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Public Bill Committee

NATIONALITY AND BORDERS BILL

Eleventh Sitting

Thursday 28 October 2021

(Morning)

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Monday 1 November 2021

The Committee consisted of the following Members:

Chairs: † Sir Roger Gale, Siobhain McDonagh

† Anderson, Stuart *(Wolverhampton South West)* (Con)
† Baker, Duncan *(North Norfolk)* (Con)
† Blomfield, Paul *(Sheffield Central)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Gullis, Jonathan *(Stoke-on-Trent North)* (Con)
† Holmes, Paul *(Eastleigh)* (Con)
Howell, Paul *(Sedgefield)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
† McLaughlin, Anne *(Glasgow North East)* (SNP)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Pursglove, Tom *(Parliamentary Under-Secretary of State for the Home Department)*
† Richards, Nicola *(West Bromwich East)* (Con)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*
† Wood, Mike *(Dudley South)* (Con)

Rob Page, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 28 October 2021

(Morning)

[Sir Roger Gale *in the Chair*]

Nationality and Borders Bill

11.30 am

The Chair: The usual housekeeping notes: switch off your electronic devices, please, or put them on silent; and no food or drink is allowed in Committee—I do not think there is any, so that is good. Members are encouraged to wear masks, and I remind colleagues that they are worn not for your own protection, but for the protection of others, as a courtesy. Those who have speaking notes, will you please make them available to *Hansard* at the appropriate time, together with any documents that you are quoting from?

Clause 37

Illegal entry and similar offences

The Parliamentary Under-Secretary of State for the Home Department (Tom Pursglove): I beg to move amendment 110, in clause 37, page 36, line 4, at end insert—

"(C1A) A person who—

(a) is required under immigration rules not to travel to the United Kingdom without an ETA that is valid for the person's journey to the United Kingdom, and

(b) knowingly arrives in the United Kingdom without such an ETA,

commits an offence."

This amendment inserts a new offence into the Immigration Act 1971 of a person knowingly arriving in the United Kingdom without a valid electronic travel authorisation (ETA) in circumstances where they require such an ETA.

The Chair: With this it will be convenient to discuss the following:

Government amendments 111 to 117.

Amendment 188, in clause 37, page 37, line 17, at end insert—

"(10) Before this section comes into force, the Secretary of State must lay before Parliament a report on the implications of this section for devolved criminal justice functions and bodies in Northern Ireland and Scotland, including but not restricted to those of—

(a) the Director of Public Prosecutions in Northern Ireland;

(b) the Lord Advocate;

(c) the Police Service of Northern Ireland;

(d) Police Scotland;

(e) the Northern Ireland Prison Service;

(f) the Scottish Prison Service;

(g) the Northern Ireland Courts and Tribunals Service; and

(h) the Scottish Courts and Tribunals Service.

(11) A report under subsection (10) must include the following information—

(a) an assessment of the how the functions and bodies listed in (10) will be affected by this section;

(b) the financial implications for those bodies;

(c) the implications for existing devolved criminal justice and related policies;

(d) details of any consultation and engagement with those bodies; and

(e) the Secretary of State's findings, conclusions and proposed actions."

This amendment would require the Government to report on the implications of clause 36 for bodies involved in devolved criminal justice functions and to obtain Parliamentary approval for such a report, before the clause enters into force.

Clause stand part.

Government amendment 125.

Clause 60 stand part.

Government amendment 120.

Government new clause 21—*Electronic travel authorisations.*

Government new clause 22—*Liability of carriers.*

Tom Pursglove: Amendment 110 will add to the other offences in the clause the additional offence of knowingly arriving in the UK without an electronic travel authorisation where that is required. The current offence of knowingly entering the UK in breach of a deportation order or without leave dates back to the Immigration Act 1971, and is no longer considered entirely apt, given the changes in ways that people seek to come to the UK through irregular routes, and in particular the use of small boats.

Many of the individuals involved are intercepted in UK territorial seas and brought to the UK. They arrive in, but may not technically enter, the UK. However, we need to deter migrants from risking their lives and those of their families by taking such dangerous routes to the UK, and to take back control of our borders. We are committed to strengthening our border security by ensuring that everyone wishing to travel to the UK, except British and Irish citizens, seeks permission to do so before travelling.

The clause introduces new arrival offences to deal with the issue. I reassure the Committee that we do not seek to criminalise genuine refugees who come to the UK to seek asylum, but safe and legal routes can be used for that purpose, without risking lives.

Government amendments 111 to 117 and 125 are consequential amendments; they ensure that where the clause and schedule 5 cross-reference to the offence of arrival in the UK without the required entry clearance, they also refer to the new offence.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): The Minister has slightly skirted over the most fundamental point in all this, which is that lots of refugees who come to seek asylum in this country will be criminalised by the provision—a good 60% or 70%, even according to the Home Office's explanatory memorandum. How can he possibly feel comfortable about criminalising them through an offence that could see them imprisoned for up to four years?

Tom Pursglove: Clearly, any such cases would be referred to the Crown Prosecution Service or the relevant prosecuting authorities. They must make a judgment as

to whether it is in the public interest to pursue such a prosecution. I will say more about that in due course, but it is important to highlight that point.

Paul Blomfield (Sheffield Central) (Lab): Will the Minister give way?

Tom Pursglove: I will, but I will say more on this in due course.

Paul Blomfield: I am grateful to the Minister for giving way, but he may want to reflect on this now, although he might have been about to do so in due course. He referred to the CPS, but in July the CPS confirmed that, following an agreement made by prosecutors, police, Border Force, the National Crime Agency and the Home Office, it will no longer prosecute illegal entry.

Tom Pursglove: As I said—I will come on to this in more detail—it is for the prosecuting authorities to decide whether it is in the public interest to pursue a particular case.

On amendment 188, I reassure the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East that consideration of the issues he has listed is already taking place. I fully recognise that, while immigration offences are a reserved matter, the devolved Administrations in Scotland and Northern Ireland have responsibility for their criminal justice systems, and decisions on prosecutions are independently taken by the Crown Office and Procurator Fiscal Service in Scotland and the Public Prosecution Service in Northern Ireland.

My officials have been in contact with the Scottish Government criminal justice division, the Crown Office and Procurator Fiscal Service and the Department of Justice Northern Ireland, and have shared information about potential impacts and costings. The amendment would add an extra and unnecessary layer of parliamentary scrutiny to a process that is under way at official level. It would also have a critical impact on the commencement of the clause; it would add delay, but we need the measures in place to respond to the expected surge in dangerous small boat crossings when the weather improves in spring next year. I urge the hon. Member not to press his amendment.

On clause 37, the UK is experiencing a very serious problem of small boat arrivals; illegal migrants are crossing from the continent in small craft that are often equipped with only an outboard motor. They are unseaworthy and wholly unsuitable for a crossing of a minimum of 21 miles across some of the busiest sea lanes in the world. Many of the vessels break down and are intercepted by UK personnel on the grounds of safety of life at sea. The rescued migrants, including pregnant women and children, are generally brought to Dover.

The maximum sentence of six months does not reflect the seriousness of the offence of entering in breach of a deportation order. Increasing the maximum sentence to five years will disrupt the activities of foreign national offenders involved in criminal networks, including organised immigration crime.

The current offence of knowingly entering the UK without leave is ineffective and does not provide a sufficient deterrent to those wishing to enter the UK illegally by small boat. We accordingly propose increasing the maximum sentence from six months' to four years' imprisonment.

We also intend to create a new offence of arriving in the UK without an entry clearance where that is required. While some migrants seek to evade immigration control, for example by landing on a deserted beach, many more now arrive in the UK after being rescued at sea. It would not be right, and would be perverse, to have to let migrants take the risk of completing their journey without assistance, and of landing at a small beach, rather than rescuing them at sea, just because under current legislation, the act of intercepting them and bringing them to the UK could cast doubt on whether the migrants entered unlawfully.

It is worth repeating that we are not seeking to criminalise those who come to the UK genuinely to seek asylum, and who use safe and legal routes to do so. We will be targeting for prosecution those migrants in cases where there are aggravating factors—where they caused danger to themselves or others, including rescuers; where they caused severe disruption to services such as shipping routes, or the closure of the channel tunnel; or where they are criminals who have previously been deported from the UK or persons who have been repeatedly removed as failed asylum seekers. The increased prison penalty will allow appropriate sentences to be given to reflect the seriousness of this behaviour.

Stuart C. McDonald: The Minister is at his most reassuring when he tells us, basically, "Don't worry; we are not really going to apply the full provisions of the clause." The key point is that none of this is in the Bill. I want to remove these measures altogether, but could we at least put some of the restrictions in the Bill? Otherwise, we are putting in statute a law that criminalises the overwhelming majority of asylum seekers coming into the United Kingdom.

