Public Bill Committee

IMMIGRATION BILL

WRITTEN EVIDENCE

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON—THE STATIONERY OFFICE LIMITED

PBC (Bill 074) 2015–16

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Printed in the United Kingdom by The Stationery Office Ltd

51851

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Written evidence submitted by David Smith, Policy Director of the Residential Landlords Association (IB 01)

1. About the Residential Landlords Association

1.1 The Residential Landlords Association represents the interests of landlords in the private rented sector (PRS) across England and Wales. With over 20,000 members, and an additional 20,000 registered guests who engage regularly with the Association, the RLA is the leading voice of private landlords. Combined, they manage over a quarter of a million properties.

1.2 The RLA provides support and advice to members, and seeks to raise standards in the PRS through our code of conduct, training and accreditation and the provision of guidance and updates on legislation affecting the sector. Many of the RLA's resources are available free to non-member landlords and tenants.

1.3 The Association campaigns to improve the PRS for both landlords and tenants, engaging with policymakers at all levels of Government, to support the aim of a private rented sector that is first choice, not second best.

2. Executive Summary

2.1 **To protect the rights of UK born citizens without appropriate documentation, local authorities should be able to issue a single, readily identifiable document or certificate confirming their right to rent. Whilst the RLA notes that a benefit letter coupled with other documents is acceptable we are concerned that some landlords will worry that these are too easy to forge and will be put off by the extra complexity in checking more than one document especially where the document is not one with a very clear official provenance. A single, standardised certificate which could be provided by any local authority to a person in receipt of benefits would make it easier for landlords to check a significant proportion of tenants and enable easy transition into the private sector for them. This letter could be watermarked or use an embossed stamp, be single-use, and strictly time limited to prevent forgery.**

2.2 **We would urge that Parliament is given sufficient time to consider the findings of the Government's assessment of the 'Right to Rent' pilot scheme in the West Midlands in detail. We would call on the Committee to respond positively to any further legislative changes that might be needed to address the inevitable concerns of landlords that they are being put in a difficult position and to avoid them being accused of being discriminatory.**

2.3 **The RLA is calling for there to be a clearly understood and properly resourced helpline for general use by landlords with questions or queries about the operation of the Bill's provisions and to provide advice on understanding relevant documentation. This should be backed up with a major campaign to make landlords aware of their responsibilities and how to undertake them fairly and accurately.**

2.4 **We also call on the Home Office to establish a full searchable online database to make it easier for landlords to identify appropriate documents that prove someone's nationality. Whilst this has been rejected by the Home Office during our discussions with them so far, we believe that without this we will continue to see the problems now emerging in the West Midlands. The resources and support mechanisms have to be put in place if the policy is to work properly.**

3. Background

3.1 Clauses 12 to 15 of the Bill make it an offence for a landlord to fail to check the immigration status of tenants who are subsequently found to be in the country illegally. In such circumstances landlords face being fined or potentially being imprisoned for up to five years.

3.2 The Bill will make it easier for a landlord to regain possession of a property where a tenant's right to remain in the UK expires midway through a tenancy.

3.3 This builds on the Immigration Act 2014 which requires landlords to check the immigration status of their tenants. This was piloted in the West Midlands and is known as the 'Right to Rent' scheme, but this only contained the threat of civil penalties for landlords.

4. Migrants in Private Rented Housing

4.1 In September this year, Oxford University's Migration Observatory published its annual briefing, 'Migrants and Housing in the UK: Experiences and Impacts'. It found that:

- The foreign-born population is almost three times as likely to be in the private rental sector (39% were in this sector in the first quarter of 2015), compared to the UK-born (14%).
- Recent migrants, classed as those who have been in the UK for five years or less, are almost twice as likely to be renting property (74% were in the private rental sector in the first quarter of 2015), compared to all migrants.

4.2 The RLA is concerned that the Government is proceeding with its plans without any assessment of the scale of the problem of illegal immigrants residing in private rented housing.

5. Landlord-Tenant Relations Are Being Strained

5.1 Following the announcement in the Queen's Speech of 2013 of plans to make landlords legally required to check the immigration status of their tenants, the RLA conducted a survey of its members. This found that 82% were opposed to the idea.

5.2 This reflects growing concerns among landlords that they are being placed in a difficult position. Whilst the RLA condemns all cases of racism it is inevitable that when faced with the threat of a fine or prison many landlords will wish to avoid all risk and will refuse housing to those whose status is not easy to prove.

5.3 This is borne out by the findings of the only research so far published on the impact of the 'Right to Rent' pilot scheme in the West Midlands by the Joint Council for the Welfare of Immigrants (JCWI). This reported that:

— 42% of landlords said that the Right to Rent requirements have made them less likely to consider someone who does not have a British passport. 27% are reluctant to engage with those with foreign accents or names.

— 50% of respondents who had been refused a tenancy felt that discrimination was a factor in the landlord's decision.

— 65% of landlords were much less likely to consider tenants who cannot provide documents immediately.

— 44% of tenants within the pilot area had not been asked for identity documents.

5.4 Concerns about potential discrimination were echoed also in December 2013 by United Nations High Commission for Refugees which noted in its briefing for MPs on the then Immigration Bill that its provisions appeared "likely to result in asylum-seekers, refugees and beneficiaries of subsidiary protection being stigmatised in the public mind and in their being denied access to housing or bank accounts."

5.5 The UNHCR continued, "the UN high commissioner for refugees is concerned that if introduced, such measures could contribute towards a climate of misunderstanding and ethnic profiling that could undermine the longer-term prospects for integration of such persons and prove detrimental to social cohesion."

5.6 Given this, landlords will need to cover their backs and avoid accusations of discrimination by examining identity documents of all potential tenants. In such circumstances the RLA questions how the 12 million UK-born citizens who, according to the 2011 census, do not hold a British passport are expected to prove their identity? Those in such a situation are likely to be some of the most vulnerable in society, potentially in most need of somewhere to live.

5.7 **To protect the rights of UK born citizens without appropriate documentation, local authorities should be able to issue a single, readily identifiable document or certificate confirming their right to rent. Whilst the RLA notes that a benefit letter coupled with other documents is acceptable we are concerned that some landlords will worry that these are too easy to forge and will be put off by the extra complexity in checking more than one document, especially where the document is not one with a very clear official provenance. A single, standardised certificate which could be provided by any local authority to a person in receipt of benefits would make it easier for landlords to check a significant proportion of tenants and enable easy transition into the private sector for them. This letter could be watermarked or use an embossed stamp, be single-use, and strictly time limited to prevent forgery.**

5.8 We welcome the Government's commitment to publish its assessment of the Right to Rent pilot scheme in the West Midlands by Committee Stage of this Bill.

5.9 **We would urge that Parliament is given sufficient time to consider the findings of the Government's assessment in detail. We would call on the Committee to respond positively to any further legislative changes that might be needed to address the inevitable concerns of landlords that they are being put in a difficult position and to avoid them being accused of being discriminatory.**

6. Landlords do not feel well equipped to undertake the checks

6.1 A common trend that the RLA is seeing in its dealings with landlords in the Right to Rent pilot area has been that a substantial number do not feel properly equipped to understand what documents are proof of someone's immigration status and which may be forgeries.

6.2 This was a concern raised in the 2013 briefing note from the UNHCR which noted that "the UN high commissioner for refugees is concerned that the types of documentation carried by asylum-seekers, refugees, beneficiaries of subsidiary protection and stateless people can be varied and complex, and landlords and other service providers are likely to misinterpret the legality of their status."

6.3 Likewise, the JCWI research has found that:

— 57% of landlords and agents nationwide and 40% in the pilot area feel they have not effectively understood the Right to Rent changes or remain unaware of them.

— 65% of landlords have not read or feel they have not fully understood the 'Code of Practice on preventing illegal immigration' or the 'Code of Practice on Avoiding Discrimination'.

— 56% of tenants in the 'pilot' area remain unaware of the Right to Rent scheme. 81% have not received any advice on how to prepare for the checks when applying for a tenancy or their rights in relation to the Equality Act 2010.

6.4 These results are not surprising given that, for example, landlords would need to be able to recognise the 404 different types of European identity documents that may be possessed by a tenant (as outlined by the Council of Europe's 'Public Register of Authentic Identity and Travel Documents Online') which give holders the right to free movement. We question how landlords can be expected to know every legitimate document from every country that proves someone's immigration status, let alone recognise high quality fraudulent documents without proper training and support?

6.5 Whilst the helpline set up to support landlords in the pilot area is a welcome resource, anecdotal evidence suggests that it has been insufficiently resourced and no awareness raising campaign has been carried out by the Government of its existence.

6.6 In briefings with the Home Office the RLA has also been told that when the Right to Rent scheme rolls out across the country, this helpline will revert to a landlord checking service only for prospective tenants with a Home Office registration number rather than a general helpline for landlords.

6.7 **The RLA is therefore calling for there to be a clearly understood and properly resourced helpline for general use by landlords with questions or queries about the operation of the Bill's provisions and to provide advice on understanding relevant documentation. This should be backed up with a major campaign to make landlords aware of their responsibilities and how to undertake them fairly and accurately.**

6.8 **We also call on the Home Office to establish a full searchable online database to make it easier for landlords to identify appropriate documents that prove someone's nationality. Whilst this has been rejected by the Home Office during our discussions with them so far, we believe that without this we will continue to see the problems now emerging in the West Midlands. The resources and support mechanisms have to be put in place if the policy is to work properly.**

6.9 The RLA is also seriously concerned that some landlords could inadvertently find themselves breaking the law despite having done everything possible to confirm the immigration status of a tenant subsequently found to be residing in the county illegally.

6.10 **As drafted, the Bill would mean that a landlord can be served with a notice by the Secretary of State informing them that that their tenant(s) are residing in the country illegally. As soon as that notice is served the landlord would immediately be guilty of an offence. By adding a provision to the Bill which states that the landlord would not be guilty while they are proceeding with eviction there would at least be a chance for them to sort things out. We have drafted suggested wording for such an addition to the Bill which can be found in Appendix A.**

APPENDIX A

ADDITION TO THE IMMIGRATION BILL

After clause 12, subsection (2), page 9, line 13 add:

(9) A person does not commit an offence under subsection 1 or 7 where they are proceeding diligently to evict any adult who is disqualified as a result of their immigration status from occupying the property of which they are a landlord.

October 2015

Written evidence submitted by NSL (IB 02)

IMMIGRATION BILL (HC BILL 74) EVIDENCE BRIEFING

NSL is an identity document and right-to-work screening expert, having worked for a number of years with many notable organisations to ensure all those they employ have the right to employment in the UK. In addition, we are a Recognised Supplier to the National Landlords' Association (NLA) and have conducted many of the checks during the pilot right-to-rent scheme in the West Midlands. In order to do this NSL uses the world's most advanced identity document verification systems, powered by Keesing Technologies, and provides comprehensive vetting management, driving licence entitlement monitoring, criminal record checks, background screening services and systems tailored to employers' needs.

As a result of our expertise in the area, NSL has prepared a short briefing for the Immigration Bill Committee in order to highlight various areas where we feel we can offer our insight. We have created a 'traffic light system', which easily identifies legislative amendments that i) we welcome (green), ii) we feel there is scope for further additions to what has been proposed in the Bill (amber) and iii) we feel should be included in the Bill (red).

If you have any questions about the below points, NSL would be happy to provide further information, including giving oral evidence, should that be helpful.

Issue	*Overview*	*Suggested Amendment*
Offence of illegal working	Within part one of the Bill the Government has outlined the offence of illegal working. In instances hitherto, when police officers were notified of an illegal worker, they did not have sufficient grounds to remove the worker. Making it an offence of illegal working provides clarity for security services on how illegal workers can be dealt with.	NSL is fully supportive of this and is well positioned to help with enforcement.
Illegal working premises closure notice	To deal with those employers who continue to flout the law by employing illegal workers and evade sanctions, part 1 of the Bill will introduce a power to close premises for 48 hours or more. We welcome this, however, we believe that this may give rise to so-called 'phoenix companies'.	In order to avoid this, we suggest that the Government target individuals within companies – such as company directors – barring them from holding similar roles in future if they continue to evade the law.
Amendment to Licensing Act 2003	NSL welcomes the move in part 1 to ensure that licences will only be issued to off licences based on the condition that they are not breaching immigration laws, including employing illegal workers.	NSL believes that in order to be effective, this must be equally applicable to employers of all sizes.
Right to Rent checks	Part three of the Bill will enable landlords to evict illegal migrant tenants more easily, and in some circumstances without a court order. NSL welcomes this amendment as it is likely to act as an effective deterrent.	In our experience, this is likely to force underground those who are seeking to rent illegally. As a result it is advisable that whilst extending this programme nationwide, the Government should also strengthen laws that protect people that are being taken advantage of by rogue landlords.
Seize wages of illegal workers as proceeds of crime	The Bill will make illegal working a criminal offence in its own right, which we support. As part of this the Government proposes that wages paid to all illegal workers will be recoverable under the Proceeds of Crime Act 2002. However in reality, those that are working illegally are usually earning less than minimum wage and are living hand to mouth and will not have considerable assets.	This is unlikely to pose as an effective deterrent to illegal working. Instead time may be better spent chasing employers that seek to exploit vulnerable workers.
Border security	One of the most fruitful ways to reduce the number of illegal immigrants entering the country is through strong and effective border control. However, the government does not have the funds to increase the number of immigration officers.	NSL recommends that immigration officials copy the system in place in policing with the employment of PCSOs. This would include employing Immigration Support Officers at lesser expense to carry out administrative duties relating to border control.
Leave to remain	The Bill broaches on the topic of leave to remain by providing a power to cancel leave extended by a statute where conditions of leave have been breached. However, there remains an issue within existing legislation that has created a quagmire for those that have been granted leave to remain but have not renewed their documents in that they are not afforded the right to work until their documents have been updated.	NSL recommends that the Government facilitate those with indefinite leave to remain to renew their documentation quickly and easily, and make them aware that failure to do so will result in them working illegally in the UK.

About NSL

NSL is a leading UK company specialising in the delivery and management of frontline services in complex public sector and regulated environments. Our core services include business process management; enforcement; passenger and social transport; street management and technical design services. We currently have over 70 contracts with local, regional and central government, and have delivered contracts for high-profile government agencies, such as The Royal Parks, DVLA, Transport for London and Transport Northern Ireland. NSL employs more than 5,250 people and has over 300 offices throughout the UK. We are an Investor in People Champion, and have been awarded an Investor in People GOLD Award, joining the top 2% of UK organisations to have achieved the prestigious standard, which is given only to organisations who can demonstrate excellence in developing and supporting their staff.

October 2015

Written evidence submitted by the Recruitment and Employment Confederation (REC) (IB 03)

1. Summary

The single biggest issue currently affecting the UK jobs market is skill shortages. In the long-term, government and employers need to invest in upskilling the domestic workforce but businesses need to access skilled labour right now.

2. Skills and Migration

2.1 There has been a boom in job creation as the economy has recovered from recession but this has not been matched by the availability of high-skilled labour. This has resulted in severe skill shortages across many sectors, causing a slump in productivity. Month on month, REC data shows that while demand for staff continues to increase, the availability of candidates decreases.

2.2 The REC produce two monthly job reports.

— Jobs Outlook is a survey of employers on their hiring intentions. Last month, employers reported growing confidence with a significant majority (74%) saying that domestic economic conditions are improving (Source: REC Jobs Outlook, 24 Sept 2015).

— Report on Jobs is developed by the market research company Markit and draws on data from UK recruiters on staff appointments, job vacancies and starting salaries. Last month, permanent job appointments rose at the slowest pace in two and a half years, with many recruiters stating that a lack of available skilled labour was slowing down recruitment.

2.3 In light of these challenges, we believe the Migration Advisory Committee's review of Tier 2 visas must be allowed to conclude before an **immigration skills charge** is introduced. This could unfairly penalise those employers who have already exhausted domestic recruitment channels. It also fails to recognise the high investment made by UK businesses into formal training for its domestic staff.

3. Enforcement

3.1 We support the creation of a Director for Labour Market Enforcement and welcome the efforts to co-ordinate resources and intelligence across BIS and the Home Office. Strong enforcement enables compliant businesses to grow and sends out a powerful message to those who flout the rules.

3.2 There is a clear role for professional bodies to play in sharing information with government and its agencies, and improving compliance standards. All recruitment agencies that are members of the REC must abide by our Code of Professional Practice – a copy of which is enclosed. Companies must also take a compliance test every two years to enter and stay in REC membership.

3.3 The REC Code of Professional Practice sets out specific standards for the treatment of international workers. Any breaches of the REC Code can be investigated – and the ultimate arbitrators for this is our Professional Standards Committee which includes representation from the TUC and the CBI to ensure that both the employer and the worker voice is portrayed.

4. Illegal Working

4.1 The vast majority of UK businesses are compliant with the law and will welcome the government's attempts to crackdown on illegal working. The REC is keen to continue to play its part. For example, we previously supported the introduction of the Modern Slavery Act and were amongst those who called for there to be end-user accountability in the supply chain.

4.2 We want to continue to work with the Home Office and the reformed GLA to strengthen its intelligence gathering function so that compliant businesses and vulnerable workers are better protected. It is not clear from the Immigration Bill how the GLA will be reconstituted and of course this is subject to the current consultation. It is important to note at this stage, however, that we would urge government to continue its risk-based approach to regulating the sector. Indeed, any moves to extend licensing and increase the burden on business would be a heavy-handed and detrimental step.

October 2015

Written evidence submitted by the Coram Children's Legal Centre (IB 04)

Coram Children's Legal Centre (CCLC), part of the Coram group of charities, works in the UK and globally to protect and promote the rights of children through the provision of direct legal services; the publication of free legal information; research and policy work; law reform; training; and international consultancy on child rights. CCLC's Legal Practice Unit specialises in child and family law, education law, community care law and immigration and asylum law. CCLC operates the Child Law Advice Service (CLAS), providing free advice on family and education law, and the Migrant Children's Project, a centre of specialist expertise on the rights of refugee and migrant children. CCLC has undertaken amicus curiae interventions in a number of significant cases, including in the Supreme Court and the Court of Appeal, providing assistance to the court on matters of children's rights and best interests.

Summary

1. The provisions in the Immigration Bill have serious implications for the welfare and safeguarding of children. The government has reiterated its commitment to giving due consideration to the UN Convention on the Rights of the Child when making new policy and legislation[1] yet **no assessment has been conducted of how this Bill will impact on children's rights or indeed how the Home Secretary's child welfare duty under section 55 of the Borders, Citizenship and Immigration Act 2009 has been taken into account.** The Bill undermines the UK's legal obligations to children and the Supreme Court's finding that children should not be blamed for the actions of their parents.[2] It is predicated on the incorrect assumption that Home Office decision making is satisfactory and that children's best interests are considered as a matter of course.

2. Coram Children's Legal Centre (CCLC) is particularly concerned that:

— **Children in families in the asylum process will be made destitute** as a result of provisions to remove support from families whose claims have been refused, based on the premise that forced destitution is an acceptable policy measure to encourage people to leave the UK.

— **Limits to appeal rights will put children at risk** of being separated from a parent or themselves being removed from the UK in breach of their rights because there will be no independent judicial oversight of decisions while they are in this country.

— **Children and young people may be prevented from accessing education** due to changes to the status of those who have made an application to the Home Office, including asylum-seekers, and new conditions that can be imposed on them.

Asylum support *(Clause 34 and Schedule 6)*

3. The Bill seeks to repeal section 4 of the Immigration and Asylum Act 1999 and replace this with a new section 95A of the Immigration and Asylum Act 1999, limited to providing support for failed asylum-seekers who can show that they are destitute and that there is a 'genuine obstacle' (undefined in legislation) to their return. Under Clause 34, section 95 support for asylum-seeking families with children will be stopped once their claim been refused and any appeal rejected. Previously families deliberately were kept on section 95 support – now after a period of time (undefined in legislation) their support will be withdrawn (unless they are making further submissions on refugee and humanitarian protection grounds) and they will have to demonstrate that they are eligible for section 95A if facing destitution.

No right of appeal against decision to refuse/withdraw support

4. There would be no right of appeal against decisions to refuse or discontinue support under section 95A, so the only (potential) remedy would be judicial review, which is neither quick, efficient nor cost-effective. Currently 65% of people appealing against a refusal of section 4 asylum support to the Asylum Support Tribunal have a successful outcome due to poor decision making in the first instance.[3] In light of this statistic, to introduce these provisions with no right of appeal would risk leaving a significant number of families and children destitute and homeless.

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[1] http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/14405.htm#note15

[2] see *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74; H v Lord Advocate 2012 SC (UKSC) 308 and H(H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338; *ZH (Tanzania) v SSHD* [2011] UHSC 4; EM *(Lebanon) v SSHD* [2008] UKHL 64.

[3] In 2014-15, the Asylum Support Appeals Project represented 509 appeals related to section 4 – 332 of these cases had a successful outcome.

A failed policy

5. The withdrawal of support will not achieve the government's stated intention of 'ensuring the departure from the UK of refused asylum seekers with no lawful basis to remain in the UK'. The government tried to implement a similar change to asylum support provision through its Section 9 pilot ten years ago and the Home Office's own evaluation of this pilot, which compared the behaviour of the cohort of 116 families in the pilot against a control group of similar cases who did not have their support cut off, found only one case in the pilot in which a family was successfully removed, as compared to nine successful removals in the control group. Even when voluntary returns are taken into account, the total number of returns in the control group was nearly twice as high as in the pilot. The evaluation concluded that 'there was no significant increase in the number of voluntary returns or removals of unsuccessful asylum-seeking families' and that the measure 'did not influence behaviour in favour of co-operating with removal and… should not be seen as a universal tool to encourage departure'.[4]

Risk of families going missing

6. Furthermore, the Section 9 pilot found that the rate of absconding was 39% for those in the cohort – nearly double the amount of those in the control group (21%), who remained supported. 35 families disappeared, losing all contact with services and leaving themselves and their children acutely vulnerable. A rise in the number of families going missing would not only contradict the objective of increased returns, but also raise significant safeguarding concerns regarding the children in those families. As the Centre for Social Justice highlighted in 2008, '…making refused asylum seekers homeless and penniless is hugely counterproductive: it makes it much more difficult to work with them to encourage voluntary return or to ensure timely removal, and in driving them underground makes it harder to keep track of them'. In the report's foreword, Ian Duncan Smith MP stated that: 'It appears that a British government is using forced destitution as a means of encouraging people to leave voluntarily. It is a failed policy...still driven by the thesis, clearly falsified, that we can encourage people to leave by being nasty'.[5]

The need to improve Home Office decision making and the returns process

7. The Bill's provisions are predicated on the idea that families will return, or the Home Office can remove them. This could only result from improvements to Home Office decision in the first instance and greater support for the current Assisted Voluntary Returns process (for which funding is being reduced) and the Family Returns Process scheme. Of the 1,193 families that the Home Office considered to have no right to remain in UK between 2012 and 2014, for example, 242 families could not actually be returned and needed to be granted leave.[6] From April 2012 to March 2014, 1193 cases entered the family returns process, with 407 returned. The Home Office impact assessment on changes to asylum support states that, as at 31 March 2015, around 2,900 families whose asylum claims had been refused were receiving support.[7] It estimated that in the future there would be 3,600-11,200 new claims for section 95 and 600-5,600 new claims to section 4 support. The numbers of Appeal Rights Exhausted families would greatly outweigh the current Home Office's current capacity for working with them to return. The Independent Chief Inspector of Borders and Immigration has highlighted the need for 'considerable improvements in the Home Office's capability to monitor, progress, and prioritise the immigration enforcement caseload'.[8]

Impact on local authorities

8. Local authorities are responsible for preventing the most vulnerable from falling into destitution and homelessness. The changes set out in Schedule 6 are likely to significantly increase the numbers of destitute families and homeless children. Local authorities have a responsibility to safeguard and promote the welfare of children 'in need' under section 17 of the Children Act 1989.[9] Even if their parents are excluded from support under schedule 3 of the Nationality, Immigration and Asylum Act 2002, a local authority could not refuse section 17 support if this would breach their rights under the European Convention on Human Rights (ECHR).

9. Given the Home Office's poor record of decision making regarding asylum support (see paragraph 4), there is a risk that families who are unable to return but are not capable of demonstrating this within a limited 'grace period' will find themselves turning to the local authority when made destitute. Or, while there may be no obstacle to the family's return in the eyes of the Home Office, the local authority may find that there is a practical or a legal barrier to return because it would breach ECHR or EU law rights and it is therefore under a duty to provide support.

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[4] Home Office, *Family Asylum Policy – The Section 9 Implementation Project,* 2004 at http://webarchive.nationalarchives.gov.uk/20140110181512/http:/www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/section9implementationproj.pdf

[5] Centre for Social Justice (2008) 'Asylum Matters: Restoring Trust in the UK Asylum System': http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20Exec%20summaries/AsylumMatters.pdf

[6] Independent Family Returns Panel Annual Report, 2012-14, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360431/Independent_Family_Returns_r eport_2012_to_2014.pdf. The Panel questioned 'the quality of Home Office initial decision making'

[7] https://www.gov.uk/government/publications/reforming-support-for-failed-asylum-seekers-and-other-illegal-migrants-impact-assessment

[8] Independent Chief Inspector of Borders and Immigration, An Inspection of Overstayers:
How the Home Office handles the cases of individuals with no right to stay in the UK, May – June 2014, at
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387908/Overstayers_Report_FINAL__web_.pdf

[9] A child is 'in need' if unlikely to achieve or maintain a reasonable standard of health or physical, intellectual, emotional, social or behavioural development, or is disabled.

10. If the family could return to their country of origin but in practice does not and the child remains 'in need', the authority's section 17 duty is still likely to be engaged. A local authority may seek to fulfil this duty to a child by separating the family and providing accommodation for the child only, threatening to take children into care rather than support the family unit as a whole. However, not only is separating a child from their parent/s where no abuse or serious harm has taken place neither in their best interests nor in accordance with their rights under Article 8 of the ECHR and Article 9 of the UN Convention on the Rights of the Child, the cost of taking a child into care far outweighs the cost of supporting them to remain with their family.[10] Giving the existing pressures on the care system, it would be extremely harmful to *all* children to potentially increase the numbers going into care through a policy of forced destitution.

11. Local authorities will also incur significant costs simply in dealing with requests from destitute asylum seeking families for support and in conducting child in need assessments and human rights assessments. This may include the provision of emergency accommodation whilst the assessments are carried out. They may also face the considerable cost of litigation if the refusal of local authority support is challenged.

Amendments

12. CCLC does not support the proposed changes to section 95 support from families. At best, this will shift costs onto local authorities. At worst, vulnerable children will be left on the streets or separated from their parents. If the provisions remain in the Bill, it is essential that there be a right of appeal against any decision to refuse or discontinue support under section 95A and that families must be provided with a sufficiently long grace period before section 95 support is withdrawn – CCLC has recommended a period of 4 months based on figures from the Assisted Voluntary Return and Family Returns Processes.[11]

Appeal rights *(Part 4, Clause 31)*

13. Under the proposed provisions, the Secretary of State will have the power to certify the claim of someone appealing on human rights grounds against an immigration decision so that they can only bring an appeal against a wrong decision from outside of the UK, unless removal would breach their human rights and cause 'serious irreversible harm'. This extends the provisions that are already in force for the deportation cases of ex-foreign national offenders to *anyone* appealing an immigration decision relying on article 8 of the ECHR, the right to respect for private and family life, causing the separation of families, disruption to an established life in the UK and significant practical difficulties in appealing from abroad. CCLC research has highlighted the challenges facing families making immigration applications[12] and regularly represents families in case where Home Office decision is dismissed at appeal. Yet his Bill aims to ensure that those who are wrongly refused leave to remain and removed from the UK have no redress, with the inevitable and systemic violation of their human rights.

Provisions will not achieve the stated aim

14. One of the stated aims of the Bill is to 'clamp down on *illegal* immigration' and to 'make it easier to remove people who should not be in the UK', yet the Bill would extend the 'deport now, appeal later' certification powers to *all* immigration cases that raise human rights issues, including individuals and families who are lawfully in the UK, and always have been.[13] It would also affect British children whose parents are applying to extend or regularise their status in the UK.

