serious issues that need to be addressed. I beg the Minister to reconsider these draconian clauses. Restrict the powers to immigration officers if you must, but please do not drag the police back to the bad old days when I was a constable on the beat. I beg to move.

Baroness Lawrence of Clarendon (Lab): My Lords, I wish to speak on Amendments 74 and 78, which relate to Clauses 41 and 42. Since this House last considered the driving offence and powers set out in the Bill, the Minister has, as he promised, engaged with me and others who expressed deep concern about the impact of these provisions. I thank him for that but I must tell him that the additional commitments made by the Government have left me feeling far from reassured.

The addition of a defence to the Clause 42 offence is welcome, as strict-liability offences can cause serious injustice, but this move will do nothing to reduce the practical discriminatory impact of these proposals. The discrimination will occur before a case reaches the police station or the court-room. It will occur on our roads and in our houses. That is where the damage will be done.

The provision of guidance on the use of these powers is not enough. Guidance exists around the use of current stop-and-search powers, such as the power set out in Section 60 of the Criminal Justice and Public Order Act 1994, but statistics produced by the

[Baroness Lawrence of Clarendon]
Met show that this power is still used disproportionately against black people. There is a time for guidance and a time for a wholesale rejection of a proposal because it is simply too harmful. In my opinion, the driving offence and the related powers in this Bill fall firmly into the latter category.

Finally, the Government offer a pilot evaluation of the implementation of the search powers set out in Clause 41. I am afraid that this does not fill me with confidence, given the experience of the right-to-rent pilot evaluation: the sample was too small and was unrepresentative, and the evidence of discrimination that it ultimately produced was ignored by the Government.

5.15 pm

The issue of traffic stops, and the decision by this Government to link them intrinsically to immigration inquiries, goes right to the heart of police/community relations in this country—and not just in this country. I refer to an incident in Ferguson, Missouri, where huge numbers of African-Americans took to the streets following the fatal shooting of an unarmed black teenager. While the shooting unquestionably led to the mass unrest that followed, background grievances had accumulated over decades, poisoning police/community relations. According to a report produced by the office of the Missouri Attorney-General, Chris Koster, while black residents account for 67% of the Ferguson population, black drivers accounted for more than 86% of traffic stops made last year by the Ferguson Police Department. This fact has not been lost on the US media, which reported on the link between anger caused by this consistent marginalisation and the fragile, unstable state of relations between the police and Ferguson's black population.

In addition to the HMRC statistics published in 2014, figures produced by StopWatch show the scale of the problem in this country. From its analysis of British Crime Survey data produced in 2008 and 2011, StopWatch found that black and ethnic-minority drivers consistently reported higher levels of car stops: 33% of people with mixed black and white ethnicities reported being stopped; for both the black Caribbean and Asian Muslim communities the figure is 18%; for white drivers, the figure is just 11%. We already have lax stop powers on the statute book which allow individuals to be stopped without reason. Yet rather than working to address the discriminatory reality of this provision, the Government seek to tie this power to the immigration system, creating the obvious potential to ramp up discriminatory impacts and inflame existing grievances. I oppose Clauses 41 and 42: they should not be part of this Bill.

Lord Deben (Con): My Lords, it seems to me that a very serious proposition is being made by the noble Lord, Lord Paddick, and I think that we ought to be very careful about it. The proposition being made is that, however valuable this clause is, it should not be passed because we cannot trust the police to carry it through properly. That is a very serious criticism. I have not been alone in my criticism of the police; I think that, particularly in London, there are very serious criticisms to be made. However, if we are to legislate on the basis that we cannot trust the police to behave properly towards the citizens of the United Kingdom, we had better look much more seriously at what we are doing with the police. We really should take it more much more seriously than is proposed here.

I think that many things happen in the police which are unacceptable. It is still true that relationships between the police and the press are far too close, and many of us have significant criticisms. But if the noble Lord, Lord Paddick, suggests that the police cannot carry through a necessary activity to ensure that illegal immigrants are properly dealt with and that the activity should be carried through not by the police but by immigration officials—who, evidently, can be trusted to behave in a proper way—then this is an argument not for this Bill but for a wholesale Bill about the nature of the police.

I do not believe that the British people would be very happy if this House decided that it would legislate in a way which was less likely to meet the needs as this Bill presents them simply because we have now accepted the inherent racism of the police force. That seems a fundamentally dangerous step to take. I would be very unhappy if the Minister were willing to be led down that route. Yes, of course, we have to have the toughest guidance; yes, of course, we have to make sure that whenever racist or discriminatory activities are found to be in the police they must be dealt with considerable severity; but we have to solve this problem—if it is a problem, and I am prepared to accept the views of the noble Lord, Lord Paddick, from his own experience—by reform and training in the police, not by saying that we will have less efficient laws because they cannot be properly and safely implemented. Are we going to say, therefore, that there should be no stopping of cars being driven in a dangerous condition because the police feel that they would be more likely to stop some kinds of people rather than others? We really cannot run a state on that basis. If this is a real problem—and I am certainly not saying that it is not—it is a problem which has to be dealt with by the Home Office and the police force, and not one which should lead us to make laws which are different from those that we would have made because we are afraid of the way in which they would be implemented.

Therefore, I hope that my noble friend the Minister will take this very seriously, not for the reasons that the noble Lord, Lord Paddick, has presented but for the reason that a democratic society has to have the laws which it needs irrespective of the differing feelings of people of differing ethnic or any other backgrounds. We are touching something fundamentally dangerous. It is precisely that kind of feeling that causes the resentment which one finds widely in Britain—a belief that we do not legislate in a colour-blind manner but in a manner which takes the view of the noble Lord, Lord Paddick, and therefore stops us legislating as effectively as we should. I hope that my noble friend will be very careful in the way in which he responds to this debate.

Lord Alton of Liverpool: My Lords, in briefly following what the noble Lord, Lord Deben, has just said, I say that there is a case for examining the way in which

policing is conducted, and I agree with him that it is unfortunate that we have to have a debate in the context of the Bill. I support what the noble Lord, Lord Paddick, said, as I did in Committee. That is based not so much on a belief that all our police officers behave badly, but more on the experience I had more than 30 years ago, in 1981, when the Toxteth riots erupted. They did so in part because of bad policing, and indeed they were linked directly to the stopping of a young black man on his motorcycle in Lodge Lane in Toxteth. The riots led to a thousand policemen being hospitalised in Liverpool as a consequence. Everyone who looked at the events in Brixton and in Liverpool afterwards, notably Lord Scarman, found that the overuse of stop-and-search powers had been part and parcel of the problem.

I guess that the question for the House today is: will this take us back to that kind of regime? That is what the noble Lord, Lord Paddick, is asking us to address. I must admit that I looked carefully at the letter kindly sent by the Minister as part of the compendium of letters he has written during the passage of this Bill. They run to page 146, which probably tells noble Lords quite a lot about the volume of correspondence we have had, and that is to the Minister's credit. I just want to mention two phrases set out in the letter because they help to bring some clarity to what is intended in the Bill and perhaps might reassure both the noble Lord, Lord Paddick, and the noble Baroness, Lady Lawrence of Clarendon. The first is that,

"it is important to bear in mind that the police will use the powers contained in these clauses reactively, after they have stopped a vehicle for an objective reason".

Later in the same letter, talking not now about vehicles but about the entry into people's homes, the letter states:

"The officer could then only enter premises where there are reasonable grounds for believing the driving licence could be found there".

All this revolves around the words "objective" and "reasonable". When the Minister replies to the debate, I hope that he will explain in a little more detail what kind of circumstances he envisages as objective and those he regards as reasonable. That might give us greater confidence that the powers suggested here will be used properly.

I conclude by saying that it would be dangerous to presume that the police of our country are incapable of implementing the laws that Parliament passes in an objective way, and the noble Lord, Lord Deben, was right to remind us of that. But we must remember our story. In 1981 Sir Kenneth Oxford was the chief constable for Merseyside. Many people believed, as I did myself at the time, that the policing had been overly aggressive. It is notable that the young assistant chief constable who subsequently came to Merseyside, Bernard Hogan-Howe as he then was, would later rise to become chief constable of the area. He introduced very sensitive community policing, and I suspect that the extremely effective policing he developed during that period is one of the reasons he was appointed the Metropolitan Police Commissioner. Good community relations were built up during that time. I would therefore be very nervous of anything that destabilised that delicate balance, which is why I seek further clarity about the reasonable and objective use of these powers.

Baroness Sheehan: My Lords, I support my noble friend Lord Paddick in this amendment and I have added my name to it. I spoke earlier about the potential of the right-to-rent clause in this Bill to set back race relations by decades. In declaring their intent to create a hostile environment for illegal immigrants, the Government risk poisoning the environment for all immigrants. Although the right-to-rent clause will undermine the already delicate relationship between landlords and tenants and will increase racial discrimination, this clause, criminalising the possession of a driving licence by an illegal immigrant, takes the potential for racial discrimination several dangerous steps further. By all means criminalise the possession of a driving licence by an illegal immigrant, but do not ask the police to enforce the measure through random stop and search. We have already heard eloquent arguments about why, if we decide to move in this direction, we must address it with very great caution.

Why not approach it differently? Why not, for example, have a hotline for this offence too? Why not use the same hotline that landlords are asked to use? In fact, I think the police already have a direct line to the Home Office to ask whether anyone they have stopped in a car randomly is legal or otherwise. Clauses 41 and 42 extend stop, search and seizure powers—powers that have a long history of being acknowledged as contributing to racial disharmony and breakdown in community cohesion. In 1981, Lord Scarman in his report on the Brixton riots concluded that the mass use of stop and search was a direct cause of the riots.

A great deal of power already resides with the Home Office to revoke the licences of illegal immigrants without resort to a measure that would damage the public's relationship with the police, who would become the whipping boy of immigration officers, as the National Black Police Association rightly says. The weak link is the enforcement of the rules that currently exist and the Government would do better to concentrate on improving those.

5.30 pm

Lord Green of Deddington (CB): My Lords, I would like to speak briefly to Clause 42. The noble Lord, Lord Paddick, spoke powerfully and from long experience, and that has to be respected. However, it is troubling that he suggested that the police cannot be trusted to enforce a carefully drawn law. I entirely endorse what the noble Lord, Lord Deben, said on that subject.

I remind the House that the major purpose of the Bill is to make it more difficult for those who have no right to be in this country to remain here. Those who do so add to the pressures on public services, and we should remember that there are no actual barriers to them addressing or entering health and education services. There is widespread concern throughout the country about the scale of illegal immigration, in part because it tends to lower the wage rates for the low-skilled workers. In a sentence, there are very good reasons for this Bill and very good reasons for this part of it. Action is needed and should be pursued with care and with thought to the points raised, but it really ought to be taken.

Lord Rosser (Lab): We have an amendment in this group which provides that a person does not commit an offence of driving when unlawfully in the United Kingdom if at the time of driving the motor vehicles the person had a reasonable belief that they had a legal right to be in this country. Of course, the Government have tabled an amendment which provides that a person commits the offence of driving when unlawfully in the UK only if they knew or had reasonable cause to believe that they were disqualified from driving by reason of their immigration status. We welcome the move that the Government have made on this issue.

The argument has been made in this debate by the noble Lord, Lord Paddick, for deleting from the Bill this new offence and the powers to carry out searches related to driving issues. My noble friend Lady Lawrence of Clarendon has spoken powerfully on the potential consequences of this new offence and the associated search powers to increase discrimination and damage community relations, including relations with the police, and generally put the clock back.

The Government have said that guidance will be issued and that there will be public consultation but I, too, ask whether there will be any debate in Parliament on the guidance. What will be the Government's reaction if the public consultation shows clear concern about the potential impact of the new offence? Will the Government then decide not to bring it into force? If the new offence does come into force, what regular checks and reviews will be put in place to ensure that the concerns that have been raised about its potential adverse impact on community relations and discrimination are not materialising? What ongoing liaison, consultation and discussion will there be between the Government, the police and those in our diverse community who feel strongly that this new offence could do more harm than good? They say that, among other reasons, in the light of the evidence, you are more likely to be stopped and searched if you are black or from a minority-ethnic group.

As has already been said, this is about what might happen in practice as opposed to what should happen, as set out in the letter to which reference has already been made of 1 March, which I accept also made reference to the pilot over the use of the search power in Clause 41 in one or two police areas before proceeding with a national rollout. I very much hope that the Minister will address the specific points that I have raised on what might be the outcome of the public consultation, and on the issue about the regular checks and reviews that will be put in place to ensure that if the offence does come into being what happens is what should happen, as opposed to the very real fears that have been voiced today that it will potentially cause damage to community relations and increase discrimination.

Lord Bates: My Lords, I will come to the points raised in this debate shortly but first I shall speak to the two government amendments in this group, standing in my name.

Amendments 75 and 76 would introduce a mens rea to the offence of driving while being unlawfully present in the UK. As currently drafted, the driving offence contained in Clause 42 is one of strict liability, on which the noble Lord, Lord Rosser, raised some significant concerns in Committee. Following that exchange, we agreed to reflect further on the issue. I believe that we are of one mind in our intention to ensure that migrants are not prosecuted for this offence where they hold a genuine and reasonable belief that they are in the UK legally. The Government have been persuaded that it would be appropriate to place further safeguards on the face of the statute. These amendments introduce a mens rea element so that an illegal migrant will only commit the offence of driving while illegally present if they knew or had reasonable cause to believe they were in the UK illegally.

This will protect those who genuinely and reasonably believed they were here in the UK lawfully, while ensuring that other migrants cannot seek to avoid prosecution by avoiding contact with the Home Office and/or their legal representatives, in order to establish the necessary doubt as to whether they could reasonably be expected to have known they were required to leave the UK. I invite noble Lords to support these amendments.

I am grateful to the noble Lord, Lord Paddick, for moving his amendment. I fully accept that he is very sincere, but he also has a professional track record as he has worked in these very complex areas of community cohesion here in the capital, and has done so with great distinction over a long career. Of course, the work of the noble Baroness, Lady Lawrence, for victims and improving community cohesion is well recognised. For that reason, it was very important that we had that meeting on 22 February where we sat down with officials to discuss the implications and workings of this clause. I am sure that they will testify to the fact that it was not necessarily an easy or cosy gathering. There were some strong feelings and concerns on all sides which were expressed at that time. One of the things that your Lordships' House does repeatedly in many areas that is immensely valuable—officials may not have appreciated it fully at the time, but they have come to—is to bring great understanding, background and perspective to these very complex areas to pose the key questions that need to be addressed.

That said, I turn to the amendments, because they stem directly from that meeting. We went back afterwards and asked how we do this. As the noble Lord rightly pointed out, the Home Secretary is acknowledged to have made significant steps in improving community cohesion, in particular in tackling abuse of stop-and-search powers. That is why numbers have fallen. Part of the reason why that happens is that the number of incidents is now recorded so we can see what is happening on the ground. I set out in my letter—more like an epistle, as the noble Lord, Lord Alton, might say—to noble Lords over some three or four pages on 1 March how that operated in practice and the effect it was having.

We have brought forward two things: to recognise that we are making significant progress to improve community relations, and to maintain the confidence of all communities in the police to act fairly and justly, as my noble friend Lord Deben and the noble Lord, Lord Green, said. Nothing must be done to put any of that at risk. That is why we are proceeding cautiously in this area by introducing a pilot scheme, as mentioned.

On the concerns that focused on police use of these powers with particular groups, these clauses are important and necessary. We do not issue driving licences to illegal migrants and we revoke driving licences held by them. So far we have revoked some 16,000 UK driving licences held by illegal migrants, but less than 1,000 have been returned, even though it is a criminal offence to retain them. As these licences hold a value as a form of identification that can help an illegal migrant settle in the UK, it is important that they are removed from circulation. Clause 41 provides the best opportunity for us to do this when a person is apprehended as an illegal migrant.

The Government cannot, however, revoke foreign-issued driving licences. Without Clause 42, illegal migrants would be able to drive on valid, foreign-issued licences without consequence. This, in turn, facilitates their ability to stay unlawfully in the UK, to look for work and to work illegally. Illegal immigrants should not be driving on our roads. They have shown a disregard for the laws of this country—that is the very point that my noble friend Lord Deben raised. Therefore, it is absolutely right that we legislate to ensure that they are unable to do so.

I re-emphasise the following points. First, these clauses do not create new powers to stop persons or vehicles. Secondly, we intend the police to use these powers reactively after they have already stopped a vehicle for an objective reason—I will come back to that particular use of words, as the noble Lord, Lord Alton, asked me to—such as a driving offence. I emphasise that these powers will not be used by the police to stop vehicles simply to check the immigration status of the driver. That is an important distinction between the roles and responsibilities of the police and of immigration enforcement. It is one that we recognise should be maintained. Thirdly, these powers must be used proportionately. To that end, we have put in place safeguards against misuse.

Finally, I reiterate that the Government are absolutely clear that no one should be stopped, under existing police powers, on the basis of their race or ethnicity. This would be unlawful. The Government also remain absolutely clear in their commitment to reform the use of police stop-and-search powers so that they are applied in a way that genuinely protects our communities. We would not bring forward any proposal that we believe might undermine this work.

We have listened carefully to the concerns raised about these clauses. In response, the Home Office will go further. We will issue guidance to police and immigration officers on the operation of these powers and we will consult publicly on that draft guidance. This consultation will take place before implementation. It will raise awareness and provide an important gateway through which communities will be able to consider and comment on, among other things, appropriate safeguards.

5.45 pm

The Home Office will also pilot use of the search power contained in Clause 41 in one or two police areas before we proceed with a national rollout. This will allow us to test the operational details so that any impacts can be identified by the pilot scheme and addressed. This approach is consistent with that taken to implement similar police and immigration search and seizure powers for nationality documents to identify foreign nationals when they are arrested for criminal offences contained in Sections 44 to 46 of the UK Borders Act 2007.

Turning to some of the points raised, my noble friend Lord Deben asked about training for the police. In 2014, the Home Secretary commissioned the College of Policing to conduct a comprehensive review, at all levels in the police force, of the use of stop-and-search powers. It is intended that the training will focus on effective and fair searches. It will include awareness and the ability of the police to stop and search if they fail their stop-and-search assessments. Unconscious bias training in particular will impact on these search powers.

On the particular meaning of the words "reasonable grounds", this can never be supported on the basis of personal factors. In practice, this means that, unless the police have specific information or intelligence that provides a description of the person believed to be carrying a UK driving licence and that person is in the UK illegally, the following cannot be used alone, in combination with each other or with any other factor as the reason for searching any individual. This is set out in Police and Criminal Evidence Act Code A, which will be reflected in specific guidance issued to the police and other enforcement officers in the operation of Clause 41.

On parliamentary scrutiny, I will ensure that a copy of the draft guidance is placed in the House Library when the consultation is launched. I will ensure that a report detailing the outcome of the consultation is also put in the Library. I will go a little further, because I do not think that that response quite addresses the point we were getting at. We have some particular expertise in this House. I would certainly like to make sure, when the consultation document is published, that we reconvene—with the permission of the Opposition Front Bench—in particular with the noble Lord, Lord Paddick, and the noble Baroness, Lady Lawrence, to meet with officials again when we have that draft consultation to get the noble Lord's and the noble Baroness's perspective on that. How the pilot scheme will be framed will also be looked at. Again, we would value the noble Lord's and the noble Baroness's perspective. We will make sure that that happens before they are brought forward and placed in the Library, and before the pilot commences.

The noble Lord, Lord Rosser, asked a perfectly reasonable question on what will happen after the consultation and the pilot have taken place. Because the consultation will be published and the pilot will have taken place, we will have an opportunity to discuss again how the guidance ought to be implemented. Of course, that means that all options are open following such a trial, otherwise it would be pretty pointless having a consultation. The consultation is a genuine one, because this is an area where progress has been made. We are dedicated to the fact that we will not see anything happen that could possibly be a regressive step in this very important area of social cohesion, while at the same time ensuring that the Government can implement their right in the manifesto to introduce these offences for people who are illegally here in the UK.

Lord Paddick: My Lords, I am very grateful to the Minister for addressing the concerns that we have. I had already challenged his script on safeguards when I moved my amendment. When he went off-script, he was more reassuring as far as I am concerned.

I am also grateful to all noble Lords who participated in this debate. To reply to the noble Lords, Lord Deben and Lord Green of Deddington, I was a police officer for more than 30 years and considered long and hard what I would say this afternoon. It is a significant thing for me to say it but at the end of the day my real concern with these measures is the fundamental issue that they are likely to bring the police more into conflict with black and ethnic minority communities, and the consequences there could be from that.

However, it does not really matter what my opinion is, despite my police experience. The issues are complex. Very few if any police officers are deliberately racist but, as the Minister said, the training that the Home Secretary asked the College of Policing to look into is to address what he described as "unconscious bias". At the end of the day, what is the explanation for the fact that, according to the HMIC survey, you are twice as likely to be stopped as a driver if you are black compared with if you are white? What is the explanation that you are four times more likely to be stopped and searched by the police if you are black than if you are white? If those are the facts do we really want to take the risk of giving the police these additional powers in the absence of any credible explanation for the facts as we know them? Those concerns remain but I beg leave to withdraw the amendment.

Amendment 74 withdrawn.

Clause 42: Offence of driving when unlawfully in the United Kingdom

Amendments 75 and 76

Moved by ***Lord Bates***

75: Clause 42, page 35, line 3, after "if" insert "—(a)"

76: Clause 42, page 35, line 5, at end insert ", and

(b) at that time the person knows or has reasonable cause to believe that the person is not lawfully resident in the United Kingdom."

Amendments 75 and 76 agreed.

Amendments 77 and 78 not moved.

Amendment 79

Moved by ***Baroness Doocey***

79: After Clause 43, insert the following new Clause—

"Ability to pay the immigration health surcharge incrementally

In section 38 of the Immigration Act 2014 (immigration health charge), in subsection (3)(c), after "State" insert ", including allowing the surcharge to be paid in multiple payments"."