Tom Pursglove: I hope I will be able to provide the hon. Member with further reassurance by going on to say that, of course, the decision on whether prosecution is in the public interest rests with the Crown Prosecution Service in England and Wales, the Crown Office and Procurator Fiscal Service in Scotland and the Public Prosecution Service in Northern Ireland. In many cases, we will continue to seek the illegal migrant's removal, rather than their prosecution.

The amended and new offences will apply to all types of unlawful entry and arrival, rather than being limited to entry via small boats. We should not limit our response to the evasion of proper immigration procedures and controls depending on the method of entry employed. Doing that would risk causing displacement to another, potentially equally dangerous, route. The offences will therefore also apply equally to other means of evasion, such as concealment in a lorry.

We are also amending the offence of assisting unlawful immigration to the UK in breach of immigration law, known as facilitation, to include arrival in the UK. That will ensure that the offence of facilitation also applies to those assisting the new offence of arriving without a valid entry clearance.

Clause 60 is one of the six clauses drafted as marker clauses at introduction. As indicated in the explanatory notes and memorandum for the Delegated Powers and Regulatory Reform Committee, it was drafted as such

[Tom Pursglove]

in the interest of transparency—to make clear our intention of bringing forward substantive provisions on electronic travel authorisations. New clauses 21 and 22 are intended to replace clause 60.

Amendment 120 ensures the provisions in new clauses 21 and 22 can be extended to the Crown dependencies by Order in Council, should they wish to introduce their own electronic travel authorisation scheme by amending the Bill's extent provisions in clause 69. As I noted earlier, the Government are committed to strengthening the security of our border by ensuring that everyone who wishes to travel to the UK—except British and Irish citizens—has permission to do so before they travel. The Government will introduce an electronic travel authorisation scheme—the ETA scheme—to close the current gap in advance permissions, and to enhance our ability to prevent the travel of those who pose a threat to the UK.

At present, non-visa nationals coming to the UK for up to six months as visitors, and in limited other categories, can travel to the UK solely on the basis of their nationality, evidenced by their passport or other travel document. That information is sent to the Government by the majority of carriers as advance passenger information shortly before the individual embarks on their journey. The ETA scheme will allow security checks to be conducted and more informed decisions to be taken at an earlier stage in advance of travel. The introduction of an ETA scheme is in line with the approach that many of our international partners have taken to border security, including the United States, Canada, New Zealand and Australia.

New clause 21 would insert proposed new section 11C into part 1 of the Immigration Act 1971, which will allow the Secretary of State to make immigration rules to administer an ETA scheme. Those rules will include, but are not limited to, who must apply for an ETA, what that application must contain, how long an ETA will be valid for, and when an ETA should be granted, refused, varied or cancelled.

Additionally, new clause 21 also inserts proposed new section 11D into part 1 of the 1971 Act, allowing the Secretary of State to administer an electronic travel authorisation scheme on behalf of a Crown dependency, if requested to do so, in the event that a Crown dependency chooses to operate its own ETA scheme. It also enables the Secretary of State to make regulations to recognise an electronic travel authorisation issued by a Crown dependency as valid for travel to the UK, in line with the UK's commitment to maintaining the integrity and security of the common travel area.

To enforce the ETA scheme, new clause 22 builds on the existing carriers' liability scheme by incentivising carriers to check prior to boarding that a traveller holds an ETA—or another form of permission, such as a visa in electronic form—or risk a civil penalty. Such checks are necessary to enforce our requirement for everyone, except British and Irish nationals, to get permission to come to the UK before they travel.

At present, carriers are incentivised to check for the presence of a valid immigration document that satisfactorily establishes identity and nationality or citizenship, and any visa required. New clause 22 incentivises carriers to check that all passengers have the appropriate permission—including by checking with the Home Office, if that permission may be held only in digital form—or risk a penalty. The new clause also provides a statutory excuse against the imposition of a penalty, to cater for circumstances where it has not been possible for the carrier to check for the presence of an ETA, or another form of permission, through no fault of their own.

The Chair: I will call Mr McDonald first, because he has tabled an amendment that is in this group.

Stuart C. McDonald: Thank you very much indeed, Sir Roger.

I will speak in support of amendment 188 and against the clause. To respond to what the Minister said, and to build on one of my interventions, the Committee has to debate the clause as it appears before us, not as the Minister envisages it being implemented. As it stands, the clause is one of the Bill's low points, as it places in an already bleak Bill an extraordinarily broad criminal offence that will criminalise pretty much everyone who seeks asylum—many of whom are refugees—as well as survivors of trafficking. That will help to strengthen the control that traffickers have over their victims, rather than helping those victims.

It is unbelievable that should a Syrian, a Uyghur, a persecuted Christian convert, an Afghan interpreter, or a victim of the horrific crime of trafficking arrive seeking our protection, instead of being championed, they would be prosecuted and imprisoned by the regime put in place by the clause. Taken alongside the removal of the protections in the convention for asylum seekers in clause 34, this is a hugely retrograde step. It is also, again, utterly against the spirit and the letter of the refugee convention and the convention on trafficking, an issue that the Minister did not touch on.

11.45 am

Tom Pursglove: Notwithstanding what I have already said about the prosecution services taking a case-by-case approach, the hon. Member inquired about aggravating factors not being added to the Bill. The factors for prosecution when someone comes to the UK may change depending on the circumstances. We need to be able to react flexibly, so putting the factors in primary legislation would be too restrictive. I return to the point that I would expect prosecution services to look carefully at individual cases and to take all factors into account, so I would not accept his depiction.

Stuart C. McDonald: I take a small crumb of comfort from the fact that the Minister does seem to be evidencing some discomfort about how the clause is drafted. He is trying to reassure us by saying it will not be implemented as it is set out now, but that is not satisfactory. We parliamentarians are concerned with what is in the Bill. It is fine for the Minister to say that; I do not know how long he will be in office—hopefully many years—but there will be other Immigration Ministers to come, and they may take a completely different approach.

It may be challenging to put restrictions or a statutory defence in the Bill, but the Minister has to try. He must try much harder. We cannot leave such a broad criminal offence in the Bill simply on the basis of reassurances. I am absolutely of the view that the measures should be

removed—for the reasons relating to the refugee convention, and that is even before we get to the ethical considerations and the impact the measures will have on asylum seekers and trafficking victims.

What the clause actually says will make it infinitely harder for refugees or trafficking survivors who eventually make it all the way through the horrendous new system to integrate, put down roots and rebuild their lives. There are questions about how the measures would operate in practice; they raise the spectre of families being separated on arrival if one member is accused of committing this criminal offence. How much harder will it be for somebody to get a job in due course if they have this criminal conviction and spend years in prison? UK citizenship will essentially be near impossible for them.

As we have heard repeatedly, particularly from the hon. Member for Sheffield Central, all of this will achieve absolutely nothing. As Tony Smith, the borders expert, told us in the Committee's evidence sessions, use of the criminal justice system just has not worked. For smugglers and traffickers, it absolutely has, but not for their victims.

I have a question on scope. Will the Minister clarify whether someone who arrives with an entry clearance that is invalidated because it turns out that it was applied for on a false basis—for example, somebody who has secured a visit visa, when they are arriving to claim asylum—will have committed a criminal offence under the clause, because the leave to enter was obtained fraudulently? From the wording, I guess that they will, but it would be useful to hear the Minister's clarification.

On amendment 110, we broadly support the ETA regime and encouraging carriers to ensure that the conditions are met, but we are still not absolutely convinced of the need for yet another criminal offence. Why can the remedy for turning up without an ETA not simply be to require that person to leave, or to send them back again? What group of people are being targeted here who are not already impacted by one of the other offences?

Even the wording on the state of knowledge of the person committing the offence raises questions. It says the person must "knowingly" arrive here without the ETA or entry clearance. The required knowledge seems to relate only to knowledge of arrival without the ETA or entry clearance, and not knowledge of whether he required that ETA or entry clearance. If we put that together with the fact that the measure will apply to people arriving in the UK rather than entering it, there is a danger that this will cover people who rock up in ignorance at airport border security, rather than anyone who is trying to do anything sinister. Simple ignorance and a mistake could lead to years in prison. I might be wrong about that; it would be useful to have clarity. Why is a criminal offence necessary?

Our amendment 188 was tabled to prompt discussion about consultation with the devolved criminal justice systems and the personnel in Scotland and Northern Ireland. Again, it gives me some comfort that the Minister has had some of these discussions—at least, the Home Office has—and there has been the important recognition that decisions about public interest will be for devolved prosecutors. It is important to acknowledge that, and it is welcome.

In short, as clause 37 stands, it sets out a framework for arresting, prosecuting and imprisoning several thousand asylum seekers, refugees and trafficking victims every year. Is there an estimate of what the cost will be, regardless of how it is implemented in practice? What will that do the backlogs in courts struggling to recover from covid, and what would be the impact on prison capacity? Putting all that to one side, the fundamental issue is the impact on asylum seekers, refugees and trafficking victims. The clause, as drafted, will compound the already slow and needlessly painful process of securing protection and add a criminal sanction. It is going to achieve absolutely nothing except more human misery.

