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**European Convention on Human Rights**

**4.36 pm**

**The Secretary of State for the Home Department (Mrs Theresa May):** The Government are committed to reviewing and reforming—I must interrupt myself to apologise, Mr Speaker, as I should first move the motion.

I beg to move,

That this House supports the Government in recognising that the right to respect for family or private life in Article 8 of the European Convention on Human Rights is a qualified right and agrees that the conditions for migrants to enter or remain in the UK on the basis of their family or private life should be those contained in the Immigration Rules.

It might have been unfortunate if I had forgotten to do that formal bit, Mr Speaker.

**Mr Speaker:** The Home Secretary can rest assured that I would have reminded her.

**Mrs May:** I know you are assiduous in your duties, Mr Speaker, and I recognise that you would, indeed, have reminded me—and with courtesy, I am sure.

The Government are committed to reviewing and reforming all the main routes of immigration to the UK. As a result, we anticipate net migration will fall from the hundreds of thousands to the tens of thousands. Last week I laid new immigration rules for family immigration. These new rules will ensure that those who come here can do so only on the basis of a genuine relationship, that once here they can pay their way, and that they can integrate properly into British society. So we will increase the minimum probationary period for new spouses and partners to five years; we will stop dependent relatives becoming an unnecessary burden on the national health service; and we will introduce new tests to ensure family migrants can speak English, understand our history and respect our values.

But central to making those new rules work effectively is for this House to set out its view on how the right to family and private life in article 8 of the European convention on human rights should interact with our immigration policy. The ECHR makes it absolutely clear that article 8 is not an absolute right. Article 8(1) of the convention provides for the right to respect for private and family life, but that is qualified by article 8(2), which allows the state to interfere in the exercise of that right.

In an immigration context, the convention allows interference in the right to respect for family or private life on grounds of public safety, such as the prevention of crime, or to protect the UK’s economic well-being, including by controlling the numbers of immigrants allowed to enter or remain in the country. That means the Government can interfere with the exercise of article 8 rights, in full compliance with the ECHR, and in full compliance with the law, where it is necessary and proportionate to protect the public from foreign criminals or to safeguard our economic well-being.

The problem is that Parliament has never before been given the opportunity to set out how it believes it should be possible to interfere with article 8 rights in practice. That meant the courts were left to decide the proportionality of interference with article 8 rights themselves, in each and every individual case, and without the benefit of the views of Parliament.

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We are putting that situation right. We are letting Parliament do its job by making public policy, and we are letting the courts do their job by interpreting the law, with regard to the clear view of Parliament of where the public interest lies.

**Robert Halfon (Harlow) (Con):** Does my right hon. Friend agree that the original ECHR is a very noble document, but that the problem is the misinterpretation of it by modern judges? Does she also agree that the actions the Government are taking will give these judges the clear message that they should go back to the original principles of the convention rather than adhere to political correctness?

**Mrs May:** I say to my hon. Friend that I believe that what we are doing today and the motion we are asking this House to pass—I hope it will pass with support from all parts of the House—will send a clear message about what we believe the article 8 rights mean in terms of where the public interest lies. That is important because, as I say, Parliament has not been able to do that so far. But of course we uphold the principles of human rights, and this is in no way contrary to those principles or to the convention because, as I have said, the convention itself qualifies this particular right.

**Jeremy Corbyn (Islington North) (Lab):** As nobody has a dispute about whether article 8 is an absolute—it has always been subject to definition by national courts—why on earth are we debating this today? Is this not just part of the Home Secretary’s general attack on the whole principle of the European Court of Human Rights and the European convention on human rights, which her Back Benchers frequently raise at every possible opportunity?

**Mrs May:** I am a little surprised that the hon. Gentleman stands up to question why Parliament is debating something, as he has usually been keen for Parliament to debate more than it does. The point of this is that clearly—I shall deal with this later—there has been a request from the judiciary that Parliament should make its views clear on this issue, so that they can take that into account when examining cases. It is entirely reasonable that Parliament should give its voice on this matter.

**Mr James Clappison (Hertsmere) (Con):** I warmly welcome the Home Secretary’s approach. On this question of Parliament’s view, is it not important that when the courts are striking a balance between family rights and the article concerned, and “serious offences” by foreign offenders, it is right that they should know what Parliament regards as “serious offences” for these purposes?

**Mrs May:** My hon. Friend has put his finger on the point exactly. When the courts are looking at that, they should know what Parliament’s view is, and that is exactly what we are trying to ensure today.

**Mr David Ruffley (Bury St Edmunds) (Con):** Will my right hon. Friend deal with something that is in the minds of all Government Members? A robust measure such as this, put in front of the House, could have been debated at any time in the 13 years before the 2010 election.

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**Mrs May:** Indeed. My hon. Friend is right about that, and it is a pity that such a point was not debated previously. We are able to put that right today and, as I say, I hope that we will have full support from across the House.

**Pete Wishart (Perth and North Perthshire) (SNP):** I am looking at a motion that says nothing about Parliament’s view on article 8; all it seems to be is a restatement of the bleeding obvious. We all know that article 8 is a qualified right, so why are we here debating a nothing motion?

**Mrs May:** I suggest that the hon. Gentleman reads right to the end of the motion, as he will then see that we do indeed record that we support the

“right to respect for family…life in Article 8”.

We say that it is “a qualified right” and we agree that

“the conditions for migrants to enter or remain in the UK on the basis of their family or private life should be those contained in the Immigration Rules.”

That is the second crucial part of the motion. Opposition Members are arguing that somehow Parliament should not debate an issue that is of considerable concern to members of the public. The public do not want to see foreign criminals whom they think should be deported, and whom the Government think should be deported, being able to stay in the UK because they are able to claim a right under article 8. Parliament has the opportunity today to set out its view on this clearly.

**Several hon. Members** *rose* *—*

**Mrs May:** I will give way to the former Home Secretary.

**Mr Jack Straw (Blackburn) (Lab):** May I, in fully endorsing the Home Secretary’s approach and this motion, ask her to comment on the following? The previous Government, including through my right hon. Friend the Member for Kingston upon Hull West and Hessle (Alan Johnson), did make great efforts to get the courts to change their approach, as they did in the Amy Houston appeal—I have details of the grounds of appeal here with me—but it was only when the courts found themselves trapped by their own precedent that this became necessary. I therefore endorse this approach, but it is not for the want of trying an alternative route pursued by the previous Government.

**Mrs May:** The right hon. Gentleman makes the valid point that this has been an issue for some time. I think it would have been possible for the previous Government to have done what we are doing today and bring a motion before Parliament, but we have done it and we are giving people that opportunity.

**Mr William Cash (Stone) (Con)** *rose* *—*

**John McDonnell (Hayes and Harlington) (Lab)** *rose* *—*

**Mrs May:** I shall make a little progress, if I may, because I have taken a number of interventions.

With the changes that I am making, there will generally be no need for a separate assessment of article 8 beyond the requirements set out in the immigration rules. Compliance with the immigration rules will mean

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compliance with article 8, other than in truly exceptional circumstances. So, a foreign criminal who does not meet the criteria set out in the rules will be deported and they will not have a second bite at the cherry via article 8. Similarly, a migrant seeking to come to the UK to join a partner must meet the criteria set out in the rules or a visa will be refused and there will be no separate article 8 claim. So, the immigration rules will no longer be a mere starting point, with leave granted outside the rules or appeals allowed under article 8 for those who do not meet them. The immigration rules will instead take into account article 8, relevant case law and appropriate evidence and they will be proposed by the Executive and approved by the legislature.

Of course, the courts have a clear constitutional role in reviewing the proportionality of measures passed by Parliament, but now the focus of the courts should be on considering the proportionality of the rules rather than the proportionality of every individual application determined in accordance with the rules. Where the courts consider individual deportation decisions, it should now be with consideration of Parliament’s public policy intent firmly in mind.

Some have suggested that Parliament cannot set out how article 8 should be qualified because we are bound by the European convention on human rights. They evidently do not understand that article 8 is a right that is qualified by the convention itself. Of course, judges will continue to consider each case on its individual merits, but it is the courts themselves that have said that Parliament needs to make its views clear. In a case in 2007, the House of Lords said that a statement from Parliament was needed on where the public interest lies in the operation of article 8 in immigration cases. The Court of Appeal, last year and this year, has indicated that greater weight is to be given to the public interest when that has been endorsed by Parliament. Today’s motion provides the courts with the statement and the endorsement from Parliament that they have said is needed. The courts should then give that statement from the elected legislature the weight that it deserves.

**John McDonnell:** Will the right hon. Lady clarify whether we are legislating today? Are we passing into law the rules that she published less than a week ago?

**Mrs May:** The motion recognises the qualification of article 8 and invites the House to agree that it is set out in the immigration rules. The immigration rules themselves have been laid before Parliament—*[* *Interruption.* *]* I am very happy to read the motion out again. It states that the House

“agrees that the conditions for migrants to enter or remain in the UK on the basis of their family or private life should be those contained in the Immigration Rules.”

**Mr Cash:** I am much encouraged by the line the Home Secretary is taking on all this. Over and over again, as she knows, I have raised the question of the interpretation by the courts of matters relating not only to the European convention but to European Union law. Is she taking the opportunity, by one means or another, to have discussions with those in the superior hierarchy of the judiciary? To bolster the assumptions that lie behind what she is saying in defence of the

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sovereignty of this Parliament, does she want to put the words “notwithstanding the Human Rights Act 1998” in front of the legislation so that the courts are under no misapprehension about what they are to do?

**Mrs May:** I think my answer to my hon. Friend will be shorter than his question. The motion makes it absolutely clear what we are asking people to do today and I am certain that the judiciary will take into account the view of Parliament. Indeed, as I have said, members of the judiciary have suggested that it would be helpful to have the view of Parliament.

Since the Human Rights Act was implemented in 2000, it has become clear that the existing immigration rules do not properly set out how article 8 should be qualified in real cases. As a result, foreign criminals and those who failed to meet the requirements of the immigration rules and who should not be allowed to come to or stay in the UK have increasingly been able to challenge their decisions in the courts on the grounds of a breach of article 8. So, for those who do not meet the requirements of the rules, grants of discretionary leave outside the rules on article 8 grounds have risen steadily to the point that in 2010 the UK Border Agency granted discretionary leave on the basis of article 8 in around 9,500 immigration cases. That means that in 9,500 cases, applicants could not meet the requirements of the immigration rules but were allowed to stay in the UK none the less. In addition, reflecting established policy on dealing with such cases, they were automatically granted full and immediate access to the benefits system. Perversely, that placed them in a better position than applicants who had met the immigration rules and were denied such access while they served a two-year probationary period.

**Mr David Burrowes (Enfield, Southgate) (Con):** A key criticism regarding the use of article 8 is how it has appeared to give greater protection to convicted foreign criminals facing deportation than to British citizens facing extradition. Can the Home Secretary reassure my constituent Gary McKinnon and others like him facing issues of mental illness and autism—I do not want to trespass into that particular case—that the principle of this motion will not affect genuine article 8 applications relating to extradition?

**Mrs May:** Extradition cases will continue to be looked at in line with the legislation that applies to extradition cases.

**Mr David Winnick (Walsall North) (Lab):** Following the question put by my hon. Friend the Member for Hayes and Harlington (John McDonnell), I should like some clarification. As has been emphasised several times this afternoon, the immigration rules are being changed, presumably arising from the Home Secretary’s statement last week. Will Parliament have the opportunity to debate those changes?

**Mrs May:** The immigration rules have been laid and it is open to any Member of the House to pray against them and see whether they can bring forward a debate on them in the House. *[* *Interruption.* *]* It is open to anybody to pray against the immigration rules if they wish to debate the detail of them. I will refer to the changes that are being made. What we are saying today

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is that article 8 should be qualified in line with the immigration rules. I think I have repeated the motion several times.

**Pete Wishart:** *rose—*

**Mrs May:** The hon. Gentleman is getting himself terribly excited. Would he like to intervene again?

**Pete Wishart:** The right hon. Lady is going to have to explain very carefully and clearly exactly what we are debating today. Are we debating and agreeing to the rules that she announced in her statement last week or are we agreeing to restate once again the fact that article 8 is qualified in the terms of the European convention on human rights?

**Mrs May:** I am tempted to give exactly the same answer to the hon. Gentleman as I gave to him earlier. What we are debating is Parliament’s saying, first, that the House supports the Government in recognising the qualified nature of article 8 and, secondly, that the basis on which article 8 can be qualified is set out in the immigration rules. It is open to hon. Members to pray against the immigration rules if they wish to debate them. *[* *Interruption.* *]* The hon. Member for Perth and North Perthshire (Pete Wishart) asks whether we are agreeing to the immigration rules. What we are agreeing is that article 8 is qualified as set out in the immigration rules. There is then the separate issue—perhaps it would be helpful if I put it this way—of whether the immigration rules are prayed against and whether there is then a debate and a vote on those rules. I hope that I have helped him. There is a very important point at issue here: the courts have said that Parliament needs to give its views about the qualification of article 8 and that is what I am inviting hon. Members to do today.

**Dr Hywel Francis (Aberavon) (Lab)** *rose—*

**Mrs May:** I am going to make some progress now. I apologise but I have taken several questions from one hon. Member and I want to make some progress.

I was talking about the cases we have had, and I note that there are issues at appeal stage. Last year, 1,888 appeals against deportation were lodged. Of the 409 successful appeals, 185—that is 45%—were allowed on article 8 grounds. Those are the consequences of having had immigration rules that do not properly set out the qualified nature of article 8. The new immigration rules state how the balance should be struck between the public interest and individual rights. They take into account relevant case law, evidence, independent advice and public consultation, and they provide clear instructions for UK Border Agency caseworkers about the approach they must normally take in deciding article 8 claims. They provide the basis for a consistent, fair and transparent decision-making process, and I ask the House to agree that they reflect how family migration should be controlled in the public interest. Once endorsed by the House, the new immigration rules will form a framework that Parliament considers is compatible with article 8, on which the courts can therefore place greater weight as a statement of the public interest.

I turn now to the criteria in the new immigration rules that will be used to judge claims under article 8 in practice. The particular aspects of the new family

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immigration rules that are relevant are those on criminality, the best interests of a child, the family or private life of non-criminals, and the income threshold.

Perhaps nothing has done more to damage public confidence in the immigration system than when serious foreign criminals have used flimsy article 8 claims to avoid removal from this country. The European convention on human rights is clear—those who commit crimes do not have an unqualified right to respect for private and family life. So we are changing the immigration rules to make clear Parliament’s view that if someone is a serious criminal, if they have not behaved according to the standards we expect in this country, a weak claim to family life is not going to get in the way of their deportation. There is no place in this country for foreign criminals who threaten our safety and security and who undermine our rights and freedoms.

If a foreign criminal has received a custodial sentence of 12 months or more, deportation will normally be proportionate. Even if a criminal has received a shorter sentence, deportation will still normally be proportionate if their offending has caused serious harm or if they are a persistent offender who shows a particular disregard for the law. So where a foreign criminal is sentenced to less than four years, where no children are involved, and where the criminal has been here lawfully for less than 15 years, discounting their time in prison, deportation will normally be proportionate, even if they have a genuine and ongoing relationship with a partner in the UK. Even if the criminal has been here lawfully for 15 years, unless there are insurmountable obstacles to family life with that partner continuing overseas, deportation will still normally be proportionate.

**Alok Sharma (Reading West) (Con):** I welcome the motion and I hope it will have the support of all Members across the House, but can my right hon. Friend give me an assurance that in cases involving children, the best interests of the child will be a primary consideration in any decision that is made?

**Mrs May:** I shall come on to speak in more detail about the best interests of a child. The best interests of a child are covered by the Borders, Citizenship and Immigration Act 2009, and we are bringing that into the family rules.

**Lisa Nandy (Wigan) (Lab):** On that point, will the Home Secretary give way?

**Mrs May:** I shall speak in more detail about the best interests of the child, so perhaps the hon. Lady will wait and see if I answer her query in the comments that I make.

On the criminality issue first, the test for private life will also be a stringent one. Deportation will be proportionate unless the foreign criminal has been continuously resident in the UK for at least the past 20 years, excluding any period of imprisonment, and they have no social, cultural or family ties with their country of origin. For offenders aged under 25, deportation will be proportionate unless they have spent at least half their life residing continuously in the UK, excluding any period of imprisonment, and they have no ties with

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their country of origin. In all other cases, other than in exceptional circumstances, deportation of the foreign criminal will be proportionate.

**Mr Julian Brazier (Canterbury) (Con):** Will my right hon. Friend give way?

**Mrs May:** May I make a little more progress? My hon. Friend may choose to try again when I have finished dealing with this issue.

For the most serious foreign criminals—those sentenced to four or more years in prison—deportation will almost always be proportionate. Article 8 rights should prevent deportation of serious foreign criminals only in the most genuinely exceptional circumstances. So I ask the House to agree that the rights of the British public should outweigh the rights of foreign criminals in the way the new immigration rules describe. The choice for a foreign national wishing to avoid deportation is now simple: do not break the law.

I said that I would come on to the best interests of a child. The best interests of a child in the UK must always be a primary consideration. That is what the law requires and the new immigration rules reflect how the best interests of a child should be taken into account in striking a proportionate balance between an applicant’s family life and the public interest, for both criminals and non-criminals. For non-criminals, where a child would have to leave the UK as a consequence of the decision to remove their parent, the question is then whether it is reasonable to expect the child to leave. The best interests of the child will normally be met by remaining with their parents and returning with them to their country of origin, unless the child is a British citizen or has been resident in the UK for at least the past seven years and it would not be reasonable to expect the child to leave the UK.

For criminal parents, there is a broader range of circumstances in which the public interest may outweigh the best interests of a child. For serious foreign criminals, those sentenced to four or more years, the best interests of a child will only outweigh the public interest in deportation of the foreign criminal in exceptional circumstances. For criminals sentenced to between 12 months and less than four years, or those sentenced to less than 12 months but whose offending has caused serious harm or who are persistent offenders and show a particular disregard for the law, deportation will still normally be proportionate.

**Lisa Nandy:** I am grateful to the Home Secretary for giving way; I know that she wants to make some progress. Can she give an assurance that decision makers will not try to second-guess what is in the best interests of a child? We would not accept that in any other form of decision making relating to children. The individual circumstances of the child must be considered in the decision-making process.

**Mrs May:** One of the points about what we are doing, to which I tried to allude earlier, is that there is a statutory duty—in section 55 of the Borders, Citizenship and Immigration Act 2009—to safeguard and promote the welfare of children in the UK. We are now bringing the consideration of the best interests of the child formally into the new immigration family rules, which reinforces that point.

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I was talking about criminals who have been sentenced to between 12 months and less than four years or who are persistent offenders. Article 8 will prevent a deportation only if they have a genuine and subsisting parental relationship with the British citizen child or a child who has lived in the UK for at least the last seven years, if it would not be reasonable to expect the child to leave the UK with the foreign national criminal and if there is no other family member able to care for the child in the UK. Unless all three conditions are met, it will normally be proportionate to deport the criminal. If the criminal’s child is not a British citizen and has lived in the UK for less than seven years, the criminal can still be deported. If it will be reasonable to expect the child, whatever their nationality, to leave the UK, the criminal can still be deported. If there is another family member who can care for the child in the UK, the criminal can still be deported. These requirements represent a rational and proportionate qualification of article 8 rights in the interests of public safety and security, and I invite the House to endorse them.