The impact on children's welfare

15. There is no reference in the Bill to the Secretary of State directly considering the harm caused by removal to any affected children, nor is this addressed in the Impact Assessment accompanying the Bill. This is a stark omission, given the provisions risk children being deprived of their parent/s, or forced to leave the country they grew up in, before any judicial scrutiny of the Home Office decision and without any consideration of the best interests of the child. Given the significant delay, currently in some cases of up to a year, in appeals being listed, this period of separation from family and/or home would have significant consequences for any child, potentially in breach of the UK's obligations under the UN Convention on the Rights of the Children,[14] and the statutory child welfare duty under section 55 of the Borders, Citizenship and Immigration Act 2009.

[10] NPRF data shows that on average, accommodation and subsistence support costs approximately £11,000 per annum for a family. See http://www.nrpfnetwork.org.uk/policy/Documents/NRPF_national_picture_final.pdf National Audit Office figures show that the average annual spend on a foster place for a child is £29,000–£33,000 and the annual spend on a residential place for a child rises to £131,000– £135,000.

[11] The process of assisted voluntary return for a family can take between two and five months (on average, about three months) – see Refugee Action, Choices – Frequently Asked Questions, at http://www.choices-avr.org.uk/about_choices/frequently_asked_questions. The evaluation of the Family Returns Process found that of the 188 families who had returned (for whom timescales are known), 72% took between one and six months to return. See M. Lane et al., Evaluation of the new family returns process, Home Office Research Report 78, December 2013, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264658/horr78.pdf

[12] Coram Children's Legal Centre, *Growing up in a hostile environment: The rights of undocumented migrant children in the UK,* 2013, at http://www.childrenslegalcentre.com/userfiles/Hostile_Environment_Full_Report_Final.pdf

[13] Immigration Bill 2015/16 – Factsheet – Overview of the Bill; Overarching Impact Assessment – Immigration Bill.

[14] Article 9.1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities **subject to judicial review** determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

16. This Bill does not make explicit the need to consider children's best interests which should be a primary consideration in all cases involving children.[15] The recent case of *R (on the application of Kiarie) v Secretary of State for the Home Department; R (on the application of Byndloss) v Secretary of State for the Home Department* has made clear that 'the real risk of serious irreversible harm is not the overarching test'[16] and that consideration must be given to whether removal pending determination of an appeal might result in a breach of the person's rights under Article 8. Established law on children's best interests, which would be considered as part of the Article 8 consideration, makes clear that decision makers must first understand the best interests of the child and their weight, before going on to consider any other countervailing public interests factors.[17] CCLC's experience in relation to decision making involving best interests is that it is uniformly poor. The Home Office will usually include a statement in any decision letter stating that best interests have been taken into account but decisions routinely do not contain any/adequate reasons for the conclusions drawn.

Amendments

17. CCLC does not support the widening of the 'deport first, appeal later' provisions to all those with human rights claims (save those involving Article 3). If the provisions remain, the Bill must include clear reference to the need to undertake a comprehensive assessment of the child's individual circumstances and their best interests prior to certification, in line with established standards.

Immigration bail *(Clause 29 and Schedule 5)*

18. Clause 29 and Schedule 5 would replace temporary admission/release – which asylum-seekers and other applicants have currently while waiting for a decision on their case – with new 'immigration bail'. Under paragraph 2(1)(b) of Schedule 5, one of the conditions that could be put on this immigration bail is 'a condition restricting the person's work, occupation or studies in the United Kingdom'. At present, the relevant provision on temporary admission and release does not refer to restricting studying,[18] and CCLC is concerned that the new provision will open the way to asylum-seekers and others being blocked from accessing education in breach of their human rights[19] and also potentially being criminalised for studying. There is nothing on the face of the bill to say that the government will not use this power to prevent children studying.

Amendment

If changes to temporary admission and release are introduced, these must not allow for the restriction on any child or young person's access to education.

October 2015

APPENDIX

CASE STUDIES

Asylum support case studies

1. CCLC recently represented a mother with two children who had been subjected to domestic violence whilst living in the UK and who claimed asylum in Croydon. The Home Office refused her application for asylum support and claimed there was no right of appeal against this decision because the mother had allegedly withheld information. CCLC took the case to the Asylum Support Tribunal, where the judge found the mother completely credible. The Home Office was ordered to accommodate and support the family under section 95. The family were finally housed after seven months in unsafe accommodation.

This case clearly demonstrates both the difficulties families face in evidencing their situation and the need for a right of appeal against Home Office decisions.

2. Lisa, a victim of trafficking, had been in the UK for a number of years before claiming asylum and being referred into the National Referral Mechanism. She was told at screening that her caseworker would contact her with details of how to move onto section 95 support, but then received no contact from the Home Office for 1½ months. CCLC made the section 95 application for her pro bono. After receiving no response for over a month, CCLC chased up in writing and by telephone and discovered that the initial application had been lost by

[15] Both Article 3 of the UNCRC and Charter of Fundamental Rights referred to in Article 6 of the Treaty on European Union make the child's best interests 'a primary consideration' in all actions concerning children. There is a distinct but related domestic statutory obligation imposed by section 55 of the Borders, Citizenship and Immigration Act 2009.

[16] [2015] EWCA Civ 1020, para 35

[17] see *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74; H v Lord Advocate 2012 SC (UKSC) 308 and H(H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338; *ZH (Tanzania) v SSHD* [2011] UHSC 4; *EM (Lebanon) v SSHD* [2008] UKHL 64.

[18] See paragraph 21, Part I, Schedule 2 of the Immigration Act 1971:
Temporary admission or release of persons of persons liable to detention.
(2) So long as a person is at large in the United Kingdom by virtue of this paragraph, he shall be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police or an immigration officer as may from time to time be notified to him in writing by an immigration officer.

[19] Under Article 2 of the First Protocol to the European Convention on Human Rights, in combination with Article 14 of the European Convention on Human Rights (non-discrimination).

the Asylum Support team. Six weeks after the application was first submitted, the Home Office wrote directly to the client requesting information that had already been provided to them. Support was finally granted two months after the initial application was made.

This case demonstrates the weaknesses in the current support system, raising concerns about families being left without support for months on end if section 95 is withdrawn and they have to apply for section 95A.

Appeals case studies

3. Kara, a Nigerian national, came to the UK on a student visa and formed a relationship with a man with whom she had a child. As the father had indefinite leave to remain, the child was born British. Before Kara's course came to an end, the man claimed that he was making a Home Office application for her and took her passport. He never did this, and when the relationship broke down due to domestic violence, Kara was forced to flee with her child. An application was made to the Home Office on the basis of her being the parent of a British child and on Article 8 grounds. As she had no documentary evidence to prove her child was British, her application was refused. Kara appealed and detailed evidence was submitted demonstrating it would not be reasonable to expect Kara or the child to leave the UK. The Tribunal made directions that the Home Office establish whether the child's father had indefinite leave at the time of his birth. During the proceedings it was confirmed that the child was British. The appeal proceedings were vital to the successful presentation of the case and the removal of this British child prior to appeal would have been a clear violation of his human rights.

Under the Bill's appeals provisions, Kara's case could be certified, leaving her as a single mother unable to access legal advice in Nigeria to bring her appeal and resulting in the removal of a British citizen child to a country he does not know.

4. Sarah came to the UK 16 years ago to escape forced marriage. After an agent stole her documents, she lived under the radar and had three children, now aged 11, seven and two. She made an application for leave to remain on Article 8 grounds two years ago, which was refused, partly on the basis that the whole family could be returned together to the mother's country of origin. They appealed and had to wait over a year for the appeal to be heard (it was adjourned by six months shortly before it was due to be heard due to a 'shortage of judiciary'). The children only speak English and the elder two are doing very well at school, and well integrated into the borough where they have lived all their lives. The eldest child is eligible to register as British. CCLC has been helping with family with their appeal pro bono.

Under the Bill's appeals provisions, Sarah could have been removed from the UK while waiting for her appeal to be heard (which has taken well over a year). In this time, the children would have had to live in a small rural African village with their estranged maternal grandmother, with whom they do not have a common language. They would not have been able to attend school, as they do not speak the language. The youngest child would be potentially at risk of FGM, as the mother would not practically be able to relocate elsewhere. Their health would have been at risk, as it is well documented that clean drinking water is not widely available in the area, and there are no health services nearby. Their education and sense of security would have been seriously damaged, and this could not be remedied by returning them to the UK if their appeal is successful. Removal would also have prevented the eldest child from becoming eligible to register as British (the only country he's ever known), as it would have taken place shortly before his tenth birthday.

Immigration Bail case study

5. CCLC recently advised in the case of a young person, Sam, who, having studied in sixth form in the UK, had been accepted to university on a full scholarship to study mathematics. He had come to the UK with his family and claimed asylum but they had been waiting for two years for a decision on their asylum claim so he was still in the UK on 'temporary admission'.

Under the Immigration Bill's provisions, a condition could be imposed on him so that he would not be able to attend university despite his ability and dedication, the institution clearly wanting him as a student and his studies not imposing any burden on the taxpayer.

Written evidence submitted by Tony Smith CBE, Former Director General, UK Border Force (IB 05)

Background/Qualifications

I served in the UK Home Office between 1972 and 2013, at all grades from immigration officer through to Director General of the UK Border Force. I held a number of posts in immigration enforcement in London during that period, notably as an immigration officer (1979 – 1984); a Chief Immigration Officer (1986 – 1991); an Immigration Inspector (1994 – 1997); Head of London Immigration Enforcement (2003 – 2005); and Regional Director for London and the South East in the UK Border Agency (2007 – 2010). As such I have a significant depth and breadth of experience in immigration enforcement work in the United Kingdom, including dealing with illegal workers and their employers.

Proposed Amendments

My proposed amendments relate entirely to Part 1 of the Bill, Section 8 (Offence of Illegal Working). I propose that this clause be deleted from the Bill. It follows that section 8 (3) (4) (providing for committal with a view to a confiscation order being considered under s 70 of the Proceeds of Crime Act 2002) is also

deleted. I believe the inclusion of this section will place an unnecessary burden on immigration enforcement and the criminal justice system at a time of shrinking resources; and it will do little to discourage or deter illegal working when other more effective tools (such as administrative removal and employer sanctions) are available.

CONTEXT

As stated above I have extensive experience of managing illegal working in the UK spanning a career of over 40 years in the Immigration & Nationality Department, the UK Immigration Service, the Border and Immigration Agency, the UK Border Agency and the UK Border Force at all levels up to and including Director General. It is important we learn the lessons of the past before implementing new legislation in this area.

Joint Overstayers Exercise (JOE)

In 1979 – whilst serving as an immigration officer at Heathrow -I was seconded to a unit called the "Joint Overstayers Exercise (JOE)" team based at Harmondsworth in Middlesex. Prior to that, immigration officers were based primarily at the ports of entry and the enforcement of the Immigration Act 1971 (and in particular the prosecution of immigration offences) was a matter for the police. Due to a lack of any police skills or training in determining immigration status, the Home Office decided to deploy immigration officers to inland work to test the extent to which immigration offenders were remaining unlawfully or working without permission. Under the JOE arrangement, immigration officers would attend police stations to work alongside dedicated police officers (often known as Divisional Enquiry Officers) to follow up on cases where immigration offences were suspected in that particular Division. I was allocated to the West London area.

Section 24 prosecutions

It soon became clear that there were considerable numbers of illegal immigrants working in specific professions such as cleaning and catering. Most had either overstayed their leave to enter or were working in breach of their conditions of entry. However, unless we could prove that an individual had entered illegally (i.e. without first obtaining leave, or by employing deception) the only option available to us at that time was to prosecute under Section 24 of the Immigration Act 1971. Where the person had overstayed the charge would be under section 24(1)(b)(i); where the person had leave to remain but had breached a condition (eg by working without permission) the charge would be under section 24(1)(b)(ii). Both were (and still are) summary offences only.

Proving the offence was not always straightforward, and often time consuming. It is common practice for overstayers to switch identity (and often nationality) and to destroy their original travel documents. In addition to occupying scarce police resources and cells, it often demanded witness statements from the Home Office and others to secure a prosecution. Immigration officers were never trained to prosecute; they were more familiar with their schedule 2 powers to detain and remove offenders administratively. At the same time many police officers did not see immigration offences as "harmful", preferring to focus more on other more serious offences. Even when we did arrive at the Magistrates Court, and secured a conviction, offenders were usually given only a small fine and deportation was rarely recommended by the court. It was not uncommon to find the same offenders back working illegally again in the community even after conviction, whilst the Home Office embarked upon a lengthy and bureaucratic process towards administrative deportation.

Administrative Removal

The main lesson we learned from the JOE experiment was that the criminal justice system is not the most effective way to manage immigration offenders. It tied up the police and the courts unnecessarily and failed to fulfil the required intention of the Immigration Law – that where a foreign national breaches a condition of entry, then he has broken his contract with the State and should ordinarily be removed from the territory. This led to the concept of "administrative removal". It was deemed more effective and efficient to serve a notice of intention to deport an overstayer – with associated powers of detention under Schedule 3 to the Immigration Act – than to prosecute under Section 24.

Proceeds of Crime

In my experience, illegal workers invariably have very limited means at their disposal. They are usually paid at or below the minimum wage; and any funds they do accrue are quickly remitted overseas. This is not a sensible group to target under the Proceeds of Crime Act – nor will it act as a deterrent. In the same way that deploying scarce resources on prosecutions will limit the capacity of immigration enforcement to achieve more removals, deploying scarce resources on POCA work to seize assets that don't exist will be wasteful and unproductive.

Employer Sanctions

Whilst opposed to the introduction of more criminal offences for illegal workers, I support the harsher criminal penalties imposed upon their employers by section 9 of the Bill. Thus far many employers have evaded prosecution because it is hard to prove they have "knowingly" employed somebody illegally. I also support the amendment to the "knowingly" test to become "reasonable cause" for the same reason.

However in my experience prosecution is usually reserved for the more persistent offenders, with civil penalty measures being more appropriate (and easier to enforce) in most cases. In that regard, it is important to invest in the civil penalty scheme and employer compliance framework; and to ensure that adequate resources are in place to translate notices of liability into the enforced payment of the financial penalties imposed.

Document and Identity Fraud

The Committee should know that there is widespread abuse of document fraud in the field to overcome the illegal worker rules. This often manifests itself in the production of false identity documents including (in particular) EEA identity cards. Although the EU Council has called on all Member States to adopt common designs and security features for EEA identity cards since 2005, not all EEA countries have done so. When I was Regional Director in the UKBA (2007 – 2010) my enforcement teams uncovered a significant number of "forgery factories" in London who were manufacturing fake EEA identity cards. These were mainly being sold to migrants from non EEA countries who were working illegally in the UK. Although these documents would likely be identified as fraudulent at the border, they are usually sufficient to pass the "reasonably apparent" test to an employer. The same is likely to apply to the implementation of landlord sanctions. Records of EEA nationals entering the UK are not retained, and there is no obligation for EEA nationals to secure a biometric residence permit to remain here.

Equally the UK has not adopted a "permanent resident" card for foreign nationals with indefinite leave to remain in the UK (such as the US green card for example). Although biometric residence permits have been in place since 2008 for new applicants, there is still a significant market for pre 2008 documents (such as Home Office stamps and letters). This – coupled with the lack of a National Identity Register in the UK or a biometric identity card – will continue to frustrate the intent of the Bill, which is to place a greater obligation on landlords and service providers to check immigration status. Many will pass themselves off as EEA nationals (eg North Africans as French, South Americans as Spanish or Portuguese) or as people who were given indefinite leave to remain a long time ago (by producing false or fraudulent stamps and documents).

Therefore the lack of a national identity register in the UK – covering not just UK citizens but also EEA citizens and UK permanent residents – will make it harder for employers and landlords to confirm identity and entitlement of employees and tenants.

Ancillary Issues – Appeals and Returns

Returns

Ultimately the key test of a successful immigration enforcement operation is the return of those who breach their conditions of entry or who are no longer entitled to stay here. Whilst I welcome the streamlining of the appeals process there are likely to be lengthy legal challenges to this which have frustrated removals for many years, culminating in the recent decision by the Court of Appeal to declare the detained fast-track system unlawful. The use of asylum and human rights claims to frustrate the removals process – often on numerous occasions – is a major tactic employed by lawyers to keep their clients in the UK. Additionally most countries now refuse to document their own nationals for removal, or are extremely tardy in doing so. The breakdown of the Dublin Convention and the failure of EU Member States to manage asylum applications or to control the external border means that significant numbers of people claiming asylum in the UK should be returned to their first point of entry to the EU. Yet in the past UK courts have held that asylum processes in countries like Greece and Italy are not sufficiently robust to allow us to return applicants there. Some of these cases are still ongoing.

Notice of Removal and subsequent challenges thereto

Enforcement guidelines now require that most immigration offenders detained in the field are given 72 hours' notice before removal directions can be set. This invariably sets off a chain of events leading to new applications for asylum or human rights to thwart removal. In these circumstances it is often very difficult to bring a case to a final conclusion where removal becomes inevitable. So long as lawyers are able to bring new evidence to bear at the point of arrest or detention, and the EU continues to evade its responsibilities under the Dublin Convention, we will continue to struggle to achieve returns.

Conclusion

Given the ongoing difficulties in achieving returns, it is ever more important that we invest what scarce resources we have in our pre – entry controls to prevent irregular migration in the first place; and that we do not waste scarce resources trying to enforce a new offence of illegal working. It would be unhelpful to implement this clause only to see a report from the Chief Inspector of Immigration to the Home Secretary in a couple of years' time complaining that it was never used.

Immigration Enforcement teams should focus decreasing resources upon other remedies such as administrative removal and civil penalties; and they should be encouraged to work with employers, service providers and housing authorities within their local areas to ensure that they are properly equipped to identify irregular migrants and deny them services accordingly. History shows us that prosecuting illegal workers would be a retrograde step; there are already multiple provisions for prosecution available in the current law for

prosecution that are seldom used for the reasons set out above. Other remedies such as administrative removal and employers sanctions are far more effective in achieving the desired outcome, if properly applied.

October 2015

Written evidence submitted by the Scottish Federation of Housing Associations (IB 06)

1. Purpose of Submission

1.1 The SFHA welcomes the invitation from the House of Common's Public Bills Committee to submit written evidence on the Immigration Bill 2015-16.

1.2 Today's submission is focused on the SFHA's reaction to the Immigration Bill 2015-16 as introduced in the House of Commons, and emphasises our key areas of concern relating to housing as the voice of Scotland's housing association's and co-operatives.

2. Who we are

2.1 The SFHA exists to lead, represent and support housing associations and co-operatives throughout Scotland. There were 160 Registered Social Landlords (RSLs) across Scotland at the start of 2014. Their housing provision ranges across general and specialist need with around 280,000 homes, and over 5,000 places in supported accommodation. They currently add to new supply of housing, mainly for rent to people in need and at rents below market levels.

2.2 SFHA is the national voice of housing associations and co-operatives. Our role is to assist and support them to meet a diverse range of housing need, to provide high quality genuinely affordable housing and to develop sustainable communities. To this end, we wish to see Scotland develop a well-functioning housing system that is able to make a significant and effective contribution to tackling poverty, inequality and deprivation across Scotland.

3. SFHA response to the Immigration 2015-16 Bill

3.1 The SFHA questions the reasonableness and proportionality of Clauses 12-15 in the Immigration Bill regarding access to services, including introducing further offences for landlords and agents, and powers of eviction and repossession of homes.

3.2 It appears to us that there may be a strong case for modifying Clause 12 in the Immigration 2015-16 Bill, and for the repeal of the "Right to Rent" checks in the Immigration Act 2014. The rationale behind this is that the stringent "Right to Rent" checks may cause disproportionate and unnecessary stress upon our member's resources that are already under pressure due to the financial impacts of supporting tenants through welfare reform, and other financial constraints. Moreover, the necessity to keep abreast of tenants with a limited right to rent throughout a tenancy to monitor whether the tenant's right to rent has expired could further frustrate our sector though expenditure of time and labour.

3.3 The SFHA further queries whether it is the appropriate role for landlords to act as immigration officials and conduct "right to rent" checks on their tenants. This may require additional training for staff to recognise the Home Office approved forms of identification and carry out checks for fraud, as well as the extra cost of time taken to resolve any uncertainly surrounding the right to reside of their tenants using the Landlord's helpline to ensure they are erring on the correct side of the law.

3.4 The SFHA calls for further scrutiny of the scale of impact that this legislation will have in comparison to the expenditure of effort by landlords to comply with the law. According to figures obtained from the Economist, since the "Right to Rent" checks were piloted in December 2015 across local authorities in the Midlands, only seven property owners were issued with notices under the scheme.[20] This suggests that the 'Right to Rent' checks may be an ineffective way to tackle illegal immigration, whilst consuming landlord's precious time and labour from a cost/benefit perspective.

3.5 The SFHA is concerned that Clause 12, creating offences, will acutely increase the incidence of direct and indirect discrimination upon potential and existing tenants in the UK. In lieu of the delayed publishing of the UK Government's report on the "Right to Rent" pilot, the SFHA refers to an independent report by the Joint Council for the Welfare of Immigrants (JCWI).

3.6 This research found that 42% of landlords said that the "Right to Rent" requirements made them less likely to consider someone who did not have a British passport and, starkly, 27% of landlords responded that they were reluctant to engage with those with foreign accents or names.[21]

3.7 The JCWI report also questioned whether the "Right to Rent" checks satisfy the Public Sector Equality Duty contained in the Equality Act 2010 outlining that public authorities have a duty to eliminate discrimination and foster good relations when carrying out their functions.[22]

[20] The Economist, "Crisis Mismanagement", 8th August 2015.
[21] The Joint Council for the Welfare of Immigrants, *"No Passport Equals No Home" An independent evaluation of the 'Right to Rent' scheme*, September 2015: p.11.
[22] The Joint Council for the Welfare of Immigrants, p. 24.

3.8 The potential opportunity for discrimination could be further compounded when considering that Clause 12 subsection (1) builds upon the penalties of the Immigration Act 2014 of maximum £3000 fines with additional prison sentences of up to five years. Keir Starmer, a Labour MP, described this in the Second reading while discussing the landlord groups that opposed the Immigration Act 2014:

> "*Those same landlord organisations also pointed a year ago to another danger: the potential for discrimination. That concern was simply put by them and simply understood by us: landlords, not properly understanding the task before them, concerned by the complications of immigration status and worried by the threat of legal sanction, will simply go to a default position where they will not rent to anybody who does not appear to them to be obviously British."*[23]

3.9 To expand upon the additional pressures placed upon landlords to carry out the "Right to Rent" checks, the SFHA raises the issue of how reasonable it is for tenants to be able to access, and have the correct forms of identification. It is our concern that tenants will find it difficult to source the often expensive forms of identification required and this issue could be further magnified when considering those with chaotic lifestyles.

4. Conclusion and Recommendation

4.1 The SFHA recognises that in the context of the European refugee crisis the restriction in access to housing services outlined in Clauses 12-14 may attract popular support as the UK Government will be seen to be taking action to take control of the highly propagated media scenes in Calais.

4.2 However, it appears to the SFHA that the "Right to Rent" checks and subsequent enforcement may be a disproportionate and unnecessary burden upon the already stretched housing sector which will require careful and further consideration in the next steps of the legislation process.

References:

The Joint Council for the Welfare of Immigrants, *"No Passport Equals No Home" An independent evaluation of the 'Right to Rent' scheme*, September 2015, available at <http://www.jcwi.org.uk/sites/default/files/documets/No%20Passport%20Equals%20No%20Home%20Right%20to%20Rent%20Independent%20Evaluation_0.pdf> [accessed 16/10/2015]

Keir Starmer, Hansard Publication, Immigration Bill Second Reading, 13 October. Column 273. Available at <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm151013/debtext/151013-0004.htm> [accessed 16/10/2015]

The Economist, "Crisis Mismanagement", 8th August 2015. Available at <http://www.economist.com/news/britain/21660589-panicky-response-refugee-crisis-may-do-more-harm-good-crisis-mismanagement> [accessed 16/10/2015]

October 2015

Written evidence submitted by Adrian Matthews, Policy Advisor, Office of the Children's Commissioner for England (IB 07)

Views on the Immigration Bill 2015

My views are provided within the context of the statutory function of the Children's Commissioner for England as revised by the Children and Families Act 2014. That primary function is to promote and protect the rights of children in England and to promote their views and interests. In considering what constitutes the rights and interests of children, the Children's Commissioner must have regard to the United Nations Convention on the Rights of Child, an international treaty which the United Kingdom ratified in 1991, lifting its reservation in respect of children subject to immigration control in November 2008.

As is well known, the lifting of the reservation to the UNCRC paved the way for s.55 of the Border's, Citizenship and Immigration Act 2009 providing for a duty on the Secretary of State to make arrangements for ensuring that immigration and asylum functions are discharged having regard to the need to safeguard children and promote their welfare.

My concern is that some of the provisions in the current bill appear to override that duty and are also inconsistent with the UK's obligations under the UNCRC. I would point in particular to Article 3 (1) which requires that *in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*.

[23] Keir Starmer, Hansard Publication, Immigration Bill Second Reading, 13 October. Column 273.

Specific clauses that are of concern

Some of the measures in the Bill, while not directed specifically at children, will in my view result in their becoming collateral damage to a wider policy agenda. This is not treating their best interests as a primary consideration as is required in law.

Clause 34 and Schedule 6

The 4 UK Children's Commissioners submitted a detailed response to the recent Home Office consultation *Reforming Support to failed asylum seekers and other illegal immigrants.* Clause 34 and Schedule 6 are intended to give effect to some of the central proposals in that consultation.

The Children's Commissioners are firmly of the view that removing support from families where their asylum claim has been rejected is highly unlikely to lead to the 'behaviour change' that the Government envisages but rather will lead to families becoming destitute, placing children in dangerous circumstances. Some families will disappear – making it harder to engage with them around a planned departure, others will turn to already overburdened local authorities for accommodation and support while others will seek to put their children into the care of local authorities. These outcomes are evidenced from a previous pilot conducted by the Home Office in 2005.

Clause 31

This clause, in part removes existing restrictions limiting the use of the 'certification' power to those liable to deportation. The effect of certification is that an appeal against the decision can only be brought from outside the UK. Other parts of the clause aim to extend the certification power beyond appeals related to removals so that they also include circumstances where the subject is refused entry or required to leave the UK. The limitation on the power is if the subject would be at 'real risk of serious and irreversible harm' but this judgement would be made by a case owner in the Home Office rather than be subject to judicial scrutiny before departure or removal.

One effect of the clause if enacted would be to split families – for example where a foreign national parent subject to immigration control was the partner or spouse of a British Citizen and had British children. Another effect will be the uprooting of families whose children may have known no other life than in the UK.

The practicalities of appealing from abroad would make it very difficult for a parent or family who had departed to have an effective remedy in the UK courts.

Clause 30

The proposed new power under clause 30 (1) inserts a new sub-section 3A into section 3C of the '71 Act. It states: *Leave extended by virtue of this section may be cancelled if the applicant – (a) has failed to comply with a condition attached to the leave or (b) has used or uses deception in seeking leave to remain (whether successfully or not)*

Section 3C is frequently invoked by unaccompanied children whose asylum claims have been refused but who have been granted a period of leave to remain in the UK until age 17 ½ as there are no suitable reception arrangements for them to return to in their home country.

Currently, if such a child applies to extend that leave before it expires their leave is continued by virtue of 3C until a further decision is made allowing them to remain 'lawfully present' and therefore to work or receive benefits in line with their leave conditions (as well as operate a bank account, rent privately or have a driving licence).

Recent research from the Children's Commissioner has shown that nearly half of all unaccompanied children in a sample of over 100 new entrants were age disputed – mostly by adjusting the age upwards by a few years. Under Clause 31, evidence of a different conclusion reached by a local authority as to the age of the child than what was claimed on entry could be deemed as 'the use of deception' and therefore their 3C leave fall to be cancelled under the new power under 30 (1) (b).

While there would be an obligation on the local authority to continue support to anyone whose age they had disputed but whom they had nevertheless accepted as a child until they reached the (local authority)assessed age of 18, the impact of cancelling the continued leave while awaiting a decision on the extension application or an appeal arising from the further decision would be to render them without support as soon as they turned 18 (assuming 3C leave had been cancelled while they were still a minor) even if awaiting a further decision or an appeal.