Jonathan Gullis (Stoke-on-Trent North) (Con): It will not be a shock to hon. Members that I fully support clause 37, which has absolutely the right intention. Ultimately, as we have discussed—we have heard the evidence from His Excellency the Australian high commissioner—if we are to deter people from making this dangerous journey, we should be making sure that the deterrents are strong enough.

We have part of that already: if somebody enters this country illegally, that obviously counts against their asylum claim. Now we are saying that the right thing is that if someone chooses to enter this country illegally, that could lead to a criminal prosecution with a strong prison sentence. That is exactly what the people of Stoke-on-Trent North, Kidsgrove and Talke want to hear at the end of the day, because 73% voted to leave and wanted to make sure that we took back control of our borders. We are a part of the asylum dispersal scheme already, with over 1,000 currently within the city region. We are happy to welcome them, but we want to see a change.

For example, we would love other parts of Scotland, not just Glasgow, to take on asylum seekers as part of the asylum dispersal scheme. Obviously, Glasgow is fully supportive, but other places voluntarily choose not to take part. We would like Labour-run Islington Borough Council to participate: by the end of 2020, it had not taken a single refugee.

The city of Stoke-on-Trent is expected to bear the burden of a large load and is taken advantage of, because ultimately we are an area that has been forgotten. The Labour party is still checking its Ordnance Survey map to find where the city of Stoke-on-Trent actually is—Captain Hindsight sent out a search party, and it got stuck in North Islington having chai latte and avocado on toast. Meanwhile, Conservative Members are more interested in delivering on the people's priorities. We are delivering on that in making sure that this provision is strong.

Neil Coyle (Bermondsey and Old Southwark) (Lab): Will the hon. Gentleman give way?

Jonathan Gullis: I would be more than happy to hear if the search party has found Stoke-on-Trent.

Neil Coyle: It is a wonderful image, but there is only one thing I cannot bear to eat and that is avocado—I just cannot bear it.

The hon. Member is talking about the good people of Stoke-on-Trent, but I remember that they voted for a manifesto, which got him elected, that included not

[Neil Coyle]

cutting our armed forces and not cutting our aid. Can he explain to the people of Stoke-on-Trent why his party has done exactly that, which leads to more people making the crossing?

The Chair: Order. No, I am afraid the hon. Gentleman cannot do so in the context of this Bill. It would not be in order.

Jonathan Gullis: Thank you, Sir Roger. I would love to find a way of answering that question, and by the way the people of Stoke-on-Trent would love to see the foreign aid budget cut entirely, and I fully support that as a long-term measure—

The Chair: Order. The same admonition applies to the hon. Gentleman. Can he please stay within the confines of the Bill?

Jonathan Gullis: I appreciate your patience, Sir Roger, and of course I will.

I will wrap up quickly by saying that clause 37 tells people that if they enter this country illegally, it will count against them. That is exactly what we should be doing, and I look forward to seeing that progress. Ultimately, we have illegal economic migrants making the journey across the English channel from Calais. The French need to do more, and the threat from the Home Secretary of not sending the additional £54 million has clearly worked—suddenly, I have never seen so many videos and photographs of French activity on their shores to try to prevent the small boats from leaving. It is about time that the French stood up and did what was right, because it is British taxpayers' money that is funding the additional support they need.

This is about stopping the illegal economic migrants who are funding criminality by putting money into the hands of criminal people-smuggling gangs. That is probably funding wider criminality in the United Kingdom, particularly drugs in our community, and therefore it is right that we stop them. Let us not forget that 70% of those making these illegal crossings are men aged between 18 and 35, whereas we want to be protecting women and children. We have done that in Afghanistan and with Syria: the safe and legal routes are the appropriate way of doing it.

Clause 37 is saying to those illegal economic migrants that we need to make sure they go through those safe and legal routes, or, as Baroness Scotland—the former Labour Minister, back in the years when the Labour party was electable—said, they should be claiming asylum in the first safe country they reach. There is nothing wrong with Greece, Italy or France. I am more than happy to holiday there, and I am sure anyone in mainland Europe would be more than happy to make such a place their home.

Bambos Charalambous (Enfield, Southgate) (Lab): It is very interesting to follow the hon. Member for Stoke-on-Trent North, but I will not rise to the bait.

Clause 37 is one of the most controversial new provisions in part 3 of the Bill. It expands the existing offence of illegal entry so that it encompasses arrival in the UK without a valid entry clearance. It also increases the maximum penalty for those entering without leave or arriving without a valid entry clearance from six months to four years' imprisonment. I have a question for the Minister. On Tuesday we debated clause 35, which reduced the penalty for a particularly serious offence from two years' imprisonment to one year. Is it the Government's intention to make entry a particularly serious offence for the purposes of the Bill? That is what the clause could do.

In effect, the Government's proposals criminalise the act of seeking asylum in the UK. The Opposition wholeheartedly oppose the measures and urge the Government to consider the following facts. First, clause 37 breaches article 31 of the refugee convention, which prohibits penalisation for irregular entry or stay when people are seeking asylum. The new offence of unlawful arrival is designed to—and will in practice—penalise refugees based on their mode of travel. That goes against everything that the convention stands for.

Article 31 of the refugee convention says that states

"shall not impose penalties, on account of their illegal entry or presence, on refugees…where their life or freedom was threatened…provided they present themselves without delay…and show good cause for their illegal entry or presence."

Clause 37 clearly violates the non-penalisation clause in the convention and is therefore in breach of the UK's obligations under international law.

When taken in combination with clause 12, which excludes UK territorial seas from being considered a place of claim, clause 37 has significant implications for access to protection and the risk of refoulement. Under the proposed changes, those who arrive irregularly, including through a safe third country, could be prosecuted and imprisoned for between one and four years. That is because it is not possible to apply for entry clearance for the purpose of claiming asylum in the UK, and yet an asylum seeker must be physically in the UK to make a claim. Bearing that in mind, 90% of those granted asylum in the United Kingdom are from countries whose nationals must hold entry clearance to enter the UK.

Neil Coyle: This is more a point of order than an intervention, Sir Roger. I have been contacted with a correction to the record: Islington has actually taken refugees, contrary to what the hon. Member for Stoke-on-Trent North said. Does my hon. Friend congratulate Islington on its record in taking refugees and asylum seekers, contrary to the inaccurate—I was going to say "deceitful", but I am not sure whether that is parliamentary language—and I am sure accidentally misleading comments from the hon. Gentleman?

Bambos Charalambous: I congratulate all local authorities that take asylum seekers. All local authorities should take their fair share—not just in Stoke-on-Trent or Islington, but those across the country.

In practice, someone with a well-founded fear of persecution arriving in the UK intending to claim asylum will be committing a criminal offence if clause 37 is implemented. Even if they have a visa, they will be committing an offence because their intention to claim asylum will be contrary to the intention for which the

entry clearance or visa was issued. We have heard the example of students: if a student entered on a student visa and claimed asylum in the UK, they would be in breach of that visa. The clause will impact tens of thousands of people, leading to people with legitimate cases serving time in prison for these new offences, followed by continued immigration detention under immigration powers. In this context, the Government are proposing to criminalise asylum-seekers based on their journey—which, in all likelihood, was the only viable route available to them.

Secondly, the proposals are unworkable. While criminalising those we should be seeking to protect, the Bill also fails to introduce safe and legal routes to claim asylum. Clause 37 comes amid a glaring lack of lawful routes for claiming asylum in the UK. Although we welcome things like the resettlement programmes, they are not a solution for those claiming asylum because they are so limited. They cover those who are already recognised as having the protection they need.

12 noon

We strongly believe that those in need of international protection who reach the UK's shores should not be criminalised. Under the Government's proposals they will be because they have pursued the only viable route available to them. The fact that an individual is proved to be a genuine refugee and had no option but to arrive in the UK will provide them with no statutory defence.

However, it is "highly unlikely" that these provisions would be "enforced and prosecuted". Those are not my words, but those of the Law Society. The Crown Prosecution Service has provided advice to prosecutors not to prosecute asylum seekers who are not involved in any criminal activity other than illegal entry, because they could

"usually be better dealt with by removal".

It is therefore unclear whether these provisions are even enforceable. As the Law Society points out,

"Passing unenforceable laws undermines the rule of law and contributes to legal uncertainty, for no discernible gain."

As I have explained, the proposals are inhumane, unenforceable and break international law. They must achieve something, surely. But no, they also fail to achieve the Government's reported aims. The proposals in parts 2 and 3 of the Bill will push refugees into the hands of the trafficking gangs the Government say they want to stop. They will increase the number of journeys made by unsafe routes, allowing smugglers to charge more for yet more dangerous journeys.