**Mr Brazier:** My right hon. Friend is making a powerful case, and one that most Members will support, but is she aware that she has used the words “except in exceptional circumstances” seven or eight times already? If the court alone is free to determine what are exceptional circumstances, experience from other areas of the law suggests that in practice we might find that we make disappointingly little progress.

**Mrs May:** I recognise my hon. Friend’s concern, but there has to be a reference to exceptional circumstances. The way we are approaching it—setting out clearly the criteria that identify and describe the right to a private and family life—means that the exceptional circumstances will be far more limited than they have been up to now. As I hope he and others will understand from the detail I have given to the House, I have been going through every aspect of this carefully and setting out the expectations clearly. Therefore, I have every expectation that, in being able to look at those criteria and see what the public interest is in these matters, or how Parliament has defined the public interest, there would need to be truly exceptional circumstances indeed for someone to be allowed to remain in the UK outside the criteria. I have been clear that I have every expectation that this will have the impact we want it to have. If it does not, we will of course have to look at potential further measures.

**Richard Drax (South Dorset) (Con):** I support the direction in which the Home Secretary is heading but have just one question. I might be jumping the gun, but given that so many countries practise torture—I think that she will reaffirm the position that prisoners are not sent back to such countries—what do we do in cases where we cannot send a criminal back to their country of origin because of this. As I have said, torture is used frequently around the world.

**Mrs May:** Under the convention, the question of whether someone will be subjected to torture relates not to article 8, but to article 3, I think—*[* *Interruption.* *]* I am getting nods from hon. Members. Of course, the European convention on human rights includes the statement that people should not be sent back to countries where they will be subject to torture, but the issue under

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discussion is one reason why, on a number of matters, we have negotiated with a number of countries throughout the world what is called “deportation with assurances”. This has been tested in the courts and enables us to deport individuals, with the assurance, which we have achieved through a memorandum of understanding, that they—individuals in those circumstances—will not be subject to torture when they are returned.

**Dr Francis:** Given the complexity of the changes and their number, instead of our having a debate today, would it not be more appropriate to refer the matter for scrutiny to some of the many Select Committees of this House, including my own? As Chair of the Joint Committee on Human Rights, I raised the matter earlier this afternoon with its members, who agreed with me that this was a matter of considerable concern which should be referred to our Committee. To illustrate the issue’s complexities, I note that 75 years ago this month 6,000 Basque refugee children arrived in this country. Would they have been excluded under these new rules?

**Mrs May:** I recognise the work undertaken on the matter by the Joint Committee on Human Rights, which the hon. Gentleman chairs, and, if he wishes to see a debate about the immigration rules, it is of course entirely open to the Committee and, indeed, to the hon. Gentleman himself, as I indicated earlier, to pray against them, but today I am asking Parliament to say, “We recognise there is a qualified right, and that qualification is set out in the immigration rules agreed by the House.”

The new immigration rules will demand that, for non-criminals without children to remain in the UK on the basis of their family life, they will have to show that they are in a genuine relationship. If they can pay their way and meet the income threshold and other requirements, they can qualify for settlement after five years. If they cannot meet those requirements, but insurmountable obstacles to family life with their partner are continuing overseas, they can enter a 10-year route to settlement.

To remain in the UK on the basis of a private life, applicants must have resided continuously in the UK for at least 20 years, discounting any period of imprisonment; or they must be under 18 years old and have resided continuously in the UK for at least seven years; or they must be aged 18 or over but under 25 and have spent at least half their life residing continuously in the UK; or they must be aged 18 or over, have resided continuously in the UK for less than 20 years but have no social, cultural or family ties with their country of origin. If applicants qualify under those criteria, they will enter a 10-year route to settlement.

The European convention on human rights also makes it clear that article 8 may be interfered with to protect the economic well-being of the UK. Strasbourg case law has established that this includes controlling immigration. This Government believe that anyone who wishes to bring a foreign spouse, partner or dependant to the UK should be able to support them financially, and we sought advice from the Migration Advisory Committee on the minimum income level that would allow a British citizen or a person with settled status in the UK to support an immigrant partner or dependant.

Following that advice, we have set the income threshold at £18,600, a figure that was at the lower end of the range recommended by the Committee, but the level at

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which a sponsor can generally support themselves and a partner without accessing income-related benefits. Children, of course, involve additional costs to the state, particularly in schooling, so, again following advice from the Migration Advisory Committee, the income threshold will rise to £22,400 for a partner and one child, with an additional £2,400 for each further child.

Both partners’ earnings from employment in the UK can be counted towards the new requirement, together with their non-employment and pension income, and significant savings can also be used to offset any deficit in income, but third-party support in the form of subsidies or undertakings will not be allowed.

An applicant whose sponsor is in receipt of a specified disability-related benefit or carer’s allowance will be exempt from the new financial requirement. We believe that the new financial requirements are necessary, proportionate and firmly in the public interest, and I trust Parliament will endorse that view.

It may be helpful to the House if I set out some examples of how the new rules might operate in practice. In a non-criminal context, there might be the example of a former student who came to the UK with his partner and one-year-old child. His relationship with his partner has now broken down, and he has seen his child—now aged four—only once in the last year. He has no role in the child’s daily care. His partner, also a student, continues to study, and she and the child will remain here for another year. As the former student’s course has now ended, he has applied under the family rules on the basis of his child. In this case, the child is not British and has not lived in the UK for the past seven years. The father is not a primary carer and does not appear to have a genuine and subsisting relationship with his child. His former partner is also here only on a temporary basis for one more year. The application would therefore be refused.

Another example might be that of a young married couple who met overseas. The woman subsequently came to the UK to study and they married here. The man is a British citizen who earns just less than the minimum income threshold, and the woman is no longer a student and is not working. The couple are genuine and their relationship is ongoing, and they may still be able to meet the income requirement, but if not, and if there is no evidence of any insurmountable obstacles to their continuing their family life together overseas, we would expect them to do so.

In criminal cases, there might be an example of a serious foreign criminal sentenced to four years imprisonment for class A drugs supply. He has no family in the UK but claims that over his previous 15 years in this country he has built up a substantial private life. This man’s crimes represent such a serious level of offending that they outweigh any article 8 issues. There is no evidence that his case is exceptional, and this criminal could expect to be deported.

Another foreign criminal is sentenced to two years’ imprisonment for actual bodily harm. He has been in the UK lawfully for seven years before being sent to prison and has a partner who is settled in the UK. Again, there do not appear to be any exceptional circumstances in this case. The criminal has been lawfully resident in the UK for less than 15 years. It is therefore proportionate and in the public interest for this criminal to be deported.

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For too long, the rights of foreign criminals have been placed above the rights of the British public, and for too long, Parliament has not given its view on when it is proportionate to remove those criminals in the public interest. We are putting that right. We are making it clear that the British public’s right to protection from crime trumps a foreign criminal’s weak claim to family life, and we are allowing the views of those in Parliament, as the democratically elected representatives of the British people, to be heard on this issue loud and clear. We trust that the courts will give due weight to a statement from this House.

Today I have outlined common-sense proposals with which I hope all right hon. and hon. Members can agree. I ask the House to approve this motion and to let its views be heard. I commend the motion to the House.

**5.11 pm**

**Yvette Cooper (Normanton, Pontefract and Castleford) (Lab):** The Government have raised concerns about how article 8 of the European convention on human rights and the Human Rights Act 1998 are interpreted in cases involving foreign criminals convicted in the UK and then put up for deportation. I agree with the Home Secretary that the Government should be able to deport foreign citizens who have come to Britain and then broken British laws. People who come here from abroad need to abide by our laws and our values.

As the House will know, in 2007 the Labour Government introduced provisions for the automatic deportation of foreign criminals in the UK Borders Act 2007, and the number of foreign criminals deported each year trebled from 1,673 in 2005 to 5,528 in 2009. The Home Secretary has raised what the Home Office says are 185 cases that have gone to appeal each year on grounds of family life. We agree that there is a problem, with people finding it hard to understand the justice of the decision by the courts in some cases where foreign criminals have not been deported.

Article 8 is a qualified right. It says:

“Everyone has the right to respect for his private and family life.”

However, it also says that that needs to be balanced with

“the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

It is not like article 3 on the prevention of torture, which is rightly an absolute right, and which is not affected by this motion.

It stands to reason that article 8 should be a qualified right. People can be imprisoned if they break the law even if it affects their family life. The courts decide the balance of rights in individual cases, but it is part of our legal framework that Parliament can set out how qualified rights should be balanced in different areas; indeed, Parliament does so all the time through legislation. That relationship between Parliament and the courts is made even more explicit in the Human Rights Act, where Parliament is actively encouraged to debate how the rights should be balanced, and the judiciary are expected to take that into account.

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**Henry Smith (Crawley) (Con):** That being the case, why has our system apparently been so unbalanced over the past decade?

**Yvette Cooper:** It was the Labour Government who introduced the UK Borders Act 2007, which provided for the automatic deportation of foreign criminals. The number of deportations of foreign criminals increased substantially from 2005 until the election in 2010, after which the number fell significantly. I therefore say to the hon. Gentleman that his Government bear some responsibility for the action that is being taken. More needs to be done in practice to deport foreign criminals, as opposed simply to discussions of the motion today.

**Mr Clappison:** If the right hon. Lady is proceeding down that track, perhaps she will remind the House how many prisoners were found not to have been considered for deportation in 2006, let alone have their article 8 rights taken into account. Will she confirm that the figure was just over 1,000?

**Yvette Cooper:** It is interesting that the hon. Gentleman has mentioned the figure of 1,000. The number of foreign criminals being deported each year trebled between 2005 and 2009 to more than 5,000. In the most recent financial year, the number of foreign criminals being deported from this country fell by 1,000 compared with the previous year. The UK Border Agency has raised a series of concerns about how individual cases are being dealt with and the problems with travel documentation. Those are effectively administrative concerns. Some 1,000 cases are not being dealt with, not as a result of article 8, but because of serious problems with administration at the UK Border Agency. I think that that is serious, and I hope that he does too.

**Mr Clappison** *rose* *—*

**Yvette Cooper:** I will give way to the hon. Gentleman one more time.

**Mr Clappison:** Is the right hon. Lady telling us that the Home Secretary of the day, Charles Clarke, who was an honourable man, resigned because he presided over such a glorious success?

**Yvette Cooper:** As the hon. Gentleman will know, as a result of the problems over foreign criminals, a series of actions and measures were taken that increased the number of foreign criminals being deported. The problem for the Government is that the actions that they have taken seem to have reduced the number of foreign criminals being deported by more than 1,000 a year—a drop of nearly 20% in 12 months. That means that foreign criminals who should be deported are staying in this country and in the community. The UK Border Agency is not deporting them because of the chaos and fiasco within it.

**Alok Sharma:** Will the right hon. Lady be supporting the motion this evening? Everything that she is saying suggests that she supports what the Home Secretary has set out.

**Yvette Cooper:** I think that we need action to deport more foreign criminals. That includes more practical action through the UK Border Agency. The Home

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Secretary and the Minister for Immigration need to explain what they think the motion means. I will come on to that now, because it is an important issue.

The relationship between Parliament and the courts is made explicit in the Human Rights Act 1998. Parliament is actively encouraged to debate the way in which rights should be balanced, and the judiciary is expected to take that into account. Similarly, the British courts cannot strike down an Act of Parliament or primary legislation on immigration, even if they think that it does not comply with the Human Rights Act. Parliament has to decide how to respond if that is the case. That is the legal and democratic framework within which we operate. As part of that, it is reasonable for Parliament to express its view on the balance of different rights, and in particular the balance of different qualified rights. Indeed, we do so all the time through our legislation.

**Jeremy Corbyn:** My right hon. Friend will have heard the intervention of the Chair of the Joint Committee on Human Rights. Does she not think that it would have been better if this proposal had been laid on the Table today to enable his Committee to examine it and its implications for our participation in the European convention on human rights?

**Yvette Cooper:** My hon. Friend makes an important point, because the Joint Committee on Human Rights does important work. The status of the motion is unclear, because we do not know exactly how the Home Secretary expects it to operate. For example, we know that the new immigration rules affecting foreign criminals, which were set out last week, explicitly refer to how article 8 should be addressed. We believe that is legitimate, but other immigration rules do not make such reference. The rules on foreign criminals also allow the courts to consider exceptional cases, but the process remains deeply unsatisfactory and confused. The Home Secretary has said that she wants to send clear signals to the courts, but she is not sending clear signals to the House.

**Mr Cash:** Is the Home Secretary aware of the series of speeches made by the Lord Chief Justice to the Judicial Studies Board and others? He has made it abundantly clear that in his opinion, the judiciary, including the senior judiciary, have given far too much attention to the Strasbourg precedents and not enough to what he describes as the “golden thread” of the English common law. He says that it is therefore essential that we get this right and do not engage in generalised waffle about the question—

**Mr Deputy Speaker (Mr Lindsay Hoyle):** Order. The hon. Gentleman has had two interventions that have taken up speaking time. I am sure he would not want to do that, in case he wants to catch my eye later.

**Yvette Cooper:** I am not sure whether the hon. Member for Stone (Mr Cash) was accusing me or the Home Secretary of “generalised waffle”. Given his record, I fear that it could have been either of us. It was probably both.

I am sure the hon. Gentleman will have read considerably more of the judicial pronouncements on this subject than I have, but the House is being challenged to send a clear signal to the courts, and we are not being clear

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about what we are doing in the motion. The status of the motion remains unclear because it is neither primary nor secondary legislation.

**Mr Straw:** Although the hon. Member for Stone (Mr Cash) is quite right to refer to the important observations of the Lord Chief Justice, does my right hon. Friend accept that even if the Human Rights Act had never have been passed, we would still have been faced with this conundrum about the balance between the articles in the European convention on human rights so long as we remained committed to the convention? That is a key part of the Conservative party’s policy as well as ours.

**Yvette Cooper:** My right hon. Friend is right. The convention provides an important framework, and like him, I understand that the Conservative party remains committed to it. A strength of the Human Rights Act—I know he was a key pioneer in bringing it into British law—is that it provides Parliament with the ability to debate article 8. It is legitimate for us to do so as part of our debate on immigration rules and all kinds of other legislation.

**Mr Burrowes** *rose* *—*

**Yvette Cooper:** I have given way many times, but I will do so one last time.

**Mr Burrowes:** I will help the right hon. Lady not to take any further interventions by asking her to be clear about the Opposition’s position. They cannot have it both ways. I understand that they accept the observation of the House of Lords in the Huang case in 2007 that immigration lacked a clear framework, but do they also accept the observation that that was because the immigration rules

“are not the product of active debate in Parliament”?

We are having that debate today, so surely she should welcome that and accept the motion. Let us not just talk about it, let us have some action.

**Yvette Cooper:** The hon. Gentleman is right that we need a proper debate in Parliament and proper scrutiny. However, there are concerns about how the Home Secretary has set the matter out today. For example, the motion represents neither primary nor secondary legislation, so it is not clear whether the Home Secretary wants it to trump case law. She spent some time reading individual cases on to the record, so we can only assume that she wants the motion and today’s debate to trump case law and individual decisions. However, it is only a motion of the House. We have told her that we are happy to work with her on primary legislation to ensure that there is a proper legal framework.

**Pete Wishart** *rose* *—*

**Mr Rob Wilson (Reading East) (Con)** *rose* *—*

**Yvette Cooper:** I will give way one last time, to the hon. Member for Perth and North Perthshire (Pete Wishart), who I know intervened on the Home Secretary.

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**Pete Wishart:** Is it the right hon. Lady’s understanding that what the motion asks us to do—she is absolutely right that it is neither primary nor secondary legislation—is sign up to the Home Secretary’s immigration rules applying in their totality unless the shadow Home Secretary and her colleagues introduce another motion to challenge them?

**Yvette Cooper:** That is not what the motion says. It deals simply with an issue of principle about whether Parliament should be able to set out how article 8 is interpreted. Various lawyers have said that the motion is little more than a statement of fact and is effectively the equivalent of the Home Secretary regarding the immigration rules as compliant with article 8.

That is what the motion does, but it is not clear as to whether the Home Secretary expects us to endorse the detailed content of individual immigration rules, only some of which she discussed in her speech—many were not discussed. She referred, for example, to foreign criminals. The Opposition believe that the Government’s broad approach to foreign criminals is the right one—we think it is right to take stronger action, including through the immigration rules and the Border Agency—but this process is not appropriate as a general rule for the scrutiny of the content of immigration rules. For Parliament to attempt such scrutiny just two sitting days after the rules were published would be inappropriate, and it would be unlikely to reassure the courts that the detail had been properly scrutinised and debated.

In particular, today’s debate cannot be about the detail of the wider family immigration rules, which were published only last week. Further scrutiny will be needed, because there are concerns about whether the rules are the most effective way of protecting the taxpayer, and whether they are fair and just. Those concerns should be debated properly, but that cannot happen in a debate on a general motion.

The motion refers simply to the broad immigration rules and cannot suffice as proper scrutiny or endorsement of the changes to individual rules. The Opposition are happy to support the Government’s approach to tackling foreign criminals, because we believe that more action needs to be taken, including through the immigration rules. We also believe the Government are right to consider how to ensure that article 8 is interpreted. In that way, they can provide a framework of guidance when it comes to dealing with foreign criminals through the immigration rules.

There is a wider challenge. The Home Secretary’s reason for introducing the motion was that she is concerned that more foreign criminals should be deported. She will know that the number of foreign criminals deported in 2011-12 fell by nearly 18%. If all those in the cases to which she referred—the 185 cases that the Home Office said were granted appeal on article 8 grounds—were instead deported, the number deported in the most recent financial year would still have fallen by around 15% on the previous year. Whatever the Home Secretary’s intention, the motion still deals with only a small minority of cases involving foreign criminals.

The border inspector has made it clear that one of the main reasons why people are not being deported is difficulty in obtaining travel documentation. Everyone recognises that that can be difficult and untimely in some cases, but those practical operations have clearly

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become significantly worse since the election, which is a deep concern. The Home Secretary has said nothing today to answer those concerns or to address the growing concern that the Border Agency’s performance is deteriorating substantially on the Government’s watch.

The Opposition want to be able to support the Government’s approach to tackling foreign criminals, but we need more answers from the Home Secretary about what she hopes the motion will do.

**Mrs May:** There is a very simple question for the shadow Home Secretary. Does she believe it is right that, as the courts have said, Parliament should give a clear view on what the public interest is in relation to the operation of article 8 of the European convention on human rights, on the right to a private and family life? If she believes that that is the case, and that fewer foreign criminals should be allowed to stay in this country on the basis of article 8, she should support the motion and give a clear message to the courts. I am beginning to think that she is trying to confuse the courts and to prevent them from taking that interpretation of the motion. Does she support a clear message to the courts or not?