Clause 8: Offence of illegal working

This appears likely to affect parents who may be trying to regularise their immigration position following expiry, curtailment or termination of leave in a number of circumstances. Where parents are unable to provide for their children through fear of criminal sanctions against them for working illegally and cannot leave the country they are likely to turn to local authorities for support under s.17 of the Children Act 1989 thus straining

already overburdened services. Alternatively it may lead to parents enduring ever more casual, precarious and dangerous employment in order to provide for their children.

It may also effect former unaccompanied children who are waiting for an appeal against refusal of a protection claim and who thus have a legitimate reason for being here but who have been cut off from any further local authority support perhaps because cancellation of their 3C leave.

October 2015

Written evidence submitted by the Immigration Law Practitioners' Association (ILPA) (IB 08)

PART 1 LABOUR MARKET AND ILLEGAL WORKING

ILPA PROPOSED AMENDMENTS FOR HOUSE OF COMMONS COMMITTEE STAGE

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organizations and has worked closely with all parties on all immigration bills since its inception.

Further briefing will be prepared to amendments tabled.

PART 1 LABOUR MARKET AND ILLEGAL WORKING

Labour Market and Illegal Working

Clause 1 Director of Labour Market Enforcement

Proposed Amendment

Page 1, line 7, after subsection (1) insert

> (1A) In the exercise of his functions the Director shall have regard to the need to enforce the rights of workers and to protect people from being exploited for their labour.

Purpose

To ensure that the functions of the Director of Labour Market Enforcement are exercised for the purpose of protecting those vulnerable to labour market exploitation and to make this explicit on the face of the Bill.

Briefing

In both its background briefing to the Queen's Speech, Explanatory Notes to the Bill and fact sheet on this Part of the Bill, the Government has stated that the new labour market enforcement agency would be established to protect people against being exploited or coerced into work.

The Government's background briefing to the Queen's Speech states:

> *Work: We will create a new enforcement agency that cracks down on the worst cases of exploitation. Exploiting or coercing people into work is not acceptable. It is not right that unscrupulous employers can exploit workers in our country, luring them here with the promise of a better life, but delivering the exact opposite, and the full force of the State will be applied to them. A new single agency will have the scale and powers to do this.*[24]

The Explanatory Notes to the Bill state:

> *Migrant workers are particularly vulnerable to labour market exploitation and may find themselves living and working in degrading conditions.*
>
> *[...]*

[24] Cabinet Office and Prime Minister's Office, *Queens Speech 2015: Background Briefing Notes*, 27 May 2015, at: https://www.gov.uk/government/publications/queens-speech-2015-background-briefing-notes

> *The government believes that labour market exploitation is an increasingly organised criminal activity and that government regulators that enforce workers' rights need reform and better coordination. The Conservative Party Manifesto also committed to introduce tougher labour market regulation to tackle illegal working and exploitation. The Bill establishes a new statutory Director of Labour Market Enforcement, responsible for providing a central hub of intelligence and facilitating the flexible allocation of resources across the different regulators.*[25]

The Government's fact sheet on this part states:

> *The UK has a strong legal framework in place to ensure that minimum standards are met for workers. There are three main public bodies responsible for enforcing these requirements: a team in HMRC which enforces the National Minimum Wage; the Gangmasters Licensing Authority; and the Employment Agency Standards Inspectorate.*
>
> *However because of an increase in organised criminal activity engaging in labour market exploitation, we believe that there is exploitation in the labour market that none of the enforcement bodies is designed to deal with. This kind of worker exploitation often appears to involve vulnerable migrant workers.*[26]

Immigration Minister the Rt. Hon. James Brokenshire MP is cited in the fact sheet as stating:

> *"Exploiting or coercing people into work is not acceptable. It is not right that unscrupulous employers can force people to work or live in very poor conditions, withhold wages or mislead them into coming to the UK for work."*

This amendment makes this protective function of the Director of Labour Market Enforcement explicit on the face of the Bill and support the co-ordination of his or her activities towards this aim.

Where those working or living in very poor conditions are deterred from accessing assistance because of their immigration status or because of their vulnerability to threats by unscrupulous employers in relation to their immigration status, agencies will be restricted in their ability to gather the intelligence needed to exercise their regulatory functions and protect against labour market exploitation. A lack of clarity over the protective function of the labour market enforcement agency may therefore undermine its aims.

Legislation establishing other statutory bodies and guidance about them has similarly identified their statutory purpose in its text. For example, the Health and Safety at Work etc. Act 1974 establishing the Health and Safety Executive includes the clause:

1. Preliminary

(1) The provisions of this Part shall have effect with a view to –

(a) Securing the health and safety of persons at work;

(b) Protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work; [...]

The Employment Agencies Act 1973 s 5(1) provides:

5. General regulations

(1) The Secretary of State may make regulations to secure the proper conduct of employment agencies and employment businesses and to protect the interests of persons availing themselves of the services of such agencies and businesses, and such regulations may in particular make provision—

(a) requiring persons carrying on such agencies and businesses to keep records;

(b) prescribing the form of such records and the entries to be made in them;

(c) prescribing qualifications appropriate for persons carrying on such agencies and businesses;

(d) regulating advertising by persons carrying on such agencies and businesses;

(e) safeguarding clients' money deposited with or otherwise received by persons carrying on such agencies and businesses;

(ea) restricting the services which may be provided by persons carrying on such agencies and businesses;

(eb) regulating the way in which and the terms on which services may be provided by persons carrying on such agencies and businesses;

(ec) restricting or regulating the charging of fees by persons carrying on such agencies and businesses.

[25] *Immigration Bill Explanatory Notes*, Bill 74-EN, p.4 paras 3 and 4.

[26] UK Visas and Immigration, *Immigration Bill 2015-16 Factsheet- Labour Market Enforcement (clauses 1-7),* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461712/Immigration_Bill_Factsheet_-_labour_market.pdfhttps://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461712/Immigration_Bill_Factsheet_-_labour_market.pdf

The Mission Statement of the Gangmasters' Licensing Authority is

Our aim will be achieved by:

— *Preventing worker exploitation*
— *Protecting vulnerable people*
— *Tackling unlicensed/criminal activity and ensuring those licensed operate within the law.*

The 6 strategic objectives which will ensure we meet our aim and priorities are:

— Target, dismantle and disrupt serious and organised crime/early identification of human trafficking
— Provide effective, meaningful engagement with stakeholders thereby enhancing reputation
— Work with industry to recognise and address non-compliance without formal GLA intervention
— Tackle tax evasion, health and safety negligence, fraud, breaches of employment and other law/ regulations
— Maintain credible licensing scheme creating level playing field and promoting growth
— Identify and tackle forced/bonded labour by licensed and unlicensed gangmasters

The Low Pay Commission's website[27] states that

We are responsible for:

— *carrying out extensive research and consultation, and commissioning research projects*
— *analysing relevant data and actively encouraging the Office of National Statistics to establish better estimates of the incidence of low pay*
— *carrying out surveys of firms in low-paying sectors*
— *consulting with employers, workers and their representatives and taking written and oral evidence from a wide range of organisations*
— *making fact-finding visits throughout the UK to meet employers, employees and representative organisations*

Clause 1

Clause 3 Non-compliance in the labour market etc: interpretation

Proposed Amendment

Page 3 line 6, after "Act)," insert

(*) any function of the Health and Safety Executive and the Health and Safety Executive for Northern Ireland;

(**) any function of local authorities in relation to the "relevant statutory provisions" as defined in Part 1 of the Health and Safety at work act 1973;

(***) Any function of local authorities under the Children and Young Persons Act 1933 and byelaws made under it ;the Management of Health and Safety at Work Regulations 1999; the Children (Protection at Work**) (**Scotland**)** Regulations 2006

Consequential Amendment

Page 3 line 12, after "2004," insert

(*) Part 1 and The Health and Safety at Work Act 1973 and the offences mentioned in the third column of Schedule 1 to that Act;

(**) Sections 3 *Allowing persons under sixteen to be in brothels* and 4 *Causing or allowing persons under sixteen to be used for begging* and Part 2 *Employment* of the Children and Young Persons Act 1933

Purpose

To extend the remit of the Director of Labour Market Enforcement to cover functions relating to health and safety at work and child labour, functions carried out for the most part by local authorities.

Briefing

In 2007, the Trades Union Congress' Commission on Vulnerable Employment produced a report *Hard work; hidden lives*[28] which proposed a "Fair Employment Commission" with "an advisory role at the highest level of government" which would have "*permanent responsibility for promoting cross-government awareness of the problem of vulnerable employment, and taking strategic action to ensure a coordinated and comprehensive response."*

[27] https://www.gov.uk/government/organisations/low-pay-commission
[28] Available at http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf (accessed 20 September 2015)

The Bill proposes not a commission but a Director of Labour Market Enforcement,. The Director does not have a protective function as wide as that envisaged by the Trades Union Congress' commission. Contrary to the recommendations of that commission It does not cover the Health and Safety Executive or local authorities with their statutory responsibilities for the enforcement of health and safety legislation (mainly in the distribution, retail, office, leisure and catering sectors) and for the rights of children at work. ILPA understands that earlier drafts of this part of the Act did make such provision and this amendment is designed to probe why it is not included in the Bill as presented to parliament.

The phrase "relevant statutory provisions" which appears in the amendment is defined in section 53 of the Health and Safety at Work Act to mean the provisions of Part 1 of the Health and Safety at Work Act 1972 and the provisions mentioned in the third column of Schedule 1 to that Act as well as related regulations, orders or other legislative instruments. These include duties of employers to their employees, duties of employers and the self-employed to third parties and duties of persons concerned with premises to third parties.

These are simplified amendments, designed to raise the question of a wider remit rather than to set out a fully worked out scheme.

Clause 3 Non-compliance in the labour market etc: interpretation

Proposed Amendment

Page 3, line 31, leave out subclause (6) and replace with

(6) In this section "worker" means a person working

(a) under a contract of employment,

(b) under a contract of apprenticeship,

(c) under a contract personally to do work,

(d) under or for the purposes of a contract for services,

(e) for a purpose related to a contract to sell goodS,

(f) as a constable,

(g) in the course of Crown employment,

(h) as a relevant member of the House of Commons staff, or

(i) as a relevant member of the House of Lords staff.

Purpose

This is a probing amendment, designed to test what are the implications of using the definition of worker set out in the Employment Rights Act 1996 at section 23 in this section. The relevance of the definition of a worker in this clause is that it forms part of the definition of a "labour market offence" in subclause 3(4)(e) which describes a labour market offence as an offence, under section 2 *Human Trafficking* or section 4 *Committing offence with intent to commit offence under section 2* of the Modern Slavery Act 2014, committed in relation to a "worker"

The proposed subclause (6) which would be substituted by the amendment is taken from Clause 9 of the Bill, the new s 24B(9) of the Immigration Act 1971 which would create an offence of illegal working.

Briefing

Two different definitions of worker/working are used in Part 1 of the Bill, in clause 3 and in clause 9.

The definition used in Clause 3 is that set out in Section 230 of the Employment Rights Act 1996. This, so far as material, states

> 230 (3) In this Act *"worker"*(except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—
>
> (a) a contract of employment, or
>
> (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

What are the implications of this? Does it cover a person who is not working legally, or whose contract of employment would be held to be unlawful as is the case for many exploited workers and those held in slavery?

A different definition again is provided in section 25 of the Immigration, Asylum and Nationality Act 2006, which is concerned with the civil penalty for employers.

25 Interpretation

In sections 15 to 24—

> … (b) a reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written,

Does the Compensation clause include compensation for workers who are working legally but who are then locked out of their workplace for 48 hours or more and don't get paid for the time? Is there any way to compensate legal workers when there were illegal workers there, when the legal workers did not know, were not doing anything wrong, but have lost their job, or their pay for some time?

Offences

Clause 8 Offence of illegal working

Proposed Amendment/Stand Part Debate

Page 4 line 39, leave out clause 8

Purpose

To remove from the Bill the offence of working illegally and thus maintain the status quo.

Briefing

The Bill would create a new criminal offence of working without leave. Earnings can be seized. This is not, as has been suggested[29] a new departure. Criminal offences were created for Romanian, Bulgarian and Croatian workers working without authorization.[30] ILPA has asked the Home Office for statistics on the numbers of prosecutions for those offences, and also whether, when the employee was prosecuted, the employers were prosecuted or made subject to a civil penalty. This information has not been provided. It would assist in understanding whether offences have resulted in a displacement of enforcement activity, away from employers to workers.

As was raised by a number of speakers at second reading, the fear is that making it a specific crime to work without leave will drive the exploited and enslaved further underground. It is already a criminal offence, under section 24 of the Immigration Act 1971, to enter the UK without leave when leave is required, to overstay or to breach a condition of leave (such as working when work is prohibited) so why make working without leave a specific offence?

Clause 9 Offence of employing illegal worker

Proposed Amendment

Page 7 line 8, leave out "or having reasonable cause to believe" and replace with "recklessly"

Purpose

The Bill proposes to broaden the criminal offence (as opposed to civil penalty) for employing an illegal worker from "knowingly" so doing to negligently so doing ("having reasonable cause to believe" that the person does not have permission to work). The amendment would adopt a test of recklessness rather than negligence.

Briefing

The Explanatory Notes to the Bill give as the reason for broadening the offence that some employers deliberately do not check their employees' documents so that they cannot have the specific intent required to commit the offence of "knowingly" employing a person without permission to work. The difficulty is that the change proposed will catch not only such persons but other employers who are considered to have been negligent. The fear is that employers will be so afraid of being accused of negligence in this regard that they will be reluctant to employ anyone who does not hold a British passport or whom they regard as not looking, or sounding "British" or having a "British" name.

We suggest that this risk can be reduced but the persons whom the clause is intended to target encompassed by it by changing the test from one of negligence to one of recklessness.

Clause 10 Licensing Act 2003: amendments relating to illegal working

Proposed Amendment/Stand Part Debate

Page 7 line 25 leave out Illegal working in licensed premises Clause 10 and Schedule 1

[29] Prime Minister's speech of 21 May 2015 available at https://www.gov.uk/government/speeches/pm-speech-on-immigration (accessed 20 September 2015).

[30] Accession (Immigration and Worker Authorisation) Regulations 2006 SI 2006/3317 regulation 13 http://www.legislation.gov.uk/uksi/2006/3317/pdfs/uksi_20063317_en.pdf and the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013SI 2014/1460 (accessed 20 September 2015).

Purpose

To omit the new licensing/illegal working scheme for the Bill and maintain the status quo.

The most striking thing about this Schedule is the new power where an immigration officer "has reasonable grounds to believe that any premises are being used for a licensable activity" to enter the premises "with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of the activity." This is a very wide power to search any licensed premises, with no need for a suspicion. It is extremely striking, when one consults the Home Office lists of illegal working penalties given out, how many pertain to small businesses that appear likely, given that they serve ethnic cuisines, to be run by ethnic minority owners.[31] Is this because these are the gravest offenders, or because they are searched most frequently, and will the same be true of licensed premises?

The Secretary of State is added to the list of persons who must be notified when an application for a licence is made. She can object to the grant of the licence and this is to be taken into account by the licensing authority. She can appeal against a grant of a licence/refusal to cancel a licence despite her objection. All running licensed premises are affected by the additional bureaucracy.

Government statements describe a high incidence of illegal working in licensed premises and this amendment is a chance to ask government for evidence of this. It is the case that restaurants and bars, especially those serving different ethnic cuisines feature heavily on the list of those given civil penalties for employing illegal workers (see https://www.gov.uk/government/collections/employers-illegal-working-penalties#penalties) but is this because they employ illegal workers more frequently than other employers or because they are targeted more frequently for enforcement activity? If the latter, why?

Clause 10 Licensing Act 2003: amendments relating to illegal working

Proposed Amendment

Page 7 leave out from line 28 to Line 2 on page 8

Purpose

This is a probing amendment. To prevent the Secretary of State from extending the scheme by secondary legislation to Scotland and Northern Ireland.

Briefing

If it is decided that the scheme should extend to Scotland and Northern Ireland there would be seem to be no good reason why any scheme cannot be placed on the face of primary legislation (subject to a legislative consent motion) rather than left to regulations.

There are arguments both ways. Regulations made under Clause 10(2) are subject to the affirmative procedure in parliament so it would be open to parliamentarians to vote against them. If the scheme is enacted in secondary legislation then if found to be incompatible with human rights (e.g. to peaceful enjoyment of possessions under Article 1 of the first protocol) it could be struck down, whereas if it is primary legislation it can only be declared incompatible.

Illegal working notices and orders

Clause 11 *illegal working closure notices and illegal working compliance orders* and Schedule 2

Proposed Amendment/Stand Part Debate

Page 8 line 3, leave out from line 3 to line 6 and Schedule 2

Purpose

To remove from the Bill provisions as to illegal working closure notices and illegal working orders

Briefing

The Bill would give immigration officers powers to close an employer's premises where "satisfied on reasonable grounds" that the employer is employing an "illegal worker" as defined, where the employer has been required to pay a civil penalty in the last three years, or has an outstanding civil penalty or has been convicted of the offence of knowingly employing an "illegal worker" or (under the amendments to be effected by this Bill) employing a person whom they have reasonable cause to believe is not entitled to work. The initial closure could be for up to 48 hours. The immigration officer can then apply to the court for an illegal working compliance order which can prohibit or restrict access to the premises for up to two years.

Why are these measures required when criminal sanctions are available and what will ensure that they are not used in an oppressive manner?

[31] See https://www.gov.uk/government/collections/employers-illegal-working-penalties (accessed 1 October 2015). The latest penalty lists date from 29 September 2015.

Proposed New Clause

Page 7 line 28, after line 11, insert the following new clause

(*) Compensation

(1) Where an illegal working closure notice is issued and

(a) is subsequently cancelled in accordance with paragraph 3 of Schedule 3 to this Act, or

(b) no illegal working compliance order is made (whether or not an application is made for such an order)

the Secretary of State shall pay compensation to

(a) the person to whom the notice was issued or, if he is dead, to his personal representatives;

(b) a person who lives on the premises (whether habitually or not);

(c) any person who has an interest in the premises

(2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State before the end of the period of two years beginning with the date on which the notice is issued.

(3) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.

(4) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.

(5) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.

(6) In assessing so much of any compensation payable as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—

(a) the conduct of the person to whom the notice was given

(b) the conduct of the immigration officer

(4) If, having had regard to any matters falling within subsection (5)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable is to be a nominal amount only.

(5) The total amount of compensation payable must not exceed the overall compensation limit. That limit is—

(a) £10,000 in a case in which there is no element for loss of earnings

(b) £50,000 in any other case.

(6) The Secretary of State may by order made by statutory instrument amend subsection (5) so as to raise any amount for the time being specified as the overall compensation limit.

(7) No order may be made under subsection (6) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

Purpose

To provide for statutory compensation to the person to whom the notice is issued and anyone living on the premises or with an interest in the premises (see paragraph 10 of Schedule 2 to the Bill) on the premises in the event that the order is cancelled or that no application is subsequently made to a court for a closure notice, or such an application is made but the court refuses to grant it.

Briefing

The provisions are modelled on the statutory compensation scheme for miscarriages of justice under the Criminal Justice Act 1988.,

Provision for statutory compensation is designed to ensure that notices are not issued in an oppressive manner by immigration officers.

October 2015

Written evidence submitted by the London Chamber of Commerce and Industry (IB 09)

1. London Chamber of Commerce and Industry (LCCI) is the largest capital-focused business advocacy organisation representing the interests of over 3,000 companies from small and medium-sized enterprises through to large, multi-national corporates. Our member companies operate within a wide range of sectors across all 33 London local authority areas – genuinely reflecting the broad spectrum of London business opinion.

2. In 2015, LCCI published *Worlds Apart, Making the immigration system work for London businesses*, a report examining the contributions that non-EEA workers have made to the London economy and the impact that restrictions on immigration have had on the capital's businesses.[32]

3. LCCI welcomes the Government's objective to ensure that migrants living and working in the UK have the legal right to do so, and in turn, to ensure that migrants that are not lawfully resident in the UK are not able to exploit the system.

4. However, we are concerned that some of the proposed measures designed to curb illegal immigration might place unreasonable burdens on businesses and private landlords, and also negatively impact upon legal migrants to the UK who make a positive contribution to London's economy. In particular, LCCI is concerned that the transference of the requirement to confirm migrants' immigration status on to landlords and employers, risks unintended consequences.

Measures to curb illegal working

5. The bill amends the Immigration, Asylum and Nationality Act 2006 to expand the definition of an individual employing an illegal worker to include an employer who 'has reasonable cause to believe' that their employee is not lawfully resident in the UK. This raises two concerns. The first is that employers may not possess the resource or experience to ensure a person's immigration status is valid or to accurately navigate the visa system before making an offer of employment. Such a person would be equally guilty of the offence as an employer who knowingly hired an illegal worker.

6. The second is that employers wary of committing the offence because they do not possess the necessary means to determine a prospective employee's immigration status, may be reluctant to offer employment to legal migrants, or that offering employment to migrants carries increased risk.

7. The effect of transferring the obligation to confirm an employee's immigration status on to the employer risks businesses becoming unwilling to hire legitimate migrants, denying those business often needed skills.

8. This clause might also disproportionately disadvantage small businesses and start-ups, who do not possess the financial resource to consult third parties for advice on navigating the immigration system.[33]

9. Businesses will be further impacted by the bill's provision to allow immigration officers to issue closure notices for premises for 48 hours where a person is suspected of illegal working. This risks prohibiting a business' entire workforce from accessing their place of employment and, consequently, might cause disproportionate and unnecessary detriment to the business and its legal employees.

10. The offence will also apply to employers who are unable to provide sufficient evidence that work-checks have been carried out. Therefore, employers who are not guilty of employing an illegal worker, but do not have the resource tor knowledge to complete the necessary steps, could be penalised.

11. Measures to prosecute landlords who rent properties to individuals unlawfully resident in the risk having a similar impact. As with employers, landlords may not possess the means or the experience to be able to confirm a prospective tenant's immigration status as valid. Even more so than employers, landlords are likely to be single entities who possess one, or a small number of properties, without the support or financial resource of a business.

12. Similarly, as above, landlords may fear that renting to migrants carries additional risk. The creation of an offence of renting a property to a person illegally in the UK, risks landlords becoming reluctant to rent to migrants, including legitimate economic migrants. Such a development risks further hindering London's ability to recruit and retain skills from overseas where these do not exist within the domestic labour market.

Skills levy

13. LCCI responded to the proposal to introduce a skills levy for businesses recruiting from outside the EEA in the Migration Advisory Committee Review of Tier 2 Call for Evidence.[34] Whilst the Government's move to fund more apprenticeships is a welcome step towards closing the skills gap in the UK labour market, upskilling the resident labour force in this manner is a long term solution. London businesses need access to skills now.

14. As set out in our Worlds Apart report, imposing a skills levy will hinder businesses' ability to access the skills they need from outside the UK and will disproportionately impact small businesses, who do not have the same financial resource as larger firms, and London businesses, who owing to the number of global corporations in the capital, are likely to contribute more to the levy without a guarantee that they will see an equal investment in skills.

[32] LCCI (2015): Worlds Apart, Making the immigration system work for London businesses – data collected from a large law firm specialising in immigration matters.
[33] LCCI (2015): Worlds Apart, Making the immigration system work for London businesses – data collected from a large law firm specialising in immigration matters.
[34] LCCI submission to Migration Advisory Committee (2015): Call for Evidence, Review of Tier 2.

Summary

15. LCCI supports the bill's motive – to act as a clear deterrent to migrants considering coming to the UK to illegally work and to those willing to profit from illegal working. As such, the penalties which the bill imposes on those illegally working in the UK are a necessary disincentive.

16. However, the Immigration Bill and the penalties for employers and landlords who hire and rent properties to illegal workers could have wider impacts. Employers and landlords may be reluctant to offer employment and tenancies to migrants who they know to be legitimate for fear of the attached stigma or not being able to carry out adequate immigration checks.

17. Legitimate economic migrants wishing to come to the UK to work may no longer look upon the UK as a welcome destination which would further deprive London, and the rest of the UK, from much needed skills. Given that non-EEA migrants (who entered the UK between 2001 and 2011) contributed more to public finances than they received in benefits, this would have an untold effect on the UK's economy.

October 2015

Written evidence submitted by the British Medical Association (IB 10)

1. The British Medical Association (BMA) is a voluntary professional association and independent trade union which represents doctors and medical students from all branches of medicine all over the UK. With a membership of over 154,000 worldwide, we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality healthcare.

2. This briefing highlights the BMA's views on the following measures proposed in the Immigration Bill: language requirements for public sector workers (Part 7) and the immigration skills charge (Part 8).

3. The BMA welcomes the opportunity to make a written submission to the Public Bill Committee.

Executive summary

4. The BMA believes the Government's proposals to introduce new English language requirements for public sector workers should not undermine or duplicate the English language testing requirements already required by the General Medical Council for obtaining a licence to practise in the UK.

5. The Government's lack of consultation on proposals to impose an immigration skills charge on employers who sponsor non-European Economic Area (EEA) migrants is deeply concerning. Rather than tackling immediate workforce shortages in the NHS, the imposition of a charge on NHS employers would divert vital funds away from the health service to other parts of the public sector.

6. The BMA believes the NHS should be exempt from any immigration skills charge, which takes funds away from the health service.

7. The BMA does not support, and is not calling for, unfettered immigration of overseas doctors and recognises that the principle of reducing reliance on migrant workers and training and up-skilling UK resident workers to fill workforce gaps is valid.[35]

8. Employers must have the capacity to recruit and retain overseas doctors where other solutions to staffing have been unsuccessful and where a clear workforce need exists. Consequently, the immigration system must remain flexible enough to recruit doctors from outside the UK/EEA should the resident workforce be unable to fulfil this.

Part 7 – Language requirements for public sector workers

9. Part 7 of the Immigration Bill introduces a new statutory duty to ensure that every public sector employee working in a 'customer-facing' role must speak fluent English. Specifically, a duty will be imposed on public sector bodies to have regard to a statutory Code of Practice on English speaking requirements for public sector workers.[36]

10. The GMC stipulates that all doctors who practise medicine in the UK must have the necessary knowledge of English to communicate effectively so they do not put the safety of their patients at risk. Communicating includes speaking, reading, writing and listening.

11. The BMA has long supported language skills being a prerequisite for any doctor wanting to practice in the UK since 2002: patient safety must be paramount at all times. Doctors who wish to work in the UK, who have not qualified in the UK, have to pass the International English Language Testing System (IELTS) language test to the level set by the GMC, or have to provide evidence of language competence equivalent to this. In addition, Responsible Officers in England, who help evaluate the fitness to practice of doctors, now also have to have oversight over the communication skills of all doctors working in their designated organisation.

[35] Prime Minister's Speech on Immigration, 21st May 2015:
[36] Overarching Impact Assessment, Immigration Bill

12. Under current rules the GMC, individual employers and Responsible Officers have already taken steps to ensure the language competence of doctors working in the NHS. The Draft Code of Practice states that 'It is not anticipated that public authorities will need to impose a higher standard in fulfilling the fluency duty than the standards already required for such roles'.[37] The *'Consultation on draft language requirements for public sector workers Code of Practice'* states that the Code will apply 'in respect of existing workers in such roles, not just newly recruited staff' and will be enforced for 'existing staff through a complaints-based process rather than routine re-testing'.[38]

13. For the purpose of absolute clarity, the BMA would insist that any amendments to the English language requirements of doctors practising in the UK must be undertaken through amendments to the licensing procedures and must be the responsibility of the General Medical Council.

14. The BMA is also concerned that the use of guidance, as recommended, leaves open the possibility of varying interpretation and inconsistency in implementation between different areas. For example, the Code places responsibility on local employers to implement fluency policies to comply with their fluency duty. The Draft Code of Practice also suggests that HR departments should consider whether it is appropriate to stipulate in contracts of employment the standard of fluent English that is required.

Part 8 – Immigration skills charge

15. The Immigration Bill seeks to introduce new measures which would impose an immigration skills charge on employers who sponsor non EEA migrants. The Government asked the Migration Advisory Committee (MAC) to make recommendations on the immigration skills charge as part of a wider review of the Tier 2 (General) visa route. The MAC launched a Call for Evidence on Tier 2 (General) which closed on 25 September 2015; this call for evidence included gathering evidence on applying a skills levy to businesses recruiting migrants from outside the EEA, the proceeds of which will fund apprenticeships in the UK.[39] The BMA submitted evidence to this consultation.[40] However, the BMA does not consider this to be a full and robust consultation exercise specifically on the impact of the skills levy and is disappointed to see its inclusion in the Bill prior to the MAC reporting on its findings.