Baroness Doocey: My Lords, I will also speak to Amendment 80 in my name. Amendment 79 provides for health surcharges levied on non-European Economic Area migrants to be payable in instalments. The annual £200 charge for every adult and child came into effect last April and is payable upfront for the whole period of a visa whenever one is renewed. Since leave to remain, if granted, is normally for two and a half years, the upfront fee payable is £500 per person. The health surcharge comes on top of breath-taking application fees that will rise this Friday from £649 to £811 per person—a huge increase of 25%. To illustrate this, a mother of three will need to find £3,244 for the application fee plus a further £2,000 for the upfront health charge for the period of the visa. Families unable to pay these eye-watering sums cannot renew their visa and are faced with a stark, heartbreaking choice: find the money or face destitution or deportation. That is some choice.

In Committee, the Minister had three reservations about my simple, humane plan to avoid vulnerable people placing themselves in debt or poverty to pay the Home Office. He said:

"Upfront payment of the full amount … is … far simpler than requiring migrants to make multiple payments".

Yet the provisions of the amendment need apply to only a small number of cases where the migrant simply does not have the resources to pay upfront. These cases could be the exception rather than the rule. The Minister also said:

"It would be difficult, complex and costly … to enforce payment of the charge once the visa had been issued".

I simply do not accept that because the Home Office could make the granting of the migrant's leave to remain subject to and conditional upon the fees for the previous leave to remain having been paid in full according to any agreed payment schedule. The Minister's third concern was that:

"If you offered interest free credit in the commercial world … most people would take advantage of it".—[*Official Report*, 1/2/16; cols. 1613-14.]

Could the Minister name any other service for which he or anyone else would expect to pay fees two and a half years in advance? He cannot justify driving people into the arms of loan sharks and payday lenders just to make the Government's life simpler. He must surely see the case for at the very least annualising these payments.

Amendment 80 seeks to extend the categories of migrant exempted from the health charge to include those who have fled domestic violence, and dependent children. The Minister recently visited the Cardinal Hume Centre and saw first-hand the outstanding work it does with migrants with little money who are trying to navigate the law. He heard about one client the centre helped: a mother of four children who works for the NHS. She did not have the £5,700 to pay the admin and health fees for herself, her husband and her four children, so first she got an overdraft and then she borrowed the remainder of the money. She now faces crippling debt and is saddled with not just that debt but also the stress of knowing that in 30 months she must find even more money because the fees will have increased when the family need to reapply for their visas. Her case demonstrates that the fee-waiver system available for migrants unable to pay is simply not working. The Minister saw for himself a number of examples of this on his visit.

Of course, the position of these people who have fled domestic violence is even worse. They face an invidious choice between borrowing the money to pay the fees or returning to their abuser. The existing exemption for victims of domestic abuse is far too narrow as it protects only people with British spouses. I hope that the Government can prove their compassion this afternoon by making a positive response to both these amendments, including giving an assurance that they will at least review the operation of the fee-waiver system. I beg to move.

Lord Alton of Liverpool: My Lords, I support the noble Baroness, Lady Doocey, who introduced Amendments 79 and 80 with her customary conviction and compassion. She made an extremely eloquent case in their favour but also illustrated them with a poignant and vivid example from her visit to the Cardinal Hume Centre. Having spoken in Committee to urge the Minister to visit that centre with the noble Baroness, I pay tribute to him for going there and seeing it first-hand. I know how much the centre appreciated that.

Incremental payments would be a huge step forward for families that find themselves trapped—the sorts of families that the noble Baroness described in her remarks. Migrants such as those at the Cardinal Hume Centre are not trying to cheat the system or avoid paying the fees to remain. They recognise that there are rules they must adhere to and that they must pay the charges. In fact, those who can will indeed save for the visa application fee. However, the burden of having to source the necessary funds to pay upfront the application fee and the health surcharge—which many are still unaware exists—is unsurmountable for many of those involved, especially families.

6 pm

I reinforce what the noble Baroness, Lady Doocey, said about the extraordinary increase in the cost of these fees from £649 to £811. The noble Baroness referred to these as "eye-watering" sums. How on earth can we justify a 25% increase in costs? Imagine if a high street bank, a petrol filling station, a supermarket chain or a railway company announced that it was to hike up its prices by 25%. There would rightly be public indignation. This group of people, of course, are not in a position to express public indignation, and so we think that it is perfectly all right to increase the cost by this sort of level. Instead of explaining why that is necessary, they are simply told that this cost will be imposed on them. Will there be a 25% increase in value for money or in personnel in the Home Office dealing with visa applications? How will this money be used and why is it necessary to put up the price by this amount? Instead of softening the blow with incremental increases, the Government will do precisely the opposite unless the noble Baroness's amendment is accepted. Allowing these migrants to pay the charge incrementally would ease the burden while allowing them to continue to work and contribute to our economy and society, without causing unnecessary hardship.

On Amendment 80 and domestic violence, to which the noble Baroness referred, the current protections and exemptions for victims of domestic abuse are far too narrowly defined. In the experience of Women at the Well, a drop-in centre specialising in supporting women with a complex range of needs, including those affected by domestic abuse, the fear of losing status or incurring great cost can deter women from escaping abusive relationships. The free access to emergency care for victims of domestic abuse is commendable, but with the fear of being deported or left destitute many women will continue to feel that they cannot escape their abusive relationship. The current exemption protects only those women who are here as partners of British citizens. Legislation should protect all women who are victims of domestic violence, not just those with British spouses. I press the Minister to explain why that inconsistency, as it seems to me, is in the law.

The Government have spoken frequently of their track record of supporting women who are victims of domestic abuse. The noble Baroness, Lady Anelay of St Johns, does a superb job in that area and has pushed forward this policy on behalf of the Government, to which I pay tribute. This sensible change that the noble Baroness, Lady Doocey, proposes would surely add to that record and not in any way detract from it. The extension of this exemption would not be disproportionately expensive, nor would it be too difficult to administer, but it would make an enormous difference to the lives of women affected by abuse and trauma. We are indebted to the noble Baroness, Lady Doocey, for retabling these amendments on Report. I hope that the Minister will give them a favourable response.

Baroness Kennedy of The Shaws (Lab): I rise to speak to Amendment 81 standing in my name. I also support the amendments just spoken to which concern the ways in which these charges are having a serious impact on women's lives.

The House will remember that on a previous occasion I raised the issue of access to higher education for young people leaving care who have leave to enter and remain in the United Kingdom. I was deeply concerned about the way in which these opportunities would be unavailable to certain categories of people. In response to my previous amendment, the noble Lord, Lord Bates, very kindly agreed to set out the position in relation to home tuition fees. I was concerned that people who have leave to remain and have been in care are expected to pay the fees as if they were overseas students—as if they were Americans choosing to come to study in Britain. That, of course, is not the case. The fees are very much higher and cause serious detriment to those who want to have the opportunity to undertake education.

I am grateful to the Minister for setting out his rationale and that of the Government. I should make it clear to the House that the Government consider that there is already generous provision for those who have been granted refugee status. So those who have gone through the process and obtained refugee status can get home fees and access the student support regulations, which means that they can get a loan. That is also available to those granted humanitarian protection, if they can demonstrate that they have been lawfully in residence—ordinarily resident—in the country for three years.

[Baroness Kennedy of The Shaws]

But what came through in the reply to my concerns was that local authorities would be prevented from paying the higher education tuition fees of adult migrant care leavers who are not refugees and do not meet the humanitarian criteria. I ask the Government to think again on this, and I shall explain why. By preventing this discretion—which is used very sparsely by local authorities—to provide assistance in the few cases where this situation arises, we are blighting the lives of many talented young people.

I have mentioned before that I am the president of a foundation bearing my name which provides bursaries to very disadvantaged people, including young refugees, young people who have fled humanitarian crises and those who have leave to stay. One such person is a young man, Ade, a Nigerian, who was trafficked to the United Kingdom when he was a child of 14 or 15 for the purposes of exploitation. He managed to escape but was on the streets and was homeless. He was taken into care at the age of 16 and classified as a looked-after child by Salford local authority. He subsequently claimed asylum and was granted limited leave to remain.

As a looked-after child, Ade received full financial support from Salford. He was recognised as being a very clever high achiever and was offered a place at the University of Salford, where he successfully negotiated a full tuition waiver. He was not eligible for student finance due to his immigration status but he got the waiver. Salford local authority covered the additional costs of studying by providing his accommodation and living costs. If he had not had that support, this young man would have been unable to complete his education at university. He graduated with a 2:1 and went on to do a master's degree. He received his master's with a merit just last summer. He is now seeking employment. If he had not had that support from Salford local authority and the Article 26 campaign group, which has also supported him, we would not have this young graduate, who will contribute to life here in Britain. He is now applying for British citizenship, as I said.

I ask the Government to think again because there should be exceptional circumstances in which the very able are given the kind of support that Ade has had. If it had not been available, at the very best he would be seeking to embark on his journey at this stage of his life rather than when he was able to. As I said, he is an incredible young man.

I want to impress on the Government that care leavers who have had leave to remain, and whose future lies in the United Kingdom, should be able to access student finance and home fees, and should not be expected to pay overseas fees as they are now. We could, for example, apply the three years' ordinary residence in their cases, too—because Ade had been here for three years. I really want to impress on the Government that by having a blanket rule that local authorities cannot do this we are going to visit hardship on deserving cases.

Baroness Lister of Burtersett: My Lords, I will speak briefly in support of Amendments 79 and 80, to which I have added my name. The noble Baroness, Lady Doocey, has already made a very powerful case, as has the noble Lord, Lord Alton. While I appreciate the care taken by the Minister in his letter of 3 February, I am disappointed that the Government were not willing to budge an inch on what I—perhaps naively—thought was a rather small, albeit important, couple of amendments.

In Committee, the noble Baroness was rightly dismissive of the administrative arguments to justify refusal. Will the Minister give the House some idea of what the exact administrative costs are likely to be and what assumptions the Government made in deciding that it would be too administratively costly? Will he also give some idea of how many people in a year meet what he himself has described as the "narrowly defined" test to qualify for exemption on destitution grounds? While I prefer clear, legal entitlements, in the spirit of what the noble Baroness, Lady Doocey, suggested, I wonder whether there is room for building on the destitution exemption.

For example, if an applicant could demonstrate the difficulties that an up-front payment would cause, short of meeting the destitution test, they should be allowed to pay in a limited number of instalments. This would be clearly circumscribed. In some cases, we are talking about really large sums, but even where it is just the most basic payments, it is still a lot for someone with very limited means to pay as a one-off. That point has not been adequately taken on board.

What I am suggesting would get round the fear, expressed by the Minister, of people being able to use payment by instalments as an interest-free loan, regardless of their capacity to pay up front. We are not suggesting that anybody can come along and say they would like to pay in instalments—just those who may not fail the destitution test but who would clearly face real problems.

On the domestic violence exclusion, how many people have been exempted under the rule—brought in, according to the Minister's letter, in April 2015—that exempts treatment needed as a consequence of domestic violence? Would it not be simpler just to exempt all those who have been a victim of domestic violence, rather than making applicants prove that any physical or mental health needs are a direct consequence of it? We know, from other contexts, how difficult it is to prove these impacts—particularly on mental health—in a way that satisfies authorities. It can also be very distressing to have to provide that proof.

I have received an email expressing support from the Royal College of Nursing, which is very concerned about the workings of the health surcharge. One of its concerns is to know what mechanisms exist, and what assurance the Government can offer, that the revenue generated is redirected back into the NHS.

Finally, I support Amendment 81, tabled by my noble friend Lady Kennedy of The Shaws. I quote from the conclusions of a study carried out by the UN High Commissioner for Refugees and the Council of Europe, which adds to the strong case already made and states:

"Access to education should be better supported, including, where necessary, after young unaccompanied and separated asylum seekers and beneficiaries of international protection have reached the age of majority, as it plays a critical role in their transition".

We had an example of that from my noble friend. It is important that we support these young people in such a difficult transition period.

Lord Roberts of Llandudno: My Lords, I support the amendment tabled by the noble Baroness, Lady Kennedy. It was such a help to those such as me who have been involved in church education for people from overseas. I hope that the House will support it.

6.15 pm

Lord Bates: Noble Lords will be aware of the background to the immigration health surcharge, which I set out in the debate on these amendments in Committee.

There are significant practical difficulties in introducing the incremental payments, proposed by Amendment 79, which would place additional burdens on the Home Office and the NHS. It is not simply a question of changing Home Office IT, but of introducing a mechanism through which the Home Office could monitor payments, chase those who had missed them and take action against those who refused to pay. Around 560,000 migrants are expected to pay the surcharge each year, and many of these may take the opportunity to pay in instalments. The resource implications for the Home Office of administering an instalment system could, therefore, be significant. If we were unable to recover unpaid instalments from some migrants, the NHS would suffer a loss of income. An instalment system might also be open to abuse from those seeking to come to the UK in order to receive NHS care, as they could simply stop making their payments once treatment had been received.

Amendment 80 would exempt all children under the age of 18 from paying the charge, together with those who are victims of domestic violence. I do not think it unreasonable for parents or guardians of a migrant child to bear the responsibility of paying the charge for their child. Further, and as set out during our previous debate, exemptions are already in place, in certain circumstances, for children and victims of domestic violence.

I have also reflected carefully on the points raised in Committee. At the invitation of the noble Lord, Lord Alton, the noble Baroness, Lady Doocey, and I had a very productive morning at the Cardinal Hume Centre. I know that a number of noble Lords are involved there in different ways—I was talking to the noble Lord, Lord Touhig, today and he said that he was involved. The noble Lord, Lord Alton, does a huge amount of good work in connection with the centre. I was amazingly impressed by the quality of the staff who undertake the cases there.

When we were there, we talked with officials and wondered whether there was a way we could engage more structurally with organisations like the Cardinal Hume Centre. The centre gave us a list of cases relating to the visa waiver and made the point that it used to be possible to secure the waiver but that, following some change, it was now more difficult. We took those cases away but, for reasons which I totally understand, the Cardinal Hume Centre was not able to give us the individuals' names and contact details, which made it difficult for us to check. However, we have been in contact with the centre again this morning to see if we can set up a meeting to explore how the relationship might work. There would be benefits for both parties—from the Home Office point of view we would have another external validation system. The centre staff are deeply caring but not overly sentimental about it: they just want to provide practical help to people. Partnering with organisations like that can be immensely helpful and I am grateful to noble Lords for setting that up

To clarify the situation, applicants will qualify for a fee waiver if they provide evidence to show that they are destitute or would be rendered destitute by payment of the fee, or there are exceptional circumstances relating to their financial situation. Where an applicant is in receipt of local authority support and has their accommodation and other essential living needs met, they will not be destitute. To qualify for a fee waiver, they must show that they would be rendered destitute by payment of the fee or that there are exceptional circumstances. As they are unlikely to have additional disposable income and there may be no prospective change in their financial circumstances that would enable them to pay the fee, we need to ensure that they are required to provide evidence that they meet the fee waiver policy in as straightforward a manner as possible.

It is important that the Home Office is able correctly to establish whether an applicant qualifies for a fee waiver. It will not surprise the House to learn that some applicants seek not to pay the fee that is properly applicable in their case. From 6 April 2015 to 28 February 2016, there were around 11,130 applications for a fee waiver. Of the fee waiver applications considered in that period—around 11,140, including some predating that period—around 84% were refused. This underlines the importance of the work the Home Office is doing to protect an important revenue for the NHS of around £100 million per year. It also underlines the importance of ensuring that those applicants who are able to show that they qualify for a fee waiver are enabled to do so as effectively as possible.

If the applicant qualifies for a fee waiver, the health charge is also waived, so there is no need for an exemption or for payment by instalments. There are also exemptions in place, as I have described, for vulnerable children, such as asylum seekers or victims of trafficking, and for victims of domestic violence who apply for limited leave under the destitute domestic violence concession.

Amendment 81, in the name of the noble Baroness, Lady Kennedy of The Shaws, on student support for care leavers, would give student loan access to care leavers with limited leave to enter or remain who have been ordinarily resident in the UK since they were granted that leave. It would also require that such cases, as well as care leavers with an outstanding asylum claim or immigration application, be charged home rather than international student fees.

The Government are currently considering their response to the public consultation by the Department for Business, Innovation and Skills on the terms on which those without settled status and who are not otherwise able to access student support by virtue of our international obligations should be eligible for

[LORD BATES]
student support. The consultation followed the Supreme Court ruling in July 2015 in the case of Ms Tigere that the policy of refusing access to a student loan solely on the grounds that the person did not have settled status in the UK was not compatible with the European Convention on Human Rights. The Supreme Court left it to the Government to consider the options for a revised policy. The Supreme Court judgment also upheld the Government's policy of requiring all persons—with the exception of refugees, who are given immediate access to support—to be lawfully resident in the UK for at least three years immediately prior to starting their course.

We think it is appropriate that there should be some distinction between a person who is a British citizen or who has long residence here or an immigration status of the sort that means they now have a solid connection with the UK—for example, refugee leave, humanitarian protection status or indefinite leave to remain—and a migrant with limited immigration status, or none at all but with an outstanding asylum claim or immigration application, who has not yet established a solid connection of that sort with the UK.

Turning to the questions that were raised, the noble Baroness, Lady Lister, asked about domestic violence exemptions. Those who pay the charge will be eligible to use the NHS free of charge for the duration of their stay without any further treatment charges being imposed. However, a person who applies for limited leave under the Home Office destitute domestic violence concession is exempt from the charge and will receive free NHS care for the period of that leave, during which they will make an application for permanent status in the UK. Those are the circumstances in which a victim of domestic violence gets free healthcare. The noble Baroness asked whether it would be possible to simplify the process by exempting all children and victims of domestic violence. We think that sufficient safeguards are in place for ensuring that vulnerable children and victims of domestic violence are able to use the NHS without charge, and a blanket exception is therefore unnecessary.

I was asked whether the Home Office could not make an exception from collecting all the charges upfront. Any move to an instalment approach, including setting up separate systems for exceptional cases, would be costly and administratively difficult. But it is not just that. The Home Office would also need to ensure that payments were made when due and would need to chase payments if they were not made and take enforcement action which could involve curtailing the person's leave.

I was asked how much had been collected. In the first six months since its introduction, the immigration health surcharge collected more than £100 million—I correct my previous comment that it had produced £100 million in a year. That was in the first six months so, annualised, it is going to be much more than that.

The noble Baroness, Lady Doocey, and the noble Lord, Lord Alton, asked how charge payers access the NHS. Those who pay the charge and are subsequently granted entry clearance or leave to remain receive NHS care in the same way as a permanent resident. I was asked why the charge cannot be paid in multiple payments. I have addressed that point.

The noble Baroness, Lady Kennedy, said that the numbers of those requiring support by local authorities for tuition fees are very low. We disagree with that. Even one or two cases create a significant burden for local authorities. International fees range on average from £12,000 to £15,000 per year. These costs are also a significant disincentive to local authorities participating in the voluntary transfer of unaccompanied asylum-seeking children.

I was asked what the criteria were to qualify for the fee waiver. The qualification is that an applicant is destitute or would be rendered destitute by payment of the fee because they are unable to pay the fee now or to save the required amount within a reasonable period—which is 12 months, as determined by the rules—and they have no ability to borrow the required amount from friends or family, or that there is no basis for concluding that their financial circumstances are likely to change within that reasonable period, or there are exceptional circumstances relating to their finances.

In relation to the visa fees, I totally understand the point made by the noble Baroness, Lady Doocey, about the very significant increases. We changed the policy here and introduced a policy based on the belief that the user should pay; in other words, that the resident taxpayer should not be picking up the bill for people who are getting the benefit of coming to this country to study, visit or secure their citizenship. Therefore, the view was that that should be self-financing and the increases in the fees reflect that imperative.

I was asked how migrant families could be expected to pay the upfront amount. Migrant families entering the UK will be aware that they need to pay the health charge if they are here for more than six months in a temporary capacity, and will therefore need to plan their finances accordingly.

There is another letter to add to the many, which is the letter I sent to the noble Baroness, Lady Kennedy, on 8 March. I notice that that was not shared with other Members. I can place a copy in the Library, but if other Members are interested in seeing a copy of that and the reasons set out for student support for care leavers, I am very happy to make that available. I have written to the noble Baroness on these issues and have asked if she would be willing to meet Ministers at the Department for Business, Innovation and Skills to discuss her concerns. It is important that we frame the eligibility criteria for student loan access in a way which takes proper account of immigration status and is fair across all categories, including to the resident population.

While I might not have gone all the way in addressing all the concerns raised by noble Lords, I hope that with these explanations we have at least moved a little further down the road to addressing some of them and explaining the reasons why we cannot move further in other areas.

6.30 pm

Baroness Doocey: My Lords, first, I thank all noble Lords who have spoken on this amendment. Much as I admire and respect the Minister, I certainly do not think that he has moved very far, let alone come some way. However, perhaps I could deal with the various bits in the amendments.

On Amendment 79, I am very disappointed that the Government are unable or unwilling to introduce a system whereby some migrants could be allowed to pay in instalments. I am totally unconvinced by the argument that it would be difficult to set up and monitor a system. Almost every company in every country in the world has such a system. It is simple IT, not rocket science, so I simply do not buy that argument at all.

The Minister's explanation of why the Government will not extend the exemptions for domestic violence is, to me, probably the most awful thing that I have heard today. I have absolutely no doubt that this provision will force some people either to use loan-sharks or back into the arms of their abusers. This is certainly not what either of us wants and it is dreadful.

The Minister made a point on the fee waiver about people needing to be destitute. He will remember that, when we were at the Cardinal Hume Centre, one of the cases mentioned was that of a man who had been homeless for two years, but the Home Office would not accept that somebody who had been homeless for two years and was living on the streets was destitute. If that is not destitution, I do not know what is. As the Minister so rightly said, the Cardinal Hume Centre does not have stars in its eyes when people come in; it makes checks and is very careful to make sure of the facts. I am speaking from memory, but I think that it had letters from two separate charities, confirming that this man was destitute. Yet despite giving that evidence to the Home Office, he was not accepted as destitute.

I am concerned that, although the Minister has seen evidence of the current operational problems with the fee waiver system, he has been disappointingly unclear as to what the Government are going to do to improve that system. I would really like to discuss this further with the Minister between now and Third Reading but, for now, I seek leave to withdraw the amendment.

Amendment 79 withdrawn.

Amendment 80 not moved.