**Yvette Cooper:** The Home Secretary talks about clear messages, but she is not giving a clear message to the House, never mind to the courts. She has been confused at every step about what the motion is supposed to do. Time and again, she has been asked whether it is supposed to trump case law or endorse the details of individual immigration rules, on which no opportunity for proper scrutiny has been given, and which have not even gone through the normal processes in the House. It is not clear whether this is supposed to be an endorsement of the existing immigration rules or the future immigration rules. She has not made her position clear.

We would like to be able to support the Home Secretary in her principled statement that article 8 should be discussed by the House and is a matter for legitimate debate. We also want to support her in taking action to deport more foreign criminals, but we urge her to do something about the real problem, which she is still ignoring. She also needs to provide answers to the House about how the detail on other aspects of the immigration rules, particularly on family and other parts of her proposed immigration changes, will be scrutinised, and whether she is trying to bypass the normal scrutiny processes.

The Home Secretary has not chosen a normal approach today. She needs to do more to deport more foreign criminals, but she should not try to subvert normal processes and should be straight with the House about what she is asking it to do.

**Jeremy Corbyn:** On a point of order, Mr Deputy Speaker. In her speech, the Home Secretary referred extensively to rules laid before the House but not prayed against and therefore not debated. Is it in order for us to discuss the contents of those proposed rules, because that is exactly what she did throughout her opening speech?

**Mr Deputy Speaker (Mr Lindsay Hoyle):** Yes.

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**5.31 pm**

**Mr Julian Brazier (Canterbury) (Con):** I shall be fairly brief. In one sense, it was a pleasure to follow the right hon. Member for Normanton, Pontefract and Castleford (Yvette Cooper), because I would like to pick up one or two of her points. Her speech started as though it would be bipartisan but ended on an extremely partisan note.

A couple of background points should be made immediately. First, under the previous Government, there was a surge in net immigration quite unprecedented in our country’s history. Even according to official figures, more than 2 million more people entered the country than left it under the last Labour Government, but given that border controls had largely broken down and we were no longer measuring embarkation, there is a range of statistics and estimates suggesting that the numbers might be much higher. For example, the Office for National Statistics keeps on revising up its population projection statistics. In 2004, it said that by 2050 the UK population would reach 67 million, but it now says that in just 15 years, it will be 73 million—twice the increase.

Secondly, the shadow Home Secretary made much of the number of deportations of foreign criminals, looking particularly at a single year. The statistic she did not share with the House is that the number of foreign criminals in British prisons almost trebled under the Labour Government, from 4,000 to more than 11,000. That should concern us all.

**Graham Jones (Hyndburn) (Lab):** Is that not actually a good statistic showing that the police were catching criminals and locking them up?

**Mr Brazier:** The hon. Gentleman is obviously not familiar with the statistics. The number of criminals in the criminal justice system, or in prison, rose by between 20% and by 30%—I cite these figures from memory—over that period. That the number of foreign criminals trebled suggests that much was wrong with our border controls at the time.

I strongly support what my right hon. Friend the Home Secretary is trying to do. She and the Minister for Immigration, my hon. Friend the Member for Ashford (Damian Green), my constituency neighbour who is sitting next to her, have taken a brave stand in this area, against a great deal of criticism by much of the media and many parts of the legal establishment. My concerns about what we are doing are all to do with the fact that we are not going far enough. They are in no way about opposing what we are trying to do.

My first concern is one that I mentioned in an intervention on my right hon. Friend. Experience from a number of other areas of law—not least family law—suggests that the courts might drive a coach and horses through what we are trying to achieve by putting the words “except in exceptional circumstances” in each of the relevant places. An alternative would be either simply not to include those words at all, or to say that in exceptional circumstances cases should be considered again by the Home Office.

My next concern is about the way in which we are looking at the rights of children. I hope that most Members of this House—at least those who have been here for a while—will be aware of the amount of time I

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have spent pursuing the concerns of the most disadvantaged and vulnerable children, particularly in adoption and fostering, and the way in which child witnesses are treated in court. I have to say that the most colossal amount of garbage has come out of some of the court cases. The idea that it is somehow automatically in the child’s interests that a parent who is also a violent criminal who has committed a serious criminal offence should be kept in the country, whether or not the child has regular contact with that parent, seems extraordinary. In many cases it is in the child’s interests that that individual should be deported.

My next concern is that although we are taking a tough line with foreign criminals—something I strongly support—I would urge my right hon. Friend to consider applying some of this thinking more widely. A large proportion of the people who are in this country illegally came in through a perfectly legal route and have chosen to overstay. Two of the most common types of cases involve those who came in on student visas and overstayed—I represent the largest number of students in any constituency in the country—and those who came in on family visits and overstayed. By allowing the courts to continue treating each case on its own merits, from scratch, we are making it harder and harder to justify allowing people to come in for perfectly legitimate reasons.

We want to encourage students into this country, and of course people should be able to come in for family weddings and all sorts of other reasons. However, if it is possible for them to bring an article 8 family connection case after they get here, every time someone who has relatives in this country comes here as a student—I am dealing with one such case at the moment, through my constituency postbag—and every time someone who, by definition, has relatives in this country comes over for a family wedding, Home Office officials will inevitably look at those cases with a jaundiced eye. There is a strong case for saying that if those who come in through certain routes then want to make an article 8 application, they should be able to do so only after they have left the country, applying through the normal routes, irrespective of any exceptional circumstances.

I want to make only one wider point. We get few opportunities in this House to debate the wider issues around immigration. I know from my experience on the doorstep, not only from working in my constituency but from helping in a number of others—in the general election, in local elections and in the marvellous election that has just delivered Boris Johnson as Mayor of London again—that people are deeply concerned about the wider issues around immigration. I am fully behind everything that my right hon. Friend the Home Secretary and my hon. Friend the Minister for Immigration are trying to do in this regard, but we are a long way from meeting the target, and the target itself seems to regard elderly couples retiring to live in the sun as somehow a balance for young people from areas with very high birth rates coming to this country. We have a very long way to go.

I want to end by saying that we must be clear on one central point. This is an important measure and we must send a message to the courts that it is we in Parliament, not the courts, who are answerable to the people. The courts must therefore listen to what we have to say.

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**5.40 pm**

**Mr Jack Straw (Blackburn) (Lab):** The hon. Member for Canterbury (Mr Brazier) has just said that he wants the House to discuss the wider issues of immigration, and I entirely agree with him. The immigration rule changes, to which the motion refers in a coda, go much wider than simply the interpretation of article 8 in respect of the deportation of foreign criminals. I would say, parenthetically, to the Home Secretary that while I support many of the other changes, I remain concerned about some of them, not least the removal of the right of appeal in family visit cases, which I introduced in the late 1990s. That measure has worked well and fairly, and in my experience it has led to abuse in very few cases. I therefore support the motion before the House in the context in which it has been brought forward—namely, to deal with the problem of the deportation of foreign national criminals.

The particular case that got me heavily involved in this matter as a constituency MP was the death in a motor accident of young Amy Houston. She was walking with her brother in Newfield drive in my constituency when a vehicle driven by an asylum seeker, Mr Mohammed Ibrahim, knocked her down and killed her, although she was alive for six hours after the event. He drove off without stopping or giving up any details. Amy’s bereaved father, Paul Houston, lives in the constituency of my hon. Friend the Member for Hyndburn (Graham Jones), who will give the House many more details of the case.

That asylum seeker, an Iraqi Kurd, was convicted of a series of offences arising from the accident. He had no driving qualifications, he was driving while disqualified and uninsured, and driving without a valid test certificate. Subsequently, he was cautioned by the police for the possession of cannabis and for burglary and theft. He was again convicted of driving while disqualified and uninsured, and, six years after the accident, convicted of the offences of harassment, damage to property and theft, for which he was fined. In 2008, he was also arrested and fined £200 for offences arising from a dispute with the woman he subsequently claimed to have married. I shall call her Mrs Smith, as there are children involved and I have no wish to involve them.

That man’s rights of appeal were completely exhausted, and he was due to be sent back. When the matter went to appeal—at Mr Houston’s behest and mine—to an immigration judge, one of the points that the judge regarded as acting in the man’s favour was the fact that the Home Office had made no effort to deport him between 2002, when his right to remain here was exhausted, and 2006. That was because it would not have been safe to deport Mr Ibrahim to Iraq at that time, for reasons of which everybody was aware. Notwithstanding that, it was decided that the relationship he had formed with Mrs Smith, by whom he had had two children, was sufficient to justify a family life entitlement under article 8.

I have to say—I and my right hon. Friend the Member for Kingston upon Hull West and Hessle (Alan Johnson) looked at this—that the evidence of a successful family life was very flimsy indeed. There was total confusion in the court about whether the two had been married and where the marriage had taken place—in Blackburn or Birmingham. Those two places are different and separated by well over 100 miles. There was dispute about the

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date. On her own admission, Mrs Smith visited this man only once during the nine months in which he was detained as an immigration detainee.

At the behest of my right hon. Friend, the former Home Secretary, there was a further appeal. We had hoped that the courts would use this as a test case to change the law in the direction that the current Home Secretary now rightly seeks. I regret to say that, sadly, that did not happen. As a result, I strongly believe that the only alternative, however imperfect, is to bring forward this motion and try to get a change in the approach of the courts.

I want to apologise to you, Mr Deputy Speaker, to the Home Secretary and to the House, because I have to leave shortly before 6 o’clock. I also apologise to the Minister for Immigration, as I shall not be in my place to hear his winding-up speech—unusually, in my case.

In saying all this, I make no criticism of the judiciary who dealt with these cases. One thing I learned from much contact with the senior judiciary is that precisely because the system rightly sees itself as subordinate to Parliament but does its best to interpret Parliament’s will, the courts sometimes get caught by precedent. As senior members of the judiciary sometimes told me in respect of other cases, unless there is an appeal that really hits the spot, which they can then sort out, the only remaining course is sometimes for Parliament to seek to clarify the law.

**Mr Cash** *rose* *—*

**Mr Brazier** *rose* *—*

**Mr Straw:** I give way briefly to the hon. Member for Stone (Mr Cash) first.

**Mr Cash:** I am most grateful. In dealing with the critical question of proportionality, which is what arises in these cases when a balance needs to be struck by the courts either way, does the right hon. Gentleman agree that, in the absence of very express provision, it will be impossible to fetter the court’s discretion—even with a steer from the wording—in the determination? The evidence is that individual judges will tend to continue to make their own judgment, whatever Parliament seeks to say.

**Mr Straw:** I am afraid that I do not accept that. A feature of our courts is that they are, quite properly, very conscious of the need to apply the law as they believe Parliament has laid it down. I am confident—I cannot be certain—that, had this proposed approach been passed by Parliament and if necessary enshrined in legislation, the courts would have been able to exercise their judgment on proportionality in a way that showed proper respect to the Houston family and to that poor child rather than to Mr Ibrahim and the woman with whom, in my judgment, he formed a relationship solely in order to evade immigration control and deportation.

**Mr Brazier:** The right hon. Gentleman is generous in giving way. He is also generous-spirited in saying that he makes no criticism of the judge concerned, in the light of that truly extraordinary judgment. Does he accept, however, that if the motion is passed and such cases continue to arise, it will be time for parliamentarians to start to criticise judges?

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**Mr Straw:** I think that it is a matter of style. It is perfectly right and proper for Members of Parliament to dissent from what the courts have said, as I do here, but I do not think it proper for them to insult or abuse members of the judiciary. It is the essence of our democracy that we have a separation of powers, and that can only work if each side respects it.

My final point is one that I put briefly to the Home Secretary when she made a statement, and it concerns the ending of the confidentiality of judgments in cases such as this. There is good reason for asylum cases themselves to be confidential; indeed, we are bound to that by the 1951 Refugee convention. However, I do not believe that when someone has failed in an asylum case and subsequently seeks something very different, it is right or in the public interest for the whole of the judicial determinations—pages of them—to be effectively kept secret.

It was only by accident that I got hold of that judgment. I was asked by the Home Office not to disclose it to Mr Houston. It was an extraordinary circumstance. Confidentiality in such cases means that the argument that the judiciary come up with is not open to the public scrutiny that is essential if our law is to apply itself properly.

**5.51 pm**

**Kris Hopkins (Keighley) (Con):** Thank you, Mr Deputy Speaker, for giving me the opportunity to contribute to what I think is a very important debate. My hon. Friend the Member for Canterbury (Mr Brazier) spoke of the importance of the issue of immigration on the doorstep. Time and again, we hear concern and anger at the frustration that the Government experience when they attempt to deport someone who has committed a serious criminal act.

Ours is a very generous country, which rightly offers the hand of friendship and help to people wherever they may come from. That has been demonstrated by our commitment to international development, and also by our top record on asylum. It is important for us to start from that position. However, I believe that we as a nation have a right to set out the rules on immigration, and to determine migration into this country. That is why I support these rules, and also the measures that the Government have already taken, such as capping economic migration from outside the European Union, introducing minimum skills, closing the tier 1 general route that has allowed self-selecting migrants to come here without a job, reforming the student visa system, and setting a minimum income for those who wish to bring a spouse or family member here.

I know that some people in my constituency find that last measure upsetting, and they have made representations to me, but why should the British public have to bear that financial burden? If someone wants to come to this country—which is a great country—and gain from all the services, facilities, democracy and freedom of speech that it provides, that person should be required to meet some minimum standards.

We have been revisiting the citizenship test, and I think it important that British history and culture are at the centre of it. Now we are rewriting the immigration rules to help prevent article 8 of the European convention

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on human rights from being abused, and I think that important as well. I want criminals to be deported from this country as soon as possible, and I welcome the fact that we have removed 4,500 in the last year. I take the point made by the right hon. Member for Normanton, Pontefract and Castleford (Yvette Cooper), and I look forward to the Government’s explanation about the variation of 1,000. I want every single person who can be deported to be deported.

Each incremental change that we make is important. We should not stop reminding individuals that it is a privilege to come to this country, live in it and gain citizenship of it. Those who abuse that privilege should lose it. The last Government lost control of migration, and they lost public confidence in our border controls. We have a huge responsibility to right that wrong.

Although, as we have mentioned, immigration is raised constantly on the doorstep, in our mail boxes, in the pub, and wherever I go as a politician, only a small number of Members are present to contribute to today’s debate. If people do not engage in public debate on the issue because of the stigma associated with it, I would say to them that it is not racist to debate immigration. It is important for us to contribute our voice, take ownership of immigration issues, face up to the fact that policies have failed in the past, and enable the public to be confident about the fact that we take responsibility. If we do not, fascist organisations will step into the void that we have created by not discussing these issues.

**Mr Brazier:** My hon. Friend is making a powerful speech. Does he agree that it is supremely ironic that the one major public figure who has had the strength of character to say that many decent people have ended up voting for horrible organisations such as the British National party because they have given up on mainstream parties is our noble Friend Baroness Warsi?

**Kris Hopkins:** I think our noble Friend makes an extremely important contribution to the debate.

Debating this matter is an essential part of the democratic process, and I want to encourage more people to do it. We wince at the language that is used, but let us get over the issue of language: let us have the debate in all parts of the country, and give people confidence by doing so. The debate has provided an opportunity for the will of the House to be seen, and I look forward to voting in favour of the motion.

**5.57 pm**

**John McDonnell (Hayes and Harlington) (Lab):** Unfortunately the Home Secretary is not present, but let me place on record that I have a good deal of time for her. I think that her speech a few years ago about “the nasty party” was incredibly courageous. *[Interruption.]* I was trying to make a wider point. I think that it helped to change a bit of the culture of politics in this country. However, I am extremely disappointed in the process that is taking place today. I no longer know what we are debating, or what the purpose of the debate is. If its purpose is to establish some form of credentials for the House—to cause the courts to acknowledge statements in the House and thus, to an extent, shape their judgments in the light of the debate—this is not the way to go about it.

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Normally we would debate legislation, and the legislative proposals would be published in good time. Often, as one of my hon. Friends pointed out, those proposals would be presented to the relevant Committee of the House, which in this instance would probably be the Joint Committee on Human Rights. We would receive a report, a legislative proposal would be debated in the House in some form, and then, as a result of a vote, legislation would be enacted. That is the way in which we not only legislate, but shape the interpretation of legislation by the courts.

**Pete Wishart:** Like the hon. Gentleman, I am totally confused about what we are voting for this evening. There have been three explanations of what the vote at 8.30 pm will entail, but the danger is that we may be voting for the immigration rules in their entirety, as laid out last week. That is unacceptable to me, and I am sure that it is unacceptable to the hon. Gentleman.

**John McDonnell:** Let me finish the point I was making, which is that this is an object lesson in how not to go about influencing others, and certainly not the courts. The immigration rules legislative proposals were published only a week ago, and there are 45 pages of amendments to what is an even more detailed document. I ask Members who have read all of that material to put up their hand. For the benefit of the *Hansard* record, I note that one Member has raised their arm—or perhaps two.

**Mr Cash:** As an assiduous reader of these documents, may I mention that the Journal Office has advised that the use of an approval motion for such rules is normally subject to negative procedure, although that is not taking place in this instance, and the contention that Parliament’s view is subject to review by the courts is also surprising in the context of article 9 of the Bill of Rights? The Clerks have clearly therefore taken on board some serious points regarding the procedure that is being followed.

**John McDonnell:** I heard those points when they were made previously, and the House of Commons Library note provided to us describes this as an unusual process—I put it no stronger than that. We are having this debate only a matter of days after having received the detailed and complex documents to which I referred, and I simply do not understand the reason for this haste.

Moreover, the first section of the motion is a statement of the obvious; article 8 is, indeed, a qualified right. It then tries to inveigle us into a commitment to support the immigration rules that we received only a few days ago, and which have not been debated. That is an unacceptable attempt to bounce the House into agreeing to something that many of us have genuine concerns about.

We would welcome a wider debate. I know this might sound unusual, but, frankly, I want to consult my constituents on the matter. I want to understand their concerns about these new rules. My anxiety is that we are now entering a political phase. During some Members’ speeches, certain other Members were suggesting, “Well, vote against the motion.” I want nothing to do with this motion, but they were shouting and bearding people

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about voting against the motion—

*[Interruption.]*

I do not think the hon. Member for Crewe and Nantwich (Mr Timpson) has been in the Chamber since the beginning of the debate, has he?

**Mr Edward Timpson (Crewe and Nantwich) (Con):** I have.

**John McDonnell:** I apologise and withdraw that comment, therefore, but there were definitely shouts of, “Well, vote against it.” Such behaviour draws us into the realm of political knockabout, when we should be having a considered debate about the legislative proposals, and what that results in is clear to anybody who has seen the *Daily Telegraph* campaign currently being waged, in which it is naming judges and publishing their performance in individual trials. It is saying how many people those judges have deported over the last period. This is taking the form of a witch hunt, therefore, and it is an unacceptable attempt to influence the judiciary. I agree with the hon. Member for Keighley (Kris Hopkins) that there needs to be an honest debate about immigration, but to drag things down into a political knockabout on how to vote on a motion that is irrelevant in respect of any legislation is unacceptable and clouds the atmosphere in this House, and thereby undermines its ability to influence any law court or judge.