16. While the BMA recognises that the principle of reducing reliance on migrant workers and training and up-skilling UK resident workers to fill workforce gaps is entirely valid, we believe the NHS should be exempt from any skills charge for several reasons. Firstly, a single sponsor arrangement is in place for medical trainees in Scotland and England. These sponsors are already engaged in training doctors so enforcing an additional skills charge would be taking money out of an already overstretched NHS.

17. Secondly, it is highly unlikely that the NHS will benefit from the proceeds of the charge, which will fund apprenticeships in the UK. Training doctors is a lengthy process and requires an undergraduate medical degree. A UK medical student will typically spend five years as an undergraduate before undertaking the two-year Foundation Programme. It would not be possible to up-skill resident workers or put apprenticeships into place for doctors (or many other frontline healthcare workers) because of this long and rigorous training process and additional regulatory requirements.

18. The NHS is facing a number of workforce pressures both in primary and secondary care. The number of trained nurses required by the NHS far exceeds the number available in the UK workforce; this has now been acknowledged by the Government and nurses have been added to the shortage occupation list.[41]

19. The workforce shortages in the health service are not just confined to nursing though: the BMA has been calling for general practice to be added to the shortage occupation list since October 2014 and there is evidence of shortages in a number of medical specialities regionally across the UK.[42] It is essential that the NHS can recruit the staff that it needs both from the UK and overseas where the resident workforce is unable to fulfil this. Employers already have to pay a charge for each migrant they sponsor from overseas through the charge for a Certificate of Sponsorship. However, the imposition of an immigration skills charge, will add a further financial burden on employers who need to recruit from overseas to ensure patient safety.

20. The payment of the skills charge by NHS employers would be money that is lost to the NHS and we believe the NHS should be exempt.

October 2015

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[37] Draft Code of practice on the English language requirements for public sector workers, Part 7 of the Immigration Act [2016]
[38] Consultation on draft language requirements for public sector workers Code of Practice.
[39] Migration Advisory Committee: Review of Tier 2
[40] BMA submission to the Migration Advisory Committee Call for Evidence: Review of Tier 2: BMA submission- Review of Tier 2
[41] Restrictions on nurse recruitment from overseas changed, Department of Health, 15 October 2015
[42] BMA submission to the Migration Advisory Committee Call for Evidence: Review of Tier 2: BMA submission- Review of Tier 2

Written evidence submitted by Superintendent Paul Keasey, National Roads Policing Intelligence Forum, and Chief Superintendent David Snelling, National Police Chiefs' Council Vehicle Recovery Group (IB 11)

Purpose

The purpose of this report is to provide a high level overview from a Roads Policing perspective of the proposed new Immigration Bill 2015.

Background – Strategic Overview

The Government is committed to operating proper controls on immigration, to reducing net migration, and to ensuring that public confidence in the system is rebuilt and pressures on communities and public services are alleviated.

The Government is also determined to reduce illegal immigration and to take a tougher approach to dealing with those who have either entered the country illegally or overstayed their visa. The Immigration Bill contains a number of important measures to make it more difficult for illegal migrants to live in the UK, encouraging them to depart.

The Bill has three main themes: first, the Bill will crack down on exploitation of low-skilled workers, increase the consequences for employing illegal migrants and strengthen the sanctions for working illegally. A new Director of Labour Market Enforcement will coordinate our strategy for tackling worker exploitation. Those who work illegally will face criminal penalties. Measures in the Bill will also ensure that those working illegally or employing illegal workers cannot gain or retain licences to sell alcohol or late night refreshments. Immigration officers will also have new powers to close businesses where illegal working is being conducted, with new powers for the courts to then order the close supervision of the business to prevent any continued use of illegal workers.

Secondly, the Bill will build on the Immigration Act 2014 to ensure that only those migrants who are lawfully present in the UK can access services, such as rent accommodation, hold a driving licence and use UK bank accounts. New powers will make it easier for landlords to evict those with no right to be in UK, and enable immigration staff to seize driving licences from illegal migrants and close or freeze their bank accounts. Those convicted of the new offence of working illegally will face confiscation of any money made through illegal activity.

Thirdly, to make it easier to remove people who should not be in the UK, the Bill will implement Conservative manifesto commitments to tag foreign criminals released on bail and to extend 'deport now, appeal later' certification powers to more immigration cases. The Bill will also equip immigration officers with additional search and seizure powers to better enforce our immigration laws.

In addition to these three key areas, the Bill will: reform support arrangements for certain categories of migrant, strengthen our sea and air borders, make sure that only those with good English language skills can gain employment in customer-facing public sector roles, impose a new skills charge on businesses bringing migrant labour into the country and reform fees charged by the Home Office in relation to passports and civil registration.

Roads Policing

In relation to Roads Policing, Part 2 of the Immigration Bill specifically relates to the seizing of driving licences.

"Part 2:- Would build on existing measures to restrict irregular migrants' access to residential tenancies, driving and bank accounts. It creates four new offences applicable to landlords and letting agents who let properties to migrants who do not have a valid immigration status, and gives landlords new powers to evict tenants who do not have a 'right to rent'. ***There are new powers to search for and seize driving licences held by irregular migrants and a new offence of driving a vehicle when unlawfully in the UK.*** *The Bill also introduces obligations on banks to carry out immigration status checks on current account holders."*

The Governments Driving Licences factsheet in relation to the Immigration Bill identifies the salient background points regarding the specific issue of seizing driving licences, namely:

- UK driving licences can be used as a form of identification which can help an individual access UK services, such as financial services and accommodation, which facilitate a settled life in the UK.
- The Immigration Act 2014 provided the power to revoke UK driving licences held by illegal migrants. Foreign issued licences cannot be revoked by the UK Government.
- Over 11,000 UK driving licences have been revoked under the powers in the Immigration Act 2014.
- Immigration officers do not currently have the power to seize revoked UK licences that they encounter. It is the responsibility of the licence holder to return the revoked licence to the DVLA and failure to do so is a criminal offence.
- The Immigration Bill 2015 will provide two new measures which build on the driving licence related powers in the 2014 Act. It will:

— Provide a power for police and immigration officers to search people and premises, in order to seize the UK driving licences (whether revoked or not) of illegal migrants.

— Create a new criminal offence of driving whilst unlawfully present in the UK, which carries a custodial sentence of 6 months and/or a fine of up to the statutory maximum. The vehicle used may be detained and, upon conviction, the court may order its forfeiture.

Roads Policing – Points for Consideration

The National Police Chiefs' Council (NPCC) lead for roads policing (Chief Constable Suzette Davenport) helps support forces to tackle crime and keep the public safe by joining up policing operations on the roads. It brings together 43 operationally independent and locally accountable chief constables to coordinate national roads policing activities.

A 5 year strategy, "Policing the Roads in Partnership" (2015 – 2020) provides a partnership based approach for safe, secure and efficient roads. The strategy is underpinned by a more detailed annual action plan of police and partner activities, concentrating collective efforts on those threats and risks that impact disproportionately on the most vulnerable.

Two specific Roads Policing operations have occurred that highlight current issues in relation to road safety and criminal activity involving foreign national drivers in the UK:

Op Mercury:

Between November 2014 and February 2015 a joint Roads Policing and DVLA initiative was undertaken within the Midlands motorway region, in relation to foreign vehicles being driven on the UK roads illegally. During this period 775 vehicles were stopped resulting in 507 vehicles seized (65.4% seizure rate) primarily for offences relating to no vehicle excise duty, no insurance or the driver had no valid driving licence.

Op Trivium 4:

Operation Trivium is designed to:

Disrupt criminality through denying foreign national mobile organised crime groups the use of the road and enhancing levels of trust and confidence in local communities through delivering enforcement, road safety and educational activity.

During 5 days in June 2015, Operation Trivium recorded the following results:

— 11,009 vehicles stopped

— 656 vehicles seized

— 13,415 people encountered

— 897 people arrested

— 8455 enforcement actions

These outputs related to a multitude of offences ranging from road safety interventions to targeting facilitation of illegal immigration and trafficking in human beings. Specific note is the high volume of enforcement actions processed during the 5 day operation. Often these will relate to traffic document offences, including driving licences.

Changing landscape

The roads policing landscape has changed significantly and forces now collaborate within geographical areas and regions to deliver roads policing services. There are pockets of good and effective practice, where collaborative forces share resource and information with Highways England to deliver improved outcomes for all road users e.g. Central Motorway Police Group.

As resource levels fall, there is a risk that the remaining resource time is taken up dealing with reactive demand, with fewer resources for preventive work and discretionary activity. This situation is not likely to change and could get a lot worse due to the increased demands on police resources in tackling new and emerging crimes, as well making significant financial savings as a consequence of the forthcoming Government Comprehensive Spending Review (CSR).

Points for Consideration

Roads Policing is a key enabler to tackling criminals who utilise the road network and reducing road casualties. It is anticipated that the Immigration Bill could assist police forces in both of these areas. However clarity and consideration is sought in two primary areas of the Bill:

(1) Authorisation for property searches:

There is no definition of a 'Senior Officer' for the Police. If I read the Bill correctly, the term is defined for other enforcement agencies but not for the police. As searching seems to depend upon authorisation by a Senior

Officer, defining the rank which this applies to would alleviate this issue e.g. as per searching of properties (sec 18 PACE, 32 etc. require an Inspectors rank authority).

(2) The seizure of vehicles:

Vehicle registration: The provisions detailed within the Bill do not differentiate between vehicles which are registered in the UK and those which are not. Whilst it is unlikely that non EU vehicles would be in the UK and used by illegal immigrants, it is highly plausible that illegal immigrants might be using either UK or EU registered vehicles, therefore consideration could be given in respect of these vehicles too. However it is recommended that when formulating the Regulations consideration be given to the fact that some vehicles seized may not be UK registered.

Financial Cost: The retention of seized vehicles may cause additional financial burden upon police forces. The financial implications of recovery and storage may inhibit forces to pro-actively enforce the new legislation.

The Bill appears to envisage additional provisions, to add to the flora of regulations with uncoordinated provisions made under other enactments such as Section 165A Road Traffic Act; the Road Traffic Regulation Act; Criminal Justice and Public Order Act; Police Sec 59 Reform Act; Vehicles Excise Act, Powers of Criminal Courts (Sentencing) Act; Road Safety Act etc..

The costs of recovery and storage were investigated by Government in 2008 and rates were then set for several of the above enactments at a minimum of £150 for recovery and a minimum of £20 per day for storage. The Home Office, in setting these rates after consultation, stated that these rates were intended to cover the costs of the recovery and of the vehicles' storage. The Home Office further advised that the rates were not intended to provide revenue to the police or be punitive to the public. They could therefore be considered as 'cost recovery'.

The provisions in the Immigration Bill appear to envisage a process similar to that contained in the Powers of Criminal Courts (Sentencing) Act. Under that Act there is a requirement placed upon the police to retain the vehicle until the court case. After forfeiture, the vehicle must further be retained for six months before any disposal may take place (to allow for third party claimants to come forward) and, moreover, any proceeds of disposal must then be paid into the Police Act Fund and, after deduction of legitimate expenses, may therefore only be used for charitable purposes.

As the Bill foresees application to the courts for possession of seized vehicles in the possession of an illegal immigrant, it can reasonably be envisaged that considerable court time and expense could be exercised to enable employers and finance companies to seek return of vehicles which were being used by the illegal immigrant (as might be their right under Human Rights legislation?). Enabling those people to reclaim their vehicles without recourse may provide a viable option for consideration.

Vehicle Retention Amendment Option: Utilising existing legislation and wording under Section 165A RTA, may alleviate some of the aforementioned concerns. A vehicle might be seized where there is reasonable cause to believe that the person driving it is an illegal immigrant. Following seizure, that vehicle may then be automatically disposed of after a prescribed period unless collected in accordance with the provisions and the fees paid.

The same, harmonised, charging rates would apply and the vehicle may be released to a person who can show that:

(a) They have a right to be in the UK.

(b) They are the registered keeper or owner (not being the illegal immigrant).

(c) A finance or lease company who has the vehicle on lease or finance.

(d) The immigrant – if s/he has shown that they have been arrested and not charged (vehicle would then be returned without charge).

The provisions would thus exclude collection by the illegal immigrant unless the person can show that they were arrested and no further action taken against them.

In this way the police are pre-authorised to dispose of the vehicle and may dispose of anything after the prescribed period of retention.

If the vehicle is disposed of by the police, the driver would have up to 12 months from disposal within which to claim the net proceeds – or perhaps the court could, in lieu of forfeiture, extinguish this right upon conviction?

Vehicle Excise Duty: The Immigration Bill might provide an ideal opportunity to make changes to the Vehicle Excise Act so that overstaying EU vehicles may be retained until they are re-registered in the UK. It should be noted that Operation Jessica, led by the DVLA, is looking at options to ensure that overstaying foreign registered vehicles are made compliant with UK legislation before release from a pound. Currently an owner may simply pay a surety and reclaim the vehicle to be used again, exported or simply have different plates added to them.

Effective Enforcement: A process which allows effective enforcement of the registration and licensing and compliance with insurance and licensing requirements should also be applied to all seizure events – i.e. licences and insurance must be produced in all cases and compliance with the Registration and Licensing Acts be checked, and if need be, enforced, before return of any seized vehicle.

Harmonisation of Retention Powers: Whilst not forming part of the Immigration Bill, the authors note that it would be advantageous to use this as an opportunity to consider harmonising the various existing powers for retaining vehicles seized by Police. An extract from a report outlining the issues is appended below:

Introduction

In 2014, it is estimated that police recovery schemes in England and Wales recovered approximately 420,000 vehicles, thereafter managing the security, return and disposal of those vehicles and the property in them, subsequently disposing of those vehicles which remained unclaimed by their owners.

Statutory charges, amounting to about £70 million, were collected for forces. The disposal (sale and scrapping) of unclaimed vehicles was valued at a further £14.5m. With such levels of public money passing through police forces, and the associated VAT liabilities, it is important that recovery schemes are correctly and adequately managed. In the interests of reducing bureaucracy and increasing efficiency, it is requested that the Home Office and Department for Transport be asked to review and harmonise the many pieces of legislation, of which there at least six, which deal with the retention, return and disposal of vehicles which have been seized or removed.

It is not suggested that any of the actual seizure powers be revisited but only the secondary provisions relating to the retention, release and disposal of the vehicles, once seized, and the fees which are charged to cover the recovery, storage and disposal of them.

If harmonised, it is suggested that it could simplify the returns process, improving compliance with Road Traffic and Registration and Licensing legislation, whilst improving comprehension.

With a common procedure and charging regime, making regular inflation based adjustments to the associated charges would be less onerous.

The Legislation Concerned and the Parent Legislation

Whilst several of these provisions are similar, none are identical in respect to fees or requirements for storage or return. Specifically, the charges; all of which are intended to represent the same typical costs of recovery, storage and disposal, vary significantly between statutory instruments.

Whilst most provisions have been updated within the past few years, to reflect inflation, the Criminal Justice and Public Order Act charges, formerly harmonised with the Road Traffic Regulation Act charges, have not been reviewed or revised since 1995.

In Section 165B Road Traffic Act, the police are asked to validate the driving licence and insurance of the vehicle claimant before returning the vehicle. There is no requirement in the legislation to ensure that the requirements of the Vehicles Excise and Registration Act (VERA) are adhered to, despite a correctly registered vehicle being imperative for effective enforcement.

Conversely, the DVLA legislation requires compliance with VERA but makes no requirement in respect of the validation of driving licence or insurance.

There is no requirement at all to validate documents for the other provisions – even under Section 59 Police Reform Act – careless driving or driving off the highway.

It is recommended that the plethora of retention, return and disposal regulations be harmonised and incorporated, if possible, into a single Retention and Disposal Regulation, with the same fees and similar, or identical requirements, to evidence compliance with the requirements relating to all of the driving licensing, insurance and registration and licensing provisions.

Where possible, it would be helpful to provide a harmonised method of retaining and disposing of all vehicles which come into the possession of the police (or other enforcement agencies eg DVSA).

Much police time and expense is expended in trying to dispose of vehicles which have been seized under the provisions of the Police & Criminal Evidence Act 1984 and which remain unclaimed and which cannot be disposed of other than under the provisions of the Police Property Act and subordinate regulations.

Provisions which could be Harmonised

Retention Return & Disposal Regs	*Parent Legislation*	*Power of Seizure in respect of vehicles:*
Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) (Amendment) Regulations 2008	Section 165A Road Traffic Act 1988 (as amended)	being driven without insurance or driving licence
Police (Retention and Disposal of Motor Vehicles) Regulations 2002	Section 59 Police Reform Act 2002	causing alarm distress or annoyance
Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) (Amendment) Regulations 2008.	Road Traffic Regulation Act 1984 & Removal & Disposal of Vehicles Regs 1986	abandoned or causing danger or obstruction
The Road Safety (Immobilisation, Removal and Disposal of Vehicles) Regulations 2009	Schedule 4 Road Safety Act 2006	which have been tested and found to be in a dangerous condition
Police (Retention and Disposal of Vehicles) Regulations 1995	Sec 62C Criminal Justice and Public Order Act 1994	involved in unlawful trespass and not removed upon demand
The Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) (Amendment) Regulations 2008	Sections 57(1), (2) and (3) of, and Schedule 2A to, the Vehicle Excise and Registration Act 1994	used where there is outstanding VED

No specific additional provisions as to retention, return, disposal or costs of recovery

Subject to decision of the courts. May order a forfeiture order under Section 9(2) of the Act	Section 8(4) Hunting Act 2004	Seizure of vehicles used in illegal hunting activities
Subject to decision of the courts.	Section 19 Police and Criminal Evidence Act	Evidence of an offence

Current Seizure Powers:

It should be noted that Section 164(3) Road Traffic Act 1988 permits a constable or vehicle examiner to require a person to produce a revoked or suspended driving licence, and upon its being produced may seize it and deliver it to the Secretary of State.

Conclusion

The Immigration Bill contains a raft of important measures to prevent illegal immigration and remove incentives for illegal migrants to enter or remain in the UK and encourage them to depart. From a Roads Policing perspective, to ensure the successful operational delivery of the Immigration Bill it is envisaged that there will be additional enforcement activities and costs associated with the implementation of the new Bill e.g. searching of addresses, vehicle recovery and retention costs, language interpreter fees etc…

In addition, due to the multi-cultural, diverse nature of our society careful consideration is required to how the measures detailed within the Bill are effectively communicated and the impact of operational delivery monitored /assessed from a community perspective.

October 2015

Written evidence submitted by Tai Pawb (housing for all) (IB 12)

Immigration Bill 2015–2016 – Housing Measures

1.1 Tai Pawb welcomes the opportunity to submit evidence on the Immigration Bill 2015-2015 as it relates to the private rented sector (PRS). Tai Pawb (housing for all) is a registered charity and a company limited by guarantee. The organisation's mission is, "To promote equality and social justice in housing in Wales". It operates a membership system which is open to local authorities, registered social landlords, third (voluntary) sector organisations, other housing interests and individuals. Tai Pawb works closely with the Welsh Government and other key partners on national housing strategies and key working groups, to ensure that equality is an inherent consideration in national strategic development and implementation. The organisation also provides practical advice and assistance to its members on a range of equality and diversity issues in housing and related services.

1.2 We are aware that the current Bill applies to England only at this point, however, we note that it provides for future legislation to be made, which extends the provisions to Wales. We think it prudent to therefore consider evidence in relation to Wales at this point.

1.3 The PRS in Wales consists of ca 200,000 properties, which constitutes 14% of Welsh housing stock and is growing in size.

1.4 A number of legislative measures with relevance to the PRS have been brought in recently in Wales, with some still passing through the National Assembly for Wales. Housing (Wales) Act 2014 introduced mandatory registration and licencing for PRS landlords and agents which will commence in Autumn 2015. New homelessness prevention duties have also been introduced by the Act and commenced in April 2015, requiring councils to focus on the prevention aspects of homelessness first. Local authorities were also given new rights to use suitable PRS accommodation to discharge their homelessness duty.

1.5 The Renting Homes (Wales) Bill introduces new tenancy law for all tenants, including those in PRS with two basic types of tenancy contracts – standard periodic contract (for those in PRS; expected to be rolled out in 2017) and secure contract. The Bill, amongst others, changes the law in relation to joint tenancies, offers greater protection for victims of harassment and domestic abuse and removes Ground 8 for housing associations (mandatory ground for possession for rent arrears).

1.6 This means that Welsh private landlords are facing significant changes to property management, tenancy law and regulation from 2015-2018. Majority of landlords in Wales are small businesses with one or two properties. Introduction of Right to Rent checks in addition to the above changes raises concerns in relation to appropriate resourcing for capacity building and awareness raising.

1.7 This raft of Welsh legislation related to PRS also means that the circumstances of Welsh PRS landlords and tenants are going to be significantly different than those in England. We would strongly suggest that any decisions or future possible orders made in relation to Wales are therefore mindful of the above dates and based on appropriate and separate evaluation carried out in Wales, post commencement of the above Welsh measures.

1.8 Whilst we agree that the Immigration Bill could potentially improve standards for some tenants, there is a significant risk that these proposals could have an adverse impact on tenants and landlords.

1.9 We are concerned with the speed with which the second Immigration Bill has been brought forward, including the fact that the evaluation was only published on the 20th of October. There are other issues in relation to the evaluation. For example the tenant's survey was only carried out with 68 people and 60 of those were students. This suggests that the results of this survey will be skewed as students are likely not only to be better educated than other sections of potential tenant population but also less likely to face discrimination (it is easier for them to present documents too).

1.10 We also note that the pilot – which did not involve criminal provisions was deemed to be a success by the immigration minister, which raises the question of why the government feels that the new provisions are necessary. We would urge the parliament to take its time to consider the evidence.

1.11 We are concerned about the risk of discrimination. Independent evaluation issues by JCWI and partners shows clear evidence of discrimination against BME applicants and tenants as well as those unable to present documents and of failure of the policy to reach the poorest parts of the PRS (these parts were not really part of the Home Office evaluation). Home office evaluation of potential discrimination is interesting in itself. For example the mystery shopping exercises showed that much more BME people were informed about fees in the Phase 1 area, but that actually more BME people were offered to register than non-BME. The problem with this evidence is that even if we compare Phase 1 area to other areas, the evaluation does not provide any information on whether the landlords subjected to mystery shopping were actually aware of Right to Rent (it is possible that they weren't).

1.12 We note that there is also significant risk of discrimination against British Citizens who do not hold the correct documents. For example 17% of British population do not have passports. These are often people who are vulnerable, elderly people or people who are in care. We note that both NLA and RLA stated that landlords are significantly more likely to award a tenancy to people who can provide documentation quicker.

1.13 In terms of landlord awareness of the scheme and what activities are illegal, including discrimination, we are concerned about the high risk of poor awareness. We agree with previous evidence submitted by CIH who were concerned that the vast majority of landlords who have only one property will be unaware of the requirements or face difficulty in complying with them (and these landlords are in majority in Wales). A survey by website Easyroommate found that 80% of landlords were unaware of the legislation and 30% did not intend to comply. Similarly, in a JCWI survey in the pilot area, few tenants were aware of the immigration checks and only around 50% had been asked to prove their permission to be in the UK2. The Home Office own evaluation reports higher awareness levels amongst landlords – however we are not sure that it represents a true picture, with most landlords contacted to complete the online survey via industry bodies (these landlords are more likely to be aware of any requirements anyway.). This significantly increases the risk of discrimination. We also note that discrimination is actually extremely difficult to identify by tenants, unless it is overt, therefore figures from tenants will not show the true picture of what happened.

1.14 We are concerned that the legislation will lead to a big increase in homelessness presentations and in numbers of NRPF cases presented to social services. We previously highlighted to the Home Office that Right to Rent may not only cause human suffering and safeguarding issues but also increased pressures and costs for already stretched local authorities. Many of those approaching local authorities may be eligible for assistance but destitute due to complicated immigration status. Many might be eligible for homelessness and other assistance under S.17 of Children Act 1989. Recent research carried out by COMPAS shows that between 2011 and 2013, the cost to 6 Welsh local authorities which provided assistance under the Children Act was ca. £620,000 pounds. There are also additional enforcement costs and the costs and implications of increased pressure of social housing with many vulnerable groups likely to be deterred from using the private rented sector. This also directly contradicts the measures in Housing (Wales) Act 2014 which allow Welsh local authorities to discharge the duty to the private rented sector. JCWI research shows that substantial numbers of people were turned away by landlords/agents. Home office evaluation did not identify significant increases in homelessness presentations however there are a few factors to consider here. Firstly – we think that the evaluation period was too short to see any real effects of the legislation. Secondly, Phase 1 did not carry criminal provisions or new eviction powers, therefore the effects of Right to Rent checks may be milder as evaluated by the pilot. Thirdly – we note that 5 out of 9 authorities did report increase in workloads and that respondents working in social services, homelessness or children's services tended to comment on larger increases in workloads with a small number of local authority respondents feeling their no recourse to public funds (NRPF) caseload had increased as some families were now presenting themselves to social services departments as they were not able to access private rental sector accommodation. A small number out of 9 local authorities may still represent a significant percentage. Lastly – comparison of homelessness data between Phase 1 area and a control area showed an increase in BME homelessness presentations however it concludes that as there were similar trends for both EEA and non-EEA nationals this suggests that the changes are likely to be due to factors other than the Right to Rent scheme. We are not sure why similar trends for these groups would mean that homelessness was not due to Right to Rent. EEA nationals could have simply been turned away by landlords without attempts made to check their status.

1.15 We note that a freedom of information request from a member of parliament showed that only two people staff the Right to Rent helpline. Assurances would have to be made that the helpline would be resourced at a more appropriate level and provide Welsh language options for Wales.

1.16 The new eviction powers raise some concerns. There does not seem to be any provision for reasonable excuse, for example due to ill health of the tenant (who may have failed to e.g. re-apply for a visa due to ill-health) or landlord (who may have failed to carry out another check due to ill health). We also note that, it is not clear whether, if at all, tenants who have been served notice, would be able to appeal the decision and how any circumstances related to Human Rights Act or Equality Act, would be taken into consideration (if at all), especially that the decision is made by the executive out of court and is mandatory based on the status. No right of appeal against a decision which has been taken out of court anyway is disproportionate in terms of the security of tenancy and implications for tenants.

1.17 In relation to families, it is not clear to us how the legislation takes into account the position of families. A situation could arise where a spouse, partner or other family member with a valid visa or right to reside in the UK faces eviction/homelessness because a member of their household loses their right to reside or their visa becomes invalid. This situation would go counter to the policy aims of the proposals.

1.18 There is a danger that this approach could make it more difficult for non-UK citizens to find a home even if they do have proof of their permission to reside in the UK. If a landlord thinks that a potential tenant's valid visa may expire at some point meaning the landlord would be forced into carrying out an eviction (with associated costs) they may decide to rent to another person.

1.19 We would welcome the opportunity to work with the government on any future legislation which would extend the provisions contained in the Bill to Wales. More information about potential impacts of Right to Rent checks in Wales can be found in Tai Pawb and partners' briefing from August 2015 (pre JCWI evaluation and pre-Home Office evaluation) .

October 2015

Written evidence submitted by the Country Land and Business Association (CLA) (IB 13)

1. The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales, our membership owns 38% of Private Rented Sector (PRS) stock in rural areas and is a vital component of the UK housing market. As an organisation we do not believe private landlords – who are overwhelmingly individuals with only a few properties, are best paced to take on the role of immigration officials. If the Government intends to make it harder for people to live and work in the UK illegally we would recommend increasing the funding for immigration control services above the current figure of 0.25% of total Government expenditure.

2. Everyone needs somewhere to live no matter what their immigration status is. Restricting illegal migrants from renting in the PRS will inevitably push them into the hands of the same rogue landlords the Government

has been trying to remove from the PRS. It has to be recognised that those who prey on vulnerable tenants at the bottom of the housing market will ignore their obligations and any possible threat of enforcement activity, and it is these unscrupulous landlords that will profit from this policy.

