LORD GERMAN

Clause 1, page 2, line 6, at end insert—

> *"(c) the primary responsibility of Parliament and the courts is to uphold the constitution of the United Kingdom, including that constitution's fundamental commitment to the rule of law."*

Member's explanatory statement
This amendment is intended to probe the responsibility of Parliament in upholding the rule of law.

Summary

- The Bill is to permit the Government to subvert the very idea of law and legality and avoid compliance with its international law obligations all for the purpose of penalising an especially vulnerable group of people for failing to abide by rules made by the Government, which deliberately exclude them.

- At the Bill's heart is an extraordinary judicial ouster – not of the courts' jurisdiction but of their capacity to properly exercise that jurisdiction. In this way, courts are to be required to make mockery of the rule of law that is their very purpose.

- What is at stake goes far beyond party politics. While noble Lords may fear a political 'trap', they must also consider the implications if they choose to meet the Government's refusal with their own failure to abide by the rule of law.

Briefing

The amendment offers ministers the opportunity to outline their true position on the rule of law and its place and importance in the UK's constitution. It also provides the opportunity for wider reflection on this Bill's deeply concerning impact upon the rule of law and the constitution.

Demanding compliance with impossible rules while refusing to abide by internationally agreed laws and subverting the very idea of law and legality

It is heavily ironic that the charge labelled at the people who are to be most directly affected by this Bill – and by the underlying asylum policy that has brought the Government to present it – is that their manner of arrival to this country is in breach of this country's rules. That is notwithstanding all the warnings of UNHCR and many others that the rules of the international asylum system, which this country is obligated to share in delivering upon – do not prohibit refugees arriving by boat, lorry, plane or

other means without prior permission.[1] And it is notwithstanding that – as has been repeatedly highlighted over the last several years – the Home Secretary's rules require people to be in the UK to seek asylum here,[2] require these people to travel with a visa[3] and make no visa available to anyone to come for that purpose.[4] If a visa is obtained for another purpose, the rules enable it to be taken away.[5]

While refugees are required to conform with rules that effectively deprive them of any opportunity to exercise their right to seek asylum in this country – whatever the strength of their family or other connection here may be – the Government's Bill sets out, again, to enable it to avoid the law. The Bill – as several amendments will draw out – is intended to enable the Government to avoid its international law obligations, as well as avoid being held to account in law by the UK's judiciary, including its Supreme Court, or by the Court of Human Rights in Strasbourg.

An extraordinary ouster at the heart of the Bill – attempting to require the courts to make a mockery of their own jurisdiction

Furthermore, at the heart of this Bill is an extraordinary form of judicial ouster. One that retains the jurisdiction of UK courts to consider the claims of people that their transportation to Rwanda will be contrary to their rights in law while attempting to deprive those courts of any capacity to properly investigate that claim. The Bill is not only an invitation to Parliament to partake in a fiction that Rwanda is 'safe' notwithstanding any evidence that is or may become available. It is an attempt to force the courts to partake in that same fiction. The pretence is that the legal system – and respect for the rule of law – remains in place, but in practice the system is required to exercise its jurisdiction in a way that is a denial of that jurisdiction's fundamental purpose. That would make a farce of the UK's legal system.

This cannot do anything but bring into serious disrepute Parliament, courts and our constitution. Indeed, if this House will not bar this Bill then the courts are to be required in the most antagonistic circumstances to secure the constitutional balance and respect for the rule of law that Parliament will have refused.

Responsibility of all parliamentarians to reject this Bill

It is no good emphasising what at Second Reading was suggested to be a political 'trap' set by the Government[6] as justification for avoiding responsibility for upholding

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[1] The sole exception the Government will permit is any refugee who is able to travel direct from the country in which they face persecution to the UK. That, of course, is an impossibility for many for whom there are no direct flights to the UK from their home country. For many others, it is a near impossibility because the risks of seeking to make such a journey from their home country are too great; and, in any event, the introduction of carriers' liability and other measures to ensure people do not get onto planes without permission to travel are highly prohibitive.

[2] Reaffirmed in statute by section 14, Nationality and Borders Act 2022

[3] Any country from which any significant number of people seek asylum is included on the visa national list: see Immigration Rules, Appendix Visitor: visa national list.

[4] There is no visa for anyone to seek asylum in the UK. The closest to such a visa is the provision for Ukrainian refugees and certain Afghans at risk due to past connection with the UK, including its Armed Forces, during the period of its intervention in Afghanistan.

[5] See, e.g., paragraphs 30C, 9.13.1, 9.14.1 and 9.20.2, Immigration Rules

[6] *Hansard* HL, Second Reading, 29 January 2024: Cols 1018 & 1034

the separation of powers, the integrity of the UK's legal system and its constitutional arrangements. Doing that is to pass the buck and – in doing so – to increase the improper strain that already too long is being placed upon the judiciary. Of course, judges are expected fearlessly to uphold the rule of law. Parliament – and for that matter, Government – is expected to do so too. If Parliament too long refuses to do so, wider respect for that can be expected to simply break. The consequences of that are intolerable. The responsibility that falls upon noble Lords must be to do all that can be done to avoid it. If it must come to the courts to achieve that, it must surely not be by way of an abdication of Parliament to do all that it could first.

LORD GERMAN

Clause 2, page 2, line 34, at end insert "only if the decision-maker is satisfied that the available evidence demonstrates that conclusion to be true"

Member's explanatory statement
This amendment is intended to probe the necessity of evidence in the processes undertaken by a decision-maker.