The procedure the Government have introduced today completely undermines the credibility of the House on this matter. We need to get back to the normal processes of legislation. We need to ensure Members have the necessary information well in advance of any debate, rather than having it in the curtailed time scale that we have experienced on this occasion—and that is particularly important in this instance, as the matter under discussion is very complex, and very sensitive as well. The full procedures of the House should be followed, including referring the matter for consideration by the relevant Committees of the House which will then report back, and giving Members the time to consult their constituents and then to come to a considered view and arrive at a decision on a vote. That vote may well prove to be unanimous, because people will feel they have been fully involved. No court can interpret this current process as expressing the definitive will of the House, however, because many Members will have not a clue what we are voting on as the information has been provided so late.

**Mr Cash:** I just wonder whether the hon. Gentleman noticed that the Home Secretary referred to the fact that as yet nobody has placed a prayer of annulment to the immigration rules. I understand they were introduced into the House only on 13 June. I therefore suspect that, in the event of such a prayer being put, he has the option—and the right—to call for a vote on the substance of the rules.

**John McDonnell:** That is exactly the point I was about to make. It is important that Members take their responsibilities seriously and that the motion is prayed against. That will enable us to go through the due process of this House, so we can arrive at a decision that Members will feel party to, and that then will have some substance and significance in influencing future judgments in the courts—taking into account, of course, the separation of powers.

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Today’s debate is almost a waste of time. It will be looked on as an embarrassment to the House. If we want to improve the standing of MPs and the Houses of Parliament within our community, this is not the route we should be pursuing. I therefore want nothing to do with this motion. I want my position recorded very clearly. I oppose the motion and I wish to get back to a process of legislating whereby every Member feels fully involved—and involved in a process that is serious and significant, not trite as in this instance.

**6.7 pm**

**Mr Dominic Raab (Esher and Walton) (Con):** It is a pleasure to follow the hon. Member for Hayes and Harlington (John McDonnell), although, unlike him, I welcome this debate and the serious way in which Ministers have identified and targeted the issue of article 8 undermining deportation, especially in relation to foreign national criminals, but also, increasingly, in relation to other elements of our immigration controls. It is worth putting the specific problem of article 8 into perspective. The European convention on human rights was never intended to have any extra-territorial application at all. It was certainly not intended to fetter deportation in any way. That much is very clear from the travaux préparatoires of the convention, all of which are in the public domain.

All of the restrictions have arisen through judicial legislation. Judges in Strasbourg and the UK have stretched existing rights to restrict our capacity to deport. That is contrary to both the separation of powers and basic democratic accountability. It is a serious constitutional matter. It is for elected Members of this House, not unaccountable judges, to decide if British human rights need to be upgraded from the ones we signed up to in 1950. I should say that, for my part, as a matter of principle and as an elected representative, I support upholding the absolute prohibition on torture. Some will disagree, but I think it is wrong to deport anyone into the arms of a torturing state. On the question of what the right balance might be in terms of deportation and human rights, however, it must be for elected law-makers to decide if we are going to raise the bar. Politicians can, perfectly respectably, disagree on where the bar should be set, but democrats cannot disagree that it is for legislators to strike that balance.

The fact is that the European Court of Human Rights has been legislating since the 1970s. In the notorious Chahal case in 1996 it was decided that Governments could not deport terrorist suspects if there was a substantial risk of torture in the country to which they were to be returned, but Strasbourg has gone much further. We see new fetters placed on deportation, most recently in the Abu Qatada case. The House will recall that Qatada’s deportation was barred by Strasbourg not because he faced the risk of torture—that was rejected—but because he might not get a fair trial in Jordan. That is a very dangerous precedent. It cannot be Britain’s responsibility to ensure that the justice systems of the world meet British or European standards. Again, it is not for Strasbourg to expand the fetters on deportation through judicial legislation.

**Jeremy Corbyn:** Surely the hon. Gentleman is rather overreaching himself here. This country signed the UN convention against torture, as one of many countries

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that did so, and it therefore specifically becomes part of UK law and there is precedent for that. So deporting somebody to a regime that does not accept the convention against torture and therefore might torture them would be illegal under UK law, leaving aside what might happen to them when they get sent back.

**Mr Raab:** I thank the hon. Gentleman for his intervention, but he made so many leaps of legal logic that I could not possibly follow them all. The fact is that Strasbourg’s application of a bar on deportation when the individual is at risk of not having a fair trial in their home country is not set out in the UN convention against torture and is not in the European convention on human rights; this is something that Strasbourg, of its own whim, created. The number of appeals by Qatada, at home and in Strasbourg, makes a mockery of the rule of law.

That said, by far the biggest problem we face on deportation arises as a result of the new restrictions under article 8 and the right to family life. If we are being honest, we cannot blame that on Strasbourg, because these are home-grown restrictions; they are a direct result of judicial legislation by UK courts under the previous Government’s Human Rights Act, beyond even the high tide of judicial legislation in case law that has come from Strasbourg. As a result of the Immigration Minister’s direction, the Home Office has produced data showing that 400 foreign criminals a year defeat deportation orders on article 8 grounds. That represents 61% of all successful challenges to deportation orders and this is by far the biggest category.

These cases are not just statistics; they involve real lives. Many shocking cases have been reported in the news, and I wish to refer to just one, that of my constituent Bishal Gurung, a waiter from Esher who was brutally killed by a gang, with his body dumped mercilessly in the river Thames. The perpetrator was convicted of manslaughter and later released. He frustrated his deportation order by citing his right to family life. Let me make it clear: he had no wife, no children and no dependants, yet still he claimed that his family ties trumped the public interest in his deportation. The House can imagine how Bishal Gurung’s family felt about that, and we can imagine what they feel it says about British justice. Now I can at least tell them that the Government and the House of Commons are trying to tackle the problem and reform the law.

**Mr Denis MacShane (Rotherham) (Lab):** We all encounter cases where members of constituents’ families have suffered as a result of the most brutal crimes and wish the most terrible justice to be placed on those who committed the crimes—if they are British, they of course stay in our courts and within our country. What I am worried about is: what happened to the principle of not visiting the sins of the father on the child? In the case the hon. Gentleman cites there was no family, but in many cases these men have married British women and have sired British children. Do those children and those wives have no right to have a life, after the sentence has expired, with their father and with their husband?

**Mr Raab:** The right hon. Gentleman makes a very important point. He crystallises things cogently, but in this case there were no dependants, so what he says does

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not apply. This is an interesting case. There are many examples where someone has committed a vicious, violent crime—it might be murder or, as in some cases, a sexual offence—has then had a child in the meantime and has then coerced members of the family, putting them under duress, so that they give evidence, which this person has then relied on to stay in this country. I challenge the view that it is always in the best interests of a child to be with a father of such character and background, but it is very difficult for a court to make that determination when they have evidence in front of them.

I shall discuss one case, which is the most skewed and perverse that I have come across. There are reporting restrictions on it, so I shall be careful about talking about some of the details. It involves an individual raping his partner and then claiming that relationship as part of the family life that he relied on to stay in this country. Many people would regard that as both legally unsustainable and morally perverse.

This is not just about the deportation of foreign criminals; it is about the shifting goalposts of article 8. It is very important to understand that the state of the law now—that static snapshot—is not the sole issue; it reflects years of development. My worry is about the direction in which things are headed. I worry that it will be increasingly impossible to apply border controls, be they in relation to the deportation of foreign national criminals or to other aspects of coalition policy, including cracking down on things such as forced marriage, increasing language requirements or dealing with sham student visas and bogus colleges. All those things will come later because the goalposts will keep shifting. That is a real danger for this Government and for future Governments.

**Mr Cash:** In his excellent, extremely well researched and powerful speech, my hon. Friend has not yet referred to the manner in which section 6 of the Human Rights Act 1998 impinges on this question. When I was shadow Attorney-General and I invoked our party to repeal the Human Rights Act as part of our policy, it became the policy up to and including the general election. Does he agree that nothing will stop the courts from striking down immigration rules as a disproportionate violation of article 8 if they decide to do so?

**Mr Raab:** I thank my hon. Friend for his intervention. If he is patient, he will find that I will come on to deal with exactly that point, but I wish to avoid duplication at this moment.

I shall now deal with the points made by the shadow Home Secretary. She clearly knows little of the history of this problem or has conveniently forgotten it, so let me remind the House that this problem has been created by the Human Rights Act that her Government introduced. In fairness, there is an additional element to this, because the previous Prime Minister at least recognised that there was a problem. The House may recall his barnstorming 2007 conference speech in Bournemouth. His biggest cheer came when he vowed, all misty eyed, that

“any newcomer to Britain who is caught selling drugs or using guns will be thrown out. No-one who sells drugs to our children or uses guns has the right to stay in our country.”

As a result, we got changes, including the UK Borders Act 2007, to which the shadow Home Secretary referred.

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Section 32 of that Act deals with the deportation of foreign national criminals—so far, so good. However, by including an express reference to the Human Rights Act in section 33—something that was totally unnecessary and a matter of political choice—the previous Prime Minister, far from strengthening our capacity to deport, fatally weakened our capacity to deport. Ultimately—this is the point that my hon. Friend the Member for Stone (Mr Cash) is making—primary legislation trumps the Human Rights Act, but not if that Act is expressly written into the relevant statute. That may sound like a technical point, but it is crucial to understanding what went wrong with the 2007 Act. The former Prime Minister emasculated his own deportation law, and that speaks volumes about the expediency with which Labour has approached this debate. I believe that the shadow Home Secretary will be a bit less pious about this issue and will perhaps eat a little more humble pie before the House—I am sure that the shadow Immigration Minister will do so.

*[Interruption.]*

We live in hope.

I welcome the changes and the motion, but there are questions as to whether the changes to the guidance and a mere resolution of this House can deliver the reform we need. I put that precise question to the Lord Chief Justice in November, when he appeared before the Joint Committee on Human Rights. He made it clear that without primary legislation the courts would probably not rein in the expansion and application of article 8 in deportation cases. So I would be grateful if the Minister said what the Government will do if these changes are not fully effective, as at least Government Members hope they will be. Does he agree that if we cannot stop the rot, we will need a new UK borders Act to deal with this issue clearly, categorically, once and for all? It is vital that we can measure the success of the proposed changes we are debating today. Will he ensure that the Home Office now records the number of deportation cases frustrated on human rights grounds, with a breakdown in respect of articles 3, 6 and 8—the main offenders—so that we can measure, see and scrutinise whether this problem gets better or worse as a result of the changes being introduced? The Home Office has not routinely recorded those data. The Immigration Minister went out of his way to ensure that it produced a single quarterly snapshot in 2011—I welcome that and commend him for it—but can he reassure us that that information will be routinely recorded from now on?

Human rights reform is contentious and it needs to take place on three levels: reform of the Strasbourg Court; replacement of the Human Rights Act with a British Bill of Rights; and UK legislation to strengthen our border controls.

For my part—others might feel differently—I recognise that our coalition partners are sensitive about the Human Rights Act. I accept that we are unlikely to see the reform that I would like to see in this Parliament and I have already made clear my commitment to the absolute prohibition on torture. I cannot understand, however, why anyone except the lawyers, non-governmental organisations and academics who have made an industry out of human rights would die in a ditch to stop the deportation of serious criminals because it might disrupt their family, social or private ties. To me, as I have said, that suggests a skewed moral compass, not just legal chaos for our border controls.

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The changes we need require primary legislation, but we do not have to touch the Human Rights Act to solve this specific problem. It can be done by statutory amendment. I hope that the proposals before us today will tackle the problem—they have my full support—but if they do not, I hope that all parties will agree to consider very seriously the case for amending the UK Borders Act. We need to draw a line in the sand, to restore democratic control over the criteria for deportation, to stop the ever-expanding list of legal excuses used by some of the worst criminals to stay in this country, to protect the public and, above all, to restore their confidence in British justice. We will only do that by injecting a healthy dose of common sense back into the increasingly perverse application of our human rights law.

**6.21 pm**

**Pete Wishart (Perth and North Perthshire) (SNP):** Sometimes, I do not know why we bother. We all turn up for these debates. All those who take an interest in home affairs and issues such as human rights are here, and you are here in your finery, Mr Deputy Speaker. We have heard a very confused speech from the Conservative Secretary of State and we have heard from Labour Members, ever compliant on human rights and home affairs. We have not heard from the Liberals; I do not know whether we will, but I would be interested to hear what they have to say. We are all here, but we are all more or less wasting our time. Why not just get on with it and get *The* *Daily Telegraph*, along with the *Daily Mail*, to conduct our immigration policy? That is what we are getting, with immigration rules that are practically out of *The Daily Telegraph*’s leader column.

What an absolute farce this afternoon has been. What on earth are we debating? I do not have a clue. We have had three different explanations from the Government about what we are being asked to consider. We are asked to consider that article 8 is a qualified right. Yes, that is a restatement of the bleeding obvious, as I said earlier, and we all know that. We are then asked to support the Government’s immigration rules. Does that mean the immigration rules in their totality, as the Home Secretary said when I intervened, or part of them? Or are we just giving a direction to the judges? I have absolutely no clue whatsoever what we are being asked to consider this evening. It is a total waste of time and a farce. As the hon. Member for Hayes and Harlington (John McDonnell) says, we need a proper process to consider this very important subject—and it is important.

**Mr Cash** *rose* *—*

**Pete Wishart:** I will give way, but I know exactly what is coming.

**Mr Cash:** The motion simply reads

“those contained in the Immigration Rules.”

It does not state which immigration rules. Indeed, they might change, as we expect that they will, from those proposed on 13 June.

**Pete Wishart:** I do not know whether the hon. Gentleman is being helpful, but that seems to be another interpretation. When he sums up, the Minister for Immigration must tell us exactly what we are voting on this evening, because I do not know. I cannot support the immigration

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rules in their totality, so if the Government are saying that we have to accept them tonight, I unfortunately cannot support them and will press the matter to a Division. We cannot accept the rules as they stand. This is a very important debate condensed to four hours and a lot of nonsense.

**Jeremy Corbyn:** Like the hon. Gentleman, I am confused by much of the debate. Would his interpretation be that whatever the outcome of the rather odd motion the Home Secretary has tabled, it cannot by any stretch of the imagination be construed as an approval of the rules, a direction to courts or as anything other than a vague statement from the Home Secretary of whatever she happens to believe in today?

**Pete Wishart:** The hon. Gentleman might be right—I do not know. We need to hear from the Government exactly what we are voting on. The Home Secretary made three different attempts to tell the House what we will be voting on tonight, but we are no clearer. At some point, we will need to hear from the Government exactly what they are asking us to support. If they want us to support the full rules, I cannot do that. It is a Conservative assault on article 8 and I will not be able to support it this evening.

We need a considered debate on immigration. Hon. Members who have spoken are absolutely right that the matter concerns our constituents, but in Scotland we do not share the *Daily Telegraph*, *Daily Mail*, right-wing Tory view of immigration. Scotland consistently sees these issues differently. Scotland’s population is at an all-time high, but only a few years ago we had great concerns that it was going to fall below the iconic 5 million mark for the first time since the 20th century. That was a real and absolute concern that has been addressed by immigration. We see immigration as something that is valuable to our communities and that is there to be cherished, grown and developed. The minute people set foot in our nation, they are new Scots. They are integrated from day one and that is why we do not have such problems.

**Mark Reckless (Rochester and Strood) (Con):** Will the hon. Gentleman therefore confirm whether, were Scotland to become independent, it would have its own independent border service?

**Pete Wishart:** You betcha. We have been observing what has been happening in the UK Border Agency and it is a textbook guide of how not to do to it. It is a nonsensical agency; it is dysfunctional and gets things absolutely wrong. I look forward to the day when we exercise control over our own immigration policies, so that we can have policies that are designed for and suited to our demography, our economy and our population. Right now, our population is at an all-time high because of immigration and we see that as good and positive.

**Mark Reckless:** Just to clarify, is the hon. Gentleman presuming that an independent Scotland would be part of a common travel area in the way that the Republic of Ireland is? If so, can he be certain of that—

**Mr Deputy Speaker (Mr Nigel Evans):** Order. We are straying way off the matter under consideration.

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**Pete Wishart:** Thank you, Mr Deputy Speaker.

We are here today to consider changes to article 8 of the European convention on human rights, which will effectively define the basis on which people can enter or remain in the UK based on their right to a family life. The motion is a revelation, almost declaring that article 8 is not an absolute right and that it is therefore okay to interpret it in any way that the Government want and for them to give guidance to that effect.

The Government are determined to have their way with the judiciary and to tell it how to interpret these provisions. Why bother even having a judge? Why cannot the Home Secretary and the Minister for Immigration do it themselves? We will have an end to judges deciding, as the delicate balancing exercise carried out by judges every day in these tribunals and courts will now be dictated by the Secretary of State.

The Home Secretary has set herself quite an ambitious deadline. She has pledged by the end of the summer to end the abuse of the right to a family life by people who should not be here. She has been egged on by the “end the human rights” brigade, whom we see every day in the right-wing press, on the Conservative Back Benches and on the Labour Front Benches. They paint an extraordinary picture of our inner cities, inhabited by marauding foreign national murderers who in the evenings go home to their luxury penthouse flats, probably paid for by benefits and taxpayers’ money, and spend time on the phone to any one of the lavish lawyers who invent any kind of bizarre excuse to show that they have the right to a family life in the UK. That is the picture painted and the pretext behind the assault on article 8 that we are seeing today, and it is all utter nonsense.

Do you know the reality of the question of the right to a family life, Mr Deputy Speaker? Let me tell you. It is not about the marauding foreign nationals about whom we hear every day from the Conservative party. It is about the people whom we see in our constituency surgeries every day when we deal with their cases, who are separated from their families because of the inflexible rules and their rigid application of those rules by the UKBA.

**Mr Tom Harris (Glasgow South) (Lab):** I am sorry to interrupt the hon. Gentleman’s rant, but can he explain whether he shares the general feeling of repulsion held by most Members of the House about the example of the failed asylum seeker who was responsible for the death of a 12-year-old girl, left the scene of that crime and used his right to a family life to remain in the country? It is of course a small example, but does he understand why we feel such revulsion? Does he understand why ordinary people feel revulsion? Does he accept that one does not have to be a *Daily Telegraph* or *Daily Mail* reader to be revolted by that example?

**Pete Wishart:** I am grateful to the hon. Gentleman for giving me the opportunity to say absolutely that such people have no place in our country and should be dealt with efficiently and effectively, but article 8 allows the judiciary to do that. What the Government want to do is dictate to judges exactly how they should interpret these cases. I am all for getting rid of all the murderous, mayhem-causing foreign nationals we hear about every day—it is absolutely right that we do that—but let us talk about what actually happens on the ground in our constituency offices and the day-to-day routine cases.

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There is a fantastic case in Scotland just now concerning a man called Gary Boyd, who is the deputy head teacher at Kirkwall grammar school in Orkney. He has just returned to his native Scotland after an absence of five years with his Australian wife of nine years. She is having to return to Australia with her eldest son to reapply to come back into the UK because of the way in which the rules have been interpreted by the UKBA, with no flexibility but total rigidity. She had indefinite leave to remain and was out of the country for a long time and did not know that she had to reapply to stay here. She is now off to Australia. What that means—we are talking about the right to family life—is that she will be separated from her husband for six months. Their eldest son is supposed to be sitting his O-levels next year, but he does not know whether he will now be sitting them because of having to go to Australia, and we do not know whether their youngest daughter will be able to start nursery education at the end of the year. This is the reality of the right to a family life and these are the things we should be considering—the rigid rules being applied by the UKBA.