3. Clause 33C subsection 1 (a) and (b) states that a landlord could be imprisoned for up to five years if they meet the conditions set out in Clause 33A (2) and (3). Five years in prison and a possible fine for failing to identify or take action is an excessive sentencing guideline, and we would question why there is such a significant escalation in sentencing from the Immigration Act 2014 which deemed a £3,000 civil penalty to be sufficient. The report the Government commissioned of the right to rent pilot stated that the scheme had been effective in deterring illegal migrants from renting property privately, bringing into question why such a large sentence is necessary.

4. While there have been assurances that this increased sentence is for repeat offenders, the Bill does not explicitly refer to this, neither does it set in stone that the Home Office will not prosecute a landlord during the 28 day period during which the tenant would remain in the property after a notice of possession had been served.

5. We would suggest that before any criminal proceedings, consideration is given to the vast difference in size of landlords in the PRS and how this could lead to them falling foul of these new obligations. For landlords with only a few properties there is a risk that they will not be sufficiently familiar with the myriad of identity documents they could potentially encounter, leaving them vulnerable to unintentionally fall foul of the law despite their best intentions. Conversely, larger landlords with sizeable portfolios are more likely to be exposed to document forgery on the part of tenants, administrative error or a genuine oversight due to the large numbers of properties they let out.

6. Tenants who have the right to rent but do not have the appropriate documentation will be adversely affected by this legislation, it is only natural to expect landlords to accept those tenants who can present the correct identity papers. This was why the CLA advocated Local Authorities issuing prospective tenants with a certificate that would demonstrate their right to rent.

7. The Bill is not sufficiently clear on what right of appeal a landlord or tenant has following service of a notice by the Secretary of State. It is unrealistic to assume that the Home Office will not make mistakes when carrying out their duties. We recognise that the Bill states the tenant has 28 days to vacate the property following serving of the notice, and most erroneous notifications from the Home Office would be rectified during this time. However there needs to be a more formal process that does not put the burden on the tenant to have to resort to Judicial Review or some other process.

October 2015

Further written evidence submitted by the Immigration Law Practitioners' Association (ILPA) (IB 14A)

ILPA PROPOSED AMENDMENTS APPEALS

Clause 31 Appeals within the United Kingdom: certification of human rights claims

PROPOSED AMENDMENT/STAND PART

Page 34, line 3, leave out clause 31

Purpose

To remove provisions that would extend the deport first/appeal later" provisions of the Immigration Act 2014 as "remove first/appeal later" in all immigration appeals and maintain the current position.

Briefing

The Immigration Act 2014 contained a power to certify the appeals of "foreign criminals", as defined, before these appeals began or while they were in train so that, other than in cases based on fear of persecution or ill-treatment abroad, the "foreign criminal" could be removed before the appeal was determined if to do so would not breach human rights and rights under EU law and in particular would not cause "serious irreversible harm." Now it is proposed to extend these powers beyond "foreign criminals" those whose presence in the UK is deemed "not conducive to the public good" to anyone appealing an immigration decision. Rights of appeal are now restricted to appeals against refusals of protection and human rights claims.

Where an application for family reunion with a spouse, partner, child or elderly relative etc. is made under the immigration rules and refused, this will be treated as a refusal of a human rights claim and will be treated as giving rise to a right of appeal. Such cases will include persons refused because they are held not to meet the income thresholds for family reunion under the immigration rules. The All Party Parliamentary Group on

Migration produced a report on the family immigration rules in June 2013.43 Problems it highlighted included problems in satisfying the minimum income requirement and with the way in which this was calculated, in particular:

— Prospective non-EEA partner earnings should be considered for inclusion in the rules, for example in circumstances where the non-EEA partner has a firm offer of employment or self-employment in the UK, or where there is reasonable expectation that the non-EEA partner will gain employment or self-employment after entering the UK.

— The rules relating to income from cash savings and from self-employment should be reviewed.

— Third party support, particularly that provided by a close family member such as a parent, should be considered for inclusion in the rules.

5. The current evidential requirements in Appendix FM-SE should be reviewed, in order to ensure that they are clear and easy for applicants to understand.

The All Party Parliamentary Group also highlighted failure to support children to live with their parents in the UK where their best interests require this and expressed concern at cases involving adult dependant relatives, in particular:

— Government should review the rules affecting adult dependents. Consideration should be given to amending the rules to ensure that:

  — Where the UK sponsor can demonstrate their ability to provide full financial support to an adult dependent relative in the UK, or where the relative themselves has the means to financially support themselves, they are able to do so.

  — An adult dependent relative can be eligible for sponsorship where they are in need of support from the UK sponsor, but before they become fully physically dependent.

Others affecting cases will involve those relying on Article 8 of the European Convention on Human Rights in their appeal, the right to private and family life. Such cases include cases where a person has lived in the UK since childhood or where leaving the UK would mean leaving British or settled family members who cannot follow them to their destination.

The power of one party to a case to send the other party from the jurisdiction so that they cannot appear before the court or tribunal and may struggle to present their case at all is inimical to the notion of equality of arms. If the proposed residence test for legal aid, currently under challenge in the courts, is brought into effect it will mean that being outside the jurisdiction automatically disqualifies a person from legal aid. Those paying privately, and the Legal Aid Agency while legal aid is still available, will be forced to expend considerable sums instructing lawyers and marshalling evidence from overseas. Appeals will not be pursed or will be pursued inadequately.

The Home Office does not get these decisions right all of the time. Success rates are set out below:[44]

		All	Asylum Migration	Managed Clearance	Entry Visits	Family	Deport & Others
2012/13	Determined at hearing / papers	68,187	10,106	21,669	12,815	22,525	1,072
	Allowed/Granted %	44%	30%	49%	50%	43%	32%
	Dismissed/Refused %	56%	70%	51%	50%	57%	68%
2013/14	Determined at hearing / papers	67,471	9,897	28,720	14,291	12,766	1,797
	Allowed/Granted %	44%	29%	49%	48%	43%	37%
	Dismissed/Refused %	56%	71%	51%	52%	57%	63%
2014/15[r]	Determined at hearing / papers	66,262	9,137	38,084	11,631	5,314	2,096
	Allowed/Granted %	40%	31%	42%	42%	37%	33%
	Dismissed/Refused %	60%	69%	58%	58%	63%	67%

The separation of a family until the appeal is finally determined, is for a lengthy, and unknown, period. We are currently seeing cases before the Immigration and Asylum Chamber of the First-tier Tribunal listed for June 2016, in some instances July. This is before onward appeals are considered. The President of the First-

[43] http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf

[44] For full table see Table 2.5a in the zip file at https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015 In immigration judicial reviews, Professor Robert Thomas, of the University of Manchester School of Law, who has conducted detailed research into the immigration and asylum chambers of the tribunals over many years, has taken account of reviews won by claimants and those conceded by the Home Office and has concluded "*It is estimated here that the true success rate of immigration challenges is nearer to 30 per cent than the less than one per cent figure that arises from the Government's preferred and misleading metric.*" Mapping Immigration Judicial Review Litigation: An Empirical Legal Analysis [2015] P.L. October, Thomson Reuters (Professional).

tier Tribunal issued a message about the challenge of listing and ILPA understands that delays are likely to increase in the foreseeable future. It is ILPA's understanding that volumes of appeals, and of judicial reviews, have exceeded those predicted at the time of the passage of the Immigration Act 2014. Parliamentarians should ask what steps are being taken to ensure that the Tribunal deal with the volume of work before it and whether payments are being made from the Home Office to Her Majesty's Courts and Tribunals Service to mitigate the effect of Home Office legislation on courts and Tribunals.

NEW CLAUSE AFTER CLAUSE 31

PROPOSED NEW CLAUSE

Page 34 line 19, after Clause 31 insert the following new clause

( ) Amendment of Schedule 3 to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004

Schedule 3 to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 is amended as follows

(1) In paragraph 3, leave out subparagraph (2)

(2) In paragraph 8 leave out subparagraph (2)

(3) In paragraph 12 leave out subparagraph (2)

Purpose

To provide that the Secretary of State may not deem a country to be safe regardless of whether it is safe or not.

Briefing

All the subparagraphs to be deleted are in the same terms, viz

"(2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—

(a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion;

(b) from which a person will not be sent to another State in contravention of his Convention rights; and

(c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

The question is the same in all three paragraphs but relates to removal to different countries. It is:

…for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim or a human rights claim may be removed—

(a) from the United Kingdom, and

(b) to a State of which he is not a national or citizen.

Thus the provisions that the amendment would delete are provisions that deem a country to be safe, regardless of whether it is or not. The Court of Justice of the European Union has criticised deeming a country to be safe in NS v UK C-411/10 and C-493/10 (see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62010CJ0411:EN:HTML)

The court held

> 2. European Union law precludes the application of a conclusive presumption that the Member State which Article 3(1) of Regulation No 343/2003 indicates as responsible observes the fundamental rights of the European Union.
>
> Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision.
>
> Subject to the right itself to examine the application referred to in Article 3(2) of Regulation No 343/2003, the finding that it is impossible to transfer an applicant to another Member State, where that State is identified as the Member State responsible in accordance with the criteria set out in Chapter III of that regulation, entails that the Member State which should carry out that transfer must continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application.

The Member State in which the asylum seeker is present must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003.

Therefore the amendment removes "deemed safety" provisions from UK law.

NEW CLAUSE AFTER CLAUSE 31

PROPOSED NEW CLAUSE

Page 34 line 19, after Clause 31 insert the following new clause

() Amendment of the Nationality, Immigration and Asylum Act 2002

(1) The Nationality, Immigration and Asylum Act 2002 is amended as follows:

(a) In section 82(1) Right of Appeal to the Tribunal insert

"(d) the Secretary of State has refused P a certificate of entitlement under section 10 of this Act"

(b) In section 84 Grounds of Appeal after subsection 84(3) nsert

(4) An appeal brought under section 82(1)(d) (refusal of a certificate of entitlement to a right of abode) must be brought on the ground that the decision is not otherwise in accordance with the law;

Purpose

First amendment: To provide a right of appeal for British and Commonwealth citizens denied a certificate of entitlement to a right to a right of abode under section 10 of the Nationality Immigration and Asylum Act 2013. Such a certificate is the way in which a British citizen proves that they are a British citizen in cases of dispute.

To provide a ground of appeal if a person does bring such an appeal.

Briefing

This right of appeal was swept away along with others in 2014. Its removal prevents British citizens from vindicating their right to recognition as British citizens in the event of dispute.

Sections 1 and 2 of the Immigration Act 1971 as amended provide

1 General principles

(1) All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person. [*rest of section omitted*]

2 Statement of right of abode in United Kingdom.

2(1) A person is under this Act to have the right of abode in the United Kingdom if—

(a) he is a British citizen; or

(b) he is a Commonwealth citizen who—

(i) immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(d) or section 2(2) of this Act as then in force; and

(ii) has not ceased to be a Commonwealth citizen in the meanwhile.

(2) In relation to Commonwealth citizens who have the right of abode in the United Kingdom by virtue of subsection (1)(b) above, this Act, except this section and section 5(2), shall apply as if they were British citizens; and in this Act (except as aforesaid) "British citizen" shall be construed accordingly.

We concentrate here on British citizens. Commonwealth citizens with a right of abode are a finite group of people, all of whom had such a right before 1983. Many will by now be British citizens. Their position is very similar to that of a person with indefinite leave to remain although a right of abode is better than indefinite leave to remain in that it is in no way affected by prolonged absence from the UK.

It may come as a surprise to members of the Committee to learn that their right to live in, and to come and go into and from, the United Kingdom without let or hindrance (save for e.g. the long queues at passport control with which all will be familiar) is a creature of Statute and could, at least in theory be amended by parliament and new conditions imposed. The Right of Abode is a peculiar British construct, a legacy of Empire and the Commonwealth Immigrants Acts of the 1960s which mean that British nationals other than British citizens do not have a right of abode in the UK.

Fascinating as all that is, what concerns us here is that if there is a dispute about whether or not you are British (which might, for example, be relevant to your eligibility to stand as an MP) then a way to go about

proving it is to apply for a certificate entitlement to the right of abode. If that is refused, you want to be able to challenge it by an appeal to an independent tribunal.

The "not in accordance with the law" ground of appeal borrows from the pre 2014 section 84. If a mistake has been made one my application for a certificate of entitlement to a right of abode I could, if the amendment were accepted say "Your decision is not in accordance with the law, you have made a mistake on my application". Or I could say "You are not allowing me to remain in the UK. I have lived in the UK for 10 years. My home and family are here and I do an important job in the NHS , in an area where the UK has severe shortages. Your decision interferes with my private life under Article 8 of the European Convention on Human Rights. For that decision to be lawful you must show that 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. You cannot show that it is necessary or proportionate because under your own laws you got the decision wrong… Your rules say I should be allowed to stay. You made a mistake and therefore refused me. The interference with my private life is not in accordance with the law, it is unlawful, therefore I should be allowed to stay. "The current rules on appeals demand that the claim be refracted through the prism of human rights.

The www.gov.uk Passports office briefing on the right of abode is available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118569/immigration-right-of-abode.pdf

The format used in these amendments could be adapted to bring back other rights of appeal lost in 2014 and ILPA would be happy to assist with drafting these.

CLAUSE 32 CONTINUATION OF LEAVE REPEALS

PROPOSED AMENDMENT/STAND PART

Page 32 line 20 leave out Clause 32

Briefing

The provisions revoked are provisions that provide for the leave of a person facing revocation of leave to continue on the same terms and conditions until an appeal or administrative review of that leave have been completed. Leave can be revoked if a person no longer meets the requirements for leave or breaches a condition. For example, if you are here as a spouse and you split up with your partner. Or if you are here as a student with permission to work for 20 hours in term time and you work for 22 per week and are caught. Leave is wrongfully revoked if it is thought that you do not meet the conditions of leave when you do or if you are thought to have broken a condition of your leave but have not.

The Explanatory Notes to the Bill contend that the provisions revoked "have no continuing purpose". This currently true, but the reasons why it is true should be challenged.

During the passage of the Immigration Act 2014 examples were given of where those losing rights of appeal would instead be given an administrative review. These included where leave is revoked.[45] This example disappeared when the Explanatory Notes to the Bill became the Explanatory Notes to the Act. The subsequent Immigration Rules on administrative review[46] do not provide for administrative review where a person's leave is curtailed or revoked. Such a person has no right of appeal and no administrative review. Such persons are thus unable to continue to work, rent property etc. from the moment of the Home Office decision, however erroneous that decision may be. They, their families and their employers suffer as a result.

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PROPOSED AMENDMENT/STAND PART

Page 32 line 20 leave out Clause 32

Briefing

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[45] Explanatory Notes to Bill 206-EN 2013-2014 at para. 73 "...an administrative review may be sought when a person's leave is curtailed or is revoked" see http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/en/14110en.htm and see HL Bill 84-EN 2013-14, para. 77 http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/en/14084en.htm

[46] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/449633/20150803_Immigration_Rules_-_Appendix_AR.pdf (rights to administrative review set out at 3.2, 4.2 and.2).

is wrongfully revoked if it is thought that you do not meet the conditions of leave when you do or if you are thought to have broken a condition of your leave but have not.

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October 2015

Written evidence submitted by ILPA (IB 14B)

IMMIGRATION BILL ILPA DRAFTING GROUP PROPOSED AMENDMENTS PART TWO: ACCESS TO SERVICES

Residential tenancies

CLAUSES 12 TO 15

PROPOSED AMENDMENT/STAND PART AND AMENDMENT

Page 8 line 10, leave out from line 10 to page 16 line 31 (Clauses 12 to 15) and replace with

12 Residential tenancies: repeal of provisions of the Immigration Act 2014

(1) In the Immigration Act 2014, part 2, Chapter 1 Residential Tenancies omit clauses 20-37 and Schedule 3.

(2) In consequence of the repeals made by this section, the following are repealed

(a) In section 74 of the Immigration Act 2014, subsection (2)(a)

Purpose

This amendment removes the residential tenancies provisions from both the 2014 Act and the current Bill.

Briefing

This 2015 Bill creates two new criminal offences for landlords and two new criminal offences for agents who are found to have rented a property to someone who does not have the 'right to rent' and not to have notified the relevant authority (the Secretary of State in the case of landlords and the landlord in the case of agents) within a reasonable amount of time. The criminal offence carries a charge of up to five years in prison.

The Bill would give landlords and landladies new powers to evict persons whose immigration status means that they have 'no right to rent.' It would be an implied term of a residential tenancy agreement that a landlord or landlady could terminate a tenancy if an adult occupying the premises did not have a right to rent. Powers of eviction could be used is where all occupiers do not have a right to rent.

The basis for the extension of the 'right to rent' provisions contained in the Immigration Act 2014 has no factual or evidential basis. On the contrary, there is clear evidence that the provisions have already caused discrimination and have not achieved their stated aims. They should be repealed and the extension of the scheme, which will worsen the discrimination already caused, should be removed from the Bill.

Both the Home Office evaluation[49] of the right to rent scheme introduced by the Immigration Act 2014 and the independent evaluation undertaken by the Joint Council for the Welfare of Immigrants (JCWI)[50] have shown that the provisions have caused discrimination against BME tenants and people with whose names or accents are not perceived as "British" or who do not have a British passport. Furthermore, the Home Office

[47] Explanatory Notes to Bill 206-EN 2013-2014 at para. 73 "...an administrative review may be sought when a person's leave is curtailed or is revoked" see http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/en/14110en.htm and see HL Bill 84-EN 2013-14, para. 77 http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/en/14084en.htm

[48] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/449633/20150803_Immigration_Rules_-_Appendix_AR.pdf (rights to administrative review set out at 3.2, 4.2 and.2).

[49] Home Office (2015) "Evaluation of the Right to Rent scheme: Full evaluation report of phase one", available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf

[50] Joint Council for the Welfare of Immigrants (2015) "No Passport Equals No Home: an independent evaluation of the 'right to rent' scheme", available online: http://jcwi.org.uk/sites/default/files/documets/No%20Passport%20Equals%20No%20Home%20Right%20to%20Rent%20Independent%20Evaluation_0.pdf

evaluation does not adequately assess the duty of public authorities to combat discrimination under the public sector equality duty.

In addition, the Home Office's own evaluation of the scheme demonstrates that enforcement as a result of the provisions has been extremely low and any evidence that the scheme has achieved its stated aims is inconclusive.

The threat of criminal penalties in this Bill will only serve to heighten discrimination against those from a black and ethnic minority (BME) background as well as British nationals who do not own a passport. Landlords will not want to risk a prison sentence as a result of renting to someone with the incorrect immigration status, as has already been the case under the civil penalty scheme. This will result in many landlords and landladies taking the 'easy' option of accepting white, British tenants over others perceived as more of a 'risk'.

The Immigration Act 2014 (the 'Act') contained provisions to make it compulsory for private landlords to check the immigration status of all new adult tenants, sub-tenants and lodgers in order to assess whether they have the 'right to rent' in the UK.

Background

Under these provisions all individuals in the UK who are subject to immigration control and require permission to enter or remain in the UK but do not have it are disqualified from entering into a residential tenancy agreement. Landlords, landladies and their agents have a duty to check the immigration status of potential tenants or lodgers before entering into a residential tenancy agreement with an individual. If a landlord or agent fails to complete the checks and rents a property to someone who does not have valid 'leave to remain' (and therefore does not have the right to rent) they could be fined up to £3,000 per adult by way of a civil penalty notice. Due to concerns about the potential for discrimination under the provisions, the scheme was first piloted in five West Midlands local authorities. The scheme went live on 1 December 2014.

On 18 September the Government published the Immigration Bill 2015, which contains an extension of the provisions to include a criminal sanction, the subject of this amendment. This is despite clear evidence in an independent evaluation published on 3 September that the provisions have caused discrimination; do not meet the government's obligations under the equality duty; and have not met their stated aims. Over a month later, on 20 October, the Government published their evaluation of the scheme and announced a roll out of the Immigration Act 2014 provisions in England from February 2016.

Evaluation of the scheme

An independent evaluation of the 'right to rent' pilot found that in the first six months, the scheme resulted in discrimination against people whose names and accents were perceived as "foreign" and those without British passports. People with complicated immigration status, unclear documents and those who require time to provide relevant documents are less likely to be considered and accepted for a property as a result of the scheme, despite having the 'right to rent' and there is evidence that individuals with the 'right to rent' have been wrongly refused tenancies.[51]

On 20 October 2015, following the publication of the Immigration Bill on 18 September which seeks to extend the scheme with the introduction of criminal sanctions, the Home Office published its own evaluation of the 'right to rent' scheme. The report itself states that sample sizes are low and findings must be seen as indicative rather than definitive.[52] While the authors describe the evaluation as 'comprehensive', they do not claim that the results are representative. A lack of definitive evidence cannot be seen as evidence that the scheme has met its aims or worked as intended without causing discrimination. Furthermore, the report downplays its own findings on discrimination and clearly documents that discrimination has occurred as a result of the 'right to rent' scheme.

Limitations of the Home Office evaluation of the 'right to rent' scheme

— The sample sizes relied upon as evidence are in many places very small. For example, results based on responses to the online surveys (completed by landlords, agents, tenants, local authorities, housing associations and charity and voluntary sector organizations) are for some questions based on as few as five responses and only four volunteer and charity sector organizations and five housing associations were interviewed for the research.

— Only 62 landlords and landladies surveyed had taken on a new tenant since the implementation of the scheme. Of those, only 26 had conducted the checks on a prospective tenant themselves. Therefore, there is a lack of evidence of how landlords who conduct the checks will be impacted.

— The majority of tenants involved in the research had not moved property since the start of the pilot, and therefore would not have any experience of the scheme. Any evidence of the impact on tenants is therefore limited.

[51] Joint Council for the Welfare of Immigrants (2015) "No Passport Equals No Home: an independent evaluation of the 'right to rent' scheme".

[52] Home Office (2015) Evaluation of the Right to Rent scheme: Full evaluation report of phase one, p.11.

— The report inadequately addresses the risk of discrimination. The analysis is based primarily on a mystery shopper exercise with an unclear methodology, unclear aims and small sample size. The exercise only looked at discrimination on the grounds of race, which is limited.

— There is no adequate assessment of the Government's obligations or the obligations of Local Authorities under the Public Sector Equality Duty to have due regard to the need to eliminate discrimination and foster good relations in carrying out their functions.

— Evidence of discrimination reported is downplayed, despite having occurred. Given the gravity of discrimination in this sphere, and the risk of discrimination acknowledged by the Government, these issues must be addressed and evaluated properly before any extension of the scheme.

Landlords and agents remain confused about the scheme

The report claims that landlords, agents and housing associations intended to and were carrying out the checks. However:

— Only 42% of landlords and landladies surveyed had read the code of practice on illegal immigrants and the private rental sector and only 29% had read the code on avoiding discrimination. These are vital documents which are intended to explain to landlords how to undertake checks, as well as how to avoid discriminating against tenants in the course of their duties.

— Of the 109 checks undertaken on the online Landlords Checking Service Tool, just 15 resulted in the landlord being informed that the tenant did not have the right to rent. The other 94 referrals related to individuals who did have the right to rent, highlighting widespread confusion about checking immigration documents, which is incredibly complicated and should not be made the responsibility of landlords, who are not immigrations officials.

Awareness of the scheme remains low

The report claims that landlords and agents felt aware of the scheme, however:

— Less than a third of tenants felt informed and many were unaware of the scheme. Most of those who were aware were students, a group specifically targeted by way of an information campaign during the pilot.

— Although the report claims that there is 'arguably less need' for tenants to be informed about the scheme, this is extremely important; so that tenants can inform themselves of their rights; understand why the checks are being undertaken; prepare themselves for the checks so that they are not at a disadvantage if they have complicated immigration status; and understand if they are discriminated against and how to seek redress.

— Almost 60% of landlords/landladies with only one property felt poorly informed or uniformed about the 'right to rent' scheme. Small-scale landlords/landladies make up 78% of landlords. This is the key group that must be made informed of the scheme and the Home Office has not done so adequately.

— More than half of landlords/landladies were members of landlord/landlady membership bodies. This is not representative as the majority of landlords/landladies in the UK are not members of professional bodies, as was described in oral evidence to the Public Bill Committee and members are more likely to feel informed of and able to comply with the scheme than non-members, as demonstrated by the independent evaluation.

— There is therefore no clear evidence provided that the Home Office has adequately disseminated information about the scheme, which undermines any intention to roll the scheme out further nationwide.

The evaluation does not demonstrate that the scheme has achieved its aims

The aims of the 'right to rent' scheme are 1) to reduce the availability of accommodation for those residing illegally in the UK. 2) to discourage those who stay illegally and encourage those who are resident in the UK illegally to leave by making it more difficult to establish a settled lifestyle through stable housing. 3) to reinforce action against rogue landlords who target vulnerable tenants by putting people who are illegally resident in overcrowded accommodation. The Home Office report does not demonstrate that these aims have been met during the first six months of the scheme.

1) *There is no evidence that the scheme has reduced the availability of accommodation for those residing illegally in the UK*

   — There is no conclusive evidence that the private rental market had been restricted for irregular migrants as a result of the scheme.

   — The only evidence cited in the Home Office report is that during focus groups with landlords and agents a small number of participants stated that they had turned down tenants as a result of the landlord/agent not being satisfied that they had the right to rent, and that some prospective tenants had hung up the phone when enquiring about a property and being told about the requirement to undertake immigration status checks. However, this evidence is anecdotal, from a small number of individuals, and there is no evidence that those individuals did not have the right to rent.

2) *There is no evidence that irregular migrants have been encouraged to leave the UK as a result of the scheme*
   - — The report claims that 109 irregular migrants came to the attention of the Home Office as a direct result of the 'right to rent' scheme. An examination of the results shows that this number is made up of referrals provided by internal Home Office teams, external organizations including government departments, police referrals and public allegations. This number therefore appears to be made up of irregular migrants identified result of normal enforcement activity, and not as a result of the scheme.
   - — Elsewhere, the report states that just 26 referrals of irregular migrants were specifically related to the scheme.
   - — Just 15 irregular migrants came to the attention of the Home Office as a result of the online referral system created by the Home Office.
   - — Of the cases of irregular migrants where enforcement activity was instigated, only 9 have since left the UK, the same amount as have been granted status in the UK as of September 2015.
   - — 46% (47 out of 103) of those identified by the Home Office now have outstanding legal cases (four judicial review, 15 family cases, 28 asylum claims) – this means that at this moment they have the right to remain in the UK.
   - — This shows that many individuals identified by the government's 'hostile environment' do often have a valid claim to remain in the UK, or face real barriers to removal from the UK, for a number of reasons.
   - — Whether the scheme has impacted the ability of irregular migrants to access the private rental sector, a key aim of the policy, is inconclusive.
3) *There is very little evidence that the scheme has reinforced action against rogue landlords who target vulnerable tenants by putting people who are illegally resident in overcrowded accommodation*
   - — Only five civil penalty notices were issued to landlords a result of the scheme. This undermines the Government's aim to tackle rogue landlords, a key purpose of the scheme.
   - — However, eight voluntary and charity sector organizations stated that they found evidence of exploitation by landlords/landladies of people without the right to rent as a result of the scheme.

The 'right to rent' scheme has caused discrimination

The Home Office report states that 'verbatim comments… suggest that there were a small number of instances of potentially discriminatory behaviour'. These results are largely based on a mystery shopper exercise with unclear aims. Furthermore, the exercise only looked at discrimination 'on the grounds of race'. This is limited, as there are many more grounds for discrimination as a result of the scheme. The independent evaluation conducted by JCWI found evidence of discrimination due to having a foreign accent or name, or not having a British passport. The potential for discrimination on these grounds have not been analyzed. Nonetheless, the report finds clear evidence of discrimination:

- — The BME members of the 'mystery shopper' group in the pilot area were less likely to receive a 'prompt response' from a landlord/agent.
- — The BME group was asked to provide more information than 'white' group.
- — Landlords and agents made discriminatory comments to BME mystery shopper participants, for example stating that they do not want to take the time to undertake the checks.
- — Evidence of discriminatory behaviour among landlords was reported by landlords themselves, as well as agents and tenants, including a tenant refused when they had time-limited leave; preference for tenants where their 'right to rent' was easy to check; and preference for tenants with local accents or who don't appear foreign.
- — The report cites evidence that British citizens without documentation have been adversely affected.
- — Evidence was reported by charities and voluntary organizations of increased homelessness as a result of the scheme (6 organizations); difficulties findings accommodation among those with the right to rent but complicated documentation (seven organizations); and discrimination on the basis of nationality (seven organizations). These are serious allegations and must be adequately addressed.