The Bill will not, as the Government have claimed, break the business model of smuggling gangs; it may even help them. It is shocking that there is not a word in the legislation about increasing safe and legal routes—something that would break the business model of the smuggling gangs and prevent unsafe journeys.

Finally, criminalising people in this way is incredibly costly and resource intensive. The Refugee Council estimates that it could cost up to £400 million more per year than the current system, or up to £1.65 billion for four years of custody. The cost of imprisoning people who are seeking asylum in this way will cost a staggering five times more than accommodating them in the asylum support system. Instead of investing in making the asylum system fairer and more effective, the Government aim to waste taxpayers' money punishing and detaining people who need help.

The Opposition oppose clause 37 in the strongest terms. The Government's claim to be pursuing a firm and fair immigration policy is not borne out by the Bill. Many of its provisions are neither firm nor fair; they are flawed. If implemented, clause 37 will punish people based on how they arrive in the UK, criminalise those we should be seeking to protect and lead to vulnerable people with a right to protection in the UK being criminalised for pursuing the only option available to them. It will impact the most vulnerable—people who are desperately in need of international protection, from Syrians fleeing war to persecuted minority groups such as Uyghurs and Christians.

I note that there are currently 124 Hongkongers in our asylum system who are under 24 and do not qualify for the British national overseas visa. Will the Minister clarify whether those Hongkongers, depending on how they arrived, would also be criminalised for having pro-democracy views in China? That would be the effect of this legislation.

I have one other question for the Minister. Is it the Government's intention to separate families at the border? If families arrive with children and the parents are detained, will the children be put into the UK care system?

I give notice that we will vote against clause 37.

Tom Pursglove: I will pick up on a few points in concluding our deliberations on the clause.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East spoke about costs. We are working with the various UK criminal justice systems and we have shared estimates of costs at official level as part of operationalising the plan. He sought further clarity about that and I hope that has provided reassurance. He also asked about entry clearance invalidation. If the leave is valid on arrival and is subsequently cancelled, no offence would have been committed, but if it is invalidated prior to arrival and the person knows that, the offence would have been committed.

Finally, I reiterate the point about the application of offences in this area. It bears repeating that we are targeting for prosecution those migrants for whom aggravating factors are involved—for example, those causing danger to themselves or others, including rescuers; those causing severe disruption to services such as shipping routes or closure of the channel tunnel; or those who have previously been removed from the UK as failed asylum seekers. The increased prison penalty will allow appropriate sentences to be given to reflect the seriousness of this behaviour.

Stuart C. McDonald: Has the Minister done an analysis of whether there are already criminal offences that cover the scenarios he has just outlined?

Tom Pursglove: We believe that this measure is required so that we can take appropriate action to deal with the sorts of circumstances I have just set out. I have made that clear on several occasions, and Members will have

[Tom Pursglove]

heard what I have said. I fully expect that that will continue to be the case, and that will be made clear at every opportunity.

I go back to the point that prosecuting services must judge cases on a case-by-case basis. They must of course take all the factors relevant to the individual case into account in deciding whether to proceed with it. They must also decide whether that is in the public interest. That is a very clear and established position, and will continue to be the case.

I am comfortable that the proposed approach is the right one to take in addressing the issues I have set out, which are particularly egregious and concerning and which require further action.

Amendment 110 agreed to.

Amendments made: 111, in clause 37, page 36, line 5, leave out "or (C1)" and insert ", (C1) or (C1A)".

This amendment is consequential on Amendment 110.

Amendment 112, in clause 37, page 36, line 19, leave out "or (C1)" and insert ", (C1) or (C1A)".

This amendment is consequential on Amendment 110.

Amendment 113, in clause 37, page 36, line 29, after "(C1)" insert ", (C1A)".

This amendment is consequential on Amendment 110.

Amendment 114, in clause 37, page 37, line 2, after "(C1)" insert ", (C1A)".

This amendment is consequential on Amendment 110.

Amendment 115, in clause 37, page 37, line 4, after "(C1)" insert ", (C1A)".

This amendment is consequential on Amendment 110.

Amendment 116, in clause 37, page 37, line 12, after "(C1)" insert ", (C1A)".

This amendment is consequential on Amendment 110.

Amendment 117, in clause 37, page 37, line 15, after "(C1)" insert ", (C1A)". *—(Tom Pursglove.)*

This amendment is consequential on Amendment 110.

Question put, That clause 37, as amended, stand part of the Bill.

The Committee divided: Ayes 8, Noes 7.

Division No. 32]

AYES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	
Lynch, Holly	Owatemi, Taiwo

Question accordingly agreed to.

Clause 37, as amended, ordered to stand part of the Bill.

Clause 38

ASSISTING UNLAWFUL IMMIGRATION OR ASYLUM SEEKER

Bambos Charalambous: I beg to move amendment 33, in clause 38, page 37, line 22, leave out subsection (2).

This amendment deletes the subsection which removes "and for gain" from section 25A(1)(a) of the Immigration Act 1971. Currently, under section 25A(1)(a), a person commits an offence if the person knowingly "and for gain" facilitates the arrival in the UK of an individual who the person knows, or has reasonable cause to believe, is an asylum seeker. This amendment preserves the status quo.

Following on from clause 37, clause 38 proposes to remove the words "and for gain" from section 25A of the Immigration Act 1971. Presently, under section 25A(1), it is an offence for a person knowingly and for gain to facilitate the arrival or entry, or attempted arrival or entry, of an asylum seeker into the UK. Clause 38 therefore seeks to broaden the section 25A offence to allow the Home Office to charge more people for facilitating the arrival of asylum seekers to the UK. Under the clause, someone acting purely altruistically to help an asylum seeker would be committing a criminal offence. It extends who could be convicted of the offence of knowingly facilitating the entry to the UK of an asylum seeker to individuals acting out of compassion for other people for no financial benefit.

As the Committee will know, the clause has received widespread criticism, and rightly so. I am not, for example, the first to observe that clause 38 would almost certainly have criminalised and prosecuted the likes of Sir Nicholas Winton for his life-saving actions in rescuing hundreds of children on the Kindertransport in 1939. Indeed, in July, when the Bill passed its Second Reading, many highlighted that clause 38 is so draconian that it could criminalise the Royal National Lifeboat Institution and its volunteers for helping those in danger at sea. If they were deemed to be facilitating asylum seekers' arrival in the UK, they could face life imprisonment—life in prison for saving lives! I ask the Minister and this Committee: when did saving lives become a criminal offence?

These measures will criminalise friends, family members and individuals with humanitarian motives. The Minister's predecessor, the hon. Member for Croydon South (Chris Philp), attempted to provide reassurance on Second Reading by claiming that the Government have

"no intention in this Bill to criminalise bona fide, genuine rescue operations".—[*Official Report*, 20 July 2021; Vol. 699, c. 915.]

However, the Bill as it is currently written does not provide any similarly explicit reassurances.

The Refugee and Migrant Children's Consortium is especially concerned about the clause and its impact on people who provide assistance to vulnerable young people seeking asylum. It is concerned that such measures must in no way serve to deter people from saving the lives of babies and children at sea, with tragic examples demonstrating the cost of there being no safe and legal routes to the UK for families fleeing persecution. The Opposition have repeatedly drawn attention to that in Committee.

For asylum seekers who assist each other in coming to the UK to claim asylum, the implications of this measure are incredibly serious. Clause 38 increases the penalty for this offence to life imprisonment. These

increased sentences, as raised by Zoe Gardner of the Joint Council for the Welfare of Immigrants in one of the Committee's evidence sessions, risk being used to prosecute asylum seekers themselves, not the smuggling gangs and members of international criminal gangs they are intended for.

For example, according to the National Crime Agency, there is evidence that asylum seekers can often be forced to carry out work without pay for smuggling gangs. In an investigation by *The Independent* newspaper, migrants reported traffickers taking their money for crossings to the UK, only to then demand that they work for free in order to make the journey, and that work includes being forced to steer vessels during dangerous crossings.

In *The Independent* investigation, one Yemeni man demonstrated how traffickers are aware that they can criminalise asylum seekers and refugees in this way. He described the power this gives them, in that a smuggler

"told me, 'I can kill you here, no one will identify me and I will escape.' He took videos of me and of my friends while we were preparing boats for other journeys. He said, 'I could now accuse you of being a smuggler, you could be in jail.' "

This proves how the persecuted can be coerced and controlled by these criminals, and will in turn in effect become criminals themselves under the punitive policy making of the Home Office.

Of course, the prosecution of victims for the crimes of their perpetrators is something that the refugee convention, drafted 70 years ago, considers. Article 31 of the convention is intended to protect refugees from prosecution for irregular entry because refugees are, by definition, forced into dangerous and risky situations during their flight. This is something the Government are deliberately trying to wash their hands of—and to do what? To pursue a reckless policy that will prosecute those who are demonstrably not criminals, but genuine asylum seekers and refugees.