**Mr Tom Harris:** I am sorry to interrupt the hon. Gentleman again but the example he has just cited has absolutely no relevance to the motion before the House. We are talking about deportation cases, but he is not talking about deportation. He is talking about a couple who did not obey the rules that are applied to every single other person in the country. Will he admit that he is not talking about a deportation case?

**Pete Wishart:** I am grateful to the hon. Gentleman once again because he gives me another opportunity to restate that this is the reality—the things that we have to deal with in our constituency offices day in, day out. Yes, we see the headlines in *The Daily Telegraph* and yes we are appalled by the actions of some foreign nationals. Yes, such people should be deported, but if we are discussing, as we are this afternoon, the right to a family life, this is the reality—the stuff we deal with day in, day out. That is the stuff that needs the real attention.

Who can forget where all this started? It was the hilarious speech by the Home Secretary at the Conservative party conference when she—I am not making this up—cited the example of a Bolivian man who was allowed to remain in the country because he owned a cat. Of course, the Home Secretary is never one to unleash the cat among the pigeons. That ridiculous story had the Justice Secretary twitching in his Hush Puppies. He said at the time that he was willing to bet it was not true, and he was absolutely right because the Home Secretary’s story unravelled faster than a condemned pasty shortly after her speech.

**Mr Raab:** Has the hon. Gentleman read the case to which he is referring? I do not think he can have because the cat was a relevant factor—not the decisive factor but a material one—in the relationship between the boyfriend and the girlfriend, which was relied on in this case. Has the hon. Gentleman read the case?

**Pete Wishart:** I am grateful to the hon. Gentleman. I have been following his campaign with great interest, but I think he has ruined it totally with that intervention.

**Mr Raab:** Has the hon. Gentleman read the case?

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**Pete Wishart:** Of course I have read the case. The hon. Gentleman has ruined his campaign totally. He has conducted a great campaign in some ways, because it has attracted a lot of attention, and good luck to him because he has managed to secure all these fantastic column inches in all the right-wing newspapers, but he has done himself no justice with that intervention.

When the Home Secretary made her statement the other day, I asked her about these other rules that we now have to consider, which I believe we are now being asked to support. They include the measure that a family has to come up with a minimum income guarantee of £18,600. In the statement, I asked the Home Secretary why there is a flat rate across the whole United Kingdom and why there are not different rates to reflect the different incomes in other parts of the UK. In Dundee, there is a different standard of living than in London docklands—that just makes sense. She said that it would not be possible to impose different rates across the UK. What absolute rubbish. That happens in Australia. The Australians have different immigration rules for different states and they seem to get along perfectly well. All we would need to do is license people. If there was an agreement for someone to come to one part of the UK, they would have to stay in that part or lose their right to stay here and be arrested and deported. That is simple, straightforward and could easily have been done, but the Home Secretary decided that was not for us, and now everyone across the UK has to have at least £18,600.

Even if that sum is secured, the partner is now likely to be stuck in the purgatory of a probation period of five years rather than the current two. If one is foolish enough to have children, the required income level rises substantially. We are told that this is to prevent migrants from sponging off the state, but Government statistics show that foreign-born people are less than half as likely to claim benefits as those who were born here. The measures will force families to choose between staying apart or moving abroad.

The Home Secretary ridiculously says that these immigration policies are not about numbers, but if they are not, why have the Government imposed the arbitrary cap that is already doing such damage to our universities, colleges and one of the few sectors of our economy that is actually booming?

**The Minister for Immigration (Damian Green):** I think the hon. Gentleman is very confused. He is talking about a cap on universities but there is no cap on student numbers in this country. There is a cap on work visas, which is nothing to do with universities.

**Pete Wishart:** I am grateful to the Minister. He has received representations from countless educational institutions right across Scotland that have told him again and again about the damage that his immigration policies are doing to our university and college sector. I wish that he and the Home Secretary would respond positively and do the right thing for our universities and colleges, which are suffering in Scotland because of these Tory immigration policies.

This is such a Tory solution. There is one rule for the rich immigrant and another for the poor, forcing an estimated 15,000 families a year to emigrate or live

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apart. That is heartless and it gives the lie to the Tories’ manifesto claims to support what in their words is society’s building block—the family.

We will not do things this way and we look forward to getting the levers of immigration. We have observed what has happened down here and it does not work. We have seen the chaos of the UKBA and we will not do the same. We will make sure that Scotland is a welcoming, accommodating place when we have the levers of immigration at our disposal. I was at one of our national conferences at the weekend and I listened, consecutively, to an Italian Scot, an Asian Scot and a Frenchman who declared himself a new Scot and a European. Such people all contribute to the Scottish economy and to our community and culture. They have enriched Scotland. When we secure the full levers of immigration we will design a system that will attract the best and the brightest and we will address our demographic and population concerns. I cannot wait for that day when we will get rid of the *Daily Telegraph*, *D* *aily Mail* right-wing Tory nonsense determining our immigration policy here.

**6.37 pm**

**Priti Patel (Witham) (Con):** I was interested to hear the contribution of the hon. Member for Perth and North Perthshire (Pete Wishart), and particularly his analysis of immigration and what Scotland might look like under his vision of immigration.

It will come as no surprise to the House that I, as a British Asian, follow all things immigration with a degree of interest. I not only welcome this debate but applaud the Secretary of State’s statement to the House last week and congratulate the Government on bringing forward this motion on the application of article 8. I say that in relation to everything the motion is promoting.

For too long our immigration system has, as my hon. Friend the Member for Esher and Walton (Mr Raab) highlighted, been left open to interpretation, abuse and the failures of the previous Government to address many issues. Here we are addressing the issue of foreign national offenders and lawyers using human rights as an excuse—the wrong kind of excuse—to cause a range of problems and undermine public confidence in this country’s immigration and criminal justice policies. As has been mentioned, not only did the previous Government fail to address many of the problems that have been touched on today, but their inaction made the situation far worse, which makes the challenge faced by this Government even greater.

Few things have been more damaging to public confidence or caused as much division as what has been perceived as the open-border policy pursued by Labour, which left our borders subject to the consequences of uncontrollable immigration. This is no doubt why, throughout my time as a Member of Parliament, short though it has been thus far, and before then as a candidate, immigration has been one of the most pressing concerns in my constituency when I have been out knocking on doors. Instead of feeling safe and protected by a system that manages immigration responsibly, my constituents have little or no confidence in our ability to protect our borders. It falls upon the shoulders of this Government to redress that balance now, as they are doing.

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My constituents are left astounded, shocked and appalled by judgments made under article 8 or other human rights laws that have allowed foreign criminals to walk our streets and commit crimes. We have already heard about some of those crimes this afternoon. My constituents know full well that the immigration and the legal systems defy common sense when criminals such as Mohammed Ibrahim are able callously to kill a young girl and then rely on human rights laws and claim a right to a family life to avoid being deported.

On top of that, the European Court of Human Rights has been blocking us from deporting Abu Qatada. We have had the issue of prisoner votes in this country. All this highlights how powerless Parliament has become when faced with the onslaught of human rights case law. What these decisions by immigration tribunals and judges do is demonstrate that the human rights laws that they are following alongside case law value the rights of criminals over the rights of the law-abiding majority and the victims of crime. They also undermine the entire immigration system, including those who come to this country who are self-sufficient, want to be British, want to contribute to our economy and, importantly, want to abide by this country’s laws.

It is therefore absolutely right that the Government pursue the changes not only to rebalance the immigration system, but to prevent these outrageous and appalling abuses from happening in the future. It is fundamentally important to our democracy that Parliament is able to hold the courts to account and lay down guidance and rules for them to follow. I urge Ministers to press ahead, regardless of some of the hollow criticism that we have heard, because the public expect the Government to act on such issues, to put in place proper controls on immigration and to put an end to the appalling way in which human rights laws have been subject to interpretation.

The Home Secretary rightly said this afternoon that coming to Britain to live and settle is a privilege. When foreign nationals break our laws, show scant regard for our way of life and put the law-abiding majority at risk, they should expect to be deported. They have wilfully chosen to offend, and in those circumstances they have chosen to forfeit their entitlement to remain in this country. The Home Secretary can be assured of my support and the support of my constituents as she presses ahead with these important reforms. This is a positive and welcome motion, but on the wider issues of immigration and deportation, I would like to see further steps. The public expect more proactive steps forward.

We have heard about the 5,000-plus foreign national offenders who were deported last year, but 11,000 remain in our prisons. Under the present rules it is almost impossible to deport some of the 4,000 who are of European origin. I would like to see the motion taken further, although that is not the subject of the debate today. In a future system foreign prisoners who need to be deported should go straight from jail to a plane. That would go a long way in reassuring our constituents and increasing confidence in the system.

I support the motion and hope that it will be the first of a number of positive measures to bring power and decision making back to this Parliament so that we can regain control of our borders and regain public confidence when it comes to human rights issues in this country.

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**6.44 pm**

**Mr Tom Harris (Glasgow South) (Lab):** I begin by offering support to my hon. Friend the Member for Hayes and Harlington (John McDonnell), who is resuming his place in the Chamber. He is right to express concern about the purpose of the debate and the purpose of the motion on the Order Paper. I have a lot of time for the Immigration Minister, and I know that he will have taken those comments seriously. I expect that in his summing up, he will want to explain to the House why we are here today and what precedent he expects the motion to set—or what precedent has already been set at some time in the past that leads him to believe that the discussion of the motion will have a substantial effect on the decisions of judges in the future.

Before I continue my remarks, I should like to comment on the contribution from the hon. Member for Perth and North Perthshire (Pete Wishart). It was a misjudged contribution. He repeatedly referred disparagingly to right-wing papers such as *The Daily Telegraph* and the *Daily Mail*. Actually, there is a troika of right-wing newspapers. Everyone knows that they are *The* *Telegraph,* *The* *Mail* and *The Sun*, but the hon. Gentleman did not mention *The Sun* or any News International newspapers. I cannot think why. Apparently the right-wing press is now limited to *The Daily Telegraph* and the *Daily Mail*.

The hon. Gentleman also showed utter contempt for the citizens of England by suggesting that Scots, unlike the English, are welcoming of immigrants, and that every immigrant to Scotland is integrated into Scottish life as of day one—I think that was the expression that he used. Naturally, he is entirely wrong. Scots, like citizens in the rest of our country, are tolerant and welcoming, but like those in the rest of the country, we value fairness. Support for immigration in Scotland does not extend to support for open-door immigration of the kind proposed by the Scottish National party.

**Pete Wishart:** I do not know whether the hon. Gentleman has had a chance to look at the Scottish Social Attitudes survey which was carried out in the past year. If he has had a look at it, what does he make of it?

**Mr Harris:** I can tell the hon. Gentleman that, unlike him, I speak to constituents all the time, and I know that my constituents have exactly the same view as citizens throughout the United Kingdom. They want to welcome asylum seekers, they want to welcome immigrant communities, but they want a sense of fair play that applies equally across the border. Scots are no more or less tolerant of foreign-born criminals remaining in the UK than are our fellow citizens unfortunate enough to live south of the border.

Now that the hon. Gentleman has had a chance to calm down and get his breath back, I would like to ask him whether, if Scots throughout the country are some sort of homogenous entity, all thinking the same thing, he can explain why the only local authority in Scotland that applied to welcome asylum seekers was Labour-controlled Glasgow—not Perth, not Edinburgh, not another local authority anywhere in Scotland, just Glasgow?

As has already been highlighted, the deportation of foreign criminals is more often frustrated by bureaucratic process than by appeals under article 8 of the Human Rights Act. My concern today is that some Members of

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the House and many members of the media—yes, the right-wing media—are using the relatively small number of appeals under this part of the Act to make the case for the Act’s repeal. That would be unacceptable. It is important that the debate focuses on the reasons behind the failure of the Government—and, yes, the failure of previous Governments—rather than on the straw man of the Human Rights Act.

Nevertheless, it is a concern to all our constituents when someone who has enjoyed British hospitality, and who has chosen to repay that hospitality with contempt for our law, is allowed to remain in the UK. My understanding—perhaps the Immigration Minister will be able to clarify this in his summing up—is that the interpretation of article 8 as representing an absolute right to a family life is a peculiarly British interpretation. My understanding is that other judiciaries operating elsewhere in the EU under the European convention on human rights attach a significantly different interpretation to article 8—one that more frequently allows the deportation of foreign criminals.

The Government’s own policy on the circumstances in which deportation would not be appropriate—for example, if the person had lived here under valid terms for at least 15 years—deserves some attention.

My right hon. Friend the Member for Blackburn (Mr Straw) has already referred to the shocking case of Aso Mohammed Ibrahim, who in 2003 was responsible for the death of 12-year-old Amy Houston in a hit-and-run incident in Lancashire. Mr Ibrahim is variously described as an asylum seeker, a failed asylum seeker and an illegal immigrant. In fact, only the last term is correct. He arrived in the UK in 2001 and was refused refugee status, so he was never—not for one second—a refugee, and his appeal rights were exhausted by the end of 2002.

It is not the Human Rights Act that is to blame for the fact that too many criminals are allowed to remain here; it is the failure of the UK Border Agency to remove illegal immigrants in far greater numbers, and that should concern the House. Of course I accept the point made by my right hon. Friend the Member for Blackburn, who is a former Home Secretary, which is that on many occasions we simply cannot return people to their country of origin because it would not be safe to do so.

However, I have come across many constituents who have been in the country for eight or 10 years, applied for asylum and had the application refused, but who regard the refusal simply as an indication that no decision on their case has yet been made. They are wrong. They have been given the decision on their case: they have been told that they are in the country illegally and so should remove themselves. Far too often we allow time to march on and they do not make arrangements to remove themselves, but the UK Border Agency should remove them forcibly—I know that that process costs a lot—if they are not prepared to remove themselves voluntarily. I should point out that, although this debate has been billed as being about the scandal of permitting criminals to remain in the UK, the motion rightly refers only to migrants, not criminals.

I welcome the Government’s statement that one of the exceptions to the presumption that an individual will be deported is where an individual has been resident in the UK legally for 15 years. I hope that the Minister, in summing up, can confirm that the many thousands

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of individuals who have remained here illegally, ignoring decisions to refuse them refugee status, will not qualify under that exception as they have not been in the country legally. That issue is as pertinent to the cases of law-abiding immigrants as it is to criminals, and article 8 has been used to confirm the residency in the UK of many who have no criminal past and who are of less interest to the right-wing tabloids.

We are a welcoming country, across the whole UK, but our hospitality is sorely tested when people who come here either to seek refuge or to build a better life for themselves repay it by exhibiting contempt for our rules and, by implication, contempt for our citizens. Whether they have broken the law through an appallingly violent and callous act, as in the case of young Amy Houston, or by ignoring an appeal ruling that they have no right to remain here, the right to a family life cannot be absolute. The Government are right to say so. However, they are merely reflecting what the whole country already believes.

**Yvette Cooper:** On a point of order, Mr Deputy Speaker. The Home Secretary did not properly clarify earlier whether this motion is separate from the normal and proper debates on the different immigration rules. The Clerk of the Journals has now provided some clarification and reassurance that these are in fact separate. He has advised:

“The effectiveness of the statutory disapproval procedure for any particular Statement of Changes in the Immigration Rules laid before Parliament is a matter of law, which cannot be altered or over-ridden by any Resolution of the House of Commons.”

Will you confirm that that is indeed the case, because I think that would provide the House with important clarification and allow it to deliver a clearer message?

**Mr Deputy Speaker (Mr Nigel Evans):** I thank the right hon. Lady for notice of her point of order. The legal effect of the resolution is not a matter for the Chair; it is a matter for the courts. But I can confirm that, as a matter of procedure, agreeing the motion would not prevent the tabling of any motion to disapprove a Statement of Changes in the Immigration Rules as provided by statute.

**6.54 pm**

**Mr Geoffrey Cox (Torridge and West Devon) (Con):** I had not intended to speak, but a number of matters have been raised on which, it seems to me, some light might be thrown. The hon. Members for Perth and North Perthshire (Pete Wishart) and for Hayes and Harlington (John McDonnell) both questioned the effect of what we are doing, and it is on that point that I hope to shed some light.

This is a limited, practical measure, and one that I support, but I do not hold out an enormous degree of hope that it will have a substantive effect on the exercise of the courts’ discretion. Section 3 of the Immigration Act 1971 provides that the Home Secretary can amend the immigration rules, and it provides for the procedure, by way of negative resolution, by which those rules can be challenged. If they are challenged, the Act requires the Home Secretary simply to consider the points that have been made on the resolution that has disapproved them and alter, as she sees fit, the executive administrative guidance that those rules contain. Today, an attempt is

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being made to give some democratic force to the alteration of the immigration rules, which the Home Secretary could otherwise have done simply by an Executive act, in the hope that it will communicate to the courts the fact that there has been some consideration by Parliament.

I take the view that that might well have some effect on the courts beyond the fact that they will attach a degree of weight to the Home Secretary’s opinion in any event. It is well established in the human rights jurisprudence that a decision maturely taken by the Executive—in this case a Secretary of State who has a wide range of advice available to her and who can consult experts in the field—to change the existing immigration rules would already be accorded a degree of weight by the courts when they are considering what is a proportionate decision in the application of a specific human right. What the Home Secretary is doing today, which, I submit, the House should applaud, is giving the House an opportunity to voice its opinion on the changes she has decided to make.

**Chris Bryant (Rhondda) (Lab):** The key point, as I think the Clerks have already made clear, is that we are not deciding on the totality of the changes; we are deciding only on the basis of what is in the motion being debated today. I would not want the hon. and learned Gentleman to conflate the two by mistake.

**Mr Cox:** The courts are more than capable of appreciating that what we are dealing with here is not primary legislation. Primary legislation will be accorded a much greater degree of weight—some people use the word “deference”, but the courts have disapproved it—because there is usually a period of consultation, a Bill might have been scrutinised before it was even brought to the House and a wide range of interests will have been taken into account in the process of scrutiny. A court is more than able to distinguish between a piece of primary legislation and a motion such as the one before us and to see the scope that the motion considers. That is why I say that this process is likely to produce a degree—probably a very modest degree—of additional weight to be accorded to the Home Secretary’s discretion. Her discretion would normally be accorded a degree of weight by the courts, and the motion might add a little more to the changes to the immigration rules than they would already have been accorded.

It is not difficult to interpret what is being done here. It is perfectly valid. The courts will not be deceived or hoodwinked. They will see what we are doing. They will no doubt read, if they take the trouble to go that far down the pages of *Hansard*, the profoundly principled position that the hon. Member for Hayes and Harlington took when he held up his hands and, with a cry of horror, said, “Not with my assent.” But the reality is that the motion will lend some modest substance to the already substantial decision that the Executive and the Home Secretary have taken. She should be applauded for, and congratulated on, giving the hon. Member for Perth and North Perthshire the opportunity to mount that—one hon. Member described it as a “rant”; I should never be so impolite—extraordinary, eloquent and passionate diatribe, to which he treated the entire House from his position on the Opposition Benches, representing the Scottish National party.