LORD GERMAN

Clause 4, page 4, leave out lines 11 to 14 and insert "that Rwanda is not a safe country for the person in question where the evidence shows that to be so,"

Member's explanatory statement
This amendment is intended to probe the role of evidence in relation to individual cases.

LORD GERMAN

Clause 4, page 4, line 18, leave out from "country" to end of line 22 and insert "if the evidence shows that to be so."

Member's explanatory statement
This amendment is intended to probe the role of evidence in the processes undertaken by the courts.

Summary

- The primary effect of the Bill is to intentionally reject and exclude evidence and any consideration of it. That is destructive to any real respect for either law or truth.

- A secondary impact is – by the highly contrived device of Clause 4(1) - is to risk fatally interfering even with the extremely narrow question that a decision-

maker is ever permitted to consider. Seeking to exclude consideration of various relevant questions about risk (that would be important in their own right) has potentially wider impact because it may prevent a holistic assessment that is necessary to properly determine the question about risk that is permitted.

Briefing

Each of these amendments provides opportunity to probe the role of evidence in decision-making – whether of the executive or the courts. The Bill presents two distinct ways in which it is vital to consider this.

Treating fiction as fact

First, is the matter of a statutory declaration of Rwanda as 'safe' – where safe is defined as being a place to which anyone's transportation complies with all international law standards,[7] and most especially the obligation of *non-refoulement*.[8] That declaration is expressed as a "*judgement of Parliament*" in Clause 1(2)(b) and sought to be made effective by a prohibition of any dissent by any decision-maker – minister, official or judge – in Clause 2(1). The extent of that prohibition is emphasised in the further provisions of Clause 2 including to bar any judicial review or appeal brought on grounds that assert that what is declared – i.e., Rwanda's safety – is in fact false; and Clause 4(2) which is to make total the bar upon any consideration of *refoulement*.

As regards to this, it should hardly need saying that law – of any description – must properly be applied to facts. Whatever the law may be, its proper application depends on an assessment of whether the relevant facts are one way or another – otherwise none of us can be secure against the arbitrary exercise of power, which may claim that we are 'criminal' or 'liable to' or 'ineligible for' one thing or another on the entirely false basis that we or our circumstances meet some legal criteria when they do not.

Furthermore, facts must be established according to evidence – with acknowledgement that these, and the evidence for them, may change. Nobody seriously concerned to respect facts – another way of putting that is being concerned with truth – can proceed on a basis that fixes the facts contrary to or regardless of the evidence, let alone fixes them for all time.

Yet, in presenting this Bill to Parliament, that is precisely what the Government is seeking to do – and seeking the authority and therefore complicity of this place in so doing.

Holistic assessment of evidence

The second way in which this Bill requires consideration of the role of evidence relates to the highly contrived and narrow question that is left for administrative and judicial decision-making by Clause 4. Clause 4(1) permits ministers, officials and judges to consider whether Rwanda may be unsafe "*…for the person in question, based on*

[7] Clause 1(5) and (6)

[8] The obligation not to send or compel a person to go to a place where they will suffer torture or some other form of particular sever harm.

compelling evidence relating specifically to the person's particular individual's circumstances (rather than on the grounds that the Republic of Rwanda is not a safe country in general)…".[9]

It is vital to take note that this formula does not permit any consideration of the risk to the individual of *refoulement*. That remains prohibited by Clause 4(2) no matter the strength of the evidence, which the individual would, if permitted, present; and no matter whether that evidence concerned solely their personal circumstances.

It is difficult to comprehend what the formula in Clause 4(1) does ultimately permit. This is because it takes an excessively reductive approach to evidence. Any proper approach to evidence must be holistic. It must recognise all relevant evidence – both the evidence that may be specific to the person and evidence that may be more general. Also, both evidence that may go to a specific type of risk the person faces and evidence that may go to some other risk or more widely. It is only by assessing all this evidence that any proper evaluation of risk can be concluded.

To take an example, a person may have next to no evidence that is personal to them evidencing some particular risk to them in Rwanda and/or from the Rwandan authorities. That would seem to apply to most of the people who may ever be subjected to the provisions of this Bill because hardly any, if any at all, have any sort of connection with that country whatsoever. So, as is quite normal, they will need to supplement any evidence specific to them with more general evidence – evidence that tends to confirm wider conditions or practices in Rwanda that would confirm any fear that they may come to some harm. That may be evidence that people generally in their circumstances do or have come to such harm. It may be evidence of other harms to other people that more generally indicates an attitude, culture or practice that would also tend to suggest a propensity to the harm that the individual fears. Evidence of *refoulement* would be relevant even here, because that would tend to demonstrate an attitude of the relevant authorities that would indicate other risks to the individual from the same authorities.

The problem, then, is that in seeking to exclude consideration of various relevant matters (e.g., general risk, *refoulement*), Clause 4(1) - together with Clause 4(2) – tends to exclude full consideration of both those matters and the very limited matter that is left for consideration.

If, of course, the answer is that there is to be no true concern for the safety of anyone who may ever be transported to Rwanda, then these questions all fall away. The position is simply that – no matter the implications for law, morality or truth – the Bill is to facilitate that transportation. That brings us straight back to the several human rights, rule of law and constitutional questions that beset this Bill, and to which so many of the tabled amendments are directed.

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[9] This formula is precisely the same in Clause 4(1)(a) and (b), by which it applies to the executive and judiciary respectively.