It is worth considering whether clause 38 is indeed workable. As we know, clause 37 is likely to be unenforceable and clause 38 is equally, if not more, outrageous. In relation to our international law obligations, there does not appear to be any consideration of how this clause and the new expanded criminal offences in clauses 37 and 38 will be compatible with the duty of a ship to attempt to rescue persons in danger at sea. For example, article 98(1) of the United Nations convention of the law of the sea provides that every state shall require ships

"to render assistance to any person found at sea in danger of being lost",

and

"to proceed with all possible speed to the rescue of persons in distress".

More interestingly in relation to clause 38, paragraph 2.1.10 of the annex to the international convention on maritime search and rescue 1979—the SAR convention—explicitly obliges

"that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found."

With these rules in mind, it appears that the UK cannot legally prohibit vessels from rescuing asylum seekers at sea, and I urge the Minister to consider the Opposition's amendment 33, which will preserve the status quo.

12.15 pm

Our amendment will delete the subsection that removes "and for gain" from section 25A(1)(a) of the Immigration Act 1971. This will ensure that those who assist persons for gain will be prosecuted, while genuine asylum seekers and refugees are protected. It will bring the Bill in line with the advice provided by the Crown Prosecution Service in July, which confirmed that

"in cases involving the use of a boat where the sole intention is to be intercepted by BF at sea and brought into port for asylum claims to be made, no breach of immigration law will take place…The same applies where the intention is to sail the boat to a designated port of entry in order to claim asylum."

In 2019, the Home Secretary vowed to make dangerous channel crossings unviable, but numbers have only increased since then. To distract from the Government's failure, the Bill and measures in parts 2 and 3 have been introduced under the entirely baseless premise that people seeking asylum can be deterred from doing so. In reality, the Bill will not deter people from seeking asylum. It will, however, line the pockets of people-smugglers and push genuine asylum seekers and refugees into their hands and into increasingly dangerous journeys and complicated routes.

The Opposition are worried that, if measures in clauses 37 and 38 are enforced, the Government will let vulnerable people with a genuine need for protection be punished, rather than the traffickers, people-smugglers and organised criminal gangs who push them into these dangerous crossings. Targeting them takes international co-operation, not washing our hands of our international obligations under international human rights and maritime law.

Stuart C. McDonald: I wish briefly to associate myself with everything the shadow Minister just said; he covered pretty much all the ground that I would have covered. This ridiculous clause tramples all over our international obligations. I suspect what will happen today, as happened on Second Reading, is that we will be reassured that the clause will be used in a certain way so that the RNLI and others will not be targeted. Maybe I am wrong, which would be good, but the scope of the clause is extraordinary.

If the defence, as it was on Second Reading, is, "We're not going to go after these people," that is not good enough. You have to put that on the face of the Bill. We cannot create criminal offences and ask folk to go about breaching those laws and committing crimes in the hope that the Government keep their promise that they will not be prosecuted. It is a fundamental rule of legal principle—*[Interruption.]* The Minister is shaking his head: if that is not the defence, I look forward to hearing what is.

Tom Pursglove: I am grateful to the hon. Members for Enfield, Southgate and for Halifax for providing the opportunity to explain the difficulties involved in securing convictions for an odious crime that targets and exploits vulnerable people and allows organised criminals to thrive.

Gain can be obtained in many ways, but cannot always be proved to the evidential standard required for a successful prosecution: for example, money transfers made by other family members abroad or made cash in

[Tom Pursglove]

hand, promises of servitude by the asylum seeker or others, or the provision of assistance in the facilitation act, such as by avoiding paying a fee by agreeing to steer a small boat. It is right that all available evidence should be considered and all relevant behaviour taken into account in investigating a serious offence. We are, at present, limited by what is an unrealistic evidential requirement that does not take account of the reality of how international organised crime operates.

In amending the offence, we are mindful of the excellent work of those acting from humanitarian motives both now and in the past. I understand fully hon. Members' concerns that the wrong people will be drawn into the investigative and judicial process. We are therefore retaining the defence available to organisations whose aim is to assist asylum seekers and who do not charge for their services. I also recognise the bravery of volunteers working for the RNLI and lifeboat crews who undertake vital work in protecting lives at sea.

I will set out my intention to amend this clause on Report to ensure that organisations such as the RNLI, those directed by Her Majesty's Coastguard, and individuals who fulfil their obligations in rescuing those in distress at sea may continue as they do now. We also intend to ensure that this provision does not prevent those responsible for vessels from complying with their obligations if they discover stowaways on board as they journey to the UK. I understand that some members of the Committee would prefer to have those amendments ready to debate now, but the issues are complex and we must ensure that we do not inadvertently provide loopholes to be exploited by criminal gangs who will look for any means to avoid prosecution.

The effect of amendment 33 is that, by retaining the constraint and having to prove the offence was committed again, we will only rarely be able to respond to and deter those committing the offence and will continue to place an unrealistic burden on our law enforcement officers and prosecutors. I therefore ask the hon. Gentleman to withdraw the amendment, although I hope he will be reassured that I intend to table on Report an amendment to address the crux of the issues that he raised. I hope that hon. Members across the House will feel able to support the amendment that I intend to table.

Bambos Charalambous: I heard what the Minister said, but Second Reading was back in July and there has been plenty of time to table an amendment. What could be achieved by his amendment can easily be achieved by voting for this one, so I wish to press our amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 8.

Division No. 33]

AYES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	
Lynch, Holly	Owatemi, Taiwo

NOES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Neil Coyle (Bermondsey and Old Southwark) (Lab): I beg to move amendment 162, in clause 38, page 37, line 23, at end insert—

'(3) In section 25A(3) of the Immigration Act 1971 (helping asylum seeker to enter United Kingdom), for paragraph (a) substitute—

"(a) aims to—

(i) protect lives at sea, or

(ii) assist asylum-seekers; and""

This amendment would add people working on behalf of organisations that aim to protect lives at sea to those who are exempt for prosecution for helping someone seeking asylum to enter the UK, as long as those organisations do not charge for their services.

In moving this amendment, I remind colleagues of my registered interest in respect of the excellent support that I get from RAMP—the Refugee, Asylum and Migration Policy Project—and especially from Heather Staff. I also thank the British Red Cross for its work, with a personal thank you to John Featonby for his advice and support to me and my team.

I guess that the amendment tries to help the Government, because the Minister says that he wants to table an amendment on Report. If he accepts this one, he may not need to. He called me a crafty parliamentarian last week, but there is nothing crafty about this. This is a genuine offer of a ready-made amendment that he can accept. It is a humanitarian exemption that would add people working on behalf of organisations that aim to protect life at sea to those exempt from prosecution for helping someone avoid drowning, as long as those organisations do not charge for their services and are not profit-making. It is exactly along the lines he has just outlined.

Sadly, as things stand, my amendment is necessary because this clause is deeply un-British. It denies our traditions and our heritage—our Christian heritage—of not walking on by. We have touched on Islington, which I believe has 137 asylum-seeking refugees and is a borough sanctuary. My own borough of Southwark had 1,022 in June according to Home Office figures. That number has since escalated massively because of the humiliation of our withdrawal from Afghanistan. But we do not whinge in Southwark. We do not whine about our Christian commitment and moral duty to the people we are supporting. We do not mind our international obligations being upheld. We are proud to be supportive of those in need.

It is extraordinary that the Bill, and this clause in particular, seeks to make UK citizens bad Samaritans. Without my amendment, the clause requires turning a blind eye. It requires people to watch other people die. It is a sickening extension of the culture war. It is in breach of our international obligations and law. The proposed changes risk UK-flagged vessels being pushed into a Kafkaesque Catch-22: assist those in distress and risk criminal liability or do not assist, breach duties of international law and witness the deaths of other people. This risks criminalising voluntary assistance while failing to provide for a humanitarian exemption.

My amendment presses the Government for such an exemption, along the lines that the Minister outlined and says that he wants. Not least, it would honour our international commitments and protect the RNLI and its amazing work across our country. From this Room, we can see the Thames. The busiest RNLI station in the country is here in London. Since 2002, the RNLI has saved more than 300 lives in the Thames, including in my constituency.

The RNLI saved 372 people from drowning in our waters in 2019, and more than 143,000 people since its creation in 1824. That is an astonishing achievement that we should be proud of and support. It is also astonishing that in its 200-year history, it has never been so attacked or vilified, including by the far right, and inflamed by Government narrative and rhetoric. It is with some regret that we seek to amend clause 38, to spell out that those who do their duty and protect lives at sea and in our waters, including when they need to rescue asylum seekers, are not penalised and do not face prison sentences.

The Government say that they want to stop smuggling and penalise smugglers, but if that was the case there would be no need to remove the words "for gain". Instead, with one swipe, the Government have intentionally—or perhaps not, if anyone wants to be more generous than I—endangered the commitment to save life at sea, here and at other points, putting legislation at odds with our national maritime commitments. It is also deeply dehumanising, in a way that no UK Government have ever systematically attempted in the past. We have only ever seen such things abroad—I do not think I need to list all the countries involved—with catastrophic consequences, in time, for those involved.