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**John McDonnell:** Will the hon. and learned Gentleman give way?

**Mr Cox:** I will, given that I have mentioned the hon. Gentleman.

**John McDonnell:** If the hon. and learned Gentleman’s argument is that what we are doing today is virtually meaningless, I agree, but where does that fit with Pepper *v.* Hart, which we have always used as the guide to what influences a court’s decisions, and which defines very narrowly how a reference to Parliament—in other words, to a ministerial statement that gives guidance on existing legislation—can be made?

**Mr Cox:** May I say first that it is not my argument—and the hon. Gentleman knows it. It is a forensic point, which does not do his subtlety and sophistication justice, to suggest that I am saying that this is meaningless. On the contrary, I am saying that it has meaning but we must not overestimate the meaning that it has.

**John McDonnell:** So, virtually meaningless.

**Mr Cox:** No! It makes a useful and practical contribution and is a useful measure that, to the extent that the courts are able to perceive what has gone on here, will no doubt provide a useful added measure of weight to the Home Secretary’s discretion. As for Pepper *v.* Hart, that is concerned of course with primary legislation and the detailed interpretation of individual clauses.

All that is being done here is that the courts are being invited to take note that the motion before us is not simply the executive fiat of the Home Secretary, and that the Home Secretary has put it before Parliament—much the same would have applied if it had been challenged under the 40-day procedure—and a debate about it has been held. Indeed, the courts in the past have examined motions and resolutions of this House and pointed out that they were merely resolutions, but they have not ignored them, and that is exactly what I expect will happen in this situation.

So the motion is perfectly reasonable. It is a laudable attempt to give this House the opportunity to have its say, and if I may say so there was a degree of pedantry from Opposition Front Benchers, who stood on their moral high horse and said, “This should have been primary legislation.” Of course it should not; the immigration rules already have a statutory procedure for amendment, through the Home Secretary’s laying them before Parliament. That is how they are amended, so we ought to avoid the forensic froth of suggesting that this is not a useful and practical—albeit, I accept, limited—measure.

There is no doubt that the Executive have the right, supported by Parliament in whatever measure they ask Parliament to support them, to put to the courts a degree of guidance on the exercise of the courts’ undoubted discretion to decide what is proportionate. This is not an attempt to fetter the courts; it cannot be. As my hon. Friend the Member for Stone (Mr Cash) has so often said, the courts are “unfetterable”. They will not be fettered by this House, and rightly so. The courts must exercise an independent, individual judgment.

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There are other circumstances, however, in which the Executive seek to give guidance to the courts on what they consider proportionate in the circumstances. Let me give the House another example. The Home Secretary has a discretion to make an exclusion order against somebody outside this country whom it is not conducive to the public good to admit.

In—I think—2007 or 2008, what is called an acceptable behaviours policy was promulgated, setting out the general approach that a Home Secretary will take to what is a proportionate decision when people have made expressions that make them undesirable entrants to this country. That was done because, of course, article 10 on freedom of expression can be invoked, and the acceptable behaviours policy provides a broad framework for the discretion that the Home Secretary is to exercise in deciding whether to admit such a person who is guilty of such statements.

The sentencing guidelines are not dissimilar. They are guidance to a court on how a discretion might be used, but they are not binding: they cannot fetter the independent and individual judgment of the court. So, in my view, what is being proposed here is not without precedent in other areas. It is a limited, practical measure, and it is one that the House should strongly support, because there is a widespread belief among the public—sometimes wrongly held, as the hon. Member for Perth and North Perthshire has said, and sometimes a caricature—that the Human Rights Act is a shield for all kinds of disgraceful behaviour. The motion before us will do something to restore public confidence in the decisions that the courts make, and will demonstrate that the Government and this House are conscious that a change needs to be made. What will that do? It will assist the courts in striking the right balance and in achieving a degree of consistency, and, in my respectful submission, that is a wholly laudable aim to which this House ought to give its support.

**7.5 pm**

**Jeremy Corbyn (Islington North) (Lab):** I am grateful to the hon. and learned Member for Torridge and West Devon (Mr Cox) for making a wonderful speech, trying to convince the House that we are actually doing something useful when the Clerk has just explained to us that we are not doing anything very useful whatever. We are deeply indebted to the hon. and learned Gentleman, and the courts are the stronger for the ability to make that kind of argument—to make something utterly irrelevant seem important. It is a skill and a talent that, sadly, only some of us are able to possess.

The Home Secretary probably tabled this rather strange motion because she assumed that it would be a useful bone to feed to her Back Benchers, who are obsessed with the Human Rights Act, with the European convention on human rights and, in some cases, with anything to do with Europe. They follow their obsession every day in *The* *Daily Telegraph*, *Daily* *Mail* and *Daily Express.* Some of them even read *The Sun*, I believe, and they continue with that obsession.

We should be slightly more careful than that, however, because the European convention on human rights was established in 1948 to look to a future in Europe based on human rights and a respect for people, rather than on the power of the state to oppress people. We had come

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out of the Nazi period, the most horrible period in European history, so the popular press, which consistently reports anything to do with human rights as a laughable matter, should remember that many people owe their very lives to the existence of that convention and the European Court of Human Rights, which have had a good effect on many other countries.

The Home Secretary may be saying that immigration law trumps the Human Rights Act and the European convention on human rights, but article 8 has always been qualified and no one has ever disputed that. What would she and others say if the Hungarian Government made a similar statement, announcing that it absolved them of any need to be taken to the European Court of Human Rights for their treatment of Roma people and Traveller people in Hungary? We should think a bit more deeply about the causes of human rights abuse throughout Europe, and be a bit more sympathetic to the European Court of Human Rights and the European convention on human rights.

I shall not speak for long, because others want to get in and the debate is time-limited, but the Home Secretary placed in the Vote Office last week an explanatory statement on her immigration proposals, and it ranges far wider than the question of just deporting foreign criminals. It skates over the important issue of how children and families are treated in the right to family life. She has chosen to interpret that right in the narrow sphere of the individual—usually male—criminal who has served a sentence, left prison, is hopefully a reformed character and then asserts that he has a right to family life in the UK, giving stern warnings that she will not accept any of that stuff anymore and they are going to be on their way. She might care to look at what the London School of Economics did in considering the effects of article 8, and what others have done in this respect.

Baroness Hale has said that a child cannot be held responsible for the moral failings of their parents. That is a profound statement that emphasises that children do have rights in these situations. They have rights not to be deported, and their parents have rights to enjoy the company of their spouse or partner. Surely that is what we should be looking at. What is the effect on those children of one parent being removed? Some of us have been through the sad experience of arguing that case on behalf of constituents. One partner and their children do not want to be removed to another jurisdiction, so they remain here knowing full well that the missing partner—the ex-prisoner—will not be allowed into this country for at least 10 years. That is a huge proportion of a child’s life and experience. We should be slightly more liberal and understanding about these issues.

Obviously in some of the extreme cases, such as that cited by my right hon. Friend the Member for Blackburn (Mr Straw), one would have no sympathy with what those individuals have achieved, but looking at extreme cases does not make for good law. A serious examination of the totality makes for a better example of good law. That is why I suggested that we should refer the whole issue to the Joint Committee on Human Rights.

**Pete Wishart:** As usual, the hon. Gentleman is making a powerful case. He, like me, will remember the debates of years ago when we argued the same type of case. In those days, we would be joined by the Liberals, but today

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we have heard not one speech by a Liberal Member on a very important issue that they used almost to scream about. We have not had even one intervention by a Liberal Member. Two of them came wandering into the Chamber, had a little look around, and disappeared again. Is the hon. Gentleman as surprised as I am that we have heard nothing from the Liberals today?

**Jeremy Corbyn:** I am sorry to disappoint the hon. Gentleman, but I cannot help him by describing what the Liberal Democrats are doing today, because I am not responsible for them. However, having been involved in a lot of human rights, anti-terrorism and immigration debates over the many years I have been in Parliament, I know that there are different allies in different Parliaments. Sometimes there are Conservatives one agrees with, sometimes there are Liberals one agrees with, and sometimes there is nobody one agrees with, but that’s life, and we plough on.

**Mr Cash:** The hon. Gentleman makes a good point, because he and I have agreed on several matters, including the Chagos islanders. May I offer him the thought that absence of the Liberal Democrats may have something to do with the lack of clarity in the motion? If it was as clearly expressed as I would like, notwithstanding the Human Rights Act and all that goes with it, I rather suspect that there might be some difficulty for those on the Liberal Democrat Benches, because they would want it to be less clear than I would.

**Jeremy Corbyn:** I thank the hon. Gentleman for his intervention. I respect him for standing up for his principles and acknowledge that he and I have agreed on quite a lot of occasions, particularly on the disgraceful treatment of the Chagos islands by all Governments over very many years. We hope that the European Court of Human Rights, which is now hearing that case, will come to a good judgment, which we expect imminently.

When I intervened on the hon. Member for Esher and Walton (Mr Raab) about the torture and ill-treatment of people in other jurisdictions, he did not agree with me, and that is fair enough; he does not have to. However, he should understand that the European convention was a very important step in improving human rights standards around the world. The principle of a continent-wide human rights court has been copied to some extent on other continents—for example, central America has such a court. The idea of an international convention such as the United Nations convention against torture is a very powerful one. That is why I disagreed so very strongly with Tony Blair, when he was Prime Minister, on his agreeing to the deportation of people to jurisdictions that had not signed the international convention on torture. That undermined the convention, damaged the human rights of the individual, and damaged us as a country that is supposed to stand up for human rights and justice.

I cannot really describe what we are debating today, and I do not think that the Home Secretary can either. I look forward to a full debate on her proposed immigration rules, because some of them will have a devastating effect on the family life of very poor people in this

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country who have migrated here, work hard, clean our floors, look after our children, drive our trains, and help our industries to get along. We should also remember that immigration in this country has helped to create our relatively high standards of living. It does the House no credit when people condemn all immigration as an economic problem. Immigration is an economic benefit to our society, and it is about time we publicly recognised that.

**7.15 pm**

**Mr William Cash (Stone) (Con):** I agree with what the hon. Member for Islington North (Jeremy Corbyn) said about some of the benefits of economic immigration, but there is something else that I would like to put on the record. As many of us know, the best way to keep a secret is to make a speech in the House of Commons. I sincerely hope that that does not apply to the speeches that I have heard today—particularly, if I may say so without any disrespect to Opposition Members, those by my hon. Friends the Members for Esher and Walton (Mr Raab), who made a superbly forensic speech, and for Witham (Priti Patel), and my hon. and learned Friend the Member for Torridge and West Devon (Mr Cox).

Although my remarks will not necessarily be entirely consonant with wholehearted support for these proposals, for reasons that I will explain, I still genuinely support the idea that it is important to give an indication of the Government’s views. A great deal of hard work has been put into this. The more I look at it, the more I realise that the Government’s advisers have really applied themselves to it. As we now know, the immigration rules were tabled on 13 June but have not yet been decided on by the House and will, I suspect, be subject to an annulment prayer because Labour Front Benchers will decide that that is what they want to do.

Irrespective of that general sense of support for these proposals, there is also a rather unfortunate element that was indicated in the excellent speech by my hon. and learned Friend. He said, using very carefully chosen words, that the proposals will create an impression or perception whereby, in some of the national tabloid press and elsewhere, they will be construed, as we have already read, as being simply about slamming criminals and unacceptable persons who should not be allowed in this country in the first place and should be deported. I think that that general perception has been conveyed and that, given that the best way to keep a secret is to make a speech in the House of Commons, the spin that is put on this will carry the day.

However, that will not affect the courts, which will make their own decisions. Moreover, the proposals are geared in the direction of indicating to the courts that the general will of Parliament is to move away from the free-for-all of applying Strasbourg precedents, and that Parliament is making a statement that must be had regard to. Indeed, in line with what I said in an intervention, that has been a matter of concern in the generality of judicial interpretation, which has been criticised by the Lord Chief Justice in a series of very measured speeches. On one occasion about two years ago, he strongly advised his brothers and sisters in the judicial profession in the High Court that the most important matter for a judge is to uphold the common law. I think that he said it in those terms. He went on to say that they had to be much more careful about not simply adopting Strasbourg

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precedents in the application of their judgments in English courts and, by implication, that they should have more regard to what Parliament has said.

This exercise is being conducted with great complexity. One only has to look at the new immigration rules, which I have in my hand, to notice that they contain strong gearing elements. Whether they will have any effect on certain members of the judiciary remains to be seen. Individual cases, some of which have been mentioned, raise difficult questions of family law and relationships. As has been said, we hear about such cases in our constituencies. I do not think that what we heard earlier was a rant. There is an important point here. I have been confronted by some difficult family issues in the field of immigration. We ought not to be dismissive of the importance of forming a proper and proportionate judgment about these questions.

Important questions have been raised in the debates in which I have taken part over the past few years on the interpretation of statute law. An example is the Jackson case, which was not to do with human rights in the same context as this matter, but was to do with interpretation by the judiciary. Tom Bingham, the late, lamented Lord Chief Justice, took to task two Law Lords in the Jackson case. He said not only in the judgment but in his speech that they were exceeding their role by asserting judicial supremacy over Parliament.

It is therefore essential that we pay tribute to the intentions that lie behind this exercise, while at the same time being clear that the proposals lack clarity. The intentions that lie behind this extremely careful operation will not necessarily produce the results that many people expect. Given the latitude that will still be conferred on judges and the rules of proportionality that have to be applied, I anticipate that there will be ructions down the line when the rules are applied by individual judges.

I suspect that the lack of clarity has something to do with the attitudes of some in government, some in the civil service and some in the higher reaches of the judiciary and in certain chambers, who have no doubt been consulted. It might also have some connection to the attitude that would have been adopted by the Liberal Democrats if they had been confronted with the kind of clarity that could be provided, but that certainly is not. I can do no more than speculate on that. When I pressed an amendment in the Lisbon treaty debates that stated, “notwithstanding the European Communities Act 1972”, on which 55 of my hon. Friends followed me into the Lobby with enthusiasm, despite the suggestions from the Whips that they should do no such thing, the Liberal Democrats said that if I had pressed the other amendment that I had tabled, which stated “notwithstanding the Human Rights Act 1998”, they would have supported it. I therefore ask whether we are always entirely clear as to what the Liberal Democrats are up to at any given point in time.

There is a further point regarding the motion, although I do not want to be too pedantic or legalistic. It states that article 8 is a “qualified right” and that

“the conditions for migrants to enter or remain in the UK on the basis of their family or private life should be those contained in the Immigration Rules.”

I hope that you will forgive me, Mr Deputy Speaker, for pointing out that as we are debating this matter today,

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on Tuesday 19 June, I construe those words to mean the immigration rules as they now are, not as they are anticipated to be under the proposals printed on 13 June.

On page 1 of the statement of changes, which I suspect will be debated, there is a provision titled “Implementation”, which states that, with the exception of an awful lot of paragraphs,

“the changes set out in this Statement shall take effect on 9 July 2012.”

The other paragraphs

“shall take effect on 1 October 2012.”

It goes on to say:

“However, if an application for entry clearance, leave to remain or indefinite leave to remain has been made before 9 July 2012 and the application has not been decided, it will be decided in accordance with the rules in force on 8 July 2012.”

Therefore, the new immigration rules will not, I am glad to say, have retrospective effect. The implication of the wording in the motion might not be as clear as it should be. That leaves us with the reasonable position that the motion relates only to the immigration rules that are in force at this time. That is a technical point.

I regard the proposals as a steer. The Government are hoping that they will succeed and I wish them well if it is possible for them to do so. However, I think that there will be difficulties of interpretation. The harder the case, the more likely it is that an individual judge will say, “I am not bound by this motion. I am bound by what the law says.” The law that they are construing, from 9 July and 1 October 2012, will be the new rules.

The explanatory memorandum states:

“The new Immigration Rules provide a clear basis for considering family and private life cases in compliance with Article 8. To accompany the new rules, a statement of ECHR compatibility is being published on the Home Office website”.

It goes on to say, although I doubt whether this can be taken for granted:

“The new Immigration Rules will reform the approach taken as a matter of public policy towards ECHR Article 8…in immigration cases.”

It goes on to say—the distinguished Immigration Minister is sitting on the Front Bench and knows this backwards:

“The Immigration Rules will fully reflect the factors which can weigh for or against an Article 8 claim. The rules will set proportionate requirements that reflect the Government’s and Parliament’s view of how individuals’ Article 8 rights should be qualified in the public interest to safeguard the economic well-being of the UK by controlling immigration and to protect the public from foreign criminals. This will mean that failure to meet the requirements of the rules will normally mean failure to establish an Article 8 claim to enter or remain in the UK, and no grant of leave on that basis. Outside exceptional cases, it will be proportionate under Article 8 for an applicant who fails to meet the requirements of the rules to be removed from the UK.”

Why have I bothered to read all that out? Because so far, none of it has been mentioned in the debate, but it is what we are actually debating. It is about whether the courts will be steered by Parliament and apply its decisions—hopefully the right decisions—as a matter of proportionality.

As a number of Members have said, article 8 already provides a qualified right. As ever, I am afraid that the qualification simply has not been explained. Article 8 states:

“There shall be no interference by a public authority with the exercise of this right”—

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and then the crucial words, which the shadow Home Secretary conveniently left out—

“except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The words

“except such as is in accordance with the law and is necessary in a democratic society”

prompt the very question that we have to debate. Until I hear the Minister’s reply, I have to say that we are doing so without any confidence that “the law” means the law of this Parliament.

In the democratic society in which we in this country live, those words must mean the law passed in this Parliament. In certain instances, that will exclude decisions taken by the judges in Strasbourg and/or principles adumbrated in Strasbourg but applied in our courts that are contrary to the views expressed by, for example, the Lord Chief Justice. In the context of article 8, it would be nonsense if “the law” meant anything other than the law of the United Kingdom.

We have to resolve that question in the interests of Parliament, which will decide how this country is to be governed. We must decide whether it is to be governed under the European convention on human rights. I believe that we should withdraw from the convention altogether, because we have been continuously besieged by interpretations of it that are contrary to the views expressed by the people of this country as a whole. We can perfectly well legislate to protect human rights, which I would be the first to defend, by passing appropriate laws in our own land according to our own wishes. Many of those laws may well be parallel, if not identical, to those passed under the convention and the Human Rights Act.

The reason I called for the repeal of the Act 10 years ago, when I was shadow Attorney-General, was precisely because of the mess that we are now in. I hesitate to say so, but I anticipated that we would be in this position, as I did over the Maastricht treaty. By keeping ahead of the curve, whether on the convention or the issue of Europe as a whole, we would have saved ourselves a great deal of trouble. We would have defended Parliament’s right to legislate on behalf of the people of this country, who in a democratic society have a right to govern themselves. That is the central principle at the heart of our Parliament. The debate raises questions about that matter but does not entirely resolve them.

I do not say that the courts should in any way be inhibited from making a decision based on their interpretation of the law. However, the law is made here. We have to decide what the law is, and it behoves us to make that law clear. In this case it could have been made clearer by our simply saying, “Notwithstanding the European convention on human rights and the Human Rights Act 1998, we legislate for these immigration rules accordingly.” There would have been absolutely no argument about that in the courts, because the courts would have had to say, “We have no option but to administer the law as laid down by Parliament.” That is the crucial issue at the heart of this debate.