Amendment 81

Tabled by ***Baroness Kennedy of The Shaws***

81: After Clause 43, insert the following new Clause—

"Access to higher education for young people leaving care who have leave to enter or remain

(1) The Secretary of State for Business, Innovation and Skills shall make regulations identifying as eligible for student support a person who—

(a) has leave to enter or remain;

(b) is a person to whom a duty is owed by a local authority under section 20, 21, 22, 23A, 23C, 23CA, 24A or 24B of the Children Act 1989;

(c) is ordinarily resident in the UK and has not ceased to be so resident since the person was granted leave to enter or remain; and

(d) is ordinarily resident in the UK on the first day of the first academic year of the course.

(2) The Secretary of State for Education and Skills shall make regulations providing that tuition fees may not be charged at a higher rate for a person who—

(a) has leave to enter or remain in the UK;

(b) is an asylum seeker; or

(c) has made an application for leave to enter or remain in the UK which has not been finally determined;

and to whom a duty is owed by a local authority under section 20, 21, 22, 23A, 23C, 23CA, 24A or 24B of the Children Act 1989.

(3) For the purposes of this section, a duty owed to a person by a local authority shall be interpreted as if Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (withholding and withdrawal of support) did not apply.

(4) "Student support" means financial support by way of grant or loan made by the Secretary of State pursuant to regulations under section 22 of the Teaching and Higher Education Act 1998 (new arrangements for giving financial support to students).

(5) "Tuition fees" means fees payable for a course of a description mentioned in Schedule 6 to the Education Reform Act 1988 (courses of higher education)."

Baroness Kennedy of The Shaws: Before I indicate my position, I say that I am grateful that a promise has been made that I might have the opportunity of meeting the Department for Business, Innovation and Skills because, in drafting Amendment 81, I did not mention that it would be possible to reach a compromise. That compromise would be to create the same basis as we do for those who are here having fled from a humanitarian crisis. In those circumstances, we provide the special assistance of home fees and access to loans only if people have been here for three years. This usually means that they have been given leave to remain a number of times and had to make an application more than once. In the same way, and in offering a compromise, I suggest that for those people who have been domiciled for three years there might be some movement on the position currently taken by the Government.

This is obviously an expression of disappointment but I emphasise that while it is costly if a local authority has to pay overseas fees for such students, that is precisely what it should not be expected to do. The fees should be the home fees. If we have taken people in and provided them with care—as though we are their parents—then in moving on to the next stage of their lives, if they are still here because they have been trafficked and are still living in fear we should provide home fees. That would take things within a more reasonable remit for local authorities. However, I am grateful for the Minister's offer that I might have the opportunity of meeting the department, which I would really like to take up, so I will not move my amendment.

Amendment 81 not moved.

Clause 49: Search for nationality documents by detainee custody officers etc

Amendment 82

Moved by ***Lord Keen of Elie***

82: Clause 49, page 46, line 6, leave out ", or intends to make,"

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I propose to address a range of amendments relating to Part 3 of the Bill. I shall turn first to government Amendments 82 and 83. During

[Lord Keen of Elie]
Committee the noble Lord, Lord Paddick, raised concerns that the Secretary of State's ability to direct prison and prisoner custody officers to search persons in respect of whom she "intends to make" a deportation order was too wide. While the noble Lord accepted our assurance that it was the Government's intention to capture those foreign national offenders who are liable to deportation and who have been given a notice of a decision to make a deportation order against them, he asked us to reflect on why such clarity could not appear in the Bill. We have taken on board this point and have therefore tabled Amendments 82 and 83, so that the power is expressed by reference to a person being given a notice rather than simply the intention of the Secretary of State. I trust that this allays the noble Lord's concerns.

I turn to the matter of bail conditions and, in particular, to the government amendments between Amendments 88 and 112. This is a somewhat lengthy set of amendments to Schedule 9, in response to the concerns raised by Peers about the Secretary of State having the ability to impose an electronic monitoring or residence condition where the tribunal decided not to do so. As I said in Committee, having recognised the constitutional concerns that were raised, the Government have thought again about this. I will try not to take up too much of your Lordships' time but it may help if I describe the effect of these amendments in a bit more detail, in addition to responding to the probing amendments laid by the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick.

Amendments 88, 89, 90 and 91 would replace the current approach with a statutory duty on both the Secretary of State and the tribunal to impose an electronic monitoring condition when granting bail to an individual being deported. This would limit the provision to foreign national offenders or those whose deportation has otherwise been deemed conducive to the public good, such as on national security grounds. This duty would not apply if the Secretary of State considered that imposing electronic monitoring would be impractical or contrary to a person's convention rights. Just as the Secretary of State or the tribunal must impose an electronic monitoring condition where the duty applies, they must not impose such a condition where the duty is disapplied. If a person wishes to challenge the Secretary of State's decision that the duty should not be disapplied, they can do so by way of judicial review. Separately from the duty to impose electronic monitoring, the amendments make it clear that the tribunal may not vary an electronic monitoring condition. This is simply a matter of clarification as, in paragraph 4 of Schedule 9, the arrangements for electronic monitoring are a matter for the Secretary of State.

Amendment 89A would mean that any individual granted bail must be subject to an electronic monitoring condition save in exceptional circumstances, including where monitoring would breach the individual's human rights. This amendment would therefore significantly expand the application of the duty to impose electronic monitoring, which is limited to individuals in the process of being deported. We do not consider this amendment necessary. In non-deportation cases, electronic monitoring should remain a discretionary condition that the Secretary of State or the tribunal can impose having weighed the individual's circumstances, as they are not as intrinsically high risk as the deportation cases. In reaching that decision, the tribunal and the Secretary of State will continue to be bound by Section 6(1) of the Human Rights Act, which makes it unlawful for a public authority to act in a way which is incompatible with a convention right.

Amendment 91A would mean that the Secretary of State could have regard to obstacles which are insurmountable only when considering whether electronic monitoring would be impractical. This would set the bar far too high. Even tremendous difficulties in making arrangements for electronic monitoring would not fall within this, so the Secretary of State could in such circumstances be precluded from deeming monitoring to be impractical because the difficulties she faces are not, technically, insurmountable. For example, the Secretary of State could spend millions of pounds putting in place new infrastructure to overcome an obstacle.

Amendment 91B would prevent the Secretary of State from considering matters such as a person's risk of absconding or reoffending when prioritising the limited resources available for electronic monitoring. I make it clear that where the duty to impose an electronic monitoring condition on a deportee is disapplied because of impracticality or the individual's human rights, this does not mean that the individual may not be released on immigration bail. All the relevant factors must be taken into account by the tribunal or the Secretary of State when considering whether it is appropriate to grant immigration bail, and other conditions could be tailored to ensure that risk is managed in lieu of electronic monitoring.

Amendments 92 to 97 make provisions for the circumstances in which an electronic monitoring condition on an individual being deported must be removed, and if a deportee is not currently subject to monitoring, then the circumstances in which it must be imposed. Amendments 98 to 100 expand the circumstances in which the Secretary of State may provide accommodation support to an individual on bail to include where it is the tribunal that imposes a residence condition. Amendments 101 to 103 apply the duty to impose monitoring to grants of immigration bail to deportees who have been arrested for breach of bail.

Amendments 104 to 106 amend paragraph 10 on the transitional provisions to prevent the electronic monitoring duty from automatically applying to those persons who routinely transition on to new immigration bail. The amendments also provide that regulations made in accordance with paragraph 10 may allow the Secretary of State to determine how the duty is to apply to transitional cases.

Amendment 106A seeks to amend proposed new sub-paragraph (2A) to remove the ability of transitional regulations made under Clause 86(1) to modify proposed new paragraphs 6A or 6B in how they apply to the transitional cohort. Proposed new sub-paragraph (2A) was drafted to allow the Secretary of State flexibility to manage this cohort so that she can prioritise in deciding when to apply the electronic monitoring duty to those deportees who are subject to immigration

bail before commencement. Finally, Amendments 107 to 112 simply ensure that, as a result of the above amendments, the Special Immigration Appeals Commission can be substituted for references to the First-tier Tribunal where appropriate.

I hope that these amendments allay the concerns expressed by your Lordships and therefore ask that Amendments 89A, 91A, 91B and 106A be not moved. I beg to move Amendment 82 and ask your Lordships to support Amendment 83 and the government amendments between Amendments 88 and 112.

6.45 pm

Baroness Hamwee: My Lords, I will confine myself to one question and to thanking the noble and learned Lord for that remarkably succinct explanation of several pages of amendments. I am sure it will bear reading and rereading. I think that he has answered my question, but I just want to be sure. What happens if electronic monitoring cannot be imposed, for instance because of mental health concerns or some other human rights issue? I think that he said that bail could—or indeed would—still be granted. That is the central question.

Lord Keen of Elie: I am obliged to the noble Baroness. The answer is that, in those circumstances, bail could still be granted. It will be dependent on the individual conditions that arise in a particular case. But I make it absolutely clear that it would still be possible for bail to be granted in such circumstances.

Lord Mackay of Clashfern (Con): My Lords, I was one of those who expressed concern at the possibility of the Secretary of State being able to overrule a judicial determination by the tribunal. I am very grateful for the very quick response I had to that concern, which was shared by a number of my noble and learned friends.

Amendment 82 agreed.

Amendment 83

Moved by ***Lord Bates***

83: Clause 49, page 46, line 7, after "Act," insert—

"( ) to whom a notice has been given in accordance with regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision) of a decision to make a deportation order against that person,"

Amendment 83 agreed.

Amendment 84

Moved by ***Lord Ramsbotham***

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

"Immigration detention: time limit and judicial oversight

(1) Subject to the provisions of this section, a person may not be detained under any of the relevant powers—

(a) for a period longer than 28 days; or

(b) for periods of longer than 28 days in aggregate.

(2) The First-tier Tribunal may—

(a) extend a period of detention; or

(b) further extend a period of detention,

for such a period as is determined, on application made by the Secretary of State, on the basis that the exceptional circumstances of the case require extended detention.

(3) The First-tier Tribunal has the power to review an extended period of detention without requiring the Secretary of State to make a new application.

(4) This section does not apply to a person who—

(a) has been sentenced to a term of imprisonment for a term of 12 months or longer; or

(b) the Secretary of State has determined shall be deported.

(5) Rules of procedure for the purposes of this section may be made by the Lord Chancellor.

(6) In this section—

"First-tier Tribunal" means—

(a) in the case of an appeal against a decision on an asylum application which has not been determined, the chamber of the First-tier Tribunal dealing with the appeal; or

(b) in any other case, such chamber of the First-tier Tribunal as the Secretary of State considers appropriate;

"relevant powers" means powers to detain pursuant to—

(a) paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971,

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

(c) section 62 of the Nationality, Immigration and Asylum Act 2002, and

(d) section 36(1) of the UK Borders Act 2007.

(7) In the case of a person to whom section 3(2) of the Special Immigration Appeals Commission Act 1997 applies (detention on grounds of national security), the Commission established under that Act shall be substituted for the First-tier Tribunal."

Lord Ramsbotham (CB): My Lords, I will speak to my Amendments 84 and 85, and comment on government Amendment 86. Since I proposed to the Minister in Committee that the Bill should be temporarily withdrawn so that it could be redrafted to reflect the Government's countless changes of mind during its passage and the recommendations of the reports and review they had commissioned, a further 59 government amendments have been added to the 250 that I mentioned at that time, and what was Clause 34 only three weeks ago is now Clause 59 in what has become a monster. I beg the Minister and his colleagues to consider their poor front-line officials, who have to interpret and administer this mass of micromanagement, on top of all the other legislation that is being introduced, and ask themselves whether they would like to be in their position.

Looking through the proceedings of the cross-party committee on immigration detention, of which I and the noble Baronesses, Lady Hamwee and Lady Lister of Burtersett, were members, and the evidence given that influenced our recommendation that it should be subject to a 28-day limit, I well remember my noble and learned friend Lord Lloyd of Berwick—sadly now retired from the House—pointing out that such detention was administrative, not legal, since it was imposed by Home Office officials and not in a court of law. In addition, the United Kingdom was an outlier, both within the European Union and elsewhere, in not having a limit on the length of time that a potential immigrant could be detained. It was also pointed out

[LORD RAMSBOTHAM]

to us that there was no correlation between the length of detention and the likelihood of the Government being able to effect removal. Indeed, the opposite was true. Our recommendation was endorsed by the House of Commons in a detailed debate on our report of 10 September 2015.

Passionate cross-party opposition to limitless detention was displayed at all stages of the passage of the Bill through the other place. Indeed, the shadow Immigration Minister, Sir Keir Starmer MP, quoting the all-party report, said that,

"the United Kingdom has a proud tradition of upholding justice and the right to liberty. However, the continued use of indefinite detention puts this proud tradition at risk".—[*Official Report*, Commons, 1/12/15; col. 186.]

However, all attempts to pass an amendment failed, thanks to the Committee system in the other place, which has a built-in government majority of nine to seven in a Committee of 16. I therefore tabled my amendment in the spirit of trying to restore some national pride.

As far as Amendment 84 is concerned, I thank the Minister for, and refer him to, his 11-page letter of 1 March to the noble Lord, Lord Rosser, which he copied to others, and his two-pager to me of 11 March. In the former, he states that individuals can challenge Home Office decisions by way of judicial review, and that legal advice is available to those contained in immigration removal centres. That is rather like the Home Office's invariable assurance that although conditions in immigration centres may have been as bad as those reported by inspectors, all is now sweetness and light—until disproved at the next inspection. Whatever is wishfully thought by officials simply is not so in practice.

Of course, detainees can in theory challenge Home Office decisions, but new arrivals must wait for a week before they are allowed to apply for bail, and concerns have frequently been expressed about failures of centre staff adequately to explain the existence of and procedure for accessing the necessary procedures to detainees. In recent years, the Home Office has repeatedly been found to have unlawfully detained individuals for protracted periods. For example, in 2014, the High Court found the 11-month detention of a Zimbabwean woman seeking to join her husband in the United Kingdom under refugee family reunion rules to be in violation of both Articles 3 and 5 of the Human Rights Act. Between 2011 and 2014, £15 million was paid out in compensation for unlawful detention.

While on the subject of the Home Office, I repeat to the Minister what I have said many times before. The culture of disbelief that pervades the Home Office, allied to the appalling standard of its casework over the years—witnessed by the staggeringly high number of successful appeals against its decisions—and the appalling quality of its communication with applicants, gives me no confidence that it is capable of carrying out what the Government apparently wish. Nothing has been done to improve the situation for years.

The Minister now tells us—again in his letter of 1 March—that the Government propose to implement new approaches to case management and, by the summer, to appoint a separate gatekeeper team which will approve decisions about who enters immigration detention, scrutinise prospects and speed of removal and assess vulnerability. Furthermore, by the autumn, a new team will build greater expertise on making detention decisions and ensuring that appropriate safeguards are in place so that, by the end of the year, caseworkers will focus on progression towards a person's return and those detained will have both better access to information about their case and greater interaction with casework staff in immigration removal centres. Furthermore, after 14 years of inaction, the short-term holding facility rules are to be referred to an eight-week consultation.

Familiarity is said to breed contempt. I have to say to the House that, based on almost 20 years of familiarity with the current immigration system, I regard all that as largely a figment of Home Office imagination.

Amendment 84 is designed to ensure that there is legal oversight of the detention of anyone detained by administrative rather than legal process. I acknowledge the thoughts of my noble and learned friend Lord Brown of Eaton-under-Heywood about whether 28 days is long enough and fears that the First-tier Tribunal might be swamped with appeals. I also understand his concern about new subsection (4) in the amendment, but if the Home Office is working as the Minister sets out in his 1 March letter, there should be little need to detain anyone for longer than 28 days. Should my amendment be agreed, such technical issues can be corrected by the Government at Third Reading.

Amendment 85 expands on the list of those considered to be vulnerable in the Minister's letter of 1 March and those who qualify for the guidance that the Secretary of State is required to lay before Parliament under government Amendment 86. On this issue, a six-month study by the Helen Bamber Foundation carried out between 3 July last year and 3 January this year showed that, out of 371 people referred to it, 84% had significant indicators of vulnerability, including torture and human trafficking, that had been routinely ignored by the Home Office. I suggest that the fact that such an unacceptable rate of failure to identify vulnerability continues, despite the suspension of the detained fast-track process in July 2015, demonstrates that, in the Home Office-run system, the culture of disbelief that I mentioned earlier still overrides significant indicators.

This all adds up to my firm belief, arrived at after many salutary experiences over almost 20 years, that the way in which immigration detention is managed and conducted is in urgent need of improvement. Judging by the Minister's letter, the Government seem to have reached that conclusion as well. The Bill should present an ideal opportunity for such improvement to be codified, and I suggest that that process should start with legal oversight of administratively awarded detention, but with my wider consideration in mind. I beg to move.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I shall speak only to Amendment 84, not Amendments 85 and 86, which concern the detention of vulnerable persons. Far and away the most striking feature of Amendment 84 is proposed new subsection (4), which would disapply the time limit in any case where the detainee has been sentenced to imprisonment for 12 months or more, or whom it is proposed to deport.

The fact is that those are the vast majority of cases involving prolonged detention. Frankly, that provision emasculates the whole idea of a time limit.

None of the previous campaigns or arguments in favour of a time limit has suggested such a striking restriction on its scope; no such suggestion was advanced in Committee; and no other country has gone down this road. Small wonder that in its briefing on the amendment, the Equality and Human Rights Commission does not support subsection (4); nor does the organisation Bail for Immigration Detainees, to which I spoke for some length on the telephone this morning. It says that, with this restriction, it would regard the amendment as essentially pointless.

I suggest that subsection (4) is inconsistent with the definition of "relevant powers" in subsection (6), because those powers as identified in paragraphs (b) and (d) refer to detention pending deportation powers: detention which, under subsection (4), would not be subject to the limit anyway. I therefore propose to address the amendment for all the world as if subsection (4) was not part of it. Let me make plain at this stage that, even then, I shall conclude by offering limited support for the imposition of a time limit—certainly less opposition than I have expressed hitherto.

At Second Reading, I spoke against the introduction of fixed time limits for immigration detention. I pointed to the very real difficulties of such limits in the case of those whom we are trying to remove, who exercise remarkable persistence and ingenuity in their efforts to remain here. As the Minister made plain in answer to a Question a fortnight ago arising from the Chief Inspector of Prisons' report on the immigration removal centre at Harmondsworth, the overwhelming majority of the 2,700 detainees there have committed immigration offences, 40% being foreign national offenders. Those figures are higher still if you consider those detainees who have been there for more than four months—or, indeed, more than 28 days. They are, as the Minister said, working very hard to avoid their removal, and trying to frustrate the system.

7 pm

The problems of removing those intent on thwarting the system are, of course, legion and notorious; they include the destruction of documents and non-co-operation with getting fresh documents, repeated asylum claims and so forth. Far too few are successfully removed. I concluded at Second Reading by saying that while I was no supporter of what is called indefinite administrative detention, nor would I support releasing back on to our streets foreign national criminals who have managed to stretch their fight against deportation beyond some arbitrary time limit. I had already explained how the apparently unlimited statutory power of administrative detention is, in fact, subject to a long-established line of authorities, starting with the decision of Mr Justice Woolf, as he then was, in the Hardial Singh case, some 30 years ago, in 1984, which dictates that detainees can be held for only as long as is reasonable in all the circumstances, and while there remains a realistic prospect of their removal within a reasonable period—the sort of considerations that are, of course, in play and now listed in paragraph 3(2) of Schedule 9 to the Bill, such as the risks of the detainee offending or reoffending or absconding. These established legal principles, and the Home Office's own published policy guidance, which says notably that detention should be used only sparingly and only for so long as is strictly necessary, have been policed in years past by the courts exercising their judicial review jurisdiction. Indeed, I and others here, including the noble and learned Lord, Lord Hope, have been engaged in a number of such cases.

So it can be argued that the present system is workable and sustainable, particularly when allied to the detailed scheme for immigration bail now prescribed comprehensively under Schedule 9. But all that said, I have come round to the view that something broadly along the lines of this amendment would be better—namely, to have some time limit, together with express provision for extension by the tribunals or, as the case may be, by SIAC, on application by the Home Secretary. I have been persuaded by the great weight of informed criticism generally levelled at the existing system: from the APPG's inquiry and report last year into the use of immigration detention and the subsequent debate in this House, as mentioned by the noble Lord, Lord Ramsbotham—Lord Lloyd of Berwick's valedictory debate; the recent report from the Chief Inspector of Prisons on Harmondsworth; and my own recognition of the basic principle that administrative detention ought ordinarily to be subject to close scrutiny and control and not left as presently it is merely to bail applications and the courts' general supervisory jurisdiction, with all the increasing problems that we know about of obtaining legal aid, and so forth, for such challenges.

The problem with the present scheme is that detainees must take the initiative and prove their case for release whereas, more properly, the burden should shift to the Home Secretary to prove good reason to extend a period. However, I cannot support a 28-day time limit—a limit, one notes, substantially shorter even than in many of the countries subject to the EU returns directive, with its maximum time limit of 18 months, which of course we opted out of. A summary published by Detention Action a year ago states that France limits detention to 45 days but still enforces 31% more removals of irregular migrants and asylum seekers than we do. One suspects that they may be more ruthless in combating attempts to frustrate their system. Italy's time limit is three months, Belgium's is eight months and Sweden's is 12 months. The imposition of a time limit would no doubt tend to improve the way in which the Home Office processes removal proceedings—for example, in the case of foreign national offenders—starting the process earlier than at present they do, during the prison sentence rather than waiting for the transfer to immigration detention. There would still be some scope for frustrating the system, though rather less than used to be the case, given the increasing provision for appeals to be heard only from abroad. In any event, the Home Office will need time to streamline, accelerate and improve its processes, if the tribunals are not to be overwhelmed with applications for extensions, whatever the time limit decided on. I would accordingly favour initially a substantially longer time limit than 28 days—perhaps, say, nine months, with the possibility that on a later review that may be able to be shortened.

[Lord Brown of Eaton-under-Heywood]

I am conscious of having spoken rather longer than I should have done, but I wanted to explain why I have come to a rather different conclusion from that earlier expressed. I cannot support the particular proposal here, but if the House were to divide I should not vote against it.