To emphasise the humanitarian issues, I want to quote some of those frontline RNLI crew members in the English channel, who put it like this:

"I think what you realise when you get to the migrant boats, when you get to these dinghies, I think what hits you more than anything, irrespective of your own thoughts on this situation is the desperation that they must be in to put themselves in this situation and then you look at them as human beings irrespective of where they have come from, human beings that are in a state of distress that need rescuing, so every other thought goes out of your mind."

Another said:

"While there are people in small boats in the channel, there is danger. My motivation is to stop anyone drowning and washing up on the beaches. I don't care what time of day or night it is, a life is a life, and I will continue to give my best to the RNLI to protect as many as we can. I'd like to think that the crew all feel the same. You have to put the politics of it to one side; they are human beings in distress, and they need us. I am grateful that the RNLI support us and that we don't discriminate against anyone. I am proud of the work that we do and the lives that we have saved. I want us to shout about what we do and the care and empathy that we show."

He goes on:

"This country is having a crisis of empathy and I love that the RNLI are standing up for our morals and showing what I truly believe is the Britain we should all be proud of."

That is the Britain that I am also proud of. I believe that the Government have stoked a filthy culture war, and it has got filthy in our waters—due not just to the sewage that they are dumping in it, but the hate that they provoke and the consequences it has had.

Let me talk about the situation as it stands before we get to the amendment that tries to protect the humanitarian organisations involved. Another crew member put it like this:

"Our inshore lifeboat was called to a small inflatable with seven people on board…four adults and three children…They'd broken down…Everybody on the boat [was]…sick, we thought they all needed medical attention...we needed to get them ashore, [and] some of the paramedics…were there to take care of them [and] were able to establish that they had exposure. But when we got there, some members of the public who saw us coming in with two families, little children, four or five years old in this boat, were standing there on the beach"

—I apologise in advance, Sir Roger—

"shouting, 'Fuck off back to France' at us as we tried to bring them in".

This crew member said they had never been met by an angry mob like that before, and it was one of the most upsetting things they had ever seen. That situation is happening right now as a direct result of irresponsible rhetoric and policies.

Another crew member said:

"We've had some vile abuse thrown at us. We've been accused of all sorts of things. I've personally had personal phone calls at the lifeboat station people telling me what they think of me by bringing migrants in, but at the end of the day we are here to save lives at sea and all the time we are here that is what we will carry on doing."

I pay tribute to the heroism and courage in the face of irresponsibility from this Administration.

Removing the words "for gain" has caused unnecessary distress already, in an already tough job and situation. I urge the Government to reconsider their communications on the Bill—specifically the clause and in relation to my amendment—and on the issue more widely, especially the language used when talking about asylum seekers. It has already led to such horrendous abuse of the RNLI and others, as well as the degrading language around people in need of sanctuary.

The Government are responsible for the hate that asylum seekers and volunteers and professionals at RNLI face. There are also further unintended victims of the childishness on the issue. I speak as a proud member of Her Majesty's loyal Opposition. I am fearful that, should my amendment not be accepted, this grubby politics risks a course of action that will drag Her Majesty into the mess that the Government are creating. Without my amendment, if people continue to film and to seek action against the volunteers and the crew, and organisations such as the RNLI, which save lives, the chances of prosecution and prison will increasingly grow, both on an individual basis and with respect to attacks on the organisation itself.

There is a reason for the "R" in RNLI: the president is His Royal Highness the Duke of Kent. He is the Queen's first cousin, and he succeeded both his father and his mother to become RNLI president in 1969. If the Committee does not agree to the amendment, we risk the astonishing situation—created entirely by the Government—of the Queen facing calls to lock up her own cousin. Those more attuned to British history will know that that would have been more likely under the first Queen Elizabeth than under the current monarch. It is a genuinely ridiculous situation.

12.30 pm

The Duke of Kent is not the only royal with proud RNLI connections, as Prince Philip was a proud supporter, too. The Duke of Edinburgh became a member of its

council in 1972—well before I was born—and the state-of-the-art Shannon class boat will be called Duke of Edinburgh in his memory. By not accepting the amendment to protect the work of the volunteers and crew of the RNLI, the Government are not just putting at risk the great work of the RNLI, but insulting the Duke of Edinburgh's memory.

The royal connection does not end there. One last but very significant royal connection is through Her Majesty the Queen, who has been patron of the RNLI since 1952, giving seven decades of service to the organisation. The Government's proposals are nothing short of an attack on the monarch. We should thank and honour her for her service to our country, including the RNLI, which is a British institution that faces such an awful challenge as a result of this badly thought-through Bill.

The Minister says that he wants to amend the Bill later, but he has had months to draft such an amendment. I offer my amendment today to protect Her Majesty and the RNLI. Without my amendment, or the one the Minister says he will table, the ultimate sanction for Her Majesty would be an invitation to spend some time at her own pleasure.

In 70 years of connection with the RNLI, Her Majesty has named five classes of lifeboat that serve and save lives on our shores without discrimination: the Solent class, the Mersey class, the Waveney class and the two Severn classes. The Government simply claim that organisations such as the RNLI will not be criminalised, but that is not clear in the Bill, and it is not inconceivable that Her Majesty would be dragged into the unseemly row about the role of the RNLI. I urge the Government to meet royal representatives before they draft their amendment for consideration on Report, and I hope that they will not bring the royal family into disrepute by leaving the Bill as it is.

My amendment would make the humanitarian exemption crystal clear, and it could save the Government considerable embarrassment. The RNLI does not aim to assist asylum seekers, but it does aim to save lives and does not charge for the privilege. Will the Minister set that out clearly in the Bill? I am glad that he has mentioned drafting an amendment, and I look forward to seeing it. Those who share our concerns about the attacks on the RNLI, and about the position in which the Government are leaving it, can donate. I will not read out the full web address, but I will suggest that they search "donate RNLI" online.

The RNLI has implored Ministers not to politicise its work. In July, the RNLI said that it was "very proud" of its humanitarian work and that it would continue to respond to coastguard callouts to rescue at-risk channel migrants, in line with its legal duty. Mark Dowie, chief executive of the RNLI, said:

> "Imagine being out of sight of land, running out of fuel, coming across incredibly busy shipping lanes when you're frightened and you don't know which direction you're going in. That is by anyone's standards distress. Our role in this is incredibly important: simply to respond to a need to save lives".

Although the charity does not take a stance on political matters, he also said:

> "These islands have the reputation for doing the right thing and being decent societies, and we should be very proud of the work we're doing to bring these people home safe."

I wholeheartedly support that sentiment.

In the light of the attacks and agitation by the far right, spread by irresponsible Ministers in the narrative used by the Government, including the Home Secretary yesterday, the RNLI put out another statement more recently. In July, it said very powerfully:

> "Our charity exists to save lives at sea. Our mission is to save every one. Our lifesavers are compelled to help those in need without judgement of how they came to be in the water. They have done so since the RNLI was founded in 1824 and this will always be our ethos."

I urge the Government to accept my amendment and end their attacks on the RNLI—an amazing and profoundly British institution—and, by association, on the royal family.

Of course, other parties that are affected by the Government's plans could benefit from the amendment. The removal of "for gain" could still catch merchant, fishing and private vessels that are bound by international duties to rescue a person in distress at sea under maritime conventions. Significantly, for merchant vessels the change to the Immigration Act 1971 creates novel criminal liability for private vessels such as merchant, fishing or pleasure craft involved in rescues. Those not acting on behalf of an organisation and voluntarily providing assistance could now face criminal liability as a result of the legislation. While statistics on rescues by private vessels in UK territorial waters are not readily available, globally, of the 152,000 individuals rescued at sea in 2015, some 16,000 were aided by merchant ships. The Government said yesterday that they want to increase the use of the red ensign. Here is a means for them to do that, rather than risk criminalising the activity of those ships.

In light of the Bill, private pleasure craft have already been advised to avoid giving assistance to vessels in distress, because the Government have introduced legislation without an amendment. The cruising manager—I find that an interesting title—of the Royal Yachting Association is quoted as saying:

> "People believe you must render assistance at sea but you don't have to if it puts your boat in danger. It sounds very harsh, but you could have a massive bureaucratic problem. Our advice is stand off and report".

That is a direct result of the Bill, without the amendment. The Minister says he wants to introduce one later, but as things stand, lives have been put at risk because private craft have been told not to intervene. Throughout the Committee, Government and Opposition Members have said that they do not want to put lives at risk, so the amendment would help them to meet their stated aim.

Before I conclude, let me touch on one or two other matters, such as direct discrimination and trying to distinguish who to help at sea. The Bill requires sailors, fisherman, merchants or anyone at sea to know the nationality of the person they are saving. It is unclear to me how people check someone's passport, or their nationality, before bringing them aboard.