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Although I will support the general steer that we are providing, I am afraid that there may yet be difficulties and ructions further down the line, with the courts taking disconsonant decisions that are contrary to the intentions behind the rules, which are supposed to represent a clear basis but do not.

**Several hon. Members** *rose* *—*

**Mr Deputy Speaker (Mr Nigel Evans):** Order. The wind-ups will start at six minutes past 8. Three more Members wish to participate, so I ask Members to give some consideration to others.

**7.36 pm**

**Lisa Nandy (Wigan) (Lab):** I am grateful for the opportunity to raise my concerns about the impact that the immigration rules will have on children in particular. Before I came to this place I had the privilege of working with the Minister, and I know that he is committed to the welfare of children in the immigration system. We worked together to ensure that there was a commitment to ending the immigration detention of children, which has been hugely important to many children. We also both worked hard to ensure that the last Government extended the Children Act duty to those children, which is particularly relevant to today’s debate.

The statement of intent on family migration, which was published in advance of the new article 8 immigration rules to which the Home Secretary referred extensively, takes heed of the duty on the UK Border Agency under section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children while they are in the UK. Many of us fought very hard for that legislation, because immigration officials have been given increasing powers over the years without a counterbalance in law to ensure the protection of children. That section created a duty to consider a child’s best interests in decisions that affect them, and to weigh those interests against other considerations such as criminal convictions, which we have talked so much about today. That already happens in article 8 determinations.

My concern is about how narrowly a child’s “best interests” are defined in the statement of intent that was published in advance of the new immigration rules. It states:

“The best interests of the child will normally be met by remaining with their parents and returning with them to the country of origin, subject to considerations such as long residence in the UK and exceptional factors.”

During the many years in which I worked with refugee and migrant children in the Children’s Society, I dealt with many cases in which that was plainly not the case, as I am sure have other Members. I will give a few examples.

I dealt with countless cases in which girls would have been subjected to female genital mutilation if they were returned to their home country. I also dealt with the case of a young girl whose father was from Eritrea and whose mother was from Ethiopia. Huge consideration had to be given to her safety and welfare, given the state of relations between those two countries. There were also many cases of child abuse. One in particular really sticks in my mind. There was a child who we believed may have been subjected to abuse by her own parent,

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and in the end that did turn out to be the case. In that sort of occurrence, it is clearly not in the interests of the child to be removed with the adult. The Minister might say, “There is an exception. Discretion is written into the rules,” but my concern is that marking out a clear presumption that it is in the best interests of a child to be returned will direct UK Border Agency and court officials and deter them from making proactive decisions.

Since the tragic death of Victoria Climbié and the Lord Laming report that followed, we have come a long way in ensuring that all agencies, including the UK Border Agency, the courts and others, understand that they have a shared responsibility to safeguard children. That involves not only the reactive child protection approach, but a proactive approach. The measure might well unravel a great deal of the progress that has been made with the UK Border Agency and such children.

I am sure Ministers will say that discretion remains with the courts, even if there were no such concerns, but I share the view put forward forcefully by Amnesty International—that, effectively, the measure seriously limits the courts’ discretion. In the example I gave, if those factors had not been proactively investigated by UK Border Agency, it is hard to see how a decision to remove the child with the parent would be challenged in court, because the investigation would not take place and the evidence would not exist.

Furthermore, during the decade that I dealt almost daily with the UK Border Agency, I saw a culture that worked against the full investigation of human concerns. Little that I have seen since being elected to the House has convinced me that that has changed. In fact, if anything, with staffing cuts and increased pressure on UKBA staff, the situation is getting worse, not better. Case owners work to targets, and in particular to time-limited targets. Speed matters. Too often, there is a tick-box exercise rather than a full investigation of the facts. I have seen for myself how that tick-box exercise happens without a proper assessment of children’s needs prior to their detention. The Government rightly took a stance against that; I hope that they take a similar stance to protect children in respect of this measure.

When I worked for the Children’s Society, I was often called upon to deliver training for UKBA staff. One thing that struck me was their willingness to equip themselves with the skills and knowledge they needed to protect children, and to think creatively and more widely. However, people came to me time and again and said, “I’m really not sure that this is my responsibility. I am meant to be looking at so many other overriding concerns, including immigration concerns.” The child’s welfare and immigration considerations often conflict. The staff need clarity and certainty that the child’s welfare is a priority, and that they should not take actions to meet targets if it means that they do not fully and proactively investigate child protection concerns.

I hope the Minister considers that concern after the debate, but I am also concerned about the prescription in the statement of intent, which sets out that deportation will be presumed in cases involving criminality that results in a custodial sentence of between 12 months and four years unless the person has

“a genuine and subsisting parental relationship with a British citizen child or a child who has lived in the UK for at least the last

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seven years, and it would not be reasonable to expect the child to leave the UK with the foreign national criminal and there is no other family member who is able to care for the child in the UK”.

The seven-year rule, which no longer exists, was a useful indicator of whether someone had established a private life in the UK, but such detailed prescription surely has limits. I struggle to see how the seven-year prescription could be helpful to the courts. Why, for example, should a child who has been here for five years, who was born here and spent most of their life here, and who faces the prospect of returning to a country about which they know nothing, where they have no family and do not speak the language, have a less powerful claim to have established a private life than a child who has been here for eight years, but who faces the prospect of returning to country where they have family and people they know, friends and ongoing relationships, and where they speak the language? My concern is that the measure takes away the important ability to test the strength of the relationship ties that children have formed in the UK, which is the basis of article 8 decisions.

Moreover, I am concerned that hon. Members are being invited to make assumptions about the situation of children whom we know nothing about. We would never accept that for citizen children, and we should not accept it for non-citizen children. I urge Ministers to look again at the measure.

**7.44 pm**

**Graham Jones (Hyndburn) (Lab):** I rise to raise the concern of Mr Paul Houston, my constituent, who has been spoken of considerably in the debate. The case is familiar to all MPs. Mr Houston’s daughter died after being the victim of a hit and run by an asylum seeker, Aso Ibrahim Mohammed. Amy was left to die under the wheels of his car.

Mr Mohammed was granted leave to stay in the UK following his asylum case, in which he made the case for remaining here to protect his right to family life under article 8 of the Human Rights Act 1998. During the several years between the tribunal decision in 2010 and the crime for which Mr Mohammed served a paltry four-month sentence in 2003, he claimed he had established a new family with a British national and had two children with her here in the UK.

The delays in dealing with Mr Mohammed, in the words of Mr Houston, were no doubt caused by staff at the Home Office failing to find Mr Mohammed and an ineffective Border Agency. As my right hon. Friend the Member for Blackburn (Mr Straw) said, there were also problems with deportation to Iraq—Mr Mohammed is a Kurdistan national.

Mr Mohammed arrived in the UK illegally, hidden on the back of a lorry, on 31 January 2001 and claimed asylum on the same day. On 18 July 2001, his application for asylum was refused. He appealed the decision, but his appeal failed on 12 November 2002. During that period, Mr Mohammed had already been cautioned by the police for criminal damage. As a result of his failed appeal, the UK Border Agency issued a notice to Mr Mohammed that he was required to leave the UK by 28 November 2002. Had he left, the accident in which Amy lost her life would have been prevented and she would be enjoying life today.

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The Houston family have never been provided with an answer as to why UKBA did not take effective steps so that Mr Mohammed was removed from the UK on that date or why he was not at least detained pending removal. When I spoke to Paul in my constituency office, he expressed his qualified support for the Human Rights Act, but he feels that judicial processes led to the perverse outcome.

The Government say the motion will send a signal to the courts, but I am not convinced that it will have any legal impact. Why are the Government not pursuing primary legislation? Mr Houston’s most significant concern about the interpretation of article 8 is not the parameters and guidelines laid down in immigration policy that are the basis for judicial judgment, but the process of determining claims under article 8.

According to the Home Secretary, the guidelines will state that deportation will not be proportionate if an individual has a

“genuine and subsisting relationship with a partner in the UK”.

My concern, and that of Mr Houston, is how tribunals arrive at the conclusion that an individual has such a relationship.

There are fundamental differences in the application of criminal law, as in the court case at which Mr Mohammed appeared in 2002, and the application of civil law in the asylum tribunals of 2010. I question the judicial process for determining a “genuine and subsisting relationship” as laid out by the Home Secretary. In criminal law, the evidence is tested beyond reasonable doubt. In the criminal case of Mr Mohammed, the Crown Prosecution Service was unable to present a case beyond a reasonable doubt that Mr Mohammed caused Amy’s death by the more serious crime of dangerous or careless driving, partly owing to conflicting statements. He was instead convicted for having no licence or insurance.

It is worth noting that Mr Mohammed had exhausted all asylum appeals to be in the UK during 2002, a year before the incident that cost the life of that young child. Mr Mohammed was released from prison after completing just four months of his custodial sentence in early 2004. At this point, he was still an illegal asylum seeker and had no right to family life in the UK, and should have been removed from the UK. What will the Home Secretary do to ensure that those who break the law in such circumstances, but receive less than the 12 months’ custodial sentence recommended in today’s guidelines by the Home Secretary, are still deported?

Subsequently, Mr Mohammed accumulated a number of criminal convictions and police cautions over the years, and it was not until late 2008—four years later—that the authorities caught up with him and brought about deportation instructions. What will the Home Secretary do to ensure that those who have entered a deportation process are deported, and further that in cases like Mr Mohammed’s, people cannot circumvent their deportation through a subsequent appeal under article 8? I note with concern that the number of successful deportations has fallen by 18% in the last year.

By 2008, Mr Mohammed was entitled to make a fresh claim stating that to deport him would breach his right to a family life, and legal battles through the civil

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law system commenced. Following his release, this man has been convicted of possession of cannabis, cautioned for burglary and theft, convicted of driving uninsured, banned from driving and convicted of harassment. My right hon. Friend the Member for Blackburn (Mr Straw) also mentioned a dispute between Mr Mohammed and his former wife involving a £200 fine and his being bound over to keep the peace. This does not sound like a man enjoying a family life.

Mr Houston raises a key concern with the tribunal system—what he describes as the 51% rule of probability. Under this rule, circumstantial and anecdotal evidence allowed Mr Mohammed to win his tribunal case based on the balance of probability, rather than on what we have in the criminal justice system—the “beyond reasonable doubt” rule. During 2009-10, Mr Mohammed was allowed to present evidence in support of his claim through the upper tribunal for immigration and asylum. Mr Mohammed and his knowledgeable legal representatives only had to convince a judge that the evidence of his UK relationship was true on the balance of probability. My right hon. Friend the Member for Blackburn touched on the issues with the evidence submitted to the tribunal, which was flaky to say the least.

Such critical evidence should be tested beyond reasonable doubt. Mr Houston feels aggrieved that such circumstantial and conflicting evidence for the relationship of Mr Mohammed with a British national played a huge part in the judge’s granting him asylum under article 8. As someone sympathetic to the benefits of the Human Rights Act, Mr Houston believes that this is a ludicrous application of British law.

The Government need to do far more to deport foreign criminals. The problem with the motion is that it ignores the real problems of the chaos within UKBA. The Home Secretary may be well intentioned in desiring a fairer justice system, but what are her intentions for dealing with the problems caused by cases such as Mr Mohammed’s, particularly the acceptance of hearsay evidence in the decision-making process at tribunals? What does she intend to do to ensure that justice is seen to be delivered?

I understand that there is an opportunity to challenge and contest the statements presented at tribunals under part 32.14 of the civil procedure code against a person who presents false evidence. In Mr Mohammed’s case, however, there was no challenge, despite the evidence of his relationship being flaky and suggestions that there was an arrangement to the benefit of his asylum claim.

My right hon. Friend the Member for Blackburn spoke about the dubious evidence put forward by Mr Mohammed. I agree that it was simply a means of evading deportation under article 8. In cases where individuals use article 8, on the right to family or private life, and where claims are tolerated because of inefficiencies or delays by the Home Office in dealing with cases, hearsay evidence at a tribunal should be tested and challenged beyond reasonable doubt. Fairness is about not only interpretation or immigration law but the judicial process itself.

**7.54 pm**

**Jim Shannon (Strangford) (DUP):** I congratulate the Home Secretary and Immigration Minister on bringing this matter before the House. I fully understand the

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reason for the debate, but I hope that the clarification given in the letter that hon. Members have seen will ensure that there is no Division.

Everyone has a right to respect for his private and family life, home and correspondence, as many other hon. Members have said. This has been used by many people, however, to claim that anyone has a right to live and settle, with their family, where they choose and so can come to the UK, with or without a visa, to have a private family life. It must never be forgotten, however, that the right is a qualified not an absolute right, and that qualifications are essential in respect of immigration. We must therefore retain the right of the Home Secretary to control immigration through the rules already implemented and what is proposed today.

The Home Secretary’s clarification of the rules for the courts has assured me and, I hope, the House. The Human Rights Act was a good thing in principle, but once lawyers became involved, it changed, as is so often the case. I am reminded of that great and famous Shakespearean quote, “First kill all the lawyers.” That is a bit drastic, I know—I am not saying we should do it—but it is how many people feel when they hear some European judgments. The status of our judiciary has been perpetually challenged by the European Court in cases presided over by people with questionable experience making questionable rulings. As is often the case with Europe, we sign up to something in theory that turns out to be completely different in practice. That is our frustration with Europe and many of its rulings.

The ruling on the Abu Qatada case revealed that seven of the 11 top judges at the European Court of Human Rights had little or no judicial experience; one was 33 when appointed and had no senior judging experience. British judges go through years of training in the law before their application will ever be considered. To have such under-qualified people overruling our own judges is a slight, but worse still, it is dangerous and leaves us with our hands tied on too many occasions. That is the reason for this debate, I believe.

In the past, and even this very day, article 8 issues are being raised in asylum applications or as a basis for standalone applications for leave to remain in the UK. They have also been raised in appeals against deportation or removal. This was not the reason why the article was created; it was not meant to be a free pass into the UK and the benefits of living in such a great nation. According to the Courts Service, in 2010, 233 people won their appeal against deportation, and of those 102 were successful on article 8 grounds. According to figures from the independent chief inspector of UKBA, however, in 2010, 425 foreign national prisoners won their appeals against deportation, and these were won primarily on article 8 grounds.

Whichever figures are right, the matter must be addressed, which is what I think the Home Secretary is trying to do through the motion. While our immigration rules should always take note of human rights issues, they must be based on the needs of the country, which must have the right to caretake those very rights. Article 8 is increasingly difficult to impose legally; it is time to get this right, which is what the motion does.

I have received correspondence from groups stating that the removal of paragraph 395C of the immigration rules is tantamount to sacrilege. That paragraph stated that no one could be removed from the UK if it would

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contravene the UK’s obligations under the Geneva convention on refugees or the European convention on human rights. It set out a range of factors that UKBA had to consider before deciding to remove a person from the UK and reflected the considerations necessary for assessing compatibility with article 8. Those considerations included the person’s length of residence in the UK, the strength of their connections with the UK, their personal history, their character and conduct, their domestic circumstances and, importantly, any previous criminal record.

Other briefings, however, point out that deleting the paragraph has not altered the UK’s obligations under the convention. We are still bound by the rules, but that does not mean that we cannot implement our own rules. In my view, we have not yet given our sovereignty to Europe. The Home Secretary has confirmed that there will be safeguards for those who have been subjected to torture in their homeland—an assurance that many Members have sought and received. I agree with the Home Secretary in asserting her right, and the right of every UK citizen, to have control over immigration in this country.

I am not by nature someone who scaremongers. If I were, I would be reciting the figures, which are screaming out for an immigration policy change. What I will say is that if we deny ourselves the right to allow or disallow people into the country, will there even be a United Kingdom in the future, or will we be like other countries that have put their trust in the European Union only to find themselves on the brink of demise?

**Ben Gummer (Ipswich) (Con):** Several times in his speech the hon. Gentleman has referred interchangeably to the European Union and Europe when discussing the European convention on human rights. It is very important that we make the distinction in this House and in public, because the public are making the same association between the European Union and the European Court, and it is very damaging when trying to understand both institutions and separate them in the public mind.

**Jim Shannon:** I thank the hon. Gentleman for his intervention. Clearly we want to focus on where the responsibility for this issue lies.

I want to make a quick comment about what the hon. Member for Perth and North Perthshire (Pete Wishart) said. We agree on many things. I am a descendant from an Ulster Scot from the lowlands of Scotland, so I have an affinity with the Scottish nation. It is very obvious which papers he does not read in his house, but it is also obvious what his concerns are, and they are rightful concerns. I disagree with him on independence for Scotland, and I also disagree with him on the issue we are discussing, but I am sure that there are many other issues on which we will agree in future.

We have the right to make immigration control rules. As a nation, it is not in our nature to abuse human rights—that is not what this debate is about—and we will certainly not start doing that with these rules, especially when there is an underlying onus to consider the human rights implications in every decision our judiciary makes. I therefore support these rules and the guidance, as well as the clarification that the Home Secretary and the Minister for Immigration have provided. I believe they are necessary and important, and the people I represent want to see them in place.

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**8.1 pm**

**Chris Bryant (Rhondda) (Lab):** I am grateful to speak in this debate, which I think we would all agree has been interesting. I note that several of the Members who have spoken are not in their seats, but I will none the less refer to their contributions.

The hon. Member for Canterbury (Mr Brazier) spoke about a great number of the wider immigration issues that he believed needed addressing. However, it is important to remember that that is not the subject at hand this evening.

My right hon. Friend the Member for Blackburn (Mr Straw) referred to a constituency case, involving Mr Mohammed, to which my hon. Friend the Member for Hyndburn (Graham Jones) also referred. I think everybody would agree—the Home Secretary tacitly referred to this, albeit without naming the case—that that case is one of the most heinous examples of where it has felt as though the judges were out of step with public opinion, and certainly the opinion in this House. I do not think that one has to be a supporter of *The Daily Telegraph* or the *Daily Mail* to hold that view; it seems to me a fairly commonsensical one. Indeed, my right hon. Friend and my hon. Friend detailed what were some pretty horrific incidents and the way in which fairly flimsy excuses were used to remain in this country.

The hon. Member for Keighley (Kris Hopkins)—he, too, is not in his place, so I hope that I do not misrepresent him—said, “I want to see all criminals deported as soon as possible.” That would return us to a rather 19th-century understanding of what should happen to criminals in this country. I think he meant that all foreign criminals should be deported as soon as possible, but—*[* *Interruption.* *]* I think that returning to what happened to the Tolpuddle martyrs would—

**Mr Tom Harris:** We are reviewing the policy.

**Chris Bryant:** No; we, at least, are certainly not reviewing it.

However, the hon. Member for Keighley did say something with which I wholeheartedly agreed. He said that it was not racist to want to debate immigration. I have said this at the Dispatch Box before, and I will say it again: just because someone wants to talk about immigration does not make them a racist. There are certainly some people who want to talk about immigration because they are racists, but I believe that everybody has a perfect right to debate this issue, and we should be able to do so calmly and reasonably.