Baroness Lister of Burtersett: My Lords, I support Amendments 84 and 85 as a member of the all-party inquiry, which I came away from convinced of the case for a time limit, based on the experience of other countries and on the evidence that we have received from professionals and those with experience of detention about the impact of indefinite detention in particular on mental health. I am going to apply a self-imposed time limit on my own comments, and I am going to scrap what I was going to say about that. However, given the very broad all-party support, which we have heard about already, whatever the rights and wrongs of this particular amendment, when Liberty tells us that this is one of the greatest stains on this country's human rights record in recent decades, surely we should do something to remove that stain.

I move to Amendment 85 and government Amendment 86. While I welcome the decision to publish statutory guidance on the new adults-at-risk decision-making procedures, I have some concerns, particularly with regard to pregnant women. Although it is welcome that they will automatically be treated at the highest level of risk, it is still not clear why the Government have refused Shaw's recommendation of an absolute exclusion from detention. I note that the Home Affairs Select Committee has asked for an explanation of this in its recent report, and I would appreciate one, too.

Women for Refugee Women has raised a number of concerns with me and, if it is easier, I shall be quite happy for the Minister to respond to these in writing later. First, can he give some indication of how the new gatekeeper team will operate and explain why it was decided not to include an independent element in decision-making, as suggested by Shaw in recommendation 61? Secondly, it is worried as to how "imminence of removal" will be interpreted under the new adults-at-risk approach, given that this is the wording already used in the current policy. Under this policy, it says that nearly one-third of the 99 pregnant women detained in 2014 were held for between one and three months and four for between three and six months, which suggests a rather loose interpretation of imminence in the context of pregnancy. It is also worried about what is meant when the draft implementation approach states that the level of risk/vulnerability for which someone has been assessed will depend on the type and quality of the evidence available. In the experience of Women for Refugee Women and of Helen Bamber, what is understood as constituting independent or good evidence is often a real problem for survivors of sexual violence. Under rule 35, for instance, evidence such as a doctor's report on mental symptoms has been dismissed because there is no physical evidence. Will self-disclosure be accepted as evidence, as it is by many other agencies?

I was pleased to read of there being new guidance on care and management of women in detention. That sounds like a positive step. Would the Minister undertake for the Home Office to consult organisations such as Women for Refugee Women, on its contents?

It appears that the Government have also rejected Shaw's recommendation that the words,

"which cannot be satisfactorily managed in detention",

should be removed from references to individuals suffering from serious mental illness. Shaw states that,

"it is perfectly clear … that people with serious mental illness continue to be held in detention and that their treatment and care does not and cannot equate to good psychiatric practice (whether or not it is 'satisfactorily managed')".

He concludes:

"Such a situation is an affront to civilised values".

Can the Minister say whether the recommendation has been rejected; and, if so, why? Finally, can he explain why the statutory instrument giving effect to the statutory guidance will be subject to the negative resolution procedure rather than the affirmative, given the importance of these details? Will he commit to independent monitoring of the new regime, with regular reports to both Houses? In this way, we can assess whether the new adults-at-risk policy proves to be the generally transformative approach that has been promised.

Lord Green of Deddington: My Lords, I share the doubts expressed about Amendment 84 by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. We need to be clear on what is at stake here. It is not simply the number of weeks that someone is held in detention, important though that is. The capability to remove those who have no right to be in this country is absolutely fundamental to the credibility of the entire immigration system; and, indeed, the power of detention is essential to effective removal. This is fundamental in a number of respects, not just to the human rights aspects. It is fundamental to the whole immigration system.

Broadly speaking, I would argue that the system is working, although obviously it can be improved. I remind the House that in 2014 nearly 30,000 people were detained in immigration detention centres. But here is the point: two-thirds of them were there for less than 28 days. If you are going to set a limit of 28 days, what you are saying is that there are going to be 10,000 cases a year of people appealing to the immigration tribunal for release—10,000 cases, at a time when the tribunals are struggling to deal with 20,000 or 30,000, an increasing number of asylum cases. Throughout this debate, I think everyone has recognised that we need a faster and more effective system, and it seems to me that to introduce an amendment of this kind would do it very considerable damage. There may be scope for a much longer timescale of 90 days or whatever. That could be considered, perhaps, by the Government. But to set it at 28 days is, I think, quite wrong. As was mentioned in earlier debates on this Bill, it would encourage people to spin things out to get to the 28 days, they could then apply for their bail, and then—who knows?—they might disappear.

This amendment can only help such people. We need a much faster asylum system if public support for the whole system is to be maintained. This amendment would slow it up, and it should be resisted.

Lord Roberts of Llandudno: My Lords, I suggest to those who say, "Yes, let us penalise people in this way", that these are people. They are people with families, with abilities and with various stresses, as the noble Baroness, Lady Lister, has told us, including mental stresses that are often not taken into consideration. There are the conditions in which they are held. There was a report only three weeks ago on the conditions in Harmondsworth, with 660 detainees, which stated that it just was not fit for purpose. There were bugs, the toilets did not work and the showers were dirty.

We are looking at people and at what they are like when they leave there. Will they feel that British justice was fair and that Britain was handling them in a fair way, or will they feel resentment? What we do not need in the world at the present time are people who are resentful and ready to act in a violent way. They should know that there is light at the end of the tunnel, and I would support a period of 28 days. There was one detainee in the report on Harmondsworth who had been there for more than five years. Others had been there for more than 12 months. This is an opportunity for us to say to the Government that the conditions are not acceptable as they are. Let us go for an exact limit. It can be 28 days if the majority agree on that. Otherwise, we should be treating people as people. They are not criminals; they are people—people with lives, with dreams, with a culture. So I very much support this amendment.

7.15 pm

Baroness Redfern (Con): My Lords, I will speak briefly and to the point to Amendment 84. It would significantly undermine the Government's ability to enforce immigration controls and maintain public safety, which is paramount. In the current climate of high migration and growing security threats, I am sure that noble Lords would agree that we need to consider very carefully any measure that could undermine public safety. While the amendment would not apply to the time limit for certain foreign national criminals, who have knowingly broken immigration laws, these individuals would be able to rely on being released by continuing to obstruct removal.

It is important to note that, based on current behaviours, a large majority of those currently detained would be likely to take advantage of the time limit. This would seriously undermine the legitimate operation controls and pose an unnecessary threat to the public. It would add a further strain on resources, create more bureaucracy and waste time and taxpayers' money on unnecessary paperwork and legalities. It is in everyone's best interests to have an asylum system where decisions are taken quickly and effectively, but not because it is rushed.

When we deprive someone of their liberty, that decision should never be undertaken lightly. As a country, we should be proud that we take our duty of care very seriously when individuals are detained.

Lord Hope of Craighead: My Lords, I shall make a very short point about proposed new subsection (2) in Amendment 84, and in particular the word "exceptional". This is simply a power in the tribunal to extend the period. To introduce the word "exceptional" is, I would have thought, unnecessary and perhaps unduly restrictive. The phrase,

"on the basis that the … circumstances of the case require extended detention",

I would have thought, sets a sufficiently high standard for the tribunal to work to. Of course, the shorter the period—if the Government are minded to introduce a fixed period—the more important it is that the word "exceptional" should not be there, for the reasons that other people have mentioned. So I suggest that that word requires very careful thought. I would rather it was not included in the proposed subsection.

Lord Hylton: My Lords, having spoken on this subject at Second Reading, and having visited two removal or detention centres more than once, I support what the noble Baroness, Lady Lister of Burtersett, was saying about the categories of people who should never be detained. If I may draw particular attention to those with serious mental health issues or post-traumatic stress, surely, if they are at risk of injuring either themselves or other people, they should not be in these detention centres. They should be in secure psychiatric wards. So I hope that the Government will take very seriously what the noble Baroness was saying.

Baroness Hamwee: My Lords, my name is to the amendment. I made a lot of notes as the noble and learned Lord, Lord Brown of Eaton-under-Heywood, was speaking, but I do not think that I have been given his conclusion. I needed him to deal with all of them. I am well aware that there is opposition to the clause from a number of organisations which do not want to see any exceptions at all. That seems to me to have been the burden of their concerns.

The short point is that the system is not working. We do not live in a perfect world. If we were to create other rules that one might say would support the system as we now have it, I do not believe that they could be made to work. The then Chief Inspector of Prisons commented on how many of the detainees were released back into the community, which poses the question: if they are suitable to be released back into the community, why do they need to be detained in the first place?

The Government's position is a presumption that an "adult at risk" will not be detained. Our presumption is against detention for more than 28 days, so we start at the other end. It is unambitious to say—as the Government do—that they expect to see a reduction in the number of those who are at risk in detention and for reduced periods. The Written Ministerial Statement which the Government published in January categorises the issues in a way which worries me, separating risk and vulnerability from healthcare. Care and assessment are very closely allied, and I suggest, for instance, that a victim of sexual violence may not be able to explain to a healthcare worker that this is her experience until after quite a long period of treatment. Therefore, looking at the Government's approach to this, I am concerned.

We already have Rule 35 of the Detention Centre Rules, whose purpose is,

[Baroness Hamwee]

"to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention".

It is not working. We have that now and there are a great range of problems—in view of the time I will not go through them but I hope that noble Lords will understand that the all-party group, of which I was a member, heard a good deal of evidence from medical professionals about the problems with Rule 35. Therefore if that rule does not achieve what is needed, will guidance—the Government's Amendment 86—achieve it? I fear that it will not.

Amendment 85 aims to flush out the Government's view of the conditions of vulnerability listed by Stephen Shaw in his report. It says that a vulnerable person should not be detained unless there are exceptional circumstances, as determined by the tribunal. The Government's answer will, no doubt, be in Amendment 86, which talks about particular vulnerability—someone being particularly vulnerable to harm if they are detained. We start from the premise that vulnerability is vulnerability, full stop.

There is so much more one could say; I wish I could but I will not. I support the amendment.

Lord Rosser: The noble Lord, Lord Ramsbotham, has made a powerful case in support of Amendment 84, to which my name is also attached, and I do not intend to repeat all the points again. The amendment is intended to provide for judicial oversight if a person is to be detained for a period longer than 28 days. If the noble Lord, having heard the Government's response to Amendment 84, decides to test the opinion of the House, we will vote in support.

Immigration detention is a matter of concern. For the person detained it is detention for an indefinite period, since they are not given a date when it will end. Their life is in limbo. A recent all-party group inquiry into immigration detention heard evidence that detention was in some ways worse than being in prison, since at least people in prison know when they will get out. There is medical evidence that it causes anxiety and distress, not least among the more vulnerable groups. The all-party inquiry to which I have referred heard from medical people with knowledge in this field that the sense of being in limbo and the hopelessness and despair it generates leads to deteriorating mental health. One such witness said that those who are detained for more than 30 days have significantly greater mental health problems.

For his report for the Home Office into the welfare in detention of vulnerable persons, Stephen Shaw commissioned a review by Professor Mary Bosworth of the evidence linking detention with adverse mental health outcomes. Mr Shaw said that he regarded her view as a study of the greatest significance. Two of Professor Bosworth's key findings were: first, that there is a consistent finding from all the studies carried out across the globe, which were from different academic viewpoints, that immigration detention has a negative impact upon detainees' mental health and, secondly, that the impact on mental health increases the longer detention continues.

In his conclusions, Mr Shaw stated:

"Most of those who have looked dispassionately at immigration detention have come to similar conclusions: there is too much detention; detention is not a particularly effective means of ensuring that those with no right to remain do in fact leave the UK; and many practices and processes associated with detention are in urgent need of reform".

He ended by saying:

"Immigration detention has increased, is increasing, and—whether by better screening, more effective reviews, or formal time limit—it ought to be reduced".

In the first three-quarters of 2014, 37% of those detained were detained for longer than 28 days. Home Office guidelines are that detention should be for the shortest possible time and should be used only as a genuine last resort to effect removal. Yet despite centres being called "immigration removal centres", most people who leave detention do so for other reasons than being removed from the United Kingdom. According to government statistics, more than half the detainees are released back into this country.

There could surely be some scope for a wider range of community-based alternatives to detention, enabling more people to remain in their communities while their cases are being resolved or when making arrangements for them to leave the country. The family returns process, which is designed to reduce the number of children detained, has resulted, according to the Home Office's own evaluation, in most families being compliant with the process and no increase in absconding.

I note the views expressed by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, and his reason for not supporting but also, as I understand it, for not opposing this amendment if it is put to a vote. If Amendment 84 is passed by this House, the Government also have the option, if they choose to take it up, of putting an amended proposition as the Bill goes through its remaining parliamentary stages.

Amendment 84 does not of course put a time limit on immigration detention but it would ensure that a decision to continue to detain after 28 days was a judicial decision dependent on the Secretary of State having to make the argument that the circumstances of the case concerned required extended detention. The amendment does not preclude or prevent detention going beyond 28 days but it means, in a country where we uphold justice and the right to liberty, that at least after a period of time the decision to continue to detain has to be a judicial one, not an administrative one. Surely this House can support that.

Lord Keen of Elie: I am obliged to noble Lords for their contributions to this debate. The diversity of views expressed perhaps underlines the issues that have to be wrestled with in such a difficult area.

The Government take the issue of deprivation of liberty very seriously. Our current published policy in respect of immigration detention is quite clear: there is a presumption of liberty. There is a well-established principle that for an individual to be detained pending removal there must be a realistic prospect of removal within a reasonable time, and that is carried out by virtue of judicial oversight. Depriving someone of their liberty is always subject to careful consideration and account is invariably taken of individual circumstances.

Amendment 84 would significantly impact on our ability to enforce immigration controls and maintain public safety, particularly at a time when the Government have set out a commitment to ensure effective use of detention, complemented by a renewed focus on facilitating an increased number of voluntary returns without detention, which safeguards the most vulnerable while helping to reduce levels of immigration abuse.

It might be helpful to remind noble Lords that most people detained under immigration powers spend only relatively short periods in detention. According to published statistics for the year ending September 2015, more than 32,000 people left detention. Of these, 62% had been in detention for fewer than 28 days. The overwhelming majority of detainees—93%—left detention within four months. Of those, approximately 40% were subject to deportation action, having been previously convicted of criminal offences in the United Kingdom or the EU and having refused to leave the UK on a voluntary basis.

7.30 pm

I appreciate that persons subject to deportation would be excluded from the amendment. But the majority of the remainder had committed an immigration offence in the United Kingdom and had again refused to depart on a voluntary basis, even though they had no basis to remain in the United Kingdom and had been required to leave. Well over half of those who had claimed asylum had already had their asylum claim rejected, and most of those who had claimed asylum in the UK had done so only after a criminal conviction, after a significant immigration offence or after having done so previously elsewhere in the EU. The time limit created by the amendment—namely, 28 days—would give any non-compliant illegal migrant whose wish is to frustrate removal an easy target to aim for in order to secure their release from detention.

It should be borne in mind that an individual's compliance history and the likelihood of them absconding form part of the consideration of whether detention is necessary in the first place. I myself have recently noted the case of an individual who lied about his date of entry to the United Kingdom on more than one occasion—each lie being about six years apart—in order to promote his Article 8 claim. He submitted numerous unsuccessful immigration applications and human rights claims over a number of years, with all appeals being rejected by tribunals. He absconded at the point at which he became removable and subsequently claimed asylum after being apprehended and served with removal directions. After having his asylum claim rejected, he submitted a claim that he had been tortured. This new claim emerged only after he had been in the United Kingdom for 16 years.

In circumstances such as those, an asylum claim will take longer than 28 days to conclude. Added to that, the average time to conclude a judicial review is three months, even when expedited from the date it is lodged with the court. This could lead to meritless asylum claims being made, and judicial reviews being lodged, simply to get out of detention.

We detain a significant number of undocumented cases with poor immigration histories who would abscond if not detained. That is largely the purpose of detention in this context. The refusal of individuals to co-operate with the documentation process can also lead to significant delays in obtaining travel documentation. To put it bluntly, if we cannot detain these persons, we cannot get them documented, and if we cannot get them documented, we can never remove them from the United Kingdom, even though they have absolutely no right to be here.

Even if an individual were to co-operate with the documentation process, the 28-day time limit would make it difficult to obtain documents in the time available. Some countries require interviews to satisfy themselves of the nationality of the detainee, and the lead-in and turnaround time can mean that the time taken is well in excess of 28 days. It would also mean releasing an illegal migrant if a replacement travel document was delayed.

In addition, it is proposed in the amendment that the 28-day period should be aggregated. The aggregate limit of 28 days would make it difficult if, for example, we were required to redetain a person when their travel document subsequently arrived, or where a person disrupted their removal at the point of getting on to a flight and they needed to be taken back into detention until new removal arrangements had been put in place. I heard of a recent example of an individual who eventually had to be taken to the airport escorted by three personnel, having disrupted previous attempts to remove him from the United Kingdom—again, when he had absolutely no right to be here in the first place. Due to the timescales involved in arranging that sort of removal, one could easily require much in excess of 28 days to effect it.

In addition, such a time limit would reduce the incentive for individuals to comply with the conditions of immigration bail if they knew that the Home Office could not redetain them because they had already accumulated 28 days in detention.

Although the amendment allows for the detention period to be extended, the situations I have just described are all common occurrences. They are not "exceptional" circumstances, as would be required by the amendment. So, although the Secretary of State could, and indeed would, apply for an extension, because the tribunal would be required to find exceptional circumstances, it might be unable to do so and thus be unable to extend the period of detention, even in the face of such an application.

The reality is this: the vast majority of those detained are either foreign criminals or individuals who, as in the case to which I referred earlier, have broken immigration laws. Not being able to effect enforced removals would make it less likely that others would depart voluntarily from the United Kingdom and would mean more immigration rule-breakers in the community at large.

Furthermore, we can, and do, regularly remove foreign criminals sentenced to short periods in prison or because of their criminal history overseas. Because we are using administrative removal powers rather than deporting them, those who would not fall under the exemptions set out in the amendment could not be removed. It is important for public safety to remove these types of offenders before their criminality escalates —as, unfortunately, so often happens.

[Lord Keen of Elie]

In requiring the Secretary of State to apply to the tribunal for an extension, or further extension, to the period of detention at a set time, the amendment would bring about a fundamental shift in, and extension from, the tribunal's current role of deciding on questions of bail to deciding on the quite distinct question of whether bail should be granted and the length of detention.

Approximately 30,000 people are in immigration detention in any one year. So, saving foreign national offenders and other deportees, they would need to be brought into this detention review process. At the moment, the tribunal receives about 12,000 bail applications per annum, so the amendment would generate a significantly increased workload for the tribunal, consequently diverting significant resources away from consideration of asylum and human rights appeals and leading to delays in other areas of the immigration system. It would also increase complexity and require new infrastructure to provide an ongoing review process. The impact on the resources of the Special Immigration Appeals Commission would also be significant, particularly as that is a higher-level court and uses High Court judges.

It is not clear how a free-standing power for the tribunal to review a period of extended detention without the need for an application from the Secretary of State can be made workable, as the tribunal does not have access to the relevant information on which to make such a decision. The tribunal already plays an important role in the oversight of detention decisions by considering applications for bail at a time of the detainee's own choosing. It is not clear how the limits on detention are intended even to fit with the availability of bail.

While I understand the motives behind the amendment, as I have just set out, the tribunal can already consider whether detention is appropriate when a person applies to be released on immigration bail, which they can do at any time during their period of detention. This proposal would significantly undermine our immigration controls by enabling illegal migrants to manufacture their release from detention through various forms of non-compliance. I underline that last point. Let us remember that those who find themselves in detention for long periods are, generally speaking, those who have disposed of their passport, destroyed their travel documentation, lied about their nationality and lied about their arrival in the United Kingdom. It is they who often have to be detained until their nationality and origins can be identified and the appropriate travel documentation is secured for their removal from the United Kingdom.

I turn to Amendment 85, which was tabled by the noble Lord, Lord Ramsbotham, and the noble Baroness, Lady Hamwee, on the matter of vulnerable individuals. Again, this would have the effect of making it disproportionately difficult for the Government to remove individuals who have no right to remain in the United Kingdom. The effect would be that an individual regarded as being vulnerable who refused to leave the UK voluntarily could not be removed through the use of detention unless the Home Office applied to a tribunal on the basis that exceptional circumstances pertained. In the case of those subject to a deportation order, the Home Office would be able to detain only if removal were to happen immediately and the individual had not appealed against the deportation order. Again, I venture that this amendment is, in any event, unnecessary. As set out in the Written Ministerial Statement of 14 January, and in my noble friend Lord Bates's letter of 1 March, the Government have a significant programme of work under way to deliver reforms against the key themes identified by Stephen Shaw in his review of the welfare of vulnerable people in detention.

Amendment 85 would mean that an individual regarded as vulnerable who refused to leave the United Kingdom voluntarily could not be removed unless very narrow conditions applied. In addition, it would make it impossible for the immigration authorities to detain an individual for even a short period of time to check their identity or to establish that they have a legitimate immigration claim, if there were any indication that they were vulnerable in some way. Furthermore, the requirement to apply to the tribunal would, as with Amendment 84, place an unreasonable burden on both the courts and the Home Office.

In the case of those subject to a deportation order, being able to detain only when removal was to happen immediately would mean never being able to otherwise detain under immigration powers a vulnerable person whose presence in the United Kingdom was deemed as not conducive to the public good, who was a risk to the public and who had a high risk of absconding, unless the tribunal process was invoked.

We also believe that the amendment is based on the false assumption that serious criminals are the only individuals with vulnerabilities who should be detained for the purposes of removal. The amendment ignores the fact that there is a large cohort of individuals who may not be subject to a deportation order but who have histories of low-level criminality or who have persistently failed to comply with immigration law and who could simply not be removed without the use of detention. By virtue of this amendment, there would be little to stop such individuals claiming a vulnerability in order to further frustrate the system. This situation would not be in the interests of public protection or in the general public good. In addition, excluding such individuals who had appealed against a deportation order would be likely to mean that all individuals subject to a deportation order would be likely to make such an appeal in order to frustrate removal, and that would simply place further burdens on the court system.

The overall effect of the amendments tabled by the noble Lords would be to have a major impact on the Government's ability to enforce removals, significantly undermining legitimate immigration controls and the maintenance of public protection at a time of high levels of migration and real and growing security threats. They are also unnecessary and unhelpful, as they cut across the plan that the Government are putting in place for the significant reform of detention in response to Stephen Shaw's review.