David Matyas, writing in the *European Journal of International Law*, has highlighted the fact that the Bill also risks discrimination against non-white UK nationals—people who might not "look British". As he puts it, more delicately:

> "Without the cover of the 'and for gain' condition, however, private seafarers may take overly broad impressions of who they 'believe to not be a UK national'".

So, they may pull out by virtue of their beliefs about who might be British. They may not help non-white UK nationals as a result of where the Government have put them.

The proposals are scandalous. We have a Government who seek to make the seas less safe for all—including through sewage, of course—and to criminalise charities and sailors if they stop people drowning. We have also seen reports that the Government want to give immunity for "pushbacks". We will come to that matter when we debate clause 41, so I will not discuss it further today.

This is the UK Government seemingly suggesting that they could make themselves exempt from international law. There is no such immunity. My hon. Friend the Member for Enfield, Southgate has mentioned the UN convention on the law of the sea—the constitution of the oceans—under which the UK has a duty to render assistance at sea. We are a state party to UNCLOS, for the reasons my hon. Friend has given. Under international treaty law, the UK and its flagged vessels have duties to perform rescues at sea. Unlike in the Mediterranean, where the allocation of duties is obscured by territorial jurisdictions, the obligations in the Channel are much clearer—it is France or us.

Let me refer to two other legal treaties. The safety of life at sea convention, to which the UK is also a state party, states at regulation V that the

"master of a ship at sea which is in a position to be able to provide assistance, on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance."

The salvage convention, also ratified by the UK, establishes a duty to render assistance, stating at article 10 that

"every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea."

We have international obligations. We need humanitarian means to intervene when people find themselves distressed, stranded or at risk of being lost—which means dying, nothing else. We need that protection. The obligation is clear, the morality is clear, the risk to lives is clear, and the risk of disgrace is clear if the Minister fails to accept the amendment.

The Minister might claim that the RNLI will be protected later, but why have the Government put the RNLI in this position in the first place? Why put merchant fishing vessels in an extremely difficult place or leave matters to discretion? Why be shy about these exemptions, and why were they not in the Bill to begin with? If this is about smugglers and people traffickers, why not make that abundantly clear by accepting amendment 162?

The explanatory notes to the Bill state that the removal of the "for gain" condition is driven by evidentiary difficulties, but that seems to have been contradicted by the Minister today, although if the goal of the change is to ease the evidentiary burden for prosecutors, that simply must not be done when lives are in danger at sea. Establishing a humanitarian exception is a solution to this situation. I hope my amendment is accepted today, or, in the fine traditions and spirit of parliamentary democracy, I look forward to its being stolen by the Government when we consider the Bill on Report.

Tom Pursglove: I am grateful to the hon. Gentleman, of whom I am very fond, for tabling the amendment. When I referred to him in a previous sitting as a crafty parliamentarian, I meant that in the nicest of ways. I am very fond of him, and I know that he is a canny parliamentarian who is passionate about the issues he raises.

Let me touch on various points that the hon. Gentleman made. The RNLI does, rightly, have a proud royal connection, and long may that continue. Of course, the RNLI, Her Majesty's Coastguard and others provide an invaluable service in saving lives at sea. We as a Government are conscious of that, and that tradition and that vital service must continue to be upheld. The hon. Gentleman mounted a passionate defence of the monarchy, and I think I speak for the whole Government when I say that we are proud monarchists. Perhaps he might have a word with some of his colleagues about the stance they have traditionally taken in relation to the monarchy over the years, but we have proud support for our monarchy in this country.

I also want to say that the behaviour the hon. Gentleman talked about as being exhibited towards members of the RNLI and volunteers is completely unacceptable and despicable. There is a responsibility on Members across the House to speak with one voice in saying that such behaviour is despicable, and we should condemn it in the strongest terms. I think the Committee is united in that, and I hope the hon. Gentleman will take that message back to the RNLI volunteers he is engaging with in his constituency, because we do speak with one voice in that regard.

On that note, I want to mention the incident off the coast of Harwich during the past few days. Two men were rescued, but, unfortunately, an extensive search and rescue operation had to be called off after a man was reported to have entered the water. That incident highlights yet again the extreme danger of crossing the channel in small boats and the callous disregard for life shown by the criminal gangs responsible for facilitating crossings. I want to place on record my thanks to all those who responded to the incident and who continue to work tirelessly to protect lives at sea while securing our border. Their work is invaluable—it is incredibly important—and I know all Members would wish thanks to be expressed to them for the work they do.

I appreciate that the hon. Gentleman's amendment seeks to protect those who act to save lives at sea, but as I have already set out, it is the Government's intention to amend the clause on Report to do just that. The only thing I would add—Members have rightly spoken passionately about the importance of the issue—is that I want to be confident that the amendment delivering that is as robust as it needs to be, and that it achieves properly and to the fullest extent the objective I think we all share.

I therefore ask the hon. Gentleman to let me take the matter away. What has been said in Committee has been heard. There are already efforts under way to develop this amendment for consideration on Report. I hope that gives the hon. Gentleman the confidence to withdraw his amendment. We will make sure that we table an appropriate amendment on Report, which I like to think Members from across the House will feel able to vote for, and that will deliver on the objective that we all share.

12.45 pm

On clause 38, the offence under section 25 of the Immigration Act 1971 is our key control against those facilitating clandestine entry to the UK. Facilitation may include behaviour linked to recruiting, transporting, transferring, harbouring, receiving or exchanging control over another person. The related offence under section 25A of that Act relates to helping the arrival or entry, for gain, of an asylum seeker to the UK. The maximum penalties for these offences do not fully reflect the seriousness of the criminality that may be involved in facilitating the travel of illegal migrants to the UK, or that otherwise exploits them. People smugglers endanger lives and may cause public harm, including, for example, by arranging for transport in refrigerated lorries, or by returning to the UK an individual who was previously excluded or deported from the UK for national security reasons or because of serious criminal conduct.

The provision of a higher maximum sentence of life imprisonment demonstrates the gravity with which Parliament expects courts to treat the most serious offenders. The increase in the maximum sentence will also align facilitation sentencing with the sentences available to courts for human trafficking convictions under the Modern Slavery Act 2015. The measure will allow robust, visible action to combat illegal migration and activities associated with it, and with people smuggling.

The increasingly sophisticated methods employed by facilitators to hide facilitation gain not only frustrates crime investigations but hinders the Crown Prosecution Service in bringing successful prosecutions. As I have explained, gain can be obtained in many ways, and cannot always be proved to the standard required for a successful prosecution. For example, money transfers may be made by family members abroad, or made in cash, and there may be promises of servitude by the asylum seeker or others, or promises to assist in the facilitation act. To be clear, people smuggling has terrible consequences for asylum seekers, their families and others. We therefore propose removing the "for gain" element of the offence.

We intend to retain the defence available to persons acting on behalf of humanitarian and charitable organisations that aim to assist asylum seekers, and that do not charge for their services. I understand concerns raised in the House regarding the impact that removing the "for gain" element may have on individual acts of kindness. Historically, individuals have felt compelled to take compassionate action, albeit often working with the knowledge of the Home Office and charitable organisations, but this was in the absence of organisations such as the United Nations High Commissioner for Refugees. I reassure Committee members that those working openly and transparently in accordance with the published aims of an approved body and under its direction need not fear these measures. However, individuals taking maverick action that ignores lawful controls may well be liable to prosecution. We will carefully examine the circumstances of each case, and will work with the Crown Prosecution Service in England and Wales, the Crown Office and Procurator Fiscal Service in Scotland, and the Public Prosecution Service in Northern Ireland; they will determine whether a prosecution is proportionate and in the public interest.

The clause is directed at criminals who are acting to exploit and endanger people, not humanitarian charity workers. It is also directed at those who, by their attempt to evade regulations, deliberately and recklessly endanger themselves and others. We intend to deter illegal migration and create an effective sanction.

I have set out my intention to amend the clause on Report to ensure that organisations such as the RNLI, as well as those directed by Her Majesty's Coastguard and individuals fulfilling their obligation to rescue those in distress at sea, may continue to act as they do now. We also intend to ensure that the provision does not prevent those responsible for vessels from complying with their obligations if they discover stowaways on board as they journey to the UK.

I have heard what the Committee has said, and the Committee has on record my undertaking to develop an amendment for Report. Also, I intend to write to the Committee to further put on record that we are working towards this aim strongly, and in a considered way; yet again, I want to put that beyond any doubt.

Neil Coyle: I note the Minister's words and offer, but he has not explained why this amendment specifically does not do the job that he is seeking to do in the later stages. There is no explanation of what the Government would do differently from what is on the table today, so it is unclear why he will not accept the amendment. The Bill was published some months ago, and the Government have had about three months to suggest an amendment. I have already spoken about the current situation and the attacks on the RNLI: people throwing things, people spitting at crews. That will affect its recruitment and damage its reputation and, by association, all those who are patrons or otherwise involved. We need to offer better protection to the RNLI from today and send a clear signal that its work is invaluable and that we respect and honour what it does.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 8.