My hon. Friend the Member for Hayes and Harlington (John McDonnell) expressed a view about the motion before us which I think a lot of us had come to when he said, “I no longer know what this debate is about,” and when he referred to the unusual process that has been used. I will refer later to why I think this is not the process for us to go through. I think we have come to a much greater understanding of what the legal implications will be of the decision we take this evening, but he was right to highlight the fact that some of the water had been somewhat muddied by earlier contributions.

**Pete Wishart:** What about the Liberal contribution?

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**Chris Bryant:** We did not have a Liberal contribution—I was going to point that out earlier—but I am sure that the Liberals will be reserving their position for when they form a Government on their own, without the Conservative party.

The hon. Member for Esher and Walton (Mr Raab) made a thoughtful contribution, as usual. He was right to say that the European convention on human rights was never originally intended to have any kind of extra-territorial effect. However, I would merely point out to him that it was not intended to have any effect on whether homosexuals could serve in the military in any country in the United Kingdom or how marriage law should be interpreted. There are undoubtedly aspects of how the ECHR has been interpreted by the Court in Strasbourg that have been significantly beneficial, not only to people in the United Kingdom, but to people in Russia and other signatory countries.

The hon. Gentleman also referred to the shifting goalposts of article 8. That is another area where there is some agreement across the House, and certainly between the two Front Benches. He also pointed out that it would be difficult to be precise about what constituted success in the terms to which the Home Secretary referred at the beginning of the debate. How will we know whether what we are doing today has been successful? It is difficult to be precise.

I would not call the speech by the hon. Member for Perth and North Perthshire (Pete Wishart) a rant, but it had—

**Pete Wishart:** It was barnstorming.

**Chris Bryant:** I would not call it that, either. I thought the hon. Gentleman’s speech was just wrong, and in some areas inappropriate, although he did unite the House in condemnation of himself—I think that is mostly what he seeks to achieve in politics—so it was quite a success.

The hon. Member for Witham (Priti Patel)—again, she is not in her place—spoke about a whole range of wider immigration issues. All I would say is that today’s debate is not about those wider issues; rather, it is about the specific set of issues that are incorporated in the motion—a motion that is tightly drawn and does not have any papers tagged to it.

My hon. Friend the Member for Glasgow South (Mr Harris) did a very good job of demolishing the argument of the hon. Member for Perth and—is it “Perth and Perthshire”?

**Pete Wishart:** Perth and North Perthshire.

**Chris Bryant:** I see; otherwise, I would have thought that it was a rather tautological name for a constituency.

My hon. Friend is absolutely right: many of our constituents, in many different parts of this country—in Wales, just as in Scotland and England—have significant concerns about matters relating to the deportation of foreign criminals, and they want them addressed better in the criminal justice system.

I always enjoy listening to the hon. and learned Member for Torridge and West Devon (Mr Cox), not least because I see him as a very successful barrister, and I am aware that there is a convention in this House

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that if an hon. Member were to ask another Member who practises at the Bar to represent them in court, that Member is required to provide their services, free, gratis and for nothing. I therefore look forward to him representing me one day in some action, free, gratis and for nothing.

*[*

*Interruption.*

*]*

I think he is mouthing something at me, but I am not quite sure what it is. I know that he was seeking to be helpful to the Government and to support the direction of travel in which they are moving, but I noted that he said, “I do not hold out an enormous amount of hope.” I think he was referring to whether this proposal is going to be a successful manoeuvre, which is partly our concern as well. It is not a concern about the direction of travel, but a concern about whether this measure is precisely the right way in which to steer ourselves in that direction of travel.

The hon. Member for Stone (Mr Cash) is one of my favourite Members, because I have debated with him so many times—and he also told me once that he loved me, so I cannot dislike him. He referred to the application of the rules of the European Court’s decisions in relation to the courts in the United Kingdom. He, too, said that whether the decisions we make today will have any effect remains to be seen. I say that—and I think he said it, too—not out of a desire to undermine where we want to go, but to ensure that we securely get change in the direction to which many hon. Members have referred.

My hon. Friend the Member for Wigan (Lisa Nandy) made a moving speech about some of the experiences that she has had personally and in dealing with her constituents. In particular, she mentioned the situation facing many women and children. We would do ourselves a disservice if we were to pretend that the European convention on human rights had done nothing to protect the sorely abused rights of women around the world. In many cases, it has acted as a beacon for what a decent society should look like and how a decent society should go about its business.

The hon. Member for Strangford (Jim Shannon) said that he thought that there would be no Division on the motion. I thought that he might have been having a dig at the hon. and learned Member for Torridge and West Devon when he said that everything goes wrong when lawyers get involved. He was also critical of some of the judges in the European Court of Human Rights because they sometimes did not have the level of qualifications or the amount of experience that we would expect of a British judge. I am certain of the need for reform of the way in which the judges are appointed and the way in which the Court does its business and comes to its decisions, but that is not a reason for us to leave the European Court or to abandon the convention, not least—I might not be able to carry the hon. Gentleman with me on this—because it is a requirement of membership of the European Union that we should be a signatory and adhere to the Court.

The hon. Member for Ipswich (Ben Gummer), who has just fled the Chamber, made a tiny intervention on the hon. Member for Strangford, in which he pointed out the difference between the European Union, the European Court and the European convention on human rights. He was absolutely right to say that that difference was often not recognised.

The Home Secretary made several issues crystal clear in her speech. First, she made it clear that Pepper *v.* Hart was right, and that it is absolutely right for the

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courts to bear in mind what is said by a Minister or in a debate in the House of Commons—or, for that matter, the House of Lords—when legislation is ambiguous and the court is uncertain of how to proceed, without breaching article IX of the Bill of Rights, which states that a court is not able to question or impeach a proceeding in Parliament.

**Mr Cash:** In regard to interpretation, certainly in the field of European law—whether in the European Court of Justice or the European Court of Human Rights—the travaux préparatoires, as they are called, include all sorts of explanatory memorandums and so on. So when we talk about a clear basis, the question is whether it will stand up in due course. I hope that it will, but I am not sure.

**Chris Bryant:** I am not entirely sure whether I agree with that, so I am afraid that I am going to gloss over it. Perhaps the hon. Gentleman will give me a better lecture on the matter later.

We agreed with the Home Secretary’s point on Pepper *v.* Hart. We also agreed when she effectively said that she accepted the judgment in the Pankina case of 2010 that the mere tabling of new immigration rules is often not enough to provide legal or political clarity to the courts. We agree with that, which is why we would wholeheartedly welcome a debate in Parliament on these matters. There are those who would say that the process that the hon. and learned Member for Torridge and West Devon referred to earlier has been inadequate in the past.

The Home Secretary also referred to changes in the operation of article 8 in relation to the deportation of prisoners. Again, we completely agree with the direction of travel that she is taking and with what she is trying to do. In a sense, that is what we tried to do in 2007 with the changes in the law, but we accept that further work needs to be done. She said specifically that foreign criminals had used flimsy human rights arguments to remain in this country, and we agree. She said that the broader issue of the other changes, tabled last Wednesday, was a separate issue. We wholeheartedly agree with that, too.

We have some concerns about the process, but I do not want to overstate them. The motion expressly refers to “the Immigration Rules”. It therefore stands to reason that we are debating the rules that are in force today, rather than any that have been tabled but will not come into force until 9 July and could, in theory, be annulled in the future. So I am not sure that this motion provides quite the level of legal clarity that the Home Secretary would like.

Furthermore, there is the question of exactly how much influence a motion of the House has. We have already heard from the shadow Home Secretary about the ruling from the Clerks on that point. A few weeks ago, a motion of the House, which was agreed unanimously, stated that nobody wanting to come to this country from Russia should be allowed a visa if they had had anything to do with the death of Sergei Magnitsky. That motion has no force in law, however; it is just an interesting statement from the House of Commons. It has not been agreed by the House of Lords, and it has not gone through any kind of primary or secondary legislative process.

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It might have been better if the measures had been taken in a different order, with the full set of rule changes being followed by the motion that we are considering today. Indeed, many hon. Members have said that there might well be a need for primary legislation to provide the courts with the absolute clarity that they need.

I want to make it absolutely clear that we are supporting the motion today on the understanding that it applies solely to the operation of article 8 in relation to the deportation of foreign criminals. In the words of the Home Secretary, the rest is a “separate issue”.

**8.16 pm**

**The Minister for Immigration (Damian Green):** I am grateful to Members on both sides of the House who have treated this important subject seriously today. I am also grateful for the support for the Government’s approach that eventually appeared from the Opposition Front Bench, although I was rather doubtful about it earlier, when the shadow Home Secretary was speaking. I am also grateful to the right hon. Member for Blackburn (Mr Straw) and the hon. Members for Glasgow South (Mr Harris) and for Strangford (Jim Shannon), as well as to those on the Government Benches who have spoken.

Let me deal with the central question. The motion clearly sets out for the agreement of the House where we believe the balance should lie between the right to respect for family and private life under article 8 of the European convention on human rights and the legitimate aims of our immigration controls. That view is reflected in the new immigration rules that we laid before the House last week. We are in complete agreement that article 8 is a qualified right. Article 8 sets out the basis on which the public interest can justify proportionate interference in individual rights to family and private life. It is the responsibility of the Government, and of Parliament, on behalf of the public, to set out when and how the public interest should qualify those individual rights. The immigration rules are the appropriate vehicle for the expression of the views of the Government and Parliament.

**Pete Wishart:** I am beginning to get confused all over again. I thought that we had received clarification on this earlier, but the Minister is now inviting us to support all the Government’s immigration rules, which will be unacceptable to many people in the House.

**Damian Green:** No sensible person would put that interpretation on what I have just said. No sensible person would put that interpretation on the motion that is before the House, which the hon. Gentleman has shown, over the past three and a half hours, that he is incapable of reading. Read the motion, and you will see what we are debating.

The immigration rules are the appropriate vehicle for the expression of the views of the Government and Parliament. They are a statement of the normal practice to be followed by the Secretary of State’s caseworkers in making immigration decisions under the statutory framework that Parliament has provided.

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Since the Human Rights Act 1998 was implemented in 2000, it has become increasingly apparent that the existing immigration rules do not provide a sufficiently clear and comprehensive framework for considering family and private life cases in line with article 8. The rules have not reflected adequately the factors that can weigh in favour of, and against, an applicant’s article 8 claim. The courts—understandably, as the Government have never set out for Parliament’s agreement a clear position on article 8 in the immigration rules—have had to decide for themselves on the facts of the cases before them whether article 8 did or did not provide a basis for the applicant to come to or stay in the UK.

The courts have therefore not been able to give due weight to Government’s and Parliament’s view of where the balance should be struck between individual rights and the public interest, as they have not known fully what that view is. As the Government and Parliament have not established the correct balance in the rules, the courts have arguably been as well placed as the Secretary of State’s caseworkers to assess the case and make a decision. In the absence in the rules of a comprehensive statement of public policy in these matters, the courts have developed the policy themselves through case law on issues such as the required level of maintenance for family migrants.

The changes to the immigration rules that we laid before Parliament on 13 June fill the public policy vacuum we inherited by setting out the position of the Secretary of State on proportionality under article 8. The new rules state how the balance should be struck between the public interest and individual rights, taking into account relevant case law and evidence. They provide clear instructions for caseworkers on the approach they must normally take, and they therefore provide the basis for a consistent, fair and transparent decision-making process.

As the immigration rules will now explicitly take into account proportionality under article 8, the role of the courts should focus on considering proportionality in the light of the clear statement of public policy reflected in the rules. They should not have to consider the proportionality of every decision taken in accordance with the rules on every immigration application. The starting point from now will be that Parliament has decided how the balance under article 8 should be struck, and although Parliament’s view is subject to consideration by the courts, it should be accorded the deference rightly due to the legislature on the determination of public policy. That is the approach that the new immigration rules seek to put in place in the immigration system.

By subjecting the public interest that the rules reflect to debate and approval in Parliament today, we are making good the democratic deficit we inherited on the operation of article 8 rights in the immigration sphere. We are also responding to the need that the courts have themselves identified for the Government and Parliament to take proper responsibility for these matters of public policy.

The hon. Member for Hyndburn (Graham Jones), who is not in his place, raised the important Mohammed case, which precisely illustrates why we are proceeding in this way. He asked a specific question about what would happen in a case like that where the sentence was not for 12 months or more. I am happy to repeat what

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my right hon. Friend the Home Secretary said in her opening remarks, that “even if a criminal has received a shorter sentence, deportation will still normally be proportionate if their offending has caused serious harm.” There is that additional power.

My hon. Friend the Member for Stone (Mr Cash) raised an interesting point, which was repeated by the shadow Immigration Minister, about which rules we should look at—the rules as they stand today or the new rules. Again, I am more than happy to repeat what my right hon. Friend the Home Secretary said, this time in her statement last week:

“I will shortly ask the House to approve a motion recognising the qualified nature of article 8 and agreeing that the new immigration rules should form the basis of whether someone can come to or stay in this country”.—[*Official Report*, 11 June 2012; Vol. 546, c. 50.]

That is what she told the House last Monday; that is what we are debating today.

The shadow Home Secretary and, indeed, my hon. Friend the Member for Canterbury (Mr Brazier) made points about the importance of removing more foreign national offenders, on which we agree. She asked why the numbers had come down. The simple fact is that fewer cases are arising that fit the deportation threshold. The numbers in this category are down approximately 12% in 2011 in comparison with 2010, while the overall prison population has not fallen. The number of people forcibly removed or departing voluntarily during the first quarter of 2012 has remained steady. It is slightly higher than in the fourth quarter of 2011, so I hope the right hon. Lady will be reassured that action is being taken on the very important point she raised about removals.

In what might be described as the less serious part of the debate, the hon. Members for Hayes and Harlington (John McDonnell), for Perth and North Perthshire (Pete Wishart) and for Glasgow South (Mr Harris) and my hon. and learned Friend the Member for Torridge and West Devon (Mr Cox) raised the issue of whether the courts would take any notice Parliament. What the new rules do are respond to what the courts have said about the lack of a clear framework in immigration cases for balancing individual article 8 rights and the wider public interest. The House of Lords—this was before we had the Supreme Court—observed in the Huang case back in 2007 that immigration lacks a clear framework representing the competing interests of individual rights and the wider public interest because the immigration laws

“are not the product of active debate in Parliament”.

That is precisely the purpose of today’s debate. We are having an “active debate in Parliament” on immigration rules as they affect the balance between individual rights and collective rights on article 8.

Frankly, this House ought to welcome the fact that Parliament becomes the central part of a debate on an issue that is important to our constituents. I am genuinely surprised that so many Opposition Members appear to think it inappropriate for Parliament to act in this way. I shall take up what must be a luxury for any Home Office Minister under any Government and pray in aid Liberty, which said today:

“Any fair immigration policy will be a combination of rules and discretion, allowing both for clarity and compassion in the handling of individual cases and the system as a whole. On that

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basis, Immigration Rules are the obvious way for any Home Secretary to seek to guide both her officials and the judiciary in their handling of cases.”

I think Liberty is exactly right in its interpretation. As I say, that is what we are doing today.

My hon. Friend the Member for Keighley (Kris Hopkins) can be reassured that we are indeed, as he urged, trying to deport as many criminals as possible. I hope he will be reassured by the figures that I read out a few moments ago.

My hon. Friend the Member for Esher and Walton (Mr Raab) has huge legal expertise in this matter and spoke with much wisdom. I was glad to hear from him that my answers to all his parliamentary questions have done some good in providing him with facts and figures. He asked what will happen if the courts do not respond. As my right hon. Friend the Home Secretary said previously, if we need to take further steps, we will, but we do not anticipate that happening.

My hon. Friend the Member for Witham (Priti Patel) eloquently pointed out how the distortions of human rights law have indeed created real problems in this country. She said she would like to see people taken straight from jail to the airport to be deported. I cannot quite promise her that, but I hope she is reassured to some extent that the average number of days between a foreign national prisoner finishing their sentence and being removed has decreased markedly. In 2008, it was 131 days; by 2011, we had got it down to 74 days, so we are indeed speeding up that process.

The hon. Members for Islington North (Jeremy Corbyn) and for Wigan (Lisa Nandy) talked about the best interests of children. The hon. Lady is quite right that she and I worked closely together for some time on these matters during the dark days of the previous Government when they were trying to do bad things through immigration legislation. Of course we recognise the importance of the statutory duty under section 55 of the Borders, Citizenship and Immigration Act 2009

“to safeguard and promote the welfare of children…in the UK”.

It is precisely for that reason that we have reinforced our approach by bringing a consideration of the welfare or the best interest of children into the new immigration rules. In assessing that best interest, the primary question in immigration cases involving removal is whether it is reasonable to expect the child to leave the UK. The best interests of the child will normally be met by their remaining with their parents. As the hon. Lady predicted, I make the point that in these rules, exceptional factors are allowed for.

There will be exceptional factors. I do not entirely share the hon. Lady’s view of the box-ticking nature of the way in which the UKBA and individual caseworkers approach these cases, not least because of the training that they have been undertaking—training to which, as she rightly said, she has contributed in the past. We are continuing to train so that our caseworkers act in a sensitive way, but exceptions can certainly be made in extreme cases.

In these rules we are introducing clear, proportionate requirements relating to who can enter or remain in the UK on the basis of their family life. They are requirements that reflect case law, evidence, independent advice and public consultation. We invite the House to agree that they are requirements which reflect the fact that family

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migration should be controlled in the public interest, and the fact that the best interests of a child in the UK should be taken into account.

Article 8 will cease to be an afterthought in the decision-making process, considered only after a decision has been made under the immigration rules. Instead, the determination under article 8 will be made according to the immigration rules which the Government have put in place, and which Parliament has agreed correctly reflect the public interest. We have set clear and transparent requirements as the basis for the ability of a partner, child or adult dependant of non-European economic area nationality to enter or remain in the UK because of his or her relationship with a British citizen or a person with settled status in the UK.

Applicants will have to meet clear requirements in the rules which reflect an assessment of the public interest. Those requirements are a proportionate interference with article 8 because they draw on the relevant case law, because there is a strong rationale and evidence for the fact that they will serve the public interest, and because, if Parliament agrees to the motion—as I hope and expect that it will—they will reflect the correct balance between individual rights and the public interest.

No set of rules can deal with 100% of cases, and there will be genuinely exceptional circumstances in which discretion is exercised outside the rules. However, it is in the interests of both the public and applicants for there to be a clear system to ensure fairness, consistency and transparency. The public, applicants and caseworkers need to know who is entitled to come or stay, and on what basis, and who is not. If there is to be a system of that kind, there must be rules: rules that deliver sustainable family migration to the UK that is right for the migrants, for communities and for the country as a whole, rules that properly reflect individual rights and the wider public interest, and, above all, rules that are set in Parliament, and not by individual legal cases. With that in mind, I commend the motion to the House.

*Question put and agreed to.*

*Resolved,*

That this House supports the Government in recognising that the right to respect for family or private life in Article 8 of the European Convention on Human Rights is a qualified right and agrees that the conditions for migrants to enter or remain in the UK on the basis of their family or private life should be those contained in the Immigration Rules.

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