That brings me to the adults at risk policy, which was announced in a Written Ministerial Statement on 14 January as part of the response to the recommendations

in Stephen Shaw's report of his review into the welfare of vulnerable detainees. It will be an evidence-based process that overcomes some of the intractable issues around determining whether an individual falls into a particular category. It will remove much of the legal uncertainty and provide a logical and transparent way of ensuring that adults at risk are considered generally unsuitable for detention, while maintaining the integrity of the immigration system. Amendment 85 would simply not strike that balance, but government Amendment 86, which I shall come on to now, would provide both that balance and parliamentary oversight of this area of government policy.

The effect of amendment 86 would be to place a requirement on the Secretary of State to issue guidance to those making decisions on the detention of individuals for the purpose of immigration control where issues of vulnerability are raised. The guidance would inform decision-makers of the matters that they should take into account in deciding whether individuals would be particularly vulnerable to harm if they were detained or were to remain in detention. These provisions relate directly to the adults at risk policy. The purpose of Amendment 86 is to put this new guidance on a statutory footing.

7.45 pm

On 1 February, during the debate on this Bill in Committee, noble Lords expressed strong views about the level of detail in the Government's response to Mr Shaw's report. It is in response to that that the Government have reflected and decided to put forward Amendment 86. Your Lordships will be aware of the letter of 1 March from my noble friend Lord Bates, in which he set out further detail on the framework for the emerging adults at risk policy. It is a complex area of policy that is still under development, but I hope that the information provided in the letter will confirm the Government's commitment to dealing with the issues raised by Mr Shaw. Indeed, I notice that Mr Shaw himself, in his evidence to the Home Affairs Committee in another place on 9 February, referred to the "considered and serious" approach that the Government are taking to this issue.

By virtue of Amendment 86, the Government wish to go further than people, I believe, suspected, by making provision for parliamentary scrutiny of the matters to be considered in the context of guidance for the adults at risk policy. It is, of course, possible for the Government to put the policy in place without requiring it to be in statute. However, the Government wish to ensure that Parliament is aware of this important policy and, if it sees fit, able to debate its principles. We consider that that can be adequately done in circumstances where it will be subject to the negative procedure—I say that just to respond to the point made by the noble Baroness, Lady Hamwee.

I pause now, if I may, to refer back to one or two of the points that were raised by—

Noble Lords: Oh!

Lord Keen of Elie: With that encouragement, perhaps I may take just a little longer, knowing that I have noble Lords' ears if not their best wishes.

The noble Baroness, Lady Lister, raised a number of questions. I would be perfectly content to respond to them in writing, albeit that no commitment can be given. Putting the matter shortly—yes, the Scottish Law Officer is somewhat verbose, I am afraid—it is the intention of the Government to reflect on the matter of the detention of pregnant women. They do not consider that it would be appropriate for there to be an absolute rule. To give one very short and simple example, if an illegal immigrant arrives at an airport and it is possible to return them almost immediately, it may be necessary for there to be detention even for a very short period. However, the Government will reflect on this and will have considered the matter by Third Reading. I hope that that will reassure the noble Baroness, Lady Lister, at this stage.

In these circumstances, and with your Lordships' benign encouragement, I ask that Amendments 84 and 85 be not pressed and that Amendment 86 be agreed.

Lord Ramsbotham: My Lords, I am very grateful to all those who have spoken and to the Minister for that careful but rather depressing exposition. I shall be brief.

Noble Lords: Hear, hear!

Lord Ramsbotham: I admit that I had a feeling of hope having read the Minister's letter of 1 March, which set out that the Government recognised that all was not well with the immigration system and that improvements needed to be made. Far from being unnecessary and unhelpful, as the noble and learned Lord, Lord Keen, suggested we were being in tabling this amendment, we intend to be helpful. Having watched the system for 20 years, I know that it is not right. I know that this suggestion that administrative detention should not be subject to legal oversight has got to stop. Therefore, without mincing any words, I wish to test the opinion of the House.

7.49 pm

Division on Amendment 84

Contents 187; Not-Contents 170.

Amendment 84 agreed.

Division No. 1

CONTENTS

Aberdare, L.
Addington, L.
Adonis, L.
Alton of Liverpool, L.
Andrews, B.
Armstrong of Hill Top, B.
Ashdown of Norton-sub-Hamdon, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Beith, L.
Best, L.
Billingham, B.
Blood, B.
Boateng, L.
Brooke of Alverthorpe, L.
Brookman, L.
Burnett, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Cashman, L.
Chandos, V.

Clark of Windermere, L.
Clement-Jones, L.
Corston, B.
Cotter, L.
Craig of Radley, L.
Crawley, B.
Darling of Roulanish, L.
Davies of Oldham, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
Dubs, L.
Elder, L.
Falkner of Margravine, B.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Foster of Bishop Auckland, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasman, L.
Golding, B.
Gordon of Strathblane, L.
Goudie, B.
Gould of Potternewton, B.
Grantchester, L.
Greaves, L.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Grocott, L.
Hamwee, B. [Teller]
Harris of Haringey, L.
Hart of Chilton, L.
Haskel, L.
Haughey, L.
Haworth, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hollis of Heigham, B.
Howarth of Newport, L.
Howells of St Davids, B.
Hoyle, L.
Hughes of Stretford, B.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Chesterton, L.
Hunt of Kings Heath, L.
Hussain, L.
Hylton, L.
Irvine of Lairg, L.
Janke, B.
Jones, L.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Judd, L.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
King of Bow, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kinnoull, E.
Kirkhill, L.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Lennie, L.
Lester of Herne Hill, L.
Lipsey, L.
Lister of Burtersett, B.
Listowel, E.
Loomba, L.
Ludford, B.
McAvoy, L.
Macdonald of Tradeston, L.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
Maddock, B.
Manzoor, B.
Masham of Ilton, B.
Massey of Darwen, B.
Maxton, L.
Miller of Chilthorne Domer, B.
Moonie, L.
Morris of Handsworth, L.
Murphy of Torfaen, L.
Newby, L.
Nicholson of Winterbourne, B.
Norwich, Bp.
O'Neill of Bengarve, B.
O'Neill of Clackmannan, L.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Patel of Bradford, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Primarolo, B.
Purvis of Tweed, L.
Ramsbotham, L. [Teller]
Randerson, B.
Razzall, L.
Reid of Cardowan, L.
Rennard, L.
Roberts of Llandudno, L.
Rosser, L.
Rowlands, L.
Sawyer, L.
Scotland of Asthal, B.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sharp of Guildford, B.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Newnham, B.
Snape, L.
Soley, L.
Steel of Aikwood, L.
Stephen, L.
Stern, B.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taverne, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Temple-Morris, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Tomlinson, L.
Tonge, B.
Tope, L.
Trees, L.
Tyler, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walpole, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Williams of Baglan, L.
Willis of Knaresborough, L.
Woolmer of Leeds, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
Altmann, B.
Arbuthnot of Edrom, L.
Ashton of Hyde, L.
Astor of Hever, L.
Baker of Dorking, L.
Balfe, L.
Bates, L.
Berridge, B.
Blencathra, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Byford, B.
Caithness, E.
Cameron of Dillington, L.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chisholm of Owlpen, B.
Colwyn, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Crickhowell, L.
Cumberlege, B.
Curry of Kirkharle, L.
Denham, L.
Dixon-Smith, L.
Dobbs, L.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Feldman of Elstree, L.
Fellowes of West Stafford, L.
Finn, B.
Fookes, B.
Fowler, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glenarthur, L.
Gold, L.
Goodlad, L.
Goschen, V.
Green of Deddington, L.
Green of Hurstpierpoint, L.
Greenway, L.
Griffiths of Fforestfach, L.
Hague of Richmond, L.
Hailsham, V.
Hay of Ballyore, L.
Hayward, L.
Henley, L.
Higgins, L.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Keen of Elie, L.
Kirkham, L.
Knight of Collingtree, B.
Lansley, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Lothian, M.
Lupton, L.
Lyell, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Mancroft, L.
Marlesford, L.
Mawson, L.
Mobarik, B.
Montrose, D.
Moore of Lower Marsh, L.
Morris of Bolton, B.
Moynihan, L.
Nash, L.
Neville-Rolfe, B.
Newlove, B.
Noakes, B.
Norton of Louth, L.
O'Cathain, B.
O'Neill of Gatley, L.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Patel, L.
Perry of Southwark, B.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Prior of Brampton, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rowe-Beddoe, L.
Ryder of Wensum, L.
St John of Bletso, L.

Sanderson of Bowden, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Skelmersdale, L.
Smith of Hindhead, L.
Somerset, D.
Spicer, L.
Stedman-Scott, B.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Suri, L.
Taylor of Holbeach, L. [Teller]
Thurlow, L.
Trefgarne, L.
Trimble, L.
True, L.
Ullswater, V.
Wakeham, L.
Warsi, B.
Watkins of Tavistock, B.
Wei, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

Amendment 85 not moved.

Amendment 86

Moved by ***Lord Bates***

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

"Guidance on detention of vulnerable persons

(1) The Secretary of State must issue guidance specifying matters to be taken into account by a person to whom the guidance is addressed in determining—

(a) whether a person ("P") would be particularly vulnerable to harm if P were to be detained or to remain in detention, and

(b) if P is identified as being particularly vulnerable to harm in those circumstances, whether P should be detained or remain in detention.

(2) In subsection (1) "detained" means detained under—

(a) the Immigration Act 1971,

(b) section 62 of the Nationality, Immigration and Asylum Act 2002, or

(c) section 36 of the UK Borders Act 2007,

and "detention" is to be construed accordingly.

(3) A person to whom guidance under this section is addressed must take the guidance into account.

(4) Before issuing guidance under this section the Secretary of State must lay a draft of the guidance before Parliament.

(5) Guidance under this section comes into force in accordance with regulations made by the Secretary of State.

(6) The Secretary of State may from time to time review guidance under this section and may revise and re-issue it.

(7) References in this section to guidance under this section include revised guidance."

Amendment 86 agreed.

Schedule 9: Immigration bail

Amendment 87 had been withdrawn from the Marshalled List.

Amendments 88 and 89

Moved by ***Lord Bates***

88: Schedule 9, page 148, line 24, at beginning insert "Subject to sub-paragraph (1A),"

89: Schedule 9, page 148, line 35, at end insert—

"(1A) Sub-paragraph (1B) applies in place of sub-paragraph (1) in relation to a person who is being detained under a provision mentioned in paragraph 1(1)(b) or (d) or who is liable to detention under such a provision.

(1B) If immigration bail is granted to such a person—

(a) subject to sub-paragraphs (2A) to (2E), it must be granted subject to an electronic monitoring condition,

(b) if, by virtue of sub-paragraph (2A) or (2C), it is not granted subject to an electronic monitoring condition, it must be granted subject to one or more of the other conditions mentioned in sub-paragraph (1), and

(c) if it is granted subject to an electronic monitoring condition, it may be granted subject to one or more of those other conditions."

Amendments 88 and 89 agreed.

Amendment 89A not moved.

Amendment 90

Moved by ***Lord Bates***

90: Schedule 9, page 148, line 36, after "bail" insert "granted in accordance with sub-paragraph (1) or (1B)"

Amendment 90 agreed.

Amendment 91

Moved by ***Lord Bates***

91: Schedule 9, page 148, line 38, leave out sub-paragraphs (3) to (5) and insert—

"(2A) Sub-paragraph (1B)(a) does not apply to a person who is granted immigration bail by the Secretary of State if the Secretary of State considers that to impose an electronic monitoring condition on the person would be—

(a) impractical, or

(b) contrary to the person's Convention rights.

(2B) Where sub-paragraph (2A) applies, the Secretary of State must not grant immigration bail to the person subject to an electronic monitoring condition.

(2C) Sub-paragraph (1B)(a) does not apply to a person who is granted immigration bail by the First-tier Tribunal if the Secretary of State informs the Tribunal that the Secretary of State considers that to impose an electronic monitoring condition on the person would be—

(a) impractical, or

(b) contrary to the person's Convention rights.

(2D) Where sub-paragraph (2C) applies, the First-tier Tribunal must not grant immigration bail to the person subject to an electronic monitoring condition.

(2E) In considering for the purposes of this Schedule whether it would be impractical to impose an electronic monitoring condition on a person, or would be impractical for a person to continue to be subject to such a condition, the Secretary of State may in particular have regard to—

(a) any obstacles to making arrangements of the kind mentioned in paragraph 4 in relation to the person,

(b) the resources that are available for imposing electronic monitoring conditions on persons to whom sub-paragraph (1A) applies and for managing the operation of such conditions in relation to such persons,

(c) the need to give priority to the use of those resources in relation to particular categories of persons to whom that sub-paragraph applies, and

(d) the matters listed in paragraph 3(2) as they apply to the person.

(2F) In this Schedule "Convention rights" is to be construed in accordance with section 1 of the Human Rights Act 1998."

Amendments 91A and 91B, as amendments to Amendment 91, not moved.

Amendment 91 agreed.

Amendments 92 to 105

Moved by ***Lord Bates***

92: Schedule 9, page 151, line 26, leave out "Where" and insert "Subject to this paragraph and to paragraphs 6A and 6B, where a"

93: Schedule 9, page 151, line 38, at end insert—

"(4A) The First-tier Tribunal may not exercise the power in sub-paragraph (1)(a) so as to amend an electronic monitoring condition."

94: Schedule 9, page 151, line 39, leave out sub-paragraph (5)

95: Schedule 9, page 151, line 42, leave out "decides to exercise, or to refuse" and insert "exercises, or refuses"

96: Schedule 9, page 152, line 3, leave out sub-paragraphs (8) to (10)

97: Schedule 9, page 152, line 11, at end insert—

"Removal etc of electronic monitoring condition: bail managed by Secretary of State

"6A (1) This paragraph applies to a person who—

(a) is on immigration bail—

(i) pursuant to a grant by the Secretary of State, or

(ii) pursuant to a grant by the First-tier Tribunal in a case where the Tribunal has directed that the power in paragraph 6(1) is exercisable by the Secretary of State, and

(b) before the grant of immigration bail, was detained or liable to detention under a provision mentioned in paragraph 1(1)(b) or (d).

(2) Where the person is subject to an electronic monitoring condition, the Secretary of State—

(a) must not exercise the power in paragraph 6(1) so as to remove the condition unless sub-paragraph (3) applies, but

(b) if that sub-paragraph applies, must exercise that power so as to remove the condition.

(3) This sub-paragraph applies if the Secretary of State considers that—

(a) it would be impractical for the person to continue to be subject to the condition, or

(b) it would be contrary to that person's Convention rights for the person to continue to be subject to the condition.

(4) If, by virtue of paragraph 2(2A) or (2C) or this paragraph, the person is not subject to an electronic monitoring condition, the Secretary of State—

(a) must not exercise the power in paragraph 6(1) so as to impose such a condition on the person unless sub-paragraph (5) applies, but

(b) if that sub-paragraph applies, must exercise that power so as to impose such a condition on the person.

(5) This sub-paragraph applies if, having considered whether it would be impractical or contrary to the person's Convention rights to impose such a condition on the person, the Secretary of State—

(a) does not consider that it would be impractical to do so, and

(b) does not consider that it would be contrary to the person's Convention rights to do so.

Amendment etc of electronic monitoring condition: bail managed by First-tier Tribunal

6B (1) This paragraph applies to a person who—

(a) is on immigration bail pursuant to a grant by the First-tier Tribunal in a case where the Tribunal has not directed that the power in paragraph 6(1) is exercisable by the Secretary of State, and

(b) before the person was granted immigration bail, was detained or liable to detention under a provision mentioned in paragraph 1(1)(b) or (d).

(2) Where the person is subject to an electronic monitoring condition, the First-tier Tribunal—

(a) must not exercise the power in paragraph 6(1) so as to remove the condition unless sub-paragraph (3) applies, but

(b) if that sub-paragraph applies, must exercise that power so as to remove the condition.

(3) This sub-paragraph applies if the Secretary of State notifies the First-tier Tribunal that the Secretary of State considers that—

(a) it would be impractical for the person to continue to be subject to the condition, or

(b) it would be contrary to that person's Convention rights for the person to continue to be subject to the condition.

(4) If, by virtue of paragraph 2(2C) or this paragraph, the person is not subject to an electronic monitoring condition, the First-tier Tribunal—

(a) must not exercise the power in paragraph 6(1) so as to impose such a condition on the person unless sub-paragraph (5) applies, but

(b) if that sub-paragraph applies, must exercise that power so as to impose such a condition on the person.

(5) This sub-paragraph applies if the Secretary of State notifies the First-tier Tribunal that the Secretary of State—

(a) does not consider that it would be impractical to impose such a condition on the person, and

(b) does not consider that it would be contrary to the person's Convention rights to impose such a condition on the person."

98: Schedule 9, page 152, line 13, after "where" insert "—(a)"

99: Schedule 9, page 152, line 14, leave out "imposed by the Secretary of State"

100: Schedule 9, page 152, leave out lines 16 and 17

101: Schedule 9, page 153, line 41, at end insert ", subject to sub-paragraph (13A)"

102: Schedule 9, page 153, line 44, after "this" insert "is subject to sub-paragraph (13A), and"

103: Schedule 9, page 153, line 45, at end insert—

"(13A) The power in sub-paragraph (12) to grant bail subject to the same conditions and the duty in sub-paragraph (13) to do so do not affect the requirement for the grant of bail to comply with paragraph 2."

104: Schedule 9, page 154, line 30, leave out "sub-paragraph (2)" and insert "this sub-paragraph"

105: Schedule 9, page 154, line 33, leave out "This sub-paragraph" and insert "Sub-paragraph (1)"

Amendments 92 to 105 agreed.

Amendment 106

Moved by ***Lord Bates***

106: Schedule 9, page 154, line 46, at end insert—

"(2A) Regulations under section 86(1) may, in particular—

(a) make provision about the circumstances in which the power in paragraph 6(1) may or must be exercised so as to impose an electronic monitoring condition on a person to whom this sub-paragraph applies;

(b) enable the Secretary of State to exercise a discretion in determining whether an electronic monitoring condition should be imposed on such a person,

and may, in particular, do so by providing for paragraph 6A or 6B to have effect with modifications in relation to such a person.

(2B) Sub-paragraph (2A) applies to a person who—

(a) by virtue of regulations under section 86(1) is treated as having been granted immigration bail as a result of falling within—

(i) sub-paragraph (2)(c), (d) or (e), or

(ii) sub-paragraph (2)(f) on the basis that the person had been released on bail from detention under paragraph 2 of Schedule 3 to the Immigration Act 1971,

(b) is not treated as being subject to an electronic monitoring condition, and

(c) is not otherwise subject to an electronic monitoring condition.

(2C) Sub-paragraph (2A) applies to a person who—

(a) is on immigration bail pursuant to a grant before the coming into force of paragraph 2(1A) and (1B), or the coming into force of those provisions in relation to grants of that kind,

(b) before the grant of immigration bail, was detained or liable to detention under a provision mentioned in paragraph 1(1)(b) or (d), and

(c) is not subject to an electronic monitoring condition."

Amendment 106A, as an amendment to Amendment 106, not moved.

Amendment 106 agreed.

Amendments 107 to 112

Moved by ***Lord Bates***

107: Schedule 9, page 157, line 35, leave out "(3) and (5)" and insert "(2C) and (2D)"

108: Schedule 9, page 157, line 38, leave out "(5)" and insert "(2C)"

109: Schedule 9, page 158, line 13, leave out ", (7), (8) and (9)" and insert "and (7)"

110: Schedule 9, page 158, line 15, after "Commission"," insert—

"( ) in sub-paragraph (4A) for "The First-tier Tribunal" there were substituted "The Special Immigration Appeals Commission,"."

111: Schedule 9, page 158, line 16, leave out ", (6) and (10)" and insert "and (6)"

112: Schedule 9, page 158, line 17, at end insert—

"Paragraph 6A(1)(a)(ii) (removal etc of electronic monitoring condition: bail managed by Secretary of State) has effect as if—

(a) for "the First-tier Tribunal" there were substituted "the Special Immigration Appeals Commission", and

(b) for "the Tribunal" there were substituted "the Commission".

Paragraph 6B (amendment etc of electronic monitoring condition: bail managed by First-tier Tribunal) has effect as if—

(a) in sub-paragraphs (1)(a), (2), (3), (4) and (5) for "the First-tier Tribunal" there were substituted "the Special Immigration Appeals Commission", and

(b) in sub-paragraph (1)(a) for "the Tribunal" there were substituted "the Commission"."

Amendments 107 to 112 agreed.

8.05 pm

Further consideration on Report adjourned until not before 9.05 pm.

Civil Proceedings, Family Proceedings and Upper Tribunal Fees (Amendment) Order 2016

Motion to Approve

8.06 pm

Moved by ***Lord Faulks***

To move that the draft Order laid before the House on 17 December 2015 be approved.

Relevant document: 20th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, the purpose of this draft order is to introduce enhanced fees for certain types of civil and family proceedings. Specifically, the order will increase the fee to issue a possession claim in the county court to £355 from £280 and there will be a 10% fee discount for possession claims made online. It will also increase the fees for a general application made in civil proceedings to £100 for an application made by consent or without notice and to £255 for a contested application. These changes will also apply to general applications made in judicial review proceedings heard in the Immigration and Asylum Chamber of the Upper Tribunal.

There are, however, general applications relating to certain proceedings for which, given the particular sensitivities involved, we feel that it would be inappropriate to charge a fee above cost. These are applications in insolvency proceedings, applications in relation to an injunction for protection from harassment, and applications for payment to be made out of funds held in court. The order will also make small changes to the fees charged for copy documents in immigration judicial review proceedings heard in the Immigration and Asylum Chamber of the Upper Tribunal. Finally, the order increases the fee to make an application for a divorce or dissolution of a civil partnership. This will be increased to £550.

Where users are charged a fee to access public services, it is normally the case that the fee should be set at a level to cover the full cost of delivering those services. For many years the civil and family courts have operated on that basis. Section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 provides the Lord Chancellor with a power to prescribe fees above cost on the basis that these fees are used to finance an efficient and effective system of courts and tribunals. This power was used for the first time in March last year to increase the fees for money claims.