Division No. 34]

AYES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	
Lynch, Holly	Owatemi, Taiwo

NOES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 7.

Division No. 35]

AYES

Anderson, Stuart	Pursglove, Tom
Baker, Duncan	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	
Lynch, Holly	Owatemi, Taiwo

Question accordingly agreed to.

Clause 38 ordered to stand part of the Bill.

Clause 39 ordered to stand part of the Bill.

Schedule 4 agreed to.

Clause 40 ordered to stand part of the Bill.

Clause 41

MARITIME ENFORCEMENT

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Government amendment 82.

Amendment 144, in schedule 5, page 74, line 30, at end insert—

"provided that the relevant officer may not do any of the things mentioned in sub-paragraph (2) where they would risk the welfare or safety of persons on board the ship."

This amendment would require officers to assess welfare risk before stopping or boarding a ship, requiring it to be taken elsewhere or requiring it to leave UK waters, and not act if doing so would exacerbate these risks.

Government amendment 83.

Amendment 145, in schedule 5, page 75, line 8, at end insert—

"(7A) The Secretary of State must publish a list of States and relevant territories with which agreement has been reached for the purposes of sub-paragraph (7) within 30 days of the date of Royal Assent to this Act, and the Secretary of State must update that published list from time to time."

This amendment would require the Secretary of State to publish which states or territories she has agreed arrangements with for returning or removing asylum seekers to, within 30 days of Royal Assent.

Amendment 146, in schedule 5, page 76, line 24, at end insert—

"(9) A relevant officer may only exercise powers under this paragraph if they have passed relevant training, including training on the requirement to exercise powers under this paragraph in accordance with the provisions of the Human Rights Act 1998."

This amendment would require the relevant officer to have passed relevant training before acting under these powers, and only acts with regards to the Human Rights Act.

Amendment 148, in schedule 5, page 77, line 18, at end insert—

"(7) A relevant officer may only exercise powers under this paragraph if they have passed relevant training, including training on the requirement to exercise powers under this paragraph in accordance with the provisions of the Human Rights Act 1998."

This amendment would require the relevant officer to have passed relevant training before acting under these powers, and only acts with regards to the Human Rights Act.

Amendment 147, in schedule 5, page 78, line 12, at end insert—

"(10) A relevant officer may only exercise powers under this paragraph if they have passed relevant training, including training on the requirement to exercise powers under this paragraph in accordance with the provisions of the Human Rights Act 1998."

This amendment would require the relevant officer to have passed relevant training before acting under these powers, and only acts with regards to the Human Rights Act.

Amendment 149, in schedule 5, page 78, line 32, at end insert—

"(c) the act was carried out in accordance with the provisions of the Human Rights Act 1998."

This amendment would require the relevant officer to only act with regards to the Human Rights Act.

That schedule 5 be the Fifth schedule to the Bill.

Tom Pursglove: In response to numbers of migrants using dangerous maritime routes to enter the UK illegally, this Government are committed to providing Border Force with the tools and legislation they need to combat this illegal migration threat more effectively. We need to strengthen and broaden our current powers not only to improve the effectiveness and capability of Border Force's current maritime interception tactics, but to better equip them for future operational developments, which may be enhanced through agreements with our near border partners.

The clause and schedule will also provide new powers allowing Border Force to return vessels and those on board, when appropriate, to non-UK locations. Finally, the Government will use this clause to provide bespoke seizure and disposal powers intended for Border Force use against the small boats threat specifically. It will provide far more flexible options for the seizure and disposal of the vast majority of unflagged, ownerless vessels that are being used to transport illegal migrants.

I turn to Government amendments 82 and 83. We are seeing an unacceptable rise in dangerous and unnecessary small boat crossings. Our primary focus is on preventing people from embarking on dangerous channel crossings to enter the UK illegally, tackling the criminal gangs responsible and protecting lives. We must send a powerful message that people should not leave the safety of countries such as France or Belgium to enter the UK illegally in an unseaworthy boat, and if they do, they could be taken back.

Stuart C. McDonald: On the question of legality, Government amendment 82 is pretty extraordinary, because it seems to remove a restriction on the power of the Secretary of State so that she is unconstrained by the United Nations convention on the law of the sea; I am just looking at the explanatory note. Is that amendment designed to allow the Secretary of State to break the international law of the sea?

Tom Pursglove: I thank the hon. Gentleman for raising that point, and I will come on to it imminently. To finish the point I was making, the Government amendments will remove text from the Bill that is now considered not to be essential to achieving the aim that I have set out.

The UK has ratified, and is therefore fully committed to upholding, the United Nations convention on the law of the sea. The Government are committed to utilising their maritime enforcement tactics in full compliance with international law. The re-statement of

[Tom Pursglove]

that in the clause is therefore unnecessary. It is also unnecessary to state in legislation, where it is already beyond doubt, that Border Force would seek permission from a foreign country before taking a migrant boat back to that country. That statement adds nothing to the powers being created in this part of the Bill.

We want to make it explicit that operating these maritime enforcement powers in UK waters or international waters to simply divert a migrant vessel from UK territorial seas does not require the permission of a foreign state where that vessel may then enter their waters. These amendments will not result in the UK failing to abide by its international obligations, whether that be in the context of the safety of lives at sea or when seeking permission if intending to return migrants to another country, such as France.

I thank the hon. Member for Sheffield Central for what he will no doubt say about amendments 144 to 149. I will start by addressing amendment 144, which proposes to add an additional requirement to the maritime powers where the options available to officers intercepting a vessel at sea are spelled out. In order for the tactics intended for use in the exercise of these powers to be safe and legal, officers will have to carry out risk assessments before and during any exercise of the powers. That requirement will be laid out in operating procedures to ensure we meet our international obligations on safety of life at sea.

As any deployment of the tactics under the powers will be carried out in full accordance with those obligations, the welfare and safety of those on board vessels will be the priority throughout. With international obligations in this context not being a matter for UK legislation, we do not consider it necessary to add the amendment. I also note that any deployment of maritime tactics will be carried out in full compliance with obligations under the European convention on human rights and the Human Rights Act.

I turn now to amendment 145. The schedule that it would amend deals with new powers allowing Border Force and others to require vessels to be taken to a non-UK port if necessary. There are a number of reasons why we may wish to have the capability to do this, and they are not all related to the return or removal of asylum seekers. For example, any potential future agreement with partners to patrol waters jointly may require rescued or intercepted migrants to be taken back to the country from which they embarked on their maritime journey. As such, we do not consider that the amendment is needed or appropriate in schedule 5, and we are not prepared to commit to providing a running commentary to update on the progress of sometimes sensitive international negotiations.

I understand that the intention of amendments 146 to 148 is to emphasise the need to ensure that account be taken of human rights obligations by appropriately trained officers exercising these maritime powers. However, the amendments are unnecessary and would have no practical impact on the operation of the powers by Border Force officers and others. All operational officers within Border Force receive, and must have passed, appropriate training in order to exercise their duties. In order to be appointed as an immigration officer, an official must successfully complete and pass a foundation course that includes understanding the European convention on human rights as it relates to the Human Rights Act 1998, and their resulting obligations in the context of exercising powers.

1 pm

Additionally, those exercising maritime powers will have gone through further specialist training for the operation of their powers at sea and will be operating those powers within official guidance that explicitly outlines the requirement to take full account of the Human Rights Act, and therefore the European convention on human rights, when considering their use. The Government are clear that any exercise of maritime powers against migrant vessels at sea will be done in full compliance with all our international and domestic obligations, and thus these amendments are not required.

I turn finally to amendment 149. To a certain extent, I will return to arguments similar to those that I have just made. I begin by reiterating that no official can be appointed as an immigration officer and exercise their powers until they have received and passed training courses that include understanding the European convention on human rights as it relates to the Human Rights Act 1998. The liability protections afforded in proposed new section J1 of the Immigration Act 1971, which will be inserted by the Bill and which the hon. Member for Sheffield Central seeks to amend, explicitly state that officers need to be acting in good faith and within the functions of this part of the Act. In addition, all officers will have received training on relevant human rights implications as a prerequisite of being able to exercise their powers. I do not consider that there is any further necessity to restate that through an amendment.

Any exercise of maritime powers must take full account of our international obligations, including consideration of human rights issues, and will be undertaken only by relevant officers who have successfully passed their training in full. Thus, in my view, there is no additional requirement to have that stated in the Bill. For all the reasons I have outlined, I request that the hon. Gentleman not press his amendments to schedule 5.

Ordered, That the debate be now adjourned.—*(Craig Whittaker.)*

1.2 pm

Adjourned till this day at Two o'clock.