CLAUSES 12-15

PROPOSED AMENDMENT /STAND PART AND AMENDMENT

Page 8 line 10, leave out clauses 12 to 15 and replace with

(*) Amendment to the Immigration Act 2014

(1) The Immigration Act 2014 is amended as follows:

(a) In section 21 Persons disqualified by immigration status not to be leased premises

(i) leave out subsection 21(2)(a) and replace with:

(a) P requires leave to enter or remain in the United Kingdom but does not have it; and

(aa) paragraph 2A does not apply

(ii) After section 21(2) insert –

(2A) – P retains a right to rent under this section:

(a) for 90 days after P's leave to enter or remain comes to an end; or

(b) until the end of the one year beginning with the date on which P's landlord last complied with the prescribed requirements in respect of P

whichever is longer

(iii) After section 21(4) (b) insert –

(c) is a person who has a retained a right to rent under subsection (2A)

Purpose

To remove the provisions as to residential tenancies in the current Bill and to amend the Immigration Act 2014 to provide protection for landlords and landladies from prosecution when their tenant's leave comes to an end.

Briefing

For reasons to omit the provisions of the current bill, see briefings above.

In the case of the civil penalty, what matters is to carry out an annual check. However, a landlord or landlady commits a criminal offence the moment they are knowingly renting to a person with no right to rent. If I find out on Monday but do not evict until Tuesday, I have committed a crime. If I receive a notice under, for example, new s 33D inserted by clause 13, I cannot evict for 28 days but during those 28 days I am committing a crime (on which point see further the amendment to clause 13 below).

The period also gives those who are privately renting when their leave to enter or remain a period which will allow them to make arrangements to leave the UK or make a fresh application (in accordance with the Immigration Rules, within 28 days of leave ending).

Briefing

The Government's background briefing to the Queen's Speech states:

> *'We will build on the national roll-out of the landlord scheme established in the Immigration Act 2014, and make it easier to evict illegal migrants.'*

When the provisions on residential tenancies were introduced in the 2014 Act, provision was made for landlords and agents to have a statutory excuse to the payment of a penalty notice where the eligibility period in relation to the limited right occupier had not yet expired. The eligibility period was set out at section 27(4) of the Act:

(4) *The length of an eligibility period established or renewed under this section in relation to a limited right occupier is the longest of the following periods—*

(a) the period of one year beginning with the time when the prescribed requirements were last complied with in relation to the occupier;

(b) so much of any leave period as remains at that time;

(c) so much of any validity period as remains at that time.

This period recognised the importance of allowing landlords and, arguably tenants, a period of time after leave may have expired to make arrangements to either resolve their status or leave the UK. This provision specifically enabled landlords to benefit from the 'longest' of the relevant periods.

The new provisions on evictions will empower a landlord to evict a person within the eligibility period if they have been notified by the Secretary of State that a person or persons who are occupying their premises are disqualified from renting under the 2014 Act. Where the person's leave has only just come to an end, the landlord or landlady is likely to receive the notice when the tenant has no leave, and thus to be committing a criminal offence the moment they receive the letter.

Once a person's leave to enter or remain in the UK has ended they have 28 days in which to lodge a fresh application. Where a valid application is made within this time frame, their overstaying will not impact the substantive consideration of their application.

With the removal of appeal rights for most application types and the limited nature of administrative review, an individual may find themselves without leave to remain following the refusal of an application where they are able to show they satisfy the requirements of the Immigration Rules but have made a mistake in their application leading to the refusal.

It is these people who will most commonly utilise the 28 day 'grace period' incorporated into the immigration Rules to rectify this mistake with a fresh application. Although individuals only have 28 days within which to make such an application, those submitted by post will likely not be decided within that 28 day period.

By way of example, UK Visas and Immigration advises on the gov.uk website that a decision on most points based system application will take eight weeks to be made.

This amendment provides a period in which tenants can seek legal advice, take steps to rectify their immigration status by the submission of a further (permitted) application and/or make arrangements to leave the UK should they determine that they have no further basis to remain.

In the absence of such protection, individuals will, in practice, be unable to seek the legal redress foreseen by the 28 day application grace period as it will not be practical to await the outcome of an application without a home.

In the Evaluation of the Right to Rent scheme prepared in response to the pilot scheme in the West Midlands, 109 'illegal migrants' were identified. Of this number, four had an outstanding judicial review, one had made further representations that were being considered, fifteen were being progressed as family cases, twenty eight had outstanding cases, including asylum claims and nine had been granted leave to remain in the UK. This represents 57 of the 109 'illegal migrants' which is 52% of the total. This is a significant figure. As these people are not subject to removal during this period and many may, and indeed some did, obtain the right to remain, it is unclear why they should be subject to eviction proceedings while awaiting the outcome of their legal challenges and/or fresh applications. This amendment provides a buffer period while these applications and challenges proceed.

Further, under the administrative review provisions introduced by the 2014 Act, a person's leave extended under section 3C of the Immigration Act 1971 automatically ends where an administrative review is rejected. They therefore find themselves automatically without leave to enter or remain. Individuals need a period of time in which to seek legal advice where appropriate and thereafter either make arrangements to leave the UK or to make an application to regularise their status.

PROPOSED NEW CLAUSE BEFORE CLAUSE 12

Page 8 line 10, at end insert the following new clause

(*) Amendment of the Immigration Act 2014: Premises shared with the landlord or a member of his family

(1) The Immigration Act 2014 is amended in accordance with subsection (2).

(2) In Clause 20 (Residential tenancy agreement), omit the "and" at the end of subparagraph (b), and insert –

(ba) is not an agreement granting a right of occupation of premises shared with the landlord, licensor or a member of his family, and

Purpose

To exclude from the definition of a residential tenancy agreement those agreements relating to accommodation shared with a landlord or a member of his family, so that individuals who rent out rooms or take lodgers into their homes, as opposed to renting out a whole flat or house, are not part of the right to rent provisions.

Briefing

The Immigration Act 2014 made it compulsory for all landlords and landladies to check the immigration status of those to whom they rent property. This wide provision included individuals who might rent out a room or take in a lodger in order to meet the rent or mortgage on their home. Individuals who rent out a room in this way will be private citizens rather than commercial landlords and often such arrangements are more informal in nature.

People who rent out a room or take in a lodger may be living on a low income. For example, the Government has advised that individuals in receipt of housing benefit and affected by the under-occupancy charge, more commonly known as the 'bedroom tax', should take in lodgers to mitigate its effects.

In 2014, the Secretary of State for Communities and Local Government made the following statement to Parliament:

> ***Graeme Morrice (Livingston) (Lab):*** *Nine in 10 disabled people are cutting back on household bills in order to pay the bedroom tax, and many are now falling into rent arrears. If the Secretary of State were in their position, would he fall into debt or cut back on heating or even eating?*
>
> ***Mr Pickles:*** *There is no evidence of any increase in arrears. A number of things can be considered, including taking in a lodger, obtaining a job and getting help from local authorities, which have, by and large, dealt with the issue in a reasonable way. The Labour party lumbered the taxpayer with an enormous bill as far as the growth in housing benefit was concerned, and it is entirely wrong to pretend that it would not have introduced similar constraints.*[53]

[53] Hansard, 07 April 2014, http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140407/debtext/140407-0001.htm

The Parliamentary Under-Secretary of State, Department for Work and Pensions answered a parliamentary question on the bedroom tax in similar terms:

> ***Lord Freud:*** *We are encouraging people to take in lodgers when appropriate for them. Housing associations and local authorities are looking at that and tend to accept that that is a way of doing it. There is some confusion between strictures against subletting, which is a different matter entirely, but lodging tends to be accepted around the country.*[54]

The Government evaluation of the 'right to rent' scheme does not provide sufficient information to evaluate the impact of the scheme on individuals who take in lodgers or rent out rooms in their own home. The evaluation has however found lower levels of awareness of the requirements under the scheme among smaller-scale and informal landlords:

> *The qualitative research with landlords tended to support the evidence from the survey, with more professional landlords having heard about the scheme, but with many smaller-scale landlords being unaware of it. This was also raised as an issue by other respondent groups in terms of reaching 'hidden landlords' to make them aware of the scheme. This group includes landlords with smaller property portfolios, people with lodgers, landlords who are not members of a landlord association, non-compliant landlords or landlords outside of the pilot area or living overseas. Strategies for reaching these groups might be considered as part of wider roll-out. The mystery shopping research found that informal landlords had some awareness that a scheme had been introduced, but were not always aware of its details.*[55]

People who rent out rooms or take in lodgers face fines or, under this Bill a criminal penalty if they do not comply with the requirements of the 'right to rent' scheme. This is an onerous obligation to place on private citizens. It is also extremely difficult to detect

i) whether anyone is renting a room in a property, for money (it is easy to hide evidence of occupancy and/or payment
ii) Discrimination – there are a host of reasons why you might chose to share your home with one person rather than another and it may be extremely difficult to detect prohibited discrimination

Enforcement against those who take in lodgers is likely to be arbitrary and small scale (enormous resources would be required for any meaningful enforcement). The right to rent scheme is brought into further disrepute if it cannot be enforced.

PROPOSED NEW CLAUSE BEFORE CLAUSE 12

At page 8, line 10, before section 12, insert

(*) Persons disqualified by immigration status or with limited right to rent

(1) The Immigration Act 2014 is amended in accordance with subsections (2) to (3).

(2) Leave out section 21(3).

(3) After section 21(2) insert:

(3A) But P is to be treated as having a right to rent in relation to premises (in spite of subsection (2)) if:

(a) the Secretary of State has granted P permission for the purposes of this Chapter to occupy premises under a residential tenancy agreement; or

(b) P has been granted immigration bail; or

(c) P is to be treated as having been granted immigration bail.

Purpose

To ensure that persons seeking asylum who can afford to rent privately, persons with outstanding applications and persons with outstanding appeals or judicial reviews are able to rent.

Briefing

ILPA has raised with the Home Office our concerns about persons seeking asylum who wish to rent privately. Provision is made in Schedule 3 to the Immigration Act 2014 for accommodation for persons seeking asylum provided by the Secretary of State under section 95 of the Immigration and Asylum Act 1999 to be excluded from the scheme and similarly for accommodation provided for those whose claims have failed and who are accommodated under section 4 of the 1999 Act. No provision is made for asylum seekers who make their own arrangements for accommodation. It was suggested at the integration subgroup that this will be addressed by the Secretary of State's exercising her discretionary powers on a case by case basis through the checking helpline: the landlord/landlady rings the helpline and, without being told that person X is seeking asylum, is given the green light to rent to person X. This is inadequate to address the problem because:

[54] Hansard, 24 June 2014, http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140624-0001.htm#14062437000444

[55] Home Office, *Evaluation of the Right to Rent Scheme: Full evaluation report of phase one*, October 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf, p.17.

i) Discrimination is likely to occur at an earlier stage; you will not be offered the property at all. If I do not turn up with my British citizen passport (and photocopies of same) in my hand, there is a strong chance I shall not get offered the property. But even if I overcome this, why should the landlady/landlord pick up the helpline when all the available evidence is not ambiguous but points clearly to my not having a right to rent?

ii) The all clear from the helpline, without a clear rationale to back it up being explained to the landlord/landlady and at odds with what is said in the guidance (which will all point to the person's not having a right to rent) is unlikely to reassure a landlord/landlady. The duration of the right to rent for example will be unclear, there will be worries that the reply is an error; in short it will look too risky to take the person on as a tenant.

iii) There is a danger that landlords and landladies will seek to extrapolate from what the helpline has told them, assuming that because person X has a right to rent, so does person Y.

If a person cannot find a landlord/landlady prepared to rent to him/her, even though in theory this should be possible, s/he is likely to satisfy the definition of destitution under the 1999 Act and thus become the responsibility of the Home Office, an outcome the Home Office is unlikely to desire both in itself and for the precedent it sets.

The response we were given by Parvaiz Asmat of the Home Office was that the Home Office is reluctant to provide persons seeking asylum with a document that would confirm their right to rent because of concerns about fraud. The Home Office has (understandable) concerns about identifying persons, whether explicitly or indirectly, as seeking asylum. However, he saw our point that a person seeking asylum is in a very different position from a person whose documents are with the Home Office because they are applying for an extension of leave. A person seeking asylum does not have leave, and everything the landord/landlady is reading about the scheme is telling him/her that such persons do not have a right to rent.

Other persons on immigration bail are entitled not to be removed from the UK whilst their applications or appeals are outstanding. These people include those whose fresh applications are being considered by the Home Office and people whose appeals or judicial reviews are outstanding.

If the Bill is enacted, these persons would be classed as being on 'immigration bail' rather than having leave to stay in the UK. Without leave, they would not have the 'right to rent'.

The upshot is that all these persons, under the new Bill, would be unable to rent a property to accommodate themselves and their families, despite not being liable to be removed from the UK. Landlords who do rent to them would face fines and criminal sanctions, and would be given power to evict them.

The practical outcome of the 'right to rent' provisions as they stand is that those who are participating in legal proceedings and who have made valid applications to stay in the UK may be found homeless, or renting from unscrupulous or exploitative landlords/landladies.

The proposed amendment is for people who have been granted immigration bail and "those treated as being granted immigration bail". The latter is intended to include those persons who will be so treated by virtue of Paragraph 10 of Schedule 5 to the current Bill which deals with transitional provisions.

Applications for leave to remain can take up to six months to process, sometimes even longer, particularly where a complex human rights claim is made. After a decision by the Home Office, an appeal or Judicial Review may be lodged to challenge any potential unlawful decision.

By the time an application is decided and appeal rights are exhausted, a person could have been left homeless for years.

It is trite to say that those without anywhere to live will be unable to participate effectively in the application process or in their own legal proceedings.

CLAUSE 12 OFFENCE OF LEASING PREMISES

PROPOSED AMENDMENT

Page 10 line 27, leave out lines 25 to 32 and replace with

(4) Sections 33A to 33C do not apply in relation to a residential tenancy agreement or a renewed agreement entered into before the coming into force of section 12 of the Immigration Act 2014.

Purpose

To ensure that none of the criminal offences are committed in respect of tenancies entered into (or, in the case of renewed tenancies, first entered into) before the offences come into force and thus to ensure that there is no retrospective element to these criminal penalties.

CLAUSE 13 EVICTION

PROPOSED AMENDMENT

Page 11 line 19, after "them," insert

(*) confirm that no occupier is a child of the premises is under 18 years of age

Purpose

To protection families with children from summary eviction under these provisions.

Briefing

Clause 13 gives landlords the power to evict occupiers of their premises where the Secretary of State has given notice to the landlord that the occupiers are disqualified from occupying premises as a result of their immigration status.

The provisions are bizarre and appear unworkable. The Secretary of State must name the occupiers in her notice, yet the persons to be named are (in accordance with Government amendment 16) the persons whom the landlord/landlady as opposed to the Secretary of State, knows to be occupying the premises.

The criminal offences proposed in the Bill give landlords and landladies an additional incentive not to rent to persons without a right to rent or indeed to persons whom they perceive might not have a right to rent. The provisions on eviction do something new; they create new powers in housing law of summary eviction without proper safeguards. ILPA is thus inclined to regard them as the provisions in this part of the Bill likely to have the most grave consequences.

The power to evict under this provision allows for a rapid and summary eviction process and, by new clause 33E(4), excludes the residential tenancy agreement from the safeguards of the Protection from Eviction Act 1977.

Government amendment 15 changes the wording of those named in a residential tenancy agreement who may be occupiers from 'adult' to 'person' with the effect that children named in a residential tenancy agreement may be 'occupiers' and evicted under these provisions. Government amendment 16 retains the use of 'person' for those 'otherwise occupying the premises' and this means that children may be evicted as occupiers under this provision.

The purpose of this amendment is to ensure that children are not identified as 'occupiers' under this provision so that families with children are not subject to a summary eviction process without the normal safeguards that protect against unlawful eviction. This is to ensure that families with children are protected against being made homeless with the associated risks to the safeguarding and protection of children.

The eviction of children and families under these provisions is also likely to have a significant impact on children's social services, housing and homelessness departments. Local authorities will bear the responsibility of supporting and housing families where they are evicted by landlords who are not required to follow the normal eviction processes with the safeguards that these include.

It is not intended by this amendment to make landlords liable for either a civil or criminal penalty whilst proper eviction procedures are pursued for families with children identified by the Secretary of State as being disqualified from occupying premises under a residential tenancy agreement. However, this may be more properly achieved by ensuring that landlords are not subject to civil or criminal penalty whilst appropriate eviction procedures are followed. There are currently no provisions whatsoever in the Bill that protect landlords against penalty whilst they undertake appropriate action following notification by the Secretary of State that the occupiers of their premises are disqualified to do so by their immigration status so this would need to be addressed in any event should these penalties remain.

CLAUSE 13 EVICTION

PROPOSED AMENDMENT

Page 11, line 33 at end insert

() A landlord does not commit an offence under s 33A of this Act during the period of 28 days specified in subsection 4

Purpose

To protect a landlord/landlady from prosecution for renting to a person without a right to rent during the period for which they are prohibited from evicting the tenant under subsection 33D(4).

Briefing

In the proposed amendment above we have suggested that a landlord or landlady should have protection for at least 90 days after a tenant's leave comes to an end.

This amendment deals with a different situation. The tenant might never have had leave, or the tenant's leave might have come to an end years ago, but the landlord or landlady had no reasonable grounds to know this. Having performed the statutory checks, s/he cannot be made liable for a civil penalty. This could happen if, for example, the landlord or landlady were presented with and checked a forged document and could not have detected the forgery.

When the landlord or landlady receives the Secretary of State's notice, s/he has, it is suggested, reasonable grounds to believe that the occupiers of the property do not have a right to rent. At that point s/he is committing a criminal offence. Yet s/he is not allowed to stop committing the offence for 28 days, because eviction cannot be carried out within 28 days.

What will the landlord /landlady do? Evict summarily, to avoid committing a crime, but thus violate 33D(4)? Wait 28 days to evict losing sleep and fearful of prosecution? It may be said that the Crown Prosecution Service would not prosecute in these circumstances. That is, however, unlikely to provide any comfort to those caught by the provisions. The provisions in the Bill simply do not fit together. This is suggestive of haste and makes for bad law.

PROPOSED AMENDMENT

Page 12, line one, leave out from line 1 to line 3 on page 13 (section 33E)

Purpose

To remove the provision which implies into any residential tenancy agreement that the landlord or landlady may terminate the tenancy if the premises are occupied by an adult who is disqualified from renting because of their immigration status.

Briefing

The result of this provision will be forced evictions and homelessness. If an adult in the premises does not have a right to rent, the agreement can be terminated and adults and children made homeless, or forced to turn to those who are prepared to rent to them , whether under exploitative conditions or not, or forced to turn to a local authority for emergency support. Of all the housing provisions in this Bill, this is perhaps the one that should cause the greatest concern.

CLAUSE 14 ORDER FOR POSSESSION OF A DWELLING HOUSE

Page 13, line 6 leave "must" and insert "may"

Purpose

To provide a court with a discretion as to whether or not it orders possession of a dwelling house on the grounds that the Secretary of State has issued a notice confirming that a person does not have a right to rent.

Briefing

This provision has parallels with new s 33D and 33E inserted by Clause 33 and is equally grave. All the same problems arise. That a person is before a court could provide some protection, but given that the ground for possession is mandatory the court has no choice but to order possession. The amendment offers an opportunity to raise all the points raised in briefings above, on protection of children, on summary eviction, on landlords and landladies being made criminals the moment they receive a notice, etc.

NEW CLAUSE AFTER CLAUSE 14

Proposed amendment

Page 16, line 2, after Clause 14 insert the following new clause

(*) Eligibility for housing and homelessness assistance

The Secretary of State shall make provision by regulations to ensure that a person granted leave to enter or remain under section 3 of the Immigration Act 1971, whether under rules made under that section or otherwise, who is eligible for public funds shall also be eligible for housing and homelessness services.

Purpose

A probing amendment to elicit an assurance from the Minister that regulations in England will be amended to reverse changes that have produced the unintended consequence that young people and households with children given leave to remain in the UK which allows them recourse to claim all relevant benefits have unintentionally been made ineligible for local authority housing and homelessness services. Also to alert the devolved administrations to the problem.

Briefing

As the result of changes to immigration law and practice, some young people and households with children given leave to remain in the UK that allows them to claim all relevant benefits have unintentionally been made ineligible for local authority housing and homelessness services. This leaves them disadvantaged but also creates a problem for social services who must house them in emergencies if housing departments cannot.

The problem can be solved by small amendments to the housing eligibility regulations and this amendment is designed to elicit an assurance from the Minister that such amendments will be made in respect of England and to alert the devolved administrations to the problem.

The eligibility rules for people "subject to immigration control" have been framed so that they ensured that people who have leave that allows "recourse to public funds" are generally eligible for council housing and homelessness services. Benefits rules do the same, but are framed differently. That has been confirmed as the policy intention by various governments and the relevant departments (Home Office, DCLG, DWP).

The housing/homelessness eligibility rules name "classes" of people who are eligible for housing and homelessness services, and, since 1996, have covered people with indefinite leave, refugee status, humanitarian protection, and, in class B, people with "discretionary leave": limited leave given outside the immigration rules. Leave outside the rules was generally granted to all sorts of people, but leave that allowed recourse to public funds has generally been for people (including children) who had applied for asylum or for leave on human rights grounds and had not been given refugee status or humanitarian protection.

In 2012, the Supreme Court ruled that the Home Secretary could not use discretionary leave so freely, and that generally leave should be given within the Immigration Rules.[56] The Home Office then started bringing a range of cases within the rules. These included people given leave to remain because of long residence (such as families where children had lived seven years or more in the UK) and unaccompanied asylum seeking children.[57]

The problem is that the housing eligibility rules have not kept pace: the Housing and Homelessness (Eligibility) (England) Regulations 2006 SI 1294[58] define eligibility for people subject to immigration control by "classes" (regulations 3 and 5). Define class B as: "a person—

— who has exceptional leave to enter or remain in the United Kingdom granted outside the provisions of the Immigration Rules; and

— whose leave to enter or remain is not subject to a condition requiring him to maintain and accommodate himself, and any person who is dependent on him, without recourse to public funds;"

The Welsh eligibility rules[59] are similar (regulations 3 and 5 again):

Class B – a person—

(i) who has exceptional leave to enter or remain in the United Kingdom granted outside the provisions of the Immigration Rules; and

(ii) whose leave to enter or remain is not subject to a condition requiring that person to maintain and accommodate themselves, and any person who is dependent on that person, without recourse to public funds;

Scottish and Northern Irish regulations follow the same pattern.

This leaves many children and young people and, where relevant, their families or carers ineligible for housing although able to claim public funds. They are also ineligible for homelessness a service, which means that they have to rely on relevant social services provision to get emergency accommodation or longer term housing in emergencies.

In England the change largely went unnoticed, because it was a change to immigration rules, not housing, but recently some housing authorities have started refusing homeless applications from affected households and this may now be challenged in the courts because it clearly was not the intention of parliament when the eligibility rules were passed.

The Home Office has confirmed that it was an oversight and in 2013 it was understood that the Department for Communities and Local Government would bring forward an amendment to put it right. However, since then the eligibility regulations have been amended at least once without addressing this problem.

The Welsh Housing Act was due to come into force at the end of April 2015 with new eligibility regulations issued under Schedule 2 but the Welsh Government simply repeated the current eligibility regulations as quoted above.

[56] R (on the application of Alvi) (Respondent) v Secretary of State for the Home Department (Appellant) [2012] UKSC 33.

[57] They came into effect on 6th April 2013 via HC1039. Among others, they amend the Rules to "include the requirements to be met for limited leave to remain as an unaccompanied asylum seeking child to be granted". These children are now granted leave under para 352ZC-352ZE of the Immigration Rules.

[58] http://www.legislation.gov.uk/uksi/2006/1294/pdfs/uksi_20061294_en.pdf

[59] The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 No. 2603 (W. 257)

There is a need to tidy up the regulations so as to remove this unintended effect and also future proof them so that any more Home Office or case law changes do not cause unintended effects for housing and social services authorities.[60]

The necessary change is very simple: the relevant regulation would now describe Class B as

(b) Class B — a person—

(i) who has leave[61] to enter or remain in the United Kingdom; and

(i) whose leave to enter or remain is not subject to a condition requiring him to maintain and accommodate himself, and any person who is dependent on him, without recourse to public funds;

The effect of this is very simple: whether a person is granted leave within or outside the Immigration Rules, if they have recourse to public funds then they will be eligible. If they do not have recourse they will not be eligible. It removes the need to amend the regulations every time the Home Office creates a new category, and brings the housing and homelessness eligibility rules in line with the Home Office rules on recourse to public funds and eligibility for benefits.

CLAUSE 15 EXTENSION TO WALES, SCOTLAND AND NORTHERN IRELAND

PROPOSED AMENDMENT

(1) Immigration Act 2014 is amended as follows:

(2) In section 76 Extent after subsection (2) insert

(2A) Sections 20 to 37 and Schedule 3 extend to England only unless an order is made under this section but no order may be made under this section:

(a) Extending the provisions to Scotland without the consent of the Scottish Ministers;

(b) Extending the provisions to Wales without the consent of the Welsh Assembly;

(c) Extending the provisions to Northern Ireland without the consent of the Northern Ireland Assembly.

Purpose

To remove the power to extend by regulation the provisions of this Act on residential tenancies beyond England and to restrict the provisions of the Immigration Act 2014 pertaining to England unless the devolved administrations consent to their further extension.

Briefing

The right to rent provisions have so far only been extended to Birmingham and the surrounding areas so there is no difficulty in restricting the "extent" section of the 2014 Act at this time.

The provisions in the current Bill do not extend beyond England but there is power for the Secretary of State to extend them by secondary legislation. The advantage of this is that insofar as they are incompatible with human rights they could be struck down, rather than just declared incompatible, but the disadvantage is that they are not subject to the same detailed scrutiny by parliament as the provisions for England and Wales. The way the provisions have been written is perhaps the sign of a rushed Bill. The Explanatory Note records the view that a legislative consent motion would not be required for this. If, contrary to ILPA's view, it is desired to extend these provisions this should be done on the face of primary legislation

Although immigration is a reserved matter the right to rent scheme impacts upon areas within the competence of the devolved administrations including matters pertaining to housing, town and country planning and economic development. It is therefore desirable that the devolved administrations can control the extension of the right to rent scheme, in its entirety to their areas.

Driving

PROPOSED AMENDMENT/STAND PART

Page 16 line 32, leave out clauses 16 and 17

Purpose

To remove from the Bill the provisions on driving licences and thus maintain the status quo

[60] For example, the English regulations recently had a new class added, to cover the small numbers of people who will come to the UK under the "Afghan interpreters resettlement programme". The proposed change would have made this unnecessary.

[61] Or "who has limited leave to remain or enter."

Briefing

The Bill would create a new strict liability criminal offence of driving whilst not lawfully resident in the UK is proposed, Immigration officers and constables will have powers to impound vehicles which are owned by the person suspected of not having leave or vehicles which that person has driven. Vehicles can be disposed of.

Powers that would enable police, immigration officers and other persons (unspecified) authorised by the Secretary of State to enter premises to search for and seize driving licenses and to search persons for these would sit as well in the enforcement section of the Bill. The test is one of reasonable grounds for believing, rather than knowledge that a person is in possession of a driving licence and that the person is not lawfully resident in the UK. Premises owned or occupied by the person could be searched, but so could the premises in which they were encountered, either without prior authorisation from a senior officer. The authorised person could seize and retain driving licences. There is an obligation to return them only where it is decided not to revoke the licence or the person wins their appeal against revocation of the licence. Normal powers to have access to and copy seized material do not apply. The Explanatory Note states that this is so that a person cannot make use of a photocopy to secure goods and services, but there are also questions about whether there can be a fair appeal when a person cannot examine the evidence held against them.

The case for the extension of the provisions as to driving licences has not been made out.

Bank accounts

CLAUSE 18

PROPOSED AMENDMENT/STAND PART

Page 22 line 24, leave out line 24 to line 33, and leave out Schedule 3

Purpose

To remove from the Bill the restrictions on access to bank accounts and thus maintain the status quo.