Noble Lords will be aware of the difficult economic situation that we face. The Government were elected to continue our work to fix the economy, and that is indeed what we are doing. It is clearly right that we continue to look for opportunities to reduce public spending. That includes the courts and tribunals and those who use them. In the current financial climate, it is right that we look again at the balance between what

[LORD FAULKS]
users pay towards the overall cost of the Courts and Tribunals Service as compared with the financial burden that falls on the taxpayer. All of the increases in the draft order have been subject to consultation, and our decision to take them forward has been announced in subsequent published government responses.

Why are the Government taking this action and why is it necessary? The reason we are introducing these fee increases is to make sure that the courts and tribunals are funded in the long term. The courts and tribunals fulfil a vital function in our society. They make sure that access to justice is available to those who need it. Access to justice is critical to the maintenance of an effective and functioning democracy, helping to maintain social order, underpinning an effective economy, and upholding the rule of law. It is crucial that these principles are preserved so that people who need it have ready access to the courts and tribunals.

Equally, a strong economy is a prerequisite for effective and affordable public services. Noble Lords will be aware that the Government inherited a growing budget deficit, increasing public sector debt, and an economy in recession. We made economic recovery our first priority, and this has required some difficult decisions to be made. The action we have taken is working and the recovery is now well under way, but further reductions in spending are essential if we are to eliminate the deficit.

We have secured more than £700 million-worth of funding to invest in our courts and tribunals, and we have been working closely with the senior judiciary to develop a plan for investing this in reforming the courts and tribunals so that they can deliver swifter, fairer justice for everyone in England and Wales at a lower cost.

There is, however, only so much that can be done through cost-efficiency measures alone. If we are to secure the sustainable funding of the courts and tribunals, we must also look to those who use the system to contribute more, where they can afford to do so. We consulted on all these proposals and have carefully considered all the responses that were received. The consultations produced some very strong views, particularly on the proposed increase to the fee for a divorce or dissolution of a civil partnership. We have listened to what people had to say and have decided to limit the increase in this fee to £550—from £410—rather than £750, as originally proposed.

The measures set out in this order, we estimate, will generate around £60 million per annum in additional income, with every £1 collected spent on providing an efficient and effective system of courts and tribunals. We recognise that fee increases are not popular, but they are necessary if we want to deliver our promise to fix the economy while protecting access to justice. It is in those circumstances that I therefore commend this draft order to the House, and I beg to move.

Amendment to the Motion

Moved by ***Lord Beecham***

At the end to insert "but this House regrets that the draft Order further increases enhanced fees in certain proceedings that will be detrimental to victims of domestic violence and disproportionately discriminate against women; is concerned that the Government have acted against the advice of the Lord Chief Justice, Master of the Rolls, and the President of the Family Division, among others; and notes the Secondary Legislation Scrutiny Committee's disappointment that despite strong concern expressed by respondents to the public consultation the Government give no policy justification other than the generation of income".

Lord Beecham (Lab): My Lords, yesterday the House spent a good deal of time on the infamous pay-to-stay provisions of the Housing and Planning Bill. Today it is pay to sue that this order makes the subject of debate.

The Government have already ratcheted up fees for court and tribunal proceedings with a devastating effect in relation to employment tribunals, where applications have fallen by 70%. Now they seek to extract significantly higher fees in the civil and divorce courts, not only for the issue of proceedings but even for filing applications and consent orders in the course of those proceedings.

The report of the Secondary Legislation Scrutiny Committee reminds us, as the noble Lord has just done, that the Anti-social Behaviour, Crime and Policing Act 2014 permits a Lord Chancellor to,

"prescribe a fee of an amount which is intended to exceed the cost of anything in respect of which the fee is charged"—

in other words, to make a profit out of the parties to litigation over and above the actual cost to the system of those proceedings. It is as if people paying for a prescription had to pay more than their treatment costs to help fund the NHS or some other element of government funding. I hope that the Secretary of State for Health does not read *Hansard* tomorrow; it might give him ideas.

The court system costs £1 billion a year to run. The order is estimated to realise £64 million by increasing the fees for a range of proceedings. In possession claims for goods or land the fees rise from £280 to £355—an increase of 27%, or in respect of online claims from £250 to £325. Consent applications in the course of proceedings, which by definition involve a minimum of court time, see a doubling in the fee from £50 to £100. The fee for contested applications in the course of proceedings rises from £155 to £255—a 60% increase. Uncontested applications in, of all places, immigration judicial review proceedings and the Upper Tribunal more than double from £45 to £100, while contested applications more than treble, from £175 to £550—I think that figure may not be accurate, but nevertheless they are increased substantially. Controversially, as the noble Lord has indicated, the cost of divorce proceedings rises from £410 to £550, and this is represented as a generous concession from the £750 originally proposed.

8.15 pm

No explanation is offered for these widely different increases. As the Secondary Legislation Scrutiny Committee points out, the Ministry of Justice acknowledges that the actual cost of dealing with uncontested applications

for divorce is only £270. Thus the increased fee is over 100% more costly—oddly, the committee says 200% more costly. This a particularly sensitive area, given that, in effect, the Ministry of Justice is seeking to profit from a situation where the parties are in an inherently unhappy position. Women constitute two-thirds of those initiating divorce proceedings.

Others will also suffer. It might be thought that a landlord seeking a possession order should shoulder the cost but of course ultimately, if the proceedings are successful, either by way of a consent order or a judgment, the tenant will pay. In its reply to the Ministry of Justice consultation document, Thompsons Solicitors pointed out that 90% of money claims are for less than £10,000. A case settling for £1,500 would incur issue and consent order fees of £215, and if there was a contested application en route this would be another £255, so court fees alone would be a third of the value of the claim.

It is true that there is a remission scheme, but this requires a separate application for remission, with fresh income details for each fee incurred during the course of the proceedings. The guidance is a handy 31 pages long. Dealing with these applications—especially if they are made by unrepresented parties, as many will be given the non-availability of legal aid—will place extra burdens on the Courts Service. In any case, the income threshold is very low, at £245 a week or £1,085 a month—barely more than the national minimum wage or what the living wage would be. It is particularly reprehensible in the context of divorce and immigration cases. There is a risk that divorce petitioners, especially women, will not seek to recoup the costs from respondents to avoid tensions that might impact on the conduct of proceedings, or on the relationships in the family following divorce.

The Law Society points out that it is only a year since the last increase—smuggled in, one might recall, on the eve of the general election. It rightly points to particular difficulties in immigration cases, where there are already problems with costs, an application for indefinite leave to stay having gone up from £1,093 to £1,500, and where there is an additional NHS charge of £500. There is a concern about the burden of such fees in a sensitive area involving human rights and a risk that some potential applicants will resort to overstaying illegally because they will be unable to raise the necessary money to proceed with an application.

The society cites a recent case in which a couple in their 60s, the husband British, his wife American, returned to the UK to care for the husband's elderly mother. The wife has been refused a long-term visa and cannot afford the cost of fees for an appeal. The potential outcome is that the couple may have to return to the US and the mother cared for by the local authority, at public expense.

The society gives another potential example of unintended consequences. Landlords will often resort to possession proceedings where a tenant is unwilling to leave, even if in arrears, and tenants may not leave precisely because if they do so without being the subject of an order they are deemed to be voluntarily homeless and may not be rehoused. Hence, landlords may seek to insure against these risks by increasing the size of the deposit required at the time of the letting. This in turn would increase the pressure on people struggling to find the wherewithal for a deposit in the first place.

It is not surprising that, in the light of these and other difficulties, the Government's actions have been roundly criticised by leading members of the judiciary past and present. Indeed, the noble and learned Lord, Lord Woolf, told me that he would be speaking about this issue this very morning, and that he regrets that he is unable to speak again tonight, when he would have liked to have contributed to the debate, because he is giving another speech in another place—not the House of Commons.

When the Justice Select Committee took evidence in January it heard from three of the most eminent members of the judiciary: Lord Dyson, Master of the Rolls; Sir James Munby, President of the Family Division; and Sir Ernest Ryder, Senior President of Tribunals. Lord Dyson expressed grave concerns about the principle of people using the civil courts "subsidising the family court", and referred to previous increases in 2014 and 2015. He averred:

> "I am afraid that the risk of denying access to justice to a lot of people is intense in those proposals".

He referred to the impact on small business and described the Government's research, on which the order was based, as "lamentable". Sir James Munby shared Lord Dyson's concerns and alluded to the growing problem of litigants in person. Sir Ernest Ryder touched on another problem occasioned by the fees increase. He stated that the council of employment judges says that there is,

> "clear behavioural material as to the way in which respondents are behaving. They are avoiding engagement in conciliation processes and waiting for the next fee to be paid, which means that settlement opportunities are lost",

and, of course, claimants discouraged.

Lord Dyson was especially critical about the impact of the increase in divorce fees. This is not surprising. My honourable friend Christina Rees from the Opposition Front Bench quoted the Government's own words, that,

> "'the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, the Deputy Head of Civil Justice and the Civil Justice Council … They have expressed their opposition to the increased divorce fee as they think that it will be a disincentive for divorce and in particular, women that are victims of domestic violence'".—[*Official Report*, Commons, Fourth Delegated Legislation Committee, 28/1/16; col. 5.]

Graham Stuart, a Conservative Member of Parliament, pressed the hapless and hopeless Minister, Shailesh Vara, for details of the expected effect of the fees increase on divorce cases. Needless to say, the Minister could not answer, but then this is the Minister who opened that debate with the usual inaccurate references to the inheritance in 2010—emulated, I am sorry to say, by the noble Lord tonight—even including the claim of an economy in recession, when it fact it had been growing through 2010 until the Chancellor threw it into reverse gear with his emergency Budget. The economy was growing at a rate of 1.5% after the general election in 2010.

The reality is that the relentless decline in access to justice has continued for the last six years. There is no sign of it abating, despite some vaguely warm words

[LORD BEECHAM]
from the present Lord Chancellor, whose political future in any case now seems to be in some doubt. The order is just the latest in a series of measures that reflect a cynical disregard of a kind that makes the title of the Ministry of Justice look as credible as that of George Orwell's Ministry of Truth. I beg to move.

Lord Brown of Eaton-under-Heywood (CB): My Lords, this is the second time that the Lord Chancellor has exercised his power under Section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 to prescribe enhanced fees—court fees, that is, that exceed the cost to the Courts & Tribunals Service of doing that for which the fee is charged. This power was first used last year in relation to the fees for bringing court proceedings to recover sums of money. On 4 March last year—a year ago—the noble Lord, Lord Pannick, moved a regret Motion, on which I spoke. Frankly, much of what I said then applies with equal—indeed, even greater—force today. I pointed out that there has long been objection even to the basic principle of full cost recovery. The justice system exists for the benefit of society as a whole and really courts should no more be required to be self-financing than, say, the police service.

Of course, orders for enhanced fees go altogether further than mere cost recovery. In a real sense, as the noble Lord, Lord Beecham, explained, they amount to selling justice—on the face of it contrary to Magna Carta, although now of course regrettably sanctioned by Section 180 of that Christmas tree of an Act we passed two years ago, the Anti-social Behaviour, Crime and Policing Act. As I pointed out in last year's debate, that Act stretches to 186 clauses and 11 schedules, occupying 232 pages of the Queen's Printer's copy. Small wonder that by Clause 180 we had grown a little lax or careless in our scrutiny of that Bill.

Today I want to focus briefly on the increased fees now to be exacted for a decree of divorce or nullity, an increase of about a third from £410 to £550. In the Government's January 2015 response to part 2 of the consultation on the so-called reform of court fees, it was recorded at page 40 that the senior judiciary, who were, naturally enough, a statutory consultee in the process,

"noted that the current divorce fee was above cost".

The recent 20th report of the Secondary Legislation Scrutiny Committee confirmed this, noting at page 4 that the Ministry of Justice's own estimate of the average cost of dealing with an uncontested divorce application is only £270—this new enhanced fee being therefore just over double that.

Of course, that earlier consultation related specifically to the then-proposed increase of the fee to £750—a proposal later abandoned. However, the objection remains essentially as to the original proposal, summarised in the case of the higher judiciary at paragraph 8.5 of the Explanatory Memorandum to this order. The objection was that,

"it will be a disincentive for divorce and in particular, women that are victims of domestic violence".

Essentially, that echoed earlier objections that an increased divorce fee,

"could lead to parties being trapped in unhappy or violent marriages",

and could prevent people from marrying or remarrying and being therefore,

"without the protection the law affords to married couples".

At the conclusion of last year's debate, noting that the Motion was one of only regret and not a fatal Motion, I expressed the hope that at least it would persuade the Government that enough is enough and really there must be no more use of this enhanced fee power. Alas, the Government have now chosen to go still further down this sorry road. This order is to be not merely regretted; it is to be deplored.

Lord Faulks: My Lords, this debate has been short but not lacking in power nor indeed in criticism of the Government. It feels almost nostalgic to hear in this Session of Parliament criticisms of the Government generally in their handling of the economy and of the Ministry of Justice and the Secretary of State. We are on familiar ground. It even included, from the noble Lord, Lord Beecham, the customary disavowal of anything being wrong with the economy at the time of the election in 2010.

Lord Beecham: The noble Lord misrepresents me. I did not say that there was nothing wrong with the economy. I said that it was recovering—and it was.

Lord Faulks: I stand corrected, though the recovery seemed to be rather in the eye of the beholder. In any event, the approach of the noble Lord appears to be that these changes are not justified in economic terms and that they will or might have the tendency to cause hardship.

Of course, I readily accept—as I did in opening this debate—that fee increases are never likely to be popular. On the question of divorce, there was an acceptance, if not an enthusiastic one, by the noble Lord that we had listened to representations, concluded that the original proposal was too high and reduced the sum that needs to be paid in order to obtain a divorce. Reference was made by the noble Lord to what judges said in the course of giving evidence—distinguished judges, I fully acknowledge.

8.30 pm

It was suggested that there were inadequate grounds for the decision that the Government had made, and that the research was lamentable. We do not accept that. There were a number of pieces of research. A study was undertaken by Ipsos MORI, a reputable organisation, and the sample size was reasonable for a piece of qualitative research of this sort. We believe that the results are valid. Most people in that study said that they would not be deterred from starting court proceedings by the higher fees presented to them. Individuals and SMEs with fewer financial resources said that the higher fee would make them think carefully about the relative costs and benefits, but most said that they would still take their case to court if they had to pay.

Of course, when somebody is deciding whether to take proceedings or to make an application, they will take all sorts of factors into account. First, are they

going to succeed in the application? Secondly, if the application succeeds, what will be obtained in terms of recovery? Does the other party have resources? Will they be liable for the overall costs? Many factors are taken into consideration and the actual cost of taking proceedings or issuing applications is only one—I respectfully suggest, possibly quite small—part of the analysis undertaken by a litigant.

I accept that rather different considerations come into play when someone decides whether or not to seek a divorce. But, with great respect to the noble and learned Lord, Lord Brown, I am not sure that we should necessarily provide an incentive to divorce. He said that these costs would be a disincentive to divorce. Clearly, divorce should be obtainable with a reasonable sum and we respectfully submit that this is a reasonable sum. The argument is that this might result in people being stuck in loveless marriages or, more seriously, remaining with a partner who is in some way abusive. We do not accept that. Apart from anything else, fee remissions are available to those who qualify—I will come back to fee remission—and fee exemptions apply to non-molestation and occupation orders. So those who are in fear of violence or of being prejudiced in that very serious way will not suffer in any way in their ability to obtain a divorce.

Whatever their position in terms of physical security, I accept that they may well wish to obtain a divorce. It is true that the majority of divorce applications are made by women rather than men. But, in assessing fee remissions, it is important to stress that the applicant is assessed on his—or, more probably, her—individual rather than household means. Our analysis shows that women, particularly those in single-parent households, are more likely to feature in the lowest quintile of average household incomes, and are therefore more likely to qualify for a fee remission. So we submit that these fee remissions will be helpful to those who might in other circumstances feel that this relatively small increase acted as a deterrent to them bringing an end to their marriage.

The debate in the House of Commons took a slightly unusual form. The noble Lord, Lord Beecham, referred to contributions to the debate from, among others, Christina Rees as the Front Bench spokesman on behalf of the Labour Party and Mr Graham Stuart, the honourable Member who spoke, if not on behalf of the Conservative Party, as a Conservative in any event. However, neither of them felt sufficiently strongly to vote against this statutory instrument. Indeed, they both numbered among the ayes. There was only one no vote from the redoubtable Mr Dennis Skinner—a slightly unusual posture.

The fact that he was alone in this situation perhaps means there was some acceptance that, however superficially unattractive these changes may be, they were a sensible step taken by a Government trying to get to grips with economic difficulties and trying to make—as Parliament had said they could—the cost of proceedings more commensurate. I accept that the Anti-social Behaviour Act, to which the noble and learned Lord, Lord Brown, referred without much enthusiasm, entitled the Government to go beyond their former position. But the fees are hypothecated in the sense that they all go towards the administration of the courts and tribunals. It is not as if they are being frittered away on other aspects of government. I am sure that all noble Lords will share my acceptance of the importance of a satisfactory system of courts and tribunals, properly financed.

The matter of litigants in person was, of course, raised. I readily accept that these can cause judges difficulties, which may have been on the minds of those giving evidence to the Justice Select Committee. Much has been done to help litigants in person, by lots of initiatives from different parties. I attended an all-day session at which the many valuable contributions made by all sorts of practitioners and those who assist the courts were explained. The information available on courts, online or in person, is improving daily, so some of the difficulties which litigants in person confront are much ameliorated. That includes the application forms for remissions. There was originally some criticism of their comprehensibility but they have been much improved. Those who wish to argue that these figures are too high in terms of their own means should be able to understand what they can do to get, if not a complete exemption, a remission in part.

The purpose of these reforms is to increase fee income—we do not in any way shy away from that—and to reduce the costs of the courts to the taxpayer who would otherwise be responsible. We would not be doing this if we thought that there was any serious risk that it would reduce demand in the courts and tribunals. For all these reasons, and those I explained in my opening remarks, we are satisfied that the risks are minimal. I therefore commend this draft order to the House.

Lord Beecham: My Lords, I will not take up the time of the House. I do not, of course, agree with the Minister's defence of the Government's attitude, which seeks effectively to make a profit for the purposes of government—in whichever ministry—out of proceedings. In particular, the order imposes increases with no justification of their size, no common principle applied to the percentage increase, and in a way which, despite what the Minister says, will undoubtedly lead to people having great difficulties. The earnings level that I referred to is low. Beyond £245 a week, people will be expected to pay—and pay, potentially, several hundred pounds. That cannot be in the interests of justice. It is a continuing part of the Government's assault on access to justice. But, having regard to the usual practice, I beg leave to withdraw the amendment while continuing to express regret at what many in the profession, and many who support people endeavouring to seek justice, maintain is a thoroughly bad decision by the Government and a thoroughly bad order.

Amendment to the Motion withdrawn.

Motion agreed.

8.39 pm

Sitting suspended.

Immigration Bill

Report (2nd Day) (Continued)

9.05 pm

Amendment 113

Moved by ***Lord Roberts of Llandudno***

113: After Clause 58, insert the following new Clause—

"Exemption from deportation

Exemption from deportation for unaccompanied minors upon reaching the age of 18

After section 7(3) of the Immigration Act 1971 (exemption from deportation for certain existing residents) insert—

"(3A) A person shall not be liable to deportation under section 3 upon reaching the age of 18 if the person entered the United Kingdom under the age of 18 as an unaccompanied minor.""

Lord Roberts of Llandudno (LD): We are facing a problem that I think we realise exists: what happens to youngsters—unaccompanied asylum seekers or refugees—who came here some years previously? They have settled down here, they have become part of our communities; they speak our language, they go to our schools; they have imbibed the culture of the United Kingdom; and they have been very well cared for—and we are so grateful to the authorities and the foster homes which take this responsibility upon themselves. But then, when they reach 18 years of age, they lose that protection. This is an immense problem.

I remember meeting about half a dozen lads from Afghanistan who were in this category. They had reached 18 and were telling me what they had done when they were on the verge of turning 18. One had built a noose above his bed in case Border Force came and wanted to deport him—he knew what he wanted to do then. A couple of the others had pushed their wardrobes against the doors of their bedrooms to try to stop or hinder anyone from coming and deporting them. These are people who have been here, people who do not know their original country, and yet we are going to force them from here.

Last year about 250 18 year-olds were deported. Half of them were taken forcibly—they were physically taken and deported. Gosh, what sort of reputation do we have if we do these sorts of things? My grandchildren are not quite 18. These people are us, they are human beings, and yet we are doing this to them. What makes it even more incredible to me is that of those who appeal, half of them win their appeals against the prospect of unfair deportation. I ask the Minister to look at this and give us an assurance in the Bill that nobody aged 18 will be treated in this way. I beg to move.

The Lord Bishop of Norwich: My Lords, Amendment 114 in this group is in my name. I am grateful for the support of other noble Lords. The amendment seeks to ensure that a best interests assessment is obtained for any child separated from its parents as a result of an immigration appeal. It is not so very long ago, I remember, that in the light of failures in child protection a policy initiative was given the title Every Child Matters. Every child does matter, without exception.

Under Clause 59, the Secretary of State will have the power to remove the ability of a person to remain in the UK when appealing against an immigration decision. This simply extends provisions already contained in the Immigration Act 2014 which apply only to foreign national offenders. However, no analysis on the impact of children being separated from their parents as a result of the Immigration Act 2014 has been undertaken. That is the first thing to stress, yet the new Bill extends these provisions to all appeals relating to immigration claims, including those involving accompanied and unaccompanied children.

Recent research by the Children's Commissioner has shown the serious long-term impact on a child of separation from a parent: it can undermine their developmental, behavioural and emotional well-being. There is a significant delay, currently of up to a year, in immigration appeals being listed so this separation from family or home in the event of certification would have significant consequences for any child. A year may seem to pass quickly when you reach the seniority of many of us in your Lordships' House but for a child aged six or seven, a year's development is very significant. In Committee, the Minister expressed the hope that in future,

"appeal processes in simple cases will not exceed six months and even in complex cases will not exceed 12 months ".—[*Official Report*, 3/2/16; col. 1813.]

But there is no guarantee that this will be the case and even 12 months can be too long for a child removed from parents or school, or for unaccompanied young people who find themselves, as they are likely to do, without a support network in their country of origin—where they may have no family left at all.

Government Amendment 145 draws attention to the duty of the Home Secretary under Section 55 of the Borders, Citizenship and Immigration Act 2009,

"to safeguard and promote the welfare of children",

with respect to immigration, asylum and enforcement functions. However, the experience of organisations such as the Refugee Children's Consortium is that children's best interests are not systematically and comprehensively assessed within immigration decision-making. No one has ever relied on this duty of the Home Secretary in any case and there is no clear means of implementing it. It seems no more than a pious aspiration. I am in favour of pious aspirations and the more pious, the better, but they need some means of implementation and checking. There needs to be independent oversight of the duty on the Home Office to ensure that the best interests of any child are adequately considered before any decision is made to certify any claim for out-of-country appeals. That is what Amendment 114 offers so straightforwardly.

We need to see all this within the context of cuts to legal aid. The Government have removed all legal aid for immigration cases, undermining the ability of children and families to put forward the necessary evidence and legal arguments to have their cases fairly determined. What is the result? The Home Office will be making decisions on poorly-prepared cases with inadequate evidence because children and families will not have had the benefit of legal advice. It means that the ability to appeal against decisions by the Home Office has never been more important.

We saw a stark example of the current weaknesses of Home Office decision-making just last April. The Court of Appeal upheld the decision by the Upper Tribunal requiring the Home Office to return a five year-old child to the UK with his mother after failing to consider properly his best interests before they were removed to Nigeria. The woman, who was undocumented, had claimed to be in the UK since 1991. She applied for asylum in 2010, saying that she feared destitution and discrimination as a single mother in Nigeria with no immediate family. Her asylum claim had been repeatedly rejected. At one point, she was admitted to a psychiatric unit with depression. Her son was put into foster care as she battled against attempts to send them both back to Nigeria. The foster carers who looked after the boy remained close to him. When the mother and child were removed from the UK, those foster carers paid for their accommodation and healthcare in Nigeria from their own savings because they were so concerned about what happened to them both. The judge ruled:

"In not taking into account the implications of",

the mother's "mental health" for the child,

"and the risk of that degenerating in the Nigerian context and the likely consequences of removal, the Secretary of State failed to have regard to",

the child's,

"best interests as a primary consideration".

9.15 pm

Such disregard for the best interests of a child could easily become even more commonplace as a result of the passage of this legislation. What was the impact of the already-existing duty of the Home Secretary to have concern for the best interests of the child in this case? Given that duty, what is the significance of government Amendment 145? What will be the means of giving it effect? Surely we can look at how to give this government amendment more substance between now and Third Reading, if for any reason Amendment 114 is not acceptable. How do we give each child a place and a voice within this process, as well as making sure that the details of any decision will be clearly set out? Surely, every child does still matter.

Baroness Hamwee (LD): My Lords, I support my noble friend Lord Roberts of Llandudno, who reminds us of the moral obligations that we have to a child or someone who is not quite a child any longer in the eyes of the law, when in effect the state has been that child's parent up to the age of 18.

I am glad that the right reverend Prelate went ahead of me, as he said much of what needs to be said. I find the "deport first, appeal later" policy—as it has come to be called—difficult to tackle because I dislike the whole thing so much and am very frustrated that we have to approach it crab-wise because of it being a manifesto commitment. However, this does not at all detract from the importance of recognising how children's interests can properly be dealt with in the way that this amendment seeks to do.

The right reverend Prelate said that he was concerned about the Government's Amendment 145. However, I oppose Amendment 145, as by saying that Section 55 applies, all it does is put in doubt the application of Section 55 in other circumstances unless it is said that Section 55 applies. That is nonsense. The noble and learned Lord will appreciate that that cannot be what is meant and I hope he will appreciate that there is a danger, however good the Government's intentions, in trying to confirm the application of Section 55 to us in this way, although I do not wish to be bought off by that.

I think the right reverend Prelate said that the child's "voice" needs be heard. That struck me very much in the helpful briefing from the Refugee Children's Consortium, in which it says:

"Crucially, there is … no mechanism by which children's own views are systematically"—

the word systematically is probably important—"considered by the Home Office".

I appreciate that the Minister is bound not to be able to accept this from the Dispatch Box, but the consortium has told us that,

"best interests assessments are rarely conducted in any meaningful way, if at all. The Home Office routinely takes as their start and end point that the children's best interests are met by being with both parents. They rarely, if ever, consider the child's current circumstances, their likely future circumstances, the child's own views"—

as I said—

"the parents' likely circumstances on return and how they will impact on the child before making a decision".

It also tells us:

"There is also no evidence that the Home Office proactively seek to find out whether any of the children within a family liable for removal might have a right to British citizenship".

For all those reasons, and the four pages of briefing which Ministers can see me dangling, I very much support Amendment 114.

I have some amendments in this group in my name and that of my noble friend Lord Paddick. Amendments 113A and 114A deal with the position if, having been deported, an appeal is successful. The individual will have been made to leave the UK only temporarily, as it will turn out, against his or her wishes. I understand that there is guidance in connection with deportation that consideration must be given to the Home Office paying for the journey back. I would say in parenthesis that regard must be had to the quality of the Home Office decision. I do not know whether the noble and learned Lord can tell the House how the quality is assessed: is it a matter of comments made by the tribunal? It also occurs to me that if an appellant is not legally represented, will he know whether to raise the issue of payment for return to this country? In any event, my amendments are not about deportation, they are about administrative removal. If the administrative removal is wrong, the Administration should bear the costs of return to the UK.

Amendment 113B would prevent the certification of cases of persons with the characteristics specified in the amendment, so that such a person could not be required to leave the UK while the appeal was pending. The Minister will recognise how that aligns with cases of people who are vulnerable—if not "particularly" vulnerable, to use the word in Amendment 86. They are children, care leavers, persons with mental illness or learning disabilities, people who have been trafficked or enslaved, people who have claims based on domestic violence or are overseas domestic workers. For reasons

[Baroness Hamwee]
which we spent some time on when debating the previous group of amendments, Ministers will understand our concern to pay particular attention to the need not to expose people who have such characteristics to the possibility of further damage.

Lord Ramsbotham (CB): My Lords, I have added my name to Amendment 114 for two reasons. Proposed new subsections (4) to (6) seem to reflect all the experience of the practitioners on the ground with whom I have been in contact, but I was particularly keen on proposed new subsection (7), because the need for a written plan for the child resonates with the education, health and care plans which the Department of Health and the Department for Education require to be prepared for every child with speech, language and communication needs or special educational needs. So such a plan is already part of the structure for children in the United Kingdom.

I was particularly struck by a visit to a secure children's home called Orchard Lodge, sadly now closed down, which was then run by Southwark council and provided particular help for traumatised children with mental health problems, many of whom were the very people covered by these amendments. They were immigration and asylum seekers who had suffered extraordinary trauma during the conditions that brought them to this country, and they needed help—but that help needed to be structured, co-ordinated and planned. Therefore, I particularly support the amendment tabled by the right reverend Prelate the Bishop of Norwich and hope very much that, in accepting it, which I hope that the Minister feels able to do, he will reflect on the model for the plans that he calls for.

Baroness Lister of Burtersett (Lab): My Lords, I speak very briefly in support of these amendments, which are very much animated by the spirit of *Every Child Matters*, as the right reverend Prelate says. It reminded me of some of the reports that the Joint Committee on Human Rights published when I was still a member, both on unaccompanied young children and on children's rights. A theme that kept recurring was how often in government policy immigration concerns trump children's best interests and rights. All these amendments are attempting to shift that balance back so that children's best interests and children's rights take centre stage; it does not say that nothing else matters, but they are given the due that they and children deserve.

Lord Rosser (Lab): As has been said, the Government have an amendment in this group regarding the welfare of children, which would state that the Secretary of State and any other person, as set out in Section 55 of the Borders, Citizenship and Immigration Act 2009, is subject to a duty regarding the welfare of children. The Government have put this amendment down following the debate on the welfare of children under the "deport first, appeal later" clauses in this Bill in Committee. The Government have repeatedly referred to the extension of the "deport first, appeal later" issue as a manifesto commitment. The amendment tabled by the right revered prelate the Bishop of Norwich states that, before a decision is taken to certify a human rights claim, the Secretary of State must obtain an individual best interests assessment in relation to any child whose human rights may be breached by the decision to certify with the assessment being carried out by a suitably qualified and independent professional.

9.30 pm

The Government's argument against Amendment 114 appears to be going to be—they have not yet put forward their case—that it is not necessary because the Secretary of State already has a statutory duty to take into account the welfare of a child under Section 55 of the Borders, Citizenship and Immigration Act 2009, a reference to which will now appear in the Bill. The issue that has been raised by the noble Baroness, Lady Hamwee, is to ask what exactly the duty is under Section 55 of that Act regarding the welfare of children. Is it a proactive duty, or is it a reactive duty? We have heard in the brief debate already this evening of cases in which the best interests of the child do not seem to have been taken into account by the Home Office through whatever the procedures are that it applies. I would be very grateful when the Government respond for it to be spelled out what the duty is under Section 55 of the 2009 Act. What does it actually require the Secretary of State to do, and what does it not require the Secretary of State to do? I ask that looking at what the Government said on this issue in Committee. Referring to the amendment that was down at the time, the Minister said:

"The amendment has been tabled to ensure that the best interests of any affected child are considered before a claim is certified so that an appeal must be exercised from overseas. One can quite understand what lies behind the desire for such an amendment but, however well intentioned, I suggest that it is unnecessary. It is unnecessary"—

that is the Government's word—

"in law because Section 55 of the Borders, Citizenship and Immigration Act 2009, which the noble Baroness, Lady Hamwee, referred to, already imposes a clear statutory duty to consider the best interests of any child affected by a decision to certify".

The Government then went on to say:

"It is unnecessary in practice because whenever a person concerned makes the Secretary of State aware that a child may be affected by her decision, the best interests of that child are a primary consideration in deciding whether to certify".—[*Official Report*, 3/2/16; col. 1808.]

The keys words are,

"makes the Secretary of State aware".

It does not say that the Secretary of State has a duty to find out. That is why I am asking the Government, when they respond, to say exactly what that duty under the 2009 Act—which they say makes Amendment 114 unnecessary—requires the Secretary of State to do. On the basis of what the Government said in Committee, it does not appear that they think that the Secretary of State has any responsibility for actually finding out the facts herself. The wording they used was:

"It is unnecessary … because whenever a person concerned makes the Secretary of State aware".

Later on in that same debate, the noble and learned Lord, Lord Keen of Elie, said:

"Today the Secretary of State takes careful and proportionate views regarding the interests of children. Whether it is necessary to engage external agencies with regard to the interests of the

child in a particular case will depend on the facts of that case. For example, if the Secretary of State is made aware that a social services engagement exists with a child, she will make further inquiries of the social services".—[*Official Report*, 3/2/16; col. 1808.]

Once again, it is a question of the Secretary of State being made aware of the circumstances. That is why I come back to this point. I would like it spelled out what the Government think that duty is under Section 55 of the 2009 Act. It appears that the Government do not think that the Secretary of State, in making a decision, has any duty under Section 55 to find out what the situation is. Do not those advising the Secretary of State find out whether the best interests of a child are likely to be affected by a decision of the Secretary of State? From what the Minister said in Committee—and, frankly, from what has been said in the debate this evening—it appears that nobody proactively seeks to find out what the likely impact of a decision that the Secretary of State is going to take might be on a child.

If Amendment 114 is not necessary, can the Minister say whether there are any aspects called for under the terms of Amendment 114 which the Secretary of State would not undertake as part of her duty regarding the welfare of a child under Section 55 of the Borders, Citizenship and Immigration Act 2009, and, if so, what those aspects are? I would be extremely grateful if the Government would give some very clear answers to my questions.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I am obliged to the right reverend Prelate and to the other noble Lords who have spoken in this debate. I begin by observing that the noble Lord, Lord Rosser, has very helpfully advanced matters by answering his own question. He identified what he termed "the key words", and precisely so. The key words are,

"if the Secretary of State is made aware",

or where someone,

"makes the Secretary of State aware";

and, of course, it is largely for a parent or carer to do just that in the circumstances that pertain. Therefore that is where we stand, just as we did in Committee.

On Amendment 113, from the noble Lord, Lord Roberts of Llandudno, there is undoubtedly a generous spirit behind it in allowing any person who arrived in the United Kingdom as an unaccompanied child to be exempt from deportation once they reach the age of 18. However, it is necessary to bear in mind certain points. First, when you examine the figures with regard to the arrival of unaccompanied children who fail to qualify for refugee status, you find that the vast majority are aged 16 or over—16 or 17 years of age. Consequently, they have not spent the vast proportion of their life in the United Kingdom; indeed, they will have spent very little time in the United Kingdom by the time they reach the age of 18.

The difficulty is that the consequence of the amendment would be damaging for the legitimate immigration control which is required in these circumstances and for the deterrence of crime and the protection of the public. The amendment would prevent the deportation of any foreign national offender—regardless of the severity of the crime they had committed or the risk they posed to the British public—as well as those who would otherwise be liable to deportation simply because they had arrived in the United Kingdom as a minor and claimed asylum.

We are conscious of our history of offering protection to those in need and, clearly, no Government will seek to return an individual to a country where they face persecution or serious harm. However, we will deny asylum to those who are not refugees or who have committed serious crimes and are a danger to the public and will seek to return them as soon as it is safe to do so. Some unaccompanied asylum-seeking children are genuine refugees and we are clearly committed to protecting them for as long as they need such protection, but a very large number are not. This amendment would take no account of the outcome of an asylum claim nor the criminality committed by an individual. It could also create a pull factor, encouraging more children to risk their lives on hazardous journeys and play into the hands of people smugglers and traffickers. For that reason, we do not consider that such an amendment would be appropriate.

I turn to the amendments which relate to Clause 59: the power to certify that an appeal against the refusal of a human rights claim must be brought from outside the United Kingdom, which is, as was noted, a manifesto commitment. In Committee in this House we undertook to reflect on putting it in the Bill that a decision to certify under Clause 59 will be subject to a consideration of the best interests of the affected child. We have done so. Amendment 145 makes it explicit in the Bill that Section 55 of the Borders, Citizenship and Immigration Act 2009 applies to all the provisions of the Bill, including a decision to certify that an appeal against refusal of a human rights claim must be brought from outside the United Kingdom. In doing so, it preserves a fundamental principle of the way this power is to be applied—namely, the individual consideration of each case on its own facts. By contrast to the foregoing, Amendments 113A, 113B, 114 and 114A seek to impose requirements on the manner in which this power is to be applied. Such an approach would be inimical to the principle that to achieve the right outcome for certification under this power each case must be considered individually, while having regard to legal obligations and the relevant guidance.

Amendments 113A and 113B, tabled by the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick, would prevent the certification of claims made by persons with the characteristics specified. The result would be that they could not be required to leave the United Kingdom while their appeal was pending. While this amendment may be well intentioned, it does not deliver additional protection and has the detrimental effect of limiting the scope of Clause 59. The protection that the amendment seeks to deliver is inherent in Clause 59. The scope of the power in the clause is already circumscribed, as it cannot be used where to do so would cause serious irreversible harm or otherwise breach human rights.

These amendments would replace a case-by-case consideration sensitive to the nuances of individual circumstances with a blanket set of criteria. The result

[Lord Keen of Elie]
would be that the Secretary of State would be unable to certify claims in some cases, even where there would be no serious irreversible harm or breach of human rights as a result.

The Secretary of State gives careful and proportionate consideration to cases where children are involved, and we have brought forward an amendment to make that duty clear on the face of the Bill. Nevertheless, there are circumstances in which it may be appropriate to use this power where a human rights claim made by a child has been refused—for example, where a child is living in the United Kingdom with members of his wider family but his parents remain in his country of origin.

In respect of trafficking victims, I hope it is reassuring for noble Lords to note that this power will not apply to those who have made an asylum claim, as Clause 59 does not apply to asylum claims. Where, unusually, a trafficking victim makes a human rights claim, that claim can be certified only where no serious irreversible harm or other breach of human rights will result—namely, where a person will not face harm on return to their country of origin. It is right that in those cases it should be open to the Secretary of State to consider certification.

We can provide further reassurance in respect of those whose claim to be trafficked has yet to be determined. No negative decision will be made on any human rights claim until the trafficking claim has been determined. Therefore, any such decision, including any decision to certify, will be informed by the outcome of the trafficking consideration.

Amendment 114 seeks to prescribe the mechanism by which the best interests of a child must be considered by requiring a wide-ranging assessment of a long list of factors—I will not rehearse them all here—in relation to any child whose human rights may be breached by a decision to certify. Many of these factors may indeed be relevant in a particular case and will form part of a best-interests assessment by the Secretary of State. However, the current framework is for this to occur only where relevant to the individual circumstances of the case and not for every listed factor in every case to be considered in a blanket manner.

The amendment would require intrusive and potentially irrelevant investigations, even in cases where the carer or parent, best placed to inform the Secretary of State about the impact on their child, had not provided any information to suggest such an impact. We are concerned that this could have a negative impact on the children it seeks to protect. Indeed, the investigation could put a child in the position of feeling that they were to blame if the claim were certified, notwithstanding their evidence.

The amendment is simply disproportionate. It requires an independent investigation in every case, even though published guidance is clear that, where independent advice is necessary, appropriate and relevant, and it is not provided by the person affected, the Secretary of State can seek it. The amendment would also be unworkable in practice. It would require an assessment of factors which go far beyond the effect of the decision to certify the case and stray into the realms of a full care assessment.

The role of the Secretary of State in these decisions is very different from that of the courts in considering a child's welfare in, for example, family proceedings under the Children Act, from which it appears to me that the list of proposed factors has been drawn.

The amendment may have unintended adverse consequences. It may allow unco-operative parents to frustrate a consideration of whether to certify by failing to provide information to the assessor. It is therefore, as I observed earlier, wholly disproportionate.

I turn, finally, to Amendment 114A, which would require successful appellants to be returned at public expense within 28 days of a successful appeal. This amendment proceeds on the basis that the Secretary of State's original decision was always wrong when an appeal is allowed. That is a misconception. Appeals can be allowed for many reasons, including a change of circumstances or new evidence submitted at a late stage by the appellant. The Home Office makes an assessment on the basis of the proceedings in the appeal—for example, whether late or new evidence was provided by the appellant that the Home Office had not previously had an opportunity to consider, and on the basis of the appeal determination itself. Therefore, the analysis is fact-sensitive.

This amendment, however, would require the public purse to pay for the return of all individuals subject to certification who are successful on appeal, including foreign national offenders and those who have already received financial assistance to leave the United Kingdom through the facilitated returns scheme. Our guidance strikes a better balance, ensuring that factors such as an individual's ability to pay for return or the reasons why the appeal was allowed are taken into account, and that the cost of return comes from the public purse only where necessary. We consider that this is a fair approach.

9.45 pm

Imposing a requirement to return an individual within 28 days of a successful appeal takes no account of the practicalities outside the control of the Secretary of State that may make this impossible, such as the availability of travel documents or flights and the legal reality that the Secretary of State is entitled to seek leave to appeal against a determination that has gone against her, and is not required to permit entry to the United Kingdom while such an appeal is ongoing. In the light of these points, I hope that the noble Lord will agree to withdraw the amendment.

Lord Rosser: Before the Minister sits down, I have a question. I think I know the answer in the light of what he has said, but I would be grateful for confirmation. It is not quite the case that, as was said in Committee, the amendment moved then was unnecessary. What is clear from the Minister's response is that the Government's interpretation of the duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 is that there is no duty on the Secretary of State, him or herself, to seek to find out whether the best interests of a child will be affected by their decision. Is that the Government's interpretation of that duty under Section 55 of the 2009 Act?

Lord Keen of Elie: I wonder if I may be permitted to correct the noble Lord, Lord Rosser: it is the court's interpretation of the obligation, as is found in the case of SS (Nigeria) in 2014. It is on the basis of that judicial interpretation of the obligation that the Secretary of State proceeds. I am obliged to the noble Lord for the question.

Baroness Hamwee: Before the Minister sits down, he referred to guidance with regard to payment for the return of an appellant following a successful appeal. The guidance that I referred to relates to deportation—inevitably, because that is the current position. Is the Minister saying that equivalent guidance is to be provided in the case of appellants in this situation?

Lord Keen of Elie: I am not in a position to immediately answer that question but, if I may, I will write to the noble Baroness on that point.

Lord Roberts of Llandudno: I am grateful to the Minister for responding. His facts and figures are a wee bit at variance with those that I have, and I think that we need to explore this further. Therefore, tonight, I will withdraw this amendment, but I suggest that we come back to this subject very soon because so many refugee and voluntary organisations are very concerned about this deportation dating. I beg leave to withdraw the amendment.

Amendment 113 withdrawn.

Amendments 113A to 114A not moved.

Amendment 115 had been retabled as Amendment 116A.

Amendment 116

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

116: After Clause 62, insert the following new Clause—

"Asylum support move-on period

Persons in receipt of asylum support shall cease to receive such support 40 days after receiving a biometric residence permit following the granting of—

(a) refugee status;

(b) humanitarian protection status;

(c) discretionary leave status;

(d) indefinite leave to remain; or

(e) limited leave to remain for 30 months."

Baroness Lister of Burtersett: My Lords, I thank the right reverend Prelate and the noble Lords who added their names to this amendment for their support. The noble Lord, Lord Alton, is not in his place because it is his birthday, and so I think he is allowed the evening off to celebrate with his family, much as we will miss him. I also want to express my support for Amendments 117 and 118.

The amendment concerns what is commonly known as the moving-on or grace period, during which an asylum seeker granted status continues to receive asylum support but after which it is expected that they will have sorted out mainstream financial support, employment and accommodation. The amendment would increase this period to 40 days.

I am grateful to the Minister and officials for the recent meeting that we had to discuss this matter and for the discussions that I believe officials have had both within government and with the British Red Cross, to which I am grateful for help with this amendment. As I explained in Committee, this is a problem that has for far too long created unnecessary hardship and heartache for those granted status. It is not the product of deliberate government policy, but a very unfortunate consequence of an inability of two government departments to sort it out. In Committee, I cited evidence presented recently to the Work and Pensions Select Committee, which called for an immediate joint investigation of the issue with the Home Office and recommended that the time allowed in the grace period be amended if necessary. I also cited a recent report from the British Red Cross and an earlier report from Freedom from Torture.