Briefing

Banks and building societies will be required periodically to check the immigration status of holders of some 76 million existing accounts and to notify the Home Office if an account holder does not have the correct legal status. In the absence of legal status accounts can then be frozen or closed.

Banks are already required to perform checks on the identity and residence,[62] and the effect of the 2014 Act on new accounts is that an individual cannot open an account if she or he requires leave to remain in the UK but does not have it.[63]

What is new in the Bill is that these checks will be made on existing accounts with all the existing linkages that will have built up around them (e.g. rent, mortgages, utilities, benefits, child maintenance, disability support, salaries, savings etc).

Shortcomings in Home Office information, with the out of date databases and problems of manual data entry previously described by the Home Secretary, and poor quality decision-making, will inevitably result in mistakes. In addition a person may also become an overstayer by a minor mistake in an application or over a deadline, or being unable to apply for further leave due to exploitative individuals having control over their immigration status document or passport.

An overstayer attempting to fix these mistakes with a new application will be prevented from doing so because immigration forms require payment and invite applicants ("visa customers" in the new lingo) to use debit and credit cards. Where no fee is paid the application is declared invalid. With frozen or closed accounts, this encourages the creation of a subclass of people in the UK who will become dependent on criminal loan sharks, and other exploitative individuals exercising control to migrants caught in these situations.

The impact assessment has recognized at paragraph 64 that firms are more risk adverse, that certain categories of customers find it difficult to open bank accounts.[64] These provisions will have a disproportionate impact on certain racial groups, with severe consequences for individuals whose bank accounts are wrongly closed or frozen mistakenly creating many other associated problems such as homelessness and adverse impact on children. Such measures could contribute to a climate of misunderstanding and ethnic profiling.[65]

[62] By virtue of the Third and, now, Fourth, Money Laundering Directives; with the Proceeds of Crime Act 2002 (POCA) as amended by the Serious Organized Crime & Police Act 2005 supplementing the 'anti-terror' measures already in place.

[63] Section 40 of the Immigration Act 2014, supplemented by Immigration Act 2014 (Bank Accounts)(Amendment) Order 2014; the Immigration Act 2014 (Bank Accounts)(Prohibition on Opening Current Accounts for Disqualified Persons) Order 2014; and the Immigration Act 2014 (Bank Accounts) Regulations.

[64] Immigration Bill: tackling existing current accounts held by illegal migrants, 03 August 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462233/Immigration_Bill_bank_accounts_impact_assessment.pdf

[65] Alabama's HB56 2011 has very similar powers and brought with it a huge increase in discrimination. The most high provide examples include the false arrest of a Mercedes Benz executive and a Japanese Honda worker (http://www.msnbc.com/msnbc/undocumented-workers-immigration-alabama).

There are provisions for appeals against freezing orders but there are no similar appeal provisions against the decision to close accounts. There are also no safeguards to retrieve funds from accounts subsequently found to be closed in error; no provisions for loss of interest on those funds, and no compensation provisions for the associated problems arising from closed accounts (e.g. loss of salary/benefits that could not be credited to the account; repossession of a house due to failure to keep up with mortgage payments etc.).

While an account holder can appeal a freezing order, there is no compensation for losses that arise should the freezing order be overturned. There should be strict timetables for appeals to be heard and, as the individual would not have access to her or his funds, provisions should be made for legal aid funding to cover representation at the appeal.

While these provisions focus on those who do not have legal status, the definition of disqualified persons does not exclude, and therefore provide protection, to those who have an outstanding immigration appeal or continuing legal challenge to their legal status.

The provisions also do not protect individuals who choose to leave the UK after their leave has run out. Such individuals may have saved up funds derived during periods of lawful employment. These individuals will find themselves prevented from accessing their lawfully derived money.

According to the impact assessment, in which it is acknowledged that numbers of are very rough estimates indeed, numbers of genuinely affected accounts are anticipated to be small, c 900 matches per year after the first year are anticipated. The rewards of the procedure appear disproportionately small compared to the effort involved.

This measure will instead have a substantial negative impact in practice, impeding or excluding the access of lawful migrants and citizens to accounts, to add further to problems of exploitation and criminal activity. Those determined to evade controls are likely to circumvent these provisions by establishing and accessing overseas accounts.

With the associated consequences of freezing or closing an account, the proposals may potentially engage Articles 6 (the right to a fair trial), 8 (right to respect for private, home and family life), and Article 1 Protocol 1 (protection of property) as well as Article 14 (right to non- discrimination in the enjoyment of Convention rights) of the European Convention on Human Rights.

Bank accounts

SCHEDULE 3 PARAGRAPH 40G CLOSURE OF ACCOUNTS NOT SUBJECT TO FREEZING ORDERS

PROPOSED AMENDMENT

Page 72, Line 7, at end insert –

(8A) The Secretary of State shall provide any individual she determines to be a disqualified person with the information resulting from her checks under 40C(1) that led to this determination.

(8B) The Secretary of State shall provide an individual she determines to be a disqualified person, and any person or body by or for whom the relevant account is operated, with compensation in accordance with [new clause (*)], where that determination is found to have been incorrect.

PROPOSED NEW CLAUSE

Page 72, Line 13, insert the following new clause

(*) Compensation

(1) This section applies where:

(a) a person is determined by the Secretary of State (following a check under 40C(1)) to be a disqualified person;

(b) the Secretary of State provides notification to the bank that the person is a disqualified person under section 40C(3) or 40D(7);

(b) the bank closes an account or prevents an account being operated in compliance with section 40G; and

(c) the determination by the Secretary of State under 40C(1) is found to have been incorrect.

(2) Where subsection (1) applies, the Secretary of State shall pay compensation to:

(a) a person incorrectly determined to be a disqualified person;

(b) any person or body by or for whom the relevant account is operated.

(3) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State before the end of the period of two years beginning with the date on which the information resulting from its checks under 40C(1) is provided to the person incorrectly determined to be the disqualified person.

(4) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.

(5) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.

(6) If the Secretary of State determines that there is a right to such compensation, the sum of £10,000 is paid.

Purpose

To make provision for statutory compensation from the Secretary of State to compensate the holder of a bank account where their account is closed or suspended by their bank in reliance on incorrect information provided by the Secretary of State as to the status of the account holder as a disqualified person.

Briefing

These provisions are designed to ensure that individuals are compensated for losses and harm caused by the closure or suspension of their bank accounts as a result of mistakes made by the Secretary of State in identifying the account holder as a disqualified person.

Under 40C(3) the Secretary of State may choose not to apply to the Court for a freezing order in respect of an account and instead notify the bank that the account holder is a disqualified person placing the bank under a duty to close the account or to prevent that account from being operated. There will therefore be no independent oversight by a Court or any other mechanism of the notification by the Secretary of State that leads to an account being closed or prevented from being operated. There will therefore be no opportunity for an individual to challenge the closure of their account or to challenge incorrect or unreliable information that has led to the closure of that account.

Throughout the Bill, it is assumed that Home Office information databases are consolidated, correct and up-to-date and that Home Office staff will provide correct information to banks as to whether an individual is a 'disqualified person' for the purpose of holding a current account.

In ILPA's experience, however, these remain significant and ongoing problems within the Home Office. The following case examples, drawn from experience of the Home Officer Employers' Checking Service, highlight some of the problems in Home Office record-keeping and in the accuracy or reliability of information provided by the Home Office:

> *A worker was suspended by their employer because an application was still not showing on the database against which the Home Office makes its checks despite the payment for the application having been taken more than three years previously. The employer was told that she did not have permission to work.*
>
> *In March 2014 a man made an application on form FLR(O) for further leave to remain. The application was rejected shortly afterwards as being invalid because the Home Office said that it was made on the wrong form. It was however the correct form so, after correspondence failed to resolve the issue, his legal representatives issued a pre-action protocol letter. As a consequence of that letter the Home Office conceded the application had been made on the correct form and would be considered. However the Home Office computerised records did not show that the client's application was pending until the beginning of September by which time the man's employer had made a check with the Employment Checking Service which stated that he had no right to work. He lost his job.*
>
> *A family member of an EEA national was refused a certificate confirming permanent residence, in circumstances where there should have been no doubt that she had a right of residence under European Union law. She was told by the Home Office that she had no status.*
>
> *The Parliamentary and Health Service Ombudsman upheld a complaint by an EEA national who was unable to prove his right to work whilst UK Visas and Immigration dealt with his application for a permanent residence card after exercising EU treaty rights in the UK as a worker for five years. After submitting his application in May 2012, the individual was sacked from his job in July 2012 when the Employer Checking Service told his employer that it could not confirm his right to work.*[66]

Under the provisions of the Bill, individuals whose bank accounts are closed by the Secretary of State will have no means of preventing the closure or the suspension of their account and, at the same time, no form of redress against the Secretary of State if their account is closed or suspended by their bank in reliance on inaccurate information provided to it by the Secretary of State.

The new paragraph 40G(8A) proposed enables the person identified by the Secretary of State as a disqualified person to receive the information that formed the basis of that assessment so that the individual has the

[66] Examples excerpted from: *Response of the Immigration Law Practitioners' Association to the Department of Communities and Local Government consultation Tackling Rogue Landlords and improving the private rental sector*, 20 August 2015, http://www.ilpa.org.uk/resources.php/31308/ilpa-response-to-the-department-of-communities-and-local-government-consultation-on-tackling-rogue-l

opportunity to correct any inaccuracies. The individual concerned would not otherwise receive this information from the bank. Without this duty, the Secretary of State may delay in responding to enquiries and rectifying mistakes made, causing increased disruption to the individual whilst their bank account is closed or suspended.

The new clause proposed, allowing for the provision of compensation, enables some form of redress and restitution for persons affected by the closure or suspension of the bank account and incentivises good administration on the part of the Secretary of State.

The statutory compensation scheme proposed above is based on the provisions under s.133 Criminal Justice Act 1988 for compensation for miscarriages of justice. The sum of £10,000 is proposed for the purposes of debate and could be changed.

Written evidence submitted by ILPA (IB 14C)

ILPA DRAFTING GROUP PROPOSED AMENDMENTS FOR HOUSE OF COMMONS COMMITTEE
PART 3 ENFORCEMENT

CLAUSE 19 *powers in connection with examination, detention and removal*

PROPOSED AMENDMENT

Clause 19, page 23, line 10, at end insert —

"(2A) In paragraph 2(2) after "examine" insert "at the point of entry into the United Kingdom."

Purpose

Schedule 2, paragraph 2 of the 1971 Act (ostensibly a power dealing with individuals on arrival in the UK for the purposes of determining whether they have, or should be given leave to enter or remain) has been used by the Home Office as justification for conducting speculative, in-country spot-checks involving 'consensual interviews'. This proposed amendment would expressly limit this power to examination at the point of entry.

Briefing

ILPA supports this proposed amendment, which has been proposed by Liberty as "end speculative spot check".

The Home Office Enforcement Guidance and Instructions at Chapter 3124 rely on the (dubious) authority of Singh v Hammond [1987] 1 All ER 829, [1987] Crim LR 332 as authority for its stop and search operations, for example at tube stations.

The Home Office takes the 1987 case of *Singh v Hammond* as authority for the proposition that Schedule 2, paragraph 2 examinations in relation to those 'who have arrived in the United Kingdom'30 can be carried out in-country. Its enforcement guidance and instructions provide at Chapter 31

> In *Singh v Hammond*, the Court held that:
>
> *'An examination [under paragraph 2 of Schedule 2 to the Immigration Act 1971] ... can properly be conducted by an immigration officer away from the place of entry and on a later date after the person has already entered ... if the immigration officer has some information in his possession which causes him to enquire whether the person being examined is a British citizen and, if not, ... whether he should be given leave and on what conditions.'*

The Enforcement Guidance and Instructions go on to provide

> *Reasonable suspicion that an individual may be an immigration offender could arise in numerous ways but an example might be where an individual attempts to avoid passing through or near a group of IOs who are clearly visible, wearing branded Immigration Enforcement clothing, at a location which has been targeted based on intelligence suggesting that there is a high likelihood that immigration offenders will be found there. This behaviour could not necessarily be considered to be linked to, for example, evading payment of the train fare if IOs are wearing body armour or other items of work wear which clearly show which agency they belong to. In such circumstances the IO could legitimately stop the individual and ask consensual questions based on a reasonable suspicion that that person is an immigration offender*
>
> *IOs should not engage with and question all persons in an attempt to demonstrate that they are undertaking these operations in a non-discriminatory manner. Stopping or requesting identification from all individuals in a particular location is not consistent with stopping only those people in relation to whom the IO has a reasonable suspicion that they may be an immigration offender. Instead, IOs must be able to demonstrate and record the objective evidence on which they base the 'reasonable suspicion' which forms the basis for their initial engagement with an individual in all*

cases. The reasons recorded should be sufficient to demonstrate that their actions are compliant with the Equality Act 2010 (see 31.19.5).

In short, any of us, anywhere, if we so much as seek to avoid crossing the path of an immigration officer, can be subject to such powers unless and until such time as we are able, if we are, to establish that we are British Citizens or Commonwealth citizens with a right of abode (see Section 143 of the Immigration and Asylum Act 1999 as amended by Schedule 8).

CLAUSE 20 SEARCH OF PREMISES IN CONNECTION WITH THE IMPOSITION OF A CIVIL PENALTY

PROPOSED AMENDMENT/STAND PART

Clause 20, page 25, line 11, leave out from line 11 to page 26, line 11 (Clause 20)

Purpose

To remove powers to search any premises for documents which might be of assistance in determining whether an employer or a landlord/landlady is liable to the imposition of a civil penalty, to seize and retain those documents.

Briefing

This clause creates a power for an immigration officer lawfully on any premises, be these a private home, a shop or a place of business, to search that premises without a warrant if the immigration officer has reasonable grounds for believing that there are documents which might be of assistance in determining whether an employer or landlord/landlady is liable to the imposition of a civil penalty on those premises. Such documents could include an employer's personnel and other records or a landlord/landlady's rent book or diary.

Under existing provisions, augmented by this Bill, an employer, employee or landlord/landlady can be guilty of a criminal offence. The Bill proposes to make it a criminal offence to work without permission. Remaining in the UK without leave is already a criminal offence. Paragraph 25A of Schedule 2 to the Immigration Act 1971 provides powers of entry and search of premises for the purposes of finding and retaining documents which may establish the person's identity, nationality or citizenship, or the place from which he or she has travelled to the UK or intends to travel from the UK. The powers it confers on immigration offers were extended as recently as last year, by Schedule 1 to the Immigration Act 2014. Inter alia, paragraph 3(3) of that Schedule extended the premises which may be entered and searched from the premises on which a person was found, or which he or she controls or occupies to other premises, but only under the authority of a warrant issued by a justice of the peace if certain conditions are met. These conditions essentially described circumstances where it is not practicable to seek and obtain the permission of whoever owns, or is entitled to enter, these premises.

A document may be retained only be retained under these amendments for such time as an immigration officer has reasonable grounds for believing that the arrested person may be liable for removal and the document may facilitate the person's removal.

The Schedule also amended Section 146(1) of the Immigration and Asylum Act 1999 to permit immigration officers to use reasonable force in exercising powers under any of the Immigration Acts past, present and future, including any Act resulting from this Bill.

The powers of an immigration officer are set out in Chapter 16 to the Home Office Enforcement Instructions and Guidance.[67] It is not a straightforward document to understand if one is not familiar with the powers in the first place but it gives an idea of just how extensive the powers are. Members of the Committee should request a more detailed version of the tables therein so that they can properly understand existing powers of search, seizure and retention of documents.

Immigration Officers already have extensive powers to search without warrant in connection with a criminal offence. Thus what is envisaged here is to give them powers to search premises without a warrant in circumstances where they do not have any reasonable suspicion that a criminal offence has been committed. There is no restriction in the clause authorising an immigration officer to act only where it is not practicable to obtain a warrant etc.

Powers of search of private homes and places of business of citizens and others in connection with a civil infraction are disproportionate.

Immigration Officers cannot be relied upon to exercise these powers responsibly. In October 2014, in *R v Ntege et ors*,[68] a prosecution of persons accused of arranging sham marriages, His Honour Judge Madge stayed the prosecution because of both bad faith and serious misconduct on the part of the prosecution. He held "I am satisfied that officers at the heart of this prosecution have deliberately concealed important evidence and lied on oath."

[67] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330367/Chapter16_v6.pdf
[68] See www.ilpa.org.uk/resources.php/30347/r-v-ntege-and-others-on-abuse-of-process-by-immigration-officers-21-october-2014

In *Abdillaahi Muuse v Secretary of State for the Home Department* [2010] EWCA Civ 453 the Court of Appeal concluded that the conduct of what was then the Immigration and Nationality Directorate and HM Prison Service in the unlawful imprisonment of Mr Muuse *"was not merely unconstitutional but an arbitrary exercise of executive power which was outrageous"*. Indeed, it is clear that each of the Lord Justices considered that the Secretary of State was fortunate to avoid a finding of reckless indifference to legality, which would have established misfeasance in public office by officials of his department.

At paragraphs 73 and 74 of the judgment, Thomas LJ lists the key actions or omissions on the part of the officials and of the department which the Court found to exhibit the outrageous nature of the conduct of the officials and the department in this case. In the paragraphs that follow, Thomas LJ sets out what has been done to address the inevitable concerns arising from the findings of fact in this case. The Court's conclusion, justifying the grant of exemplary damages in the case, was that:

> *"Given the absence of Parliamentary accountability for the arbitrary and unlawful detention of Mr Muuse, the lack of any enquiry and the paucity of the measures taken by the Home Office to prevent a recurrence, it is difficult to see how such arbitrary conduct can be deterred in the future and the Home Office made to improve the way in which the power to imprison is exercised other than by the court making an award of exemplary damages."*

The Guardian and The Observer newspapers covered allegations of rape, abuse and ill-treatment at Yarls Wood removal centre.[69] It was suggested in those cases that an attempt was made to remove the victims from the jurisdiction before they could bring a case. Such allegations are not new. We recall for example the comments of Mr Justice Munby in *R (Karas and Miladinovic) v Secretary of State for the Home Department* [2006] EWHC 747 (Admin):

> *I am driven to conclude that the claimants' detention was deliberately planned with a view to what in my judgment was a collateral and improper purpose – the spiriting away of the claimants from the jurisdiction before there was likely to be time for them to obtain and act upon legal advice or apply to the court. That purpose was improper. It was unlawful. And in my judgment it renders the detention itself unlawful.*
>
> *What the present case and others like it reveal, in my judgment, is at best an unacceptable disregard by the Home Office of the rule of law, at worst an unacceptable disdain by the Home Office for the rule law, which is as depressing as it ought to be concerning.*

CLAUSE 24 SEARCH FOR NATIONALITY DOCUMENTS BY DETAINEE CUSTODY OFFICERS ETC

PROPOSED AMENDMENT

Clause 24, page 30, line 13, leave out lines 13 to 16

PROPOSED AMENDMENT

Clause 24, page 30, line 17, at beginning insert "A strip search"

Purpose

The first amendment removes the power to conduct a strip search. The second amendment introduces an express prohibition.

Briefing

Give the very grave concerns about the treatment of immigration detainees, including about sexual abuse (see further the annex), it is not acceptable to give detainee custody officers powers of strip search. The potential for abuse is enormous and those being searched might previously have been stripped as a prelude to torture or other treatment. A search may not be carried out in the presence of a person of the opposite sex, but can it be carried out by such a person? Given that the powers can be exercised in a young offenders' institution, is it proposed that a child could be strip searched? What of a child in a family detained?

The specific mention of reasonable force (not in connection with this power) in paragraph ((10) provides no reassurance as in the Immigration Act 2014 immigration officers were given powers to use reasonable force in carrying out any of their functions. Commenting on that power, Lord Ramsbotham, former HM Chief Inspector of Prisons and former chair of an independent commission on enforced removals said at second reading of the Bill that became the Immigration Act 2014:

> *"I do not believe that paragraph 5 of Schedule 1 which allows untrained and unlicensed immigration officers to use unspecified but allegedly 'reasonable force' when there is such an authentic catalogue of unreasonable force being used by those on Home Office contracts, including a charge of unlawful killing, should be allowed to stand. I go further by suggesting that it would be wholly irresponsible of*

[69] *Yarl's Wood affair is a symptom, not the disease*, Nick Cohen, The Observer, 14 September 2013.

> *this House not to try and ensure that current practice is wound up in favour of something more akin to our claim to be a civilised nation"*[70]

PROPOSED AMENDMENT

Clause 24, page 30, line 45 leave out from "might" to the end of line 3 on page 31 and replace with

"__

(a) establishes a person's nationality or citizenship"

Purpose

To narrow the definition of nationality document to mean a passport or identity card.

Briefing

By Clause 24 detainee custody officers, prison officers and prison custody officers are given powers to search for nationality documents. "Nationality document" is broadly defined to mean a document which "might" establish a person's nationality, identity or citizenship or indicate the place from which a person has travelled to the UK or to which they intend to go. Under this definition an air ticket could be a "nationality document". So could a diary. So could a tourist brochure or a lonely planet guide.

The powers in subsection 24 exist if "the Secretary of State has reasonable grounds to believe a relevant nationality document" will be found if the power is exercised" (clause 24(4)). Given the breadth of the definition, clause 24 (4) appears to provide no restriction or safeguard at all. If what the Secretary of State wants is the power to rifle through the possessions of detainees at will, then that is what she should ask parliament for and that is what should be discussed.

What is a document which "might" establish a person's nationality, identity or citizenship? Is it what we should understand as an identity document, with the "might" indicating that the document may not be genuine? Or are a broader range of personal documents envisaged: a signed letter purporting to be from a parent or sibling etc.? Powers to search, including to strip search, persons in detention, where there have been allegations of the most serious abuse, as detailed in the annex are being given to search for nationality documents.

Lord Ramsbotham, former HM Chief Inspector of Prisons and former chair of an independent commission on enforced removals said at second reading of the Bill that became the Immigration Act 2014:

> *"I do not believe that paragraph 5 of Schedule 1 which allows untrained and unlicensed immigration officers to use unspecified but allegedly 'reasonable force' when there is such an authentic catalogue of unreasonable force being used by those on Home Office contracts, including a charge of unlawful killing, should be allowed to stand. I go further by suggesting that it would be wholly irresponsible of this House not to try and ensure that current practice is wound up in favour of something more akin to our claim to be a civilised nation"*[71]

We provide further details of abuse and other problems in immigration detention in the annex to this briefing to try to give some sense of what the cases involved and also commend to you the evidence submitted to the detention inquiry conducted by the All Party Parliamentary Groups on Refugees and Migration.[72]

It is against this background that the proposals extensions to enforcement powers in Part 3 should be evaluated.

CLAUSE 25 SEIZURE OF NATIONALITY DOCUMENTS BY DETAINEE CUSTODY OFFICERS

PROPOSED AMENDMENT

Clause 25, page 31, line 28, leave out lines 38 to 40

Purpose

To remove the proposed power for the Secretary of State to direct an officer to dispose of a seized passport or other "nationality document in such a manner as she directs if she thinks that it would not be appropriate to return it.

PROPOSED AMENDMENT

Clause 25, page 32, line 12, leave out lines 12 to 14

[70] *Hansard*, 10 February 2014: Column 515.
[71] *Hansard*, 10 February 2014: Column 515.
[72] http://detentioninquiry.com/

Purpose

To remove the proposed power for the Secretary of State to direct an officer to dispose of a passport or other "nationality document" that "comes into her possession" in such a manner as she directs if she thinks that it would not be appropriate to return it.

Briefing

Under the law of many countries, property in a passport vests in the issuing authority. It is not the property of the Secretary of State to direct be disposed of as she directs. A wider range of documents are envisaged by this clause than passports issued by States, but they are among the documents captured by the very wide definition of a "nationality document" at Clause 24(15).

Will the Secretary of State notify a person of the disposal of their passport ?

Will the Secretary of State in cases where this does not present a danger to an individual (e.g. an asylum case) return the document to the issuing authority?

How will the Secretary of State determine that the return the document to the issuing authority does not present a danger to a person?

CLAUSE 27 AND SCHEDULE 3 AMENDMENTS TO SEARCH WARRANT PROVISIONS

GOVERNMENT AMENDMENT 24, 25 28-30

Stated purpose

To provide that the definition of "specific premises warrant" in section 28K(13A) of the Immigration Act 1971 inserted by paragraph 5(8) of Schedule 4 to the Bill applies to any warrant under that Act which is not an all premises warrant.

Briefing

The amendment betrays the haste with which instructions have been given to those drafting the Bill. If so many errors have been discovered at an early stage it does not bode well for the clarity of the legislation or its fate in the courts.

Nor does it contribute to democratic scrutiny when the explanation is so opaque. It is unclear whether it is intended that

(a) a specific premises warrant is always for a single premises

or

(b) a specific premises warrant is for a warrant in which all premises to be entered are specified, as opposed to a multiple premises warrant where premises as yet unknown can be entered.

A warrant should be applied for each set of premises it is proposed to enter. Premises should be identified in the warrant. ILPA opposes the amendment.

In his March 2014 report An inspection of the use of the power to enter business premises without a search warrant, the Chief Inspector of Borders & Immigration, March 2014 examined powers of entry without a warrant. In 59% of the cases in his sample entry without warrant had been effected when the required justification for entry without warrant was not made out and in a further 12% the evidence on file did not allow him to determine whether it was made out or not. Recording was inadequate.

Failure to comply with guidance was widespread. In only 5% of cases was there evidence that whether to apply for a warrant had been considered. Speculative grounds were replied on and training was inadequate, with managers as well as staff under them not displaying knowledge of the correct procedures.

In the circumstances, anything that reduces the scrutiny the courts can bring to immigration officers powers of entry and search is undesirable.

GOVERNMENT AMENDMENTS 49 to 53

Stated purpose

To provide that provisions regarding warrants in sections 28J and 28K of the Immigration Act 1971 as amended by Schedule 4 also apply to a warrant obtained for entering premises to detain a vehicle.

Briefing

These amendments are concerned with the matters that must be specified when applying for a multiple entry warrant. They extend them to cases where it is proposed to detain a vehicle in connection with the new offence of driving when not lawfully present inserted by Clause 17. ILPA's objections are to multiple entry warrants (and to the new driving offence and attendant power to detain a vehicle) rather than the extension of

the procedure for multiple entry warrants to multiple entry warrants applied in connection with the detention of a vehicle.

GOVERNMENT AMENDMENTS 26 and 27

Stated purpose

To reflect Scottish criminal law by removing the requirement for immigration search warrants obtained in Scotland to be returned to the clerk of the district court or the sheriff clerk after they have been executed, allowing for them to be retained for use by the Procurator Fiscal in court.

Briefing

This continues the "we have not got time for Scotland" theme evidenced by clauses such as clause 15. It is evidence that clauses have been drafted without taking the situation in Scotland into account. While the drafting can be rectified, the amendment evidences that there has not been consideration of whether the provisions are suitable for Scotland, including whether they might have adverse effects on devolved matters such as criminal law.

ILPA suggests that the amendments should not be accepted at this time but that time should be provided to discuss them with the devolved administration and those Scots MPs leading on immigration matters at Westminster.

GOVERNMENT AMENDMENT 54

Stated purpose

This amendment provides for the supplementary provisions about warrants in sections 28J and 28K of the Immigration Act 1971 to apply to warrants issued under Schedule 5 for entry into premises to search for and arrest named persons.

Briefing

If warrants are to be issued, all safeguards should be applied. The sections are an important reminder of the safeguards that are mitted when search without warrant is permitted.

Sections 28J and 28K read as follows:

28J.— Search warrants: safeguards.

(1) The entry or search of premises under a warrant is unlawful unless it complies with this section and section 28K.

(2) If an immigration officer applies for a warrant, he must—

(a) state the ground on which he makes the application and the provision of this Act under which the warrant would be issued;

(b) specify the premises which it is desired to enter and search; and

(c) identify, so far as is practicable, the persons or articles to be sought.

(3) In Northern Ireland, an application for a warrant is to be supported by a complaint in writing and substantiated on oath.

(4) Otherwise, an application for a warrant is to be made ex parte and supported by an information in writing or, in Scotland, evidence on oath.

(5) The officer must answer on oath any question that the justice of the peace or sheriff hearing the application asks him.

(6) A warrant shall authorise an entry on one occasion only.

(7) A warrant must specify—

(a) the name of the person applying for it;

(b) the date on which it is issued;

(c) the premises to be searched; and

(d) the provision of this Act under which it is issued.

(8) A warrant must identify, so far as is practicable, the persons or articles to be sought.

(9) Two copies of a warrant must be made.

(10) The copies must be clearly certified as copies.

(11) "Warrant" means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) or 25A(6A) of Schedule 2.

28K.— Execution of warrants.

(1) A warrant may be executed by any immigration officer.

(2) A warrant may authorise persons to accompany the officer executing it.

(3) Entry and search under a warrant must be—

(a) within one month from the date of its issue; and

(b) at a reasonable hour, unless it appears to the officer executing it that the purpose of a search might be frustrated.

(4) If the occupier of premises which are to be entered and searched is present at the time when an immigration officer seeks to execute a warrant, the officer must—

(a) identify himself to the occupier and produce identification showing that he is an immigration officer;

(b) show the occupier the warrant; and

(c) supply him with a copy of it.

(5) If—

(a) the occupier is not present, but

(b) some other person who appears to the officer to be in charge of the premises is present,

subsection (4) has effect as if each reference to the occupier were a reference to that other person.

(6) If there is no person present who appears to the officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises.

(7) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(8) An officer executing a warrant must make an endorsement on it stating—

(a) whether the persons or articles sought were found; and

(b) whether any articles, other than articles which were sought, were seized.

(9) A warrant which has been executed, or has not been executed within the time authorised for its execution, must be returned—

(a) if issued by a justice of the peace in England and Wales, to the designated officer for the local justice area in which the justice was acting when he issued the warrant;

(b) if issued by a justice of the peace in Northern Ireland, to the clerk of petty sessions for the petty sessions district in which the premises are situated;

(c) if issued by a justice of the peace in Scotland, to the clerk of the district court for the commission area for which the justice of the peace was appointed;

(d) if issued by the sheriff, to the sheriff clerk.

(10) A warrant returned under subsection (9)(a) must be retained for 12 months by the designated officer

(11) A warrant issued under subsection (9)(b) or (c) must be retained for 12 months by the clerk.

(12) A warrant returned under subsection (9)(d) must be retained for 12 months by the sheriff clerk.

(13) If during that 12 month period the occupier of the premises to which it relates asks to inspect it, he must be allowed to do so.

(14) *"Warrant"* means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) or 25A(6A) of Schedule 2.

BEFORE CLAUSE 29 IMMIGRATION BAIL

PROPOSED AMENDMENT

Before Clause 29, page 33 line 7

Leave out heading "immigration Bail"

Clause 29 Immigration Bail

PROPOSED AMENDMENT

Clause 29, page 33 line 8

Leave out name of clause "Immigration Bail" and replace with "Temporary admission"

CONSEQUENTIAL AMENDMENTS (including to Schedule 5 Immigration Bail)

Clause 29, page 33 line 9 leave out "immigration bail" and replace with "temporary admission"

Clause 29, page 33 line 13 leave out Bail" and replace with "temporary admission"

Schedule 5, page 78, line 25 rename the schedule "Temporary admission"

Schedule 5, in all places in schedule 5 where the words "immigration bail" or "bail" appear, rename this "temporary admission.

Purpose

To rename immigration bail temporary admission. Further consequential amendments (to the Immigration Act 1971 and thence to secondary legislation e.g. the Tribunal Procedure Rules) would be required fully to achieve the proposed change but these amendments will suffice to debate the point.

Briefing

The Bill creates a single status to replace bail, temporary admission and temporary release. Temporary admission is used for persons at liberty on the territory of the UK who have applied for leave but do not have it. While it can be used generally for persons in cases where an immigration officer is deliberating whether to admit them to the UK and does not detain them while these deliberations are taking place, it is used most often for persons seeking asylum. Turning someone back at port of entry is likely to take hours or at most days whereas the determination of an asylum claim takes months so many of those who remain on temporary admission for any significant period are persons seeking asylum.

The terminology of "immigration bail" suggests that detention is the norm and liberty an aberration. It also suggests that persons those with this status, in particular those seeking asylum are a form of criminal. In international law, Article 31 of the 1951 Refugee Convention expressly protects those who claim asylum from being treated as criminals and UNHCR and other international guidance recognises that detention of persons seeking asylum must always be the exception.

Persons seeking asylum have greeted with consternation the notion that they might be termed "on bail." These are persons who have presented themselves to the authorities and asked to regularize their status: they have applied for leave as a person seeking asylum. They include refugees, children, survivors of torture and trafficked persons. Anything that increases the possibility that they will be treated as criminals, by anyone, should be strenuously avoided. If one unified term be given to all those awaiting a decision we ask that it not be "immigration bail." We carry no special torch for "temporary admission," if the Government wishes to propose other neutral terms without connotations of criminality.

SCHEDULE 5 IMMIGRATION BAIL

PROPOSED AMENDMENT

Page 78, line 30 before subparagraph 1(1) insert

(*) The following provisions apply if a person is detained under any

provisions set out in paragraph (* - current Schedule 5 paragraph 1(1))

(a) the Secretary of State must arrange a reference to the First- tier Tribunal for it to determine whether the detained person should be released on bail;

(b) the Secretary of State must secure that a first reference to the First-tier Tribunal is made no later than the eighth day following that on which the detained person was detained;

(c) if the detained person remains in detention, the Secretary of State must secure that a second reference to the First-tier Tribunal or Commission is made no later than the thirty-sixth day following that on which the detained person was detained and every twenty-eighth day thereafter;

(d) the First-tier Tribunal hearing a case referred to it under this section must proceed as if the detained person had made an application to it for bail; and

(e) the First-tier Tribunal must determine the matter—

(i) on a first reference, before the tenth day following that on which the person concerned was detained; and

(ii) on a second and subsequent reference, before the thirty-eighth day following that on which he was detained.

(*) For the purposes of this paragraph, "First-tier Tribunal" means—

(a) if the detained person has brought an appeal under the Immigration Acts, the chamber of the First-tier Tribunal dealing with his appeal; and

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

(*) In case of a detained person to whom section 3(2) of the Special Immigration Appeals Commission Act 1997 applies (jurisdiction in relation to bail for persons detained on grounds of national security) a reference under sub-paragraph (3)(a) above, shall be to the Commission and not to the First-tier Tribunal.

(7) Rules made by the Lord Chancellor under section 5 of the Special Immigration Appeals Commission Act 1997 may include provision made for the purposes of this paragraph."

Purpose

To make provision for automatic bail hearings, after eight days, 28 days and every 28 days thereafter.

Briefing

The amendment is directed toward the same end as that proposed by Liberty, but is slightly different in form. The amendment is modelled on Part III of the Immigration and Asylum Act 1999, never brought into force and repealed in 2002. A version of it was tabled at House of Lords Committee stage of the Bill that became the Immigration Act 2014. It is in simplified form but what appears suffices to debate the principle of automatic bail hearings.

Detention under Immigration Act powers is by administrative fiat, without limit of time and a detained person is not brought before a tribunal judge or a court unless s/he instigates this. The lack of any time limit adds greatly to the stress of the detention. It may render the detention arbitrary.

The Bingham Centre for the Rule of Law's publication, written by Michael Fordham QC, *Immigration Detention and the Rule of Law: Safeguarding Principles* provides as principle 21

> *SP21. AUTOMATIC COURT-CONTROL.*
>
> *Every detainee must promptly be brought before a court to impose conditions or order release.*

As set out in that publication, this is in accordance with international standards.

Article 5(4) of the European Convention on Human Rights provides:

> *'everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful'.*

The UN Commission on Human Rights Resolution 2004/39: Arbitrary Detention of 19 April 2004, E/CN.4/RES/2004/39 provides:

> *"3. Encourages the Governments concerned: (c) To respect and promote the right of anyone who is deprived of his/her liberty by arrest or detention to be entitled to bring proceedings before a court, in order that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful, in accordance with their international obligations".*
>
> Organization of American States, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008), Principle VI: *"Competent, independent, and impartial judges and tribunals shall be in charge of the periodic control of legality of acts of the public administration that affect, or could affect the rights, guarantees, or benefits to which persons deprived of liberty are entitled, as well as the periodic control of conditions of deprivation of liberty"*
>
> UNHCR Detention Guidelines (2012), Guideline 7 §47: *"asylum-seekers are entitled to the following minimum procedural guarantees: ... (iii) to be brought promptly before a judicial or other independent authority to have the detention decision reviewed. The review should ideally be automatic, and take place in the first instance within 24–48 hours of the initial decision to hold the asylum-seeker. The reviewing body must be independent of the initial detaining authority, and possess the power to order release or to vary any conditions of release".*

In 1999 the then Government introduced provision for routine bail hearings. At second reading Lord Williams of Mostyn for the then Government said

> *Part III introduces important new safeguards for immigration detainees.* [see below for full passage, quoted by Baroness Anelay].[73]

He later explained:

> *Perhaps I may set out our intention in setting time-limits for routine bail hearings and their determination. One element that is lacking in the present system—I do not disagree with what has been said in part—is any degree of certainty or structure with regard to bail hearings. We intend that the first routine bail hearing—to use the word "routine" is not to play down its importance, but to underline the fact that it must be regular—should take place about seven days after the original detention. In practice, the reference will normally be made much earlier.*[74]

What has changed since 1999 so that a sense the gravity of the shortcomings of the system of immigration detention, and the urgency of addressing them, has gone so entirely? In 2002 the then Government, decided

[73] *HL Deb 29 June 1999 vol 603 cc176-257.*
[74] HL Deb 19 Jul 1999 : Column 707.

to repeal that part of the Immigration and Asylum Act 1999 that would have introduced a new bail regime. Baroness Anelay of St Johns, with support from all around the house, tried to stop them. She said:

> *In another place the then Home Secretary, Mr Straw, said in a debate on 22nd February 1999 at col. 39 of the Official Report: Part III fulfils the commitment in the White Paper to introduce a more extensive judicial element in the detention process. That will be achieved by introducing routine bail hearings for those detained under immigration legislation." In this House the noble and learned Lord, Lord Williams of Mostyn, when moving the Second Reading of the same Bill on 29th June 1999, at col. 178, said,*
>
> > *Part III introduces important new safeguards for immigration detainees. It introduces a more extensive judicial element into the detention process by means of a system of routine bail hearings, but the Government have decided that we should go further. The Government intend to bring forward amendments during the proceedings in this House to provide for a statutory presumption of bail, with exceptions to ensure effective immigration control and enforcement. Part VIII of the Bill provides a proper statutory framework for all aspects of the management and administration of detention centres and for the escort of detainees. Taken together, the provisions regarding bail and detention centres will provide significant additional safeguards for immigration detainees".*
>
> *I am sure Members of the Committee will recall that the noble and learned Lord moved the amendment of which he spoke at Second Reading on 19th July in Committee when he said,*
>
> *I hope that the amendment will meet with the universal acclamation of the Committee".*—[Official Report, 19/7/99; col. 725.]
>
> > *That amendment is now Section 46 of the 1999 Act and it is those very provisions in Part III of the Act, so eloquently spoken to by the noble and learned Lord, Lord Williams, three years ago, which today the Government propose to repeal under Clause 57(6) of this Bill. We acclaimed it; the Government now dispose of it.*
> >
> > *There was an extensive debate on this matter in Standing Committee in another place. But the justification given at that time by Miss Angela Eagle was unconvincing. Members of the Committee will note that the provisions have never been brought into force. The Minister said that they were not brought into force because*
> >
> > *"we have been trying since the 1999 Act to work out the frequency and logistical implications of automatic bail hearings for each detainee. We concluded that it would be a logistical nightmare that would divert scarce resources from processing asylum applications ... Implementing the Part III bail provisions would significantly increase the burden on the Immigration Appellate Authority".—[Official Report, Commons, Standing Committee E, 14/5/02; co1.256.]*
>
> *I cannot believe that the provisions in the 1999 Act which were described as important and significant by the noble and learned Lord, now the Leader of the House, and the implications of which were doubtless considered in detail by the Home Office when the White Paper was drawn up, when the 1999 Bill was drafted and when the amendments were proposed, are now to be dismissed as a logistical nightmare. I cannot believe that the noble and learned Lord, Lord Williams, would have put his name to such a measure and spoken in favour of it if he were not entirely certain that it was eminently workable and its implications had been fully thought through by the time the Act was passed by this House.*
>
> *One final but important point on Amendment No. 173 is this. In another place my honourable friend Mr Malins moved an amendment which would have brought the provisions of Part III of the 1999 Act into effect. The Minister argued in response that to do so would be administratively unworkable and would cause chaos and catastrophe in the system. Amendment No. 173 meets the Government's point. It would not bring the provisions into effect but it would stop their repeal. The effect of that would be to allow the Government to bring them into force at a time when the administrative concerns which the Minister cited in another place had been allayed.*
>
> *If the Minister were to resist the amendment, surely he would have to cast aside the mask of administrative unworkability that was taken up in another place and reveal the real policy reasons behind the Government's change of position. I invite him today to give us better justification on this matter than in another place. I beg to move.*[75]

In 1999 Lord Hylton[76] put forward an amendment that would have meant regular reviews throughout the period of detention. All speakers, with the exception of the Minister, supported him.77 Contrast this with the current Home Office guidance on review, not by a court or tribunal, but by the officials detaining the person:[78]

[75] *HL Deb 17 July 2002 vol 637 cc1257-305.*
[76] *HL Deb 19 July 1999 vol 604 cc693-724.*
[77] Ibid. col 704.
[78] Enforcement Instructions and Guidance 55.8.

> *There is a statutory requirement above, detention should also be reviewed during the initial stages, that is, the first 28 days. This does not apply in criminal casework cases where detainees come from prison, or remain there on completion of custodial sentence, and their personal circumstances have already been taken into account by the Home Office when the original decision to detain was made. However, criminal casework cases involving the detention of children must be reviewed at days 7, 10, 14 and every seven days thereafter…in practice, this will apply only to those exceptional cases where an FNO under 18 is being detained pending deportation or removal.*

Unless an immigration detainee applies for bail, s/he will never be brought before a court or tribunal to consider either release on bail or the lawfulness of detention. For those held in the prisons, there are no legal surgeries and the difficulties of obtaining any legal representation at all are increased. People with a mental illness are among the least likely to be able to take the necessary steps to instigate a bail hearing.

The lack of procedural protection and effect access to a court or tribunal in the UK renders detention under immigration act powers in particular cases arbitrary within the definitions used by the UN Human Rights Committee in resolution 1997/50 and by the UN Working Group on Arbitrary Detention: where it is clearly impossible to invoke any legal basis justifying the deprivation of liberty of a particular individual[79] and where an asylum seeker, immigrants or refugees are subjected to prolonged administrative custody without any possibility in practice of administrative or judicial review or remedy.[80]

SCHEDULE 5 PARAGRAPH 2 CONDITIONS OF IMMIGRATION BAIL

PROPOSED AMENDMENT

Page 79, line 42, delete ‘, occupation or studies’ and replace with ‘or occupation’

Purpose

To remove the restriction on a person’s studies from the list of conditions to which a person may be subject when on immigration bail.

Briefing

The introduction of a restriction on studies as a condition either of temporary admission or bail for those subject to immigration control is new. No reason for the restriction is given in the Explanatory Notes to the Bill.

Breach of a condition of immigration bail is a criminal offence and therefore has serious consequences. Those lawfully present and in touch with the authorities should not be restricted from undertaking studies.

As all those subject to immigration control will be on immigration bail, not just persons released from detention, the condition could potentially be applied to children and young people, from accessing further education and even preventing them from attending their school.

Those previously on temporary admission will henceforth be on “immigration bail”. This will include persons seeking asylum. The condition could be applied to them, preventing them from learning English or undertaking other studies whilst their asylum claim is pending. This would put those recognized as refugees at a disadvantage as they start to rebuild their lives in the UK. Those refused asylum are more likely to have an incentive to return if they know that return with skills or qualifications and such skills and qualifications may also help to rebuild countries recovering from war.

Persons seeking asylum currently face considerable delay in the determination of their asylum claim, during which time they are not permitted to work. The Home Office now has a target of six months for the initial decision on an asylum claim if the case is straightforward and a target of 12 months for deciding a case that it considers not to be straightforward.[81] Only if a person waits for more than 12 months for a decision will they be permitted to work and then only in an occupation on the shortage occupation list. A person who does not wait more than 12 months for their initial decision will not be permitted to work while waiting for a decision on their appeal, however long the appeal may take.

Should a person appeal against a wrongful refusal they will wait a long time for an appeal. At the moment the First-tier Tribunal is listing appeals for June and July 2016. That is the initial appeal; some cases will proceed to the Upper Tribunal and higher courts

By the time an individual is recognized as a refugee, they have large gaps in their employment history which make it more difficult to get a job and to begin to rebuild their lives in the UK. Placing an additional restriction on persons seeking asylum that would prevent them from learning English or other skills they may need to integrate into the UK will limit their prospects of integration on recognition as a refugee.

[79] Category One of the UN Working Group’s criteria.
[80] *Ibid.*, Category Four.
[81] UKVI, *Non-straightforward cases: exclusions from the asylum processing aspiration*, 10 June 2015.

PROPOSED AMENDMENT

Schedule 5, page 80, line 1, leave out lines 1-2

Purpose

To remove the power to impose such other conditions on immigration bail as the person granting bail thinks fit.

Briefing

The Bill makes explicit that conditions requiring a person to appear before the Secretary of State or tribunal at a specified time or place can be imposed on immigration bail. It makes explicit that conditions restricting work, occupation, studies (see amendment above) or as to residence, reporting and electronic monitoring may also be imposed. But this detailed list is otiose, for the power to impose bail conditions is at large.

— What conditions are envisaged?

— Why can these not be specified on the face of the Bill?

PROPOSED AMENDMENT

Schedule 5, page 80, line 5, omit sub-paragraphs (3)-(5).

PROPOSED AMENDMENT

Schedule 5, page 83, line 4, omit sub-paragraph (5).

PROPOSED AMENDMENT

Schedule 5, page 83, line 12, omit sub-paragraphs (8)-(10).

Purpose of the three amendments

This set of proposed amendments would remove provision which would allow the Secretary of State to override a decision of the Tribunal with regard to electronic monitoring or residence conditions placed on immigration bail.

Briefing

ILPA adopts Liberty's proposals for these amendments. The tribunal is mocked by provisions that allow the Home Office to impose bail conditions it has not seen fit to impose or change conditions it has imposed. As barrister Colin Yeo explained when giving oral evidence on 22 October 2014, it renders the hearing before the tribunal a charade. The tribunal hears argument and determines not to impose a particular condition. The very next day the Secretary of State imposes it.

PROPOSED AMENDMENT

Schedule 5, page 80, line 32, omit "in that person' interests or

Purpose

To remove a power to use immigration detention on the basis that it is in the person's best interests to be detained under immigration Act powers.

Briefing

A version of this amendment is also proposed by Liberty.

The risks of using immigration detention rather than act to make appropriate provision have been illustrated by cases in the annex to this briefing, including the repeated cases in which the Home Office has been found to be in breach of Article 3 of the European Convention on Human Rights (the prohibition on torture and ill-treatment) for its treatment of the mentally ill held under immigration act powers and the case in which only when a judicial review was brought did it desist from using force on children despite not having any policies in place governing its use.

PROPOSED AMENDMENT

Schedule 5, page 83, line 22, omit paragraph 7, sub-sections (1), (2), and (3) and insert—

> *"The Secretary of State must provide, or arrange for the provision of, facilities for the accommodation of persons released on immigration bail."*

Purpose

To maintain existing powers of the Secretary of State to provide accommodation for those released on bail and to ensure that these powers are not limited

(a) to persons already granted bail

(b) to exceptional circumstances

PROPOSED AMENDMENT

Schedule 5, page 83, line 30, leave out lines 30 to 33.

Purpose

To remove the purported limitation on the use of the power to circumstances where the Secretary of State considers that there are "exceptional circumstances" justifying its use.

Briefing

In part five of this Act the Home Office is making changes to the arrangements for it to provide to support to persons under immigration control. One set of circumstances in which it provides such support is to persons released on bail who would otherwise be destitute. This support is provided under section 4(1)(c) of the Immigration and Asylum Act 1999 which is worded in identical terms to the words it is proposed to substitute in this amendment.

The reason why we do not consider that the new powers are satisfactory is that the wording in subparagraph 7(1) "when a person is on immigration bail" may not be wide enough to encompass the circumstances in which a person applies to the Home Office for an address so that they can make an application for bail in the first place. The new powers are also stated to be used only in "exceptional circumstances," a restriction to which we object for the reasons set out in the briefing to the separate amendment below.

When the Home Office consulted on restrictions to asylum support in preparation for this Bill, it proposed to leave out s 4(1)(c) and did not propose any replacement. ILPA argued that a replacement was required. Paragraph 7 appears to be response to those arguments but it is insufficient.

Section 4(1)(c) is used in cases where the Home Office needs urgently to release a person detained under Immigration Act powers because their detention is unlawful so that there is accommodation to which the person can be released. It also acts as an essential precursor for a proportion of detainees to being able to lodge and have heard an application for release on bail. Bail hearings are a means by which immigration detention is scrutinized. A failure to release a person for want of an address may lead to additional periods of unlawful detention in violation of Article 5 of the European Convention on Human Rights and the common law.

Immigration detainees seeking release on bail from the First-tier Tribunal (Immigration & Asylum Chamber) must propose a bail address. This may be private accommodation offered by family or friends, but where this is not available a detainee can apply to the Home Office for Section 4 (1)(c) bail support, and once this is granted the detainee can lodge their application for release on bail to the specified address.

Any grant of immigration bail by the First-tier Tribunal (Immigration and Asylum Chamber) is a grant to a stated address. Bail cannot, therefore, be granted pending the provision of a bail address. While "bail in principle" could be granted, just as the commencement of a grant of immigration bail may be specified to be conditional under paragraph 3(8) of Schedule 5 to this Bill, In the experience of ILPA member Bail for Immigration Detainees, which provides representation in a substantial number of bail hearings, it is normal practice for Her Majesty's Courts and Tribunals Service to refuse to list applications for hearing without a bail address, save in special circumstances and a grant of bail in principle, where the absent (but shortly to be supplied) missing element of the process is the bail address, is not a possibility in Bail for Immigration Detainee's experience, given that consideration of the bail address is a primary and essential part of any bail decision. **The Minister should be pressed on whether the matter has been raised with the Tribunal judiciary and provide their reply, as ILPA suggested be done in its response to the Home Office consultation on asylum support.**

If it were possible for detainees to seek release on bail first, and subsequently seek financial support and accommodation via s 95 support, then detainees would already be doing so. They would not need to wait in detention, for periods of up to 24 months in extreme cases, for a bail address to be granted by the Home Office, as Bail for Immigration Detainees' research and Home Office data indicates that they are doing.

On November 4 2014, there were 198 outstanding applications for Home Office Section 4(1)(c) bail support where the applicant was deemed unsuitable for Initial Accommodation. 28% of these detainees had been waiting six months or more, to date, of these 5% for over one year, and one detainee had already waited for two years.[82]

Data obtained by Bail for Immigration Detainees from the Home Office via Freedom of Information requests indicates that between three and four thousand applications are made to the Home Office each year for Section 4(1)(c) bail accommodation. In 2014 the Home Office made 2860 grants of Section 4(1)(c) bail accommodation for the purpose of lodging a bail application, although not all of these grants will have resulted in a bail application being lodged, and, if lodged, far from all will have resulted in release.

[82] Home Office response to BID FOI request dated December 2 2014.

Home Office Section 4 (1)(c) bail accommodation: applications, grants by accommodation type, and refusals of support since January 2010

	Number of APPLICATIONS RECEIVED for s4 (1) (c) bail accomm[83]	*Number of grants for **Initial Accomm***	*Number of grants for **Standard Dispersal Accomm***	*Number of grants for **Complex Bail Accomm***	*Total number of grants for the year*
2010[84]	3,367	1,916	66	19	2,001
2011	3,138	1,568	218	55	1,841
2012	3,465	1,961	382	35	2,378
2013	3,841	2,081	529	14	2,624
2014	3,635	2,233	613	14	2,860

(*Source*: Data obtained from the Home Office by Bail for Immigration Detainees through a series of freedom of information requests since 2011.)

Bail for Immigration Detainees' research in 2014 found that the average (mean) time to grant a Standard Dispersal bail address with no National Offender Management Service involvement in the case was 59. 28 days (8.46 weeks), with a range from five to 175 days (one – 25 weeks).[85] See: Bail for Immigration Detainees, (2014), *'No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation'*.[86]

A core part of bail decision-making by First-tier tribunal judges is the consideration of the suitability of the proposed bail address. In the words of current Bail Guidance to tribunal judges, the Home Office, as a party to the bail application, is also asked "to take a view as to whether they can maintain reasonable control of the person at that address." The guidance to tribunal judges states at 38i, that:

> *"The proposed place of residence must be set out clearly in the application for bail so that the immigration authorities can consider its suitability and make representations if they believe it is not suitable."*[87]

Bail decision-making takes into account the nature of the accommodation, other residents at that accommodation, and the distance between the accommodation and any sureties. Immigration detainees who are on a National Offender Management Service release licence as a result of criminal convictions must seek the approval of their probation officer for any proposed immigration bail address. Tribunal judges of the First-tier Tribunal (Immigration and Asylum Chamber) must satisfy themselves that probation approval for a proposed bail address has been given. Without a bail address, under the current system, an immigration detainee, whether an asylum seeker or not, will not reach the point of release from detention on bail.

Detainees with severe and enduring mental illness may become estranged from family or friends who could otherwise stand surety at bail or offer bail accommodation on release; their illness or behaviour arising from their illness may have alienated those who were closest to them. Detainees in this position will often be reliant on Home Office bail accommodation.

One reason that longer term detainees are disproportionately reliant on Section 4(1)(c) is that their ties with family and friends who could offer accommodation and support are weakened by years spent in detention.

An unknown but presumed to be small number of former detainees, granted release on bail by the First-tier Tribunal Immigration and Asylum Chamber, are on a National Offender Management Service licence at the time of their release and are required by the terms of their licence to reside in premises approved by the National Offender Management Service. National Probation Service Approved Premises local managers nowadays may refuse to provide these individuals with an Approved Premises bed unless 'move-on' accommodation is in place.[88] For a proportion of immigration detainees their only option for 'move-on' accommodation is Home

[83] Some individuals made more than one application during this period.

[84] Note: June 2009: introduction of new practice of granting all Section 4(1)((c) applicants shared initial accommodation (IA). January 2010: publication of new HO policy on Section 4(1)(c) support arranging bail accommodation for applicants convicted of serious offences, including new process that sought to determine whether IA or dispersal accommodation was suitable, the latter almost immediately being found to be in short supply under existing contractual arrangements.

[85] See: Bail for Immigration Detainees, (2014),' *No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation'*. Available at http://bit.ly/1DqTEQL (accessed 4 September 2015)

[86] On November 4 2014, there were 198 outstanding applications for Home Office Section 4(1)(c) bail support where the applicant was deemed unsuitable for Initial Accommodation. 28% of these detainees had been waiting 6 months or more, to date, of these 5% for over one year, and one detainee had already waited for 2 years. Source: Home Office response to BID FOI request dated December 2 2014. BID research in 2014 found that the average (mean) time to grant a Standard Dispersal bail address with no NOMS involvement in the case was 59.28 days (8.46 weeks), range from 5 to 175 days (1 – 25 weeks). See: Bail for Immigration Detainees, (2014),' *No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation'*. Available at http://bit.ly/1DqTEQL

[87] Tribunals Judiciary, (2012), 'Bail guidance for judges presiding over immigration and asylum hearings'

[88] This requirement is intended by NOMS to ensure that approved premises beds are not blocked by individuals (UK citizens and foreign nationals) without access to housing and a known address to transfer to at the end of their supervision in Approved Premises.

Office accommodation. They may have a home in the UK but precluded by some form of restriction order (e.g. non-molestation order, non-contact order] from occupying those premises on release.]) Immigration detainees required to reside in Approved Premises on release are entitled to apply for release on immigration bail but will be unable to do so in a number of cases if Home Office bail accommodation is not available.

Among Bail for Immigration Detainees' caseload, which consists mainly of long term detainees and those with additional needs, clients were reliant on a Home Office bail address in 53% of the bail applications prepared by Bail for Immigration Detainees in 2013, and in 36% of cases during