All the evidence shows, first, that asylum seekers are particularly vulnerable to destitution just at the point when they are granted refugee status or leave to remain, because it so often takes longer to move on than the allotted 28 days, after which asylum support is stopped, regardless of whether mainstream social security has started to be paid. Internal management statistics show that in 2015 the British Red Cross supported 9,138 primary service users and 4,130 dependants who were destitute. It questioned around 2,500 of them as to why they were destitute, and the largest group, a quarter, cited problems with moving on. This is a measure of the level of unnecessary destitution caused as a result of extremely vulnerable people being caught in a limbo between asylum support and mainstream support.

Secondly, it is clear from the evidence that it is not just the material impact but the psychological impact of destitution that should concern us, especially in the case of those who have suffered torture. They believe that they have reached the promised land of refugee status but instead are left without any support at a particularly vulnerable time—not grace but a form of purgatory. Just imagine how we would feel when the moment prayed for came about, but our life was actually made more difficult than it was already. Moreover, the Home Office itself has in the past emphasised the importance of the moving-on period for the longer-term integration of refugees yet, in trying to rush rather than move refugees on, the grace period serves to impede that integration.

In his response in Committee, the Minister referred to his letter of 21 January. However, that dealt with people without status, not those who had been granted it. He made the point, understandably—although I picked him up on it at the time, that it is not just a case of extending the time period but about making sure that people apply for those benefits promptly. He cited the BRC report which showed that only three—in fact, four—of the sample of 16 had applied within the first three weeks of being granted status. I accept that that is a legitimate point, and it is no one's interest, least of all that of the refugees, for a claim for benefits not to

[Baroness Lister of Burtersett]
be made promptly. After all, asylum support is significantly lower than mainstream social security. However, we must not underestimate the difficulties for people new to the system if they do not have the support of an organisation or friends who understand it. As my noble friend Lord Judd, who is not in his place, pointed out in Committee, sometimes mental health problems or a state of confusion can make it an unrealistic proposition. The BRC study found that the majority of service users questioned in Birmingham did not even know that they had only 28 days to complete a benefits claim after getting status. Most people struggle to understand the paperwork that they are sent.

The BRC identified 23 factors at play affecting the speed with which a refugee is able to make the transition to mainstream support. In some cases, five to 10 of those factors could hold up progress. It is a process involving multiple stakeholders and documents—daunting at the best of times.

Even when a refugee makes an expeditious claim, there is no guarantee that they will receive a payment within 28 days. Indeed, it can often take considerably longer than that from the date of the claim, as the BRC study found and the DWP's own research indicates. So while I agree that claiming in good time is part of the solution, it is not the whole of it. On the basis of the experience of refugee organisations, I suggest that a two-part solution is needed. First, there must be an improvement in procedures, including adequate advice and support to those granted status to ensure that they make a speedy claim. I would be grateful for an indication of what might have emerged from the discussions that officials have been having about how to improve those procedures. But that on its own is not sufficient, as can be seen, for example, from the experience of the deployment of a dedicated caseworker by the Holistic Integration Service in Scotland.

Secondly, this needs to be complemented by a legal right to continue receiving asylum support beyond the current 28 days. This amendment suggests 40 days, based on the experience of refugee organisations. Again understandably in Committee the Minister expressed the fear that simply adding days might not be enough, and of course any time limit is to some extent arbitrary. But combined with improved procedures so that, to cite the Minister, people get the care they need when they need it and the system works effectively, the view on the ground is that this is a more realistic and appropriate time period. I chose a time limit because I assumed that it would be easier to administer than a case-by-case approach triggered by the receipt of mainstream social security, but I would not be averse to the latter if the Government preferred that, and it would of course be open to the Minister to bring forward an alternative amendment on those lines at Third Reading. One way or another, I believe that we have the opportunity finally to resolve this issue. It is an injustice born of oversight, not intent, but it is none the less cruel for that.

Just as I finished drafting what to say in the debate, I read ILPA's briefing. It cites the case of EG, a little boy who starved to death during the moving-on period and whose mother died two days later. The serious case review identified the following national issue:

> "Westminster Local Safeguarding Children Board should write to the National Asylum Support Service and the Department for Work and Pensions to express its concern about the adverse consequences on vulnerable children and the resulting additional pressure on local professional agencies which are triggered in the transitional period between the withdrawal of support by the National Asylum Support Agency and entitlement to benefits".

That was dated April 2012; four years later, I am not sure that much has changed. Shockingly, according to Still Human Still Here, if anything, things have got worse. I apologise if that appears emotive, but I feel so strongly about this. It is not a party-political issue. None of the political parties would support a policy that deliberately created destitution during this period, yet none of them has done anything about it when in government. I appeal to the Minister to use the opportunity provided by this Bill to put right such an unnecessary wrong and ensure that the period after granting of refugee status can be a time of joy rather than one of destitution and psychological turmoil. I beg to move.

The Lord Bishop of Norwich: My Lords, I added my name to Amendment 116 largely as a result of past involvement with UN gateway resettlement programmes in Norwich for Congolese refugees. I discovered then how long it takes asylum seekers, once granted refugee status, to set themselves up so that they can live as citizens. The transition into work or even to mainstream benefits does not come at all quickly. Applying for national insurance numbers and biometric residence permits is slow going. Completing benefit application forms, and even getting hold of the right ones, is difficult because refugees are not always given the correct advice.

As the noble Baroness has just said, the possibility of getting what was most wanted—refugee status—and then finding that it is followed up by the removal of financial support and no accommodation is not so much an irony as a tragedy. We need a bigger window before asylum support is terminated. Starting the clock only when a biometric residence permit is obtained would inform the situation. I do not need to labour the point because it has already been very well put, but it is a terrible experience for refugees in a country to which they are immensely grateful to then experience the trauma of destitution when they have experienced so much trauma already. I warmly support this very straightforward amendment.

10 pm

Baroness Hamwee: My Lords, I was unaware of this situation until earlier stages in the Bill. Like the right reverend Prelate, I do not need to stress the concern; the noble Baroness has done so very effectively. She is absolutely right that this should not be left in the too-difficult-bureaucratically tray. It is an appalling situation and one that I cannot believe any politician would wish on—I was going to say the recipients, but they are not the recipients. That is the whole problem.

My noble friend's name has been left off, but I tabled Amendment 118 in this group, which is about the issue of vouchers and cash payment, relating to

both Sections 95 and 95A. The amendment, I hope, responds to the Minister's comments in Committee to a similar amendment. At the time he said:

"The legislation needs to be flexible enough".—[*Official Report*, 3/2/16; col. 1831.]

He referred to the fact that support is sometimes provided in the form of accommodation or services.

My amendment would provide that, as it were, the default is cash support for reasons of dignity. I do not think that I need to spell all this out again. We have covered it previously, and to me it is entirely obvious that it is undignified to be given support other than in a form that you can choose to spend—to an extent, as obviously there are many essentials to cover, but you can make their own choices. That is fundamental to human dignity, but it is also a matter of practicality.

My noble friend Lord Roberts of Llandudno referred earlier to the shop that had been established, I think on the Park Royal industrial estate, where everything was on sale for 25p—then it was going to go up to 50p, and then £1. The response was that we should see whether the shop will take the card. That does not respond appropriately to the point.

My amendment would specifically provide an answer to the Minister's points in Committee that support can be in the form of accommodation or services or, in exceptional circumstances, vouchers, which can be exchanged for goods and services, or a card entitling the holder to goods or services, but primarily in cash.

I wonder whether I can ask the Minister a question on one of his amendments in this group. Amendment 127 refers to,

"a person under the age of 18 who is unaccompanied and who … has leave to enter or remain … and is a person of a kind specified in regulations".

I realise that that wording is also included in Clause 64(9) but I also realise that I have no idea what,

"a person of a kind specified in regulations",

might be. I hope that when the Minister addresses that amendment he can explain what a person of a particular kind might be. What sort of kinds are we talking about?

Lord Roberts of Llandudno: Following what my noble friend Lady Hamwee said, I will add the word "choice". If you have a card or a voucher you have to go to certain outlets—usually the middle-range outlets, not the cheaper shops or the bargain shops. When you get only £36 a week, you have to spend your money very carefully indeed. I enjoy cheese biscuits. I forget the name of the make now; they are cheddar biscuits. Perhaps other Members do as well. I can go to a shop in Llandudno and the marked price is £1.39. I buy them sometimes. If I go to a pound shop they are two for £1. There is a massive difference between what you can buy from a shop that has possibly only limited goods on sale and from one of the ordinary shops—I will not mention them; no publicity this evening.

We are denying people the choice and ability to look after themselves and their families in the best possible way. We spoke earlier in the best interests of the child. I suggest that the best interests of the child here is that the parent can use the money and the value that they have in the best possible way, and is not limited to a certain number of shops. It should be open if you have cash in your hand. You should not be embarrassed at the till because your card is overspent; you will know exactly what you have. I have said this many times to the Minister: we always seem to have a great friendly understanding, but I never got my way on store cards. I am sure that there is the possibility in the Bill to look after the best interest of the child and those who have this benefit. I urge the Minister to accept my noble friend Lady Hamwee's amendment. It is in only exceptional circumstances that a card or voucher is used; usually it is a cash benefit that they can spend in whatever way they want.

Lord Rosser: Briefly, I am genuinely not clear what the problem is for the Government in accepting Amendment 116, which presumably would not involve large sums of money. As I understand it, it affects not people who have had their claims turned down and who have to leave the country, but people who receive a resident's permit to remain in the country for differing reasons and differing periods of time. If it is the case that there is a gap between asylum support payments and mainstream payments, because matters are not all being dealt with within what is presumably the intended 28-day period, then, frankly, why not agree to the amendment? I hope that the Government will be able to give a helpful response to what, on the face of it, appears to be a pretty straightforward issue.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, I am grateful to the noble Baroness, Lady Lister, for moving her amendment and for continuing to maintain pressure in this important area. She and the Red Cross have managed to identify a bureaucratic problem that we accept needs to be addressed.

In responding, I will place on record a few points. The first is my letter of 10 February, which is in the combined pack and set out my initial responses. I was also very grateful for the opportunity to meet—with the noble Baroness—officials. We talked through the reasons for the delays and the evidence. I know that that was something the officials found extremely helpful. It contributed to the response that I give now.

I thank the noble Baronesses, Lady Lister and Lady Hamwee, and the right reverend Prelate the Bishop of Norwich for bringing forward Amendment 116 concerning the transition off Home Office support of asylum seekers granted refugee status or other leave to remain. I agree with them on the importance of these arrangements, which we discussed at our meeting on 25 February. I also thank the British Red Cross for its excellent work in this area and for its advice ahead of this debate.

We allow a grace period of 28 days before Home Office asylum support ends in these cases. This is to provide time for the person to make other arrangements and move on from Home Office support. Many refugees have much to contribute to our economy as well as to our society, and work and integration go hand in hand. But some need support while they find work. I do not dispute that there is evidence—from the Department for Work and Pensions research in 2013 and the British Red Cross report of 2014; those two dates are relevant to the point I will come on to

[LORD BATES]
later—that some newly recognised refugees do not secure DWP benefits within 28 days. But the reasons for this are complex and the evidence does not show that the problem would be easily fixed simply by increasing the grace period to 40 days.

Our investigations into this show that there are two main reasons for delays. First, there is a lack of awareness among refugees of the need to apply for welfare benefits as soon as they are granted refugee status. Of the 16 people sampled in the Red Cross report, only three applied within the first three weeks of being granted status. That is a problem. Of course, they should apply for their biometric residence permit as soon as they get an indication, and that should take just a matter of days.

Help is on hand. I repeat that people are not left on their own with this. They are given advice and leaflets about the information and help that are available to them. Refugees can also seek help from the free telephone advice line run by Migrant Help—an excellent service that the Home Office funds. Migrant Help provides advice and support in building a new life in the UK, including help with housing and other issues. Refugees can also apply for integration loans. These can be used, for example, to pay a rent deposit or for essential domestic items or for work equipment. My point is that when we are identifying the problems, we must first make sure that people who are granted refugee status immediately understand what help is available to them and what they should do next. A new information leaflet for refugees was introduced in July 2015. In oral evidence in 2015 to the House of Commons Work and Pensions Committee session on benefits, the British Red Cross said the new leaflet provided "good guidance". It supplements the advice and assistance available from Migrant Help, which I referred to.

Secondly, the DWP research identified occasions on which a lack of awareness among staff of the correct processes contributed to the problem. Updated guidance and instructions have been issued to DWP front-line staff to address this. We welcome the Work and Pensions Committee's report on benefit delivery published on 21 December 2015, which recommends further work in this area. DWP will respond shortly to the report but intends to carry out an evaluation later this year of the impact of the improvements I have described.

The key point I make to the noble Baroness in assuring her that we take the concerns very seriously is that it is important that we have up-to-date evidence. I mentioned the reports from 2013 and 2014. We are now in 2016. Since those two dates, there has been a significant number of new initiatives and changes. We want to understand what the up-to-date periods of delay are.

10.15 pm

The noble Baroness and others have otherwise made a strong and persuasive case for this amendment to which I have listened very carefully. The length of the grace period is set out in the regulations for Section 95 support. I can confirm that, if the further DWP evaluation which will be undertaken later this year—I have referred to that—shows that it is necessary to increase the length of the grace period consistently to enable newly recognised refugees to begin to receive the welfare benefits for which they are eligible before their Home Office support ends, we undertake to return to Parliament with a proposal to amend the regulations to reflect that. Immigration regulations can be amended at any point in time. We are not bound by primary legislation having to go through to do that. We will come back with amended regulations to reflect the evidence which we receive.

I thank the noble Lords, Lord Roberts of Llandudno and Lord Rosser, and the noble Baroness, Lady Hamwee, for their Amendment 117. We had another vigorous debate on Azure cards. I am sure that the Chief Whip—my noble friend Lord Taylor of Holbeach, who is with me on the Front Bench—will recall fielding questions from the noble Lord, Lord Roberts, who is assiduous and tenacious in speaking up for some of the most vulnerable people. We respect that. He raised issues in Committee which related to the types of outlets which can take the cards. We agreed to look into that and to respond. I have listened very carefully again today to the views of noble Lords. I also wrote to Peers on 10 February covering this matter in some detail, as I referred to.

It is important to be clear about the circumstances in which decisions on applications for Section 95A support will be made. The failed asylum seekers applying for this support will generally be doing so because they have received notice that they are no longer eligible for the asylum support that they will until that point have been receiving under Section 95 of the 1999 Act. The reason they will have received that notice is that the courts will have just agreed that they do not need our protection and have no lawful basis to remain here. There will therefore be no question that it is right that they should leave the UK as soon as they are able to do so. The only issue will then be whether there exists a genuine obstacle that now prevents their departure; and where there is, support under Section 95A will be made available for as long as the obstacle exists.

What is meant by a "genuine obstacle" will be set out in regulations which, under the government amendments in this group, will be subject to the affirmative procedure—that point was covered in one of our reports on the regulations—so they will be debated and approved by both Houses of Parliament before they come into effect. Your Lordships will therefore have an opportunity to examine in detail the basis on which support under Section 95A will be provided and how it will operate.

A "genuine obstacle" to departure will include, for example, where medical evidence shows that the person is unfit to travel, or where they have applied for, but not yet been issued with, a travel document. This will involve a straightforward assessment of matters of fact. We do not consider, therefore, that a right of appeal is necessary and the evidence supports this conclusion. I again thank the Asylum Support Appeals Project for its excellent work and its briefing for this debate. This again highlights how uncommon it is for an allowed appeal to concern whether there is a genuine obstacle to departure, still less at the point the person's asylum appeal rights are exhausted. This is unsurprising.

Of the 105 destitute failed asylum seekers granted support under Section 4 of the 1999 Act in 2015 because of medical reasons or pregnancy or because they were taking all reasonable steps to leave the UK, only six applied for this support within 21 days of exhausting their asylum appeal rights. I also remind the House that we are retaining—not removing—a right of appeal for the present circumstances in which support appeals by failed asylum seekers commonly arise.

Around 87% of asylum support appeals in the year to August 2015 were against the denial of Section 4 support, most commonly where a failed asylum seeker had lodged further submissions or intended to do so. Schedule 10 will repeal Section 4 and provide Section 95 support for those with outstanding further submissions on protection grounds, or who are granted permission to apply for judicial review in relation to their asylum claim. There will remain a right of appeal against a decision that a person does not qualify for Section 95 support. On such an important issue we should be guided by evidence rather than opinion, and the case for a right of appeal for Section 95A support is simply not supported by the evidence available to us.

I thank the noble Baroness, Lady Hamwee, for Amendment 118. As I said in Committee on 3 February, the support provided to failed asylum seekers under the new Section 95A of the 1999 Act will generally be the same as that under Section 95 for asylum seekers. Section 95 support normally includes a cash allowance. The relevant regulations provide that, as a general rule, a weekly cash allowance shall be provided to cover the person's essential living needs. However, those regulations allow flexibility to provide support in other ways in individual cases if that is appropriate. As an example, in an emergency a supported person may need to be moved quickly from their current accommodation, and they might then be accommodated temporarily in full-board accommodation. It is not necessary in those circumstances to provide a cash allowance. We intend to make regulations relating to Section 95A support to make similar provision.

Government Amendments 119, 124 and 125 implement recommendations or take account of comments made by the Delegated Powers and Regulatory Reform Committee, for which we are grateful. I thank the committee again for the excellence of its advice on this Bill. The amendments will mean, in particular, that key details of the new system of Home Office and local authority support will require debate and approval by both Houses of Parliament before coming into effect.

Government Amendment 123 is a technical amendment, agreed with the Northern Ireland Executive, to update references in Schedule 3 to the Nationality, Immigration and Asylum Act 2002 to the Children (Northern Ireland) Order 1995, as amended.

Government Amendments 126 to 139 to Clauses 64, 67 and 68 extend the scope of the provisions for the transfer of unaccompanied migrant children from the care of one local authority to that of another, to cover those who arrive in the UK with refugee status as well as those applying for that status while they are here. The Government announced, on 28 January, their intention to work with the UNHCR to lead a new initiative to identify and resettle unaccompanied refugee children from conflict regions where it is in the best interests of the child. The amendments allow such children to be included in any transfer scheme introduced under this legislation, should voluntary arrangements not prove sufficient. The amendments also make clear that, should it prove necessary, one statutory transfer scheme is envisaged, with a number of local authorities included in it, rather than a series of schemes each run on a bilateral basis.

The noble Baroness asked about a "person of kind", as specified in regulation, the ability to extend the transfer provisions to refugee children resettled in the UK, as well as other unaccompanied migrant children, including unaccompanied asylum-seeking children. This is covered in other sections and my letter of 10 February. I hope that in the light of my answers and, in particular, that reassurance to the noble Baroness and the right reverend Prelate, the noble Baroness will feel able to withdraw her amendment at this stage, in the knowledge that she will be given an opportunity later this year to scrutinise the decision on the basis of the new evidence which will be accumulated to help us make that decision the right one.

Baroness Lister of Burtersett: My Lords, I am grateful to all noble Lords and the right reverend Prelate for their powerful support. I am also grateful to the Minister, because we have reached a fair compromise this evening and I appreciate that.

I think I got some clarification in those last statements but I just want to be clear that I got it right. The Minister will bring a Statement to both Houses, I guess, or certainly to this House, that will let us know the outcome even if the decision is not to change the regulations. So we will have a chance to debate the decision that is made, and it will be this year, I think he said. I would be grateful if that could be clarified. The Minister rightly paid tribute to the work of the British Red Cross in this area and there are other groups, such as the Refugee Council, which do a lot of work in this area. It would be very helpful if there could be a commitment that they could have some involvement in the discussions that lead up to the decision.

Lord Bates: To use the precise words we have agreed—obviously, we have agreed this between different government departments so I need to stick rigidly to what was said—I can confirm that if the further DWP evaluation I have referred to shows that it is necessary to increase the length of the grace period to consistently enable newly recognised refugees to begin to receive welfare benefits for which they are eligible before their Home Office support ends, we will return to Parliament with a proposal to amend the regulations to that effect. I am sure we can have an ongoing dialogue. I know that there is a very good relationship with the Red Cross in these areas. Officials meet it regularly and I am sure they will be able to share the information that comes in as it is received.

Baroness Lister of Burtersett: Are we talking about a timescale of this year—not the indefinite future?

Lord Bates: Yes, I did actually say that it would probably be later this year. That would give us the necessary time to gather the new information on the basis of the new changes that have been introduced to our procedures to try to address the concerns that the noble Baroness has identified.

Baroness Lister of Burtersett: I thank the Minister. I am sorry to pursue this but this feels like my last opportunity for the moment. On the understanding that if the decision is not to change it, we will be told that in some way, because otherwise we do not have any way of interrogating it—

Lord Bates: Just to clarify this point—because we are lip-reading from different ends of the Chamber here—I will write to the noble Baroness, setting out exactly how we will communicate this. But of course we will want to communicate how we are doing, not least to the DWP Select Committee, which has undertaken a report and the DWP is going to be responding to that shortly. I will set that out in a letter and I am sure it will be very clear.

Baroness Lister of Burtersett: I very much appreciate that. The noble Lord very kindly paid tribute to my tenacity on this issue. I am not going to give up. As he will expect, whatever the decision is, we will try to come back to it in some way. But I appreciate the fact that it sounds like finally someone has listened and heard. Certainly, from what Still Human Still Here put in its briefing to us, its assessment is that things have actually got worse, not better. But let us see what the evaluation shows. As I say, it would be helpful if there could be some involvement of the refugee organisations in that evaluation because they have on-the-ground knowledge.

On the basis that we will return to this in some form or other later in the year, I appreciate the response of the Minister and the work that officials have put into this. It is perhaps au revoir until we come back to this later in the year. I beg leave to withdraw the amendment.

Amendment 116 withdrawn.

Further consideration on Report adjourned.

Energy Bill [HL]

Returned from the Commons

The Bill was returned from the Commons with amendments.

House adjourned at 10.29 pm.

Volume 769
No. 126

Tuesday
15 March 2016

CONTENTS

Tuesday 15 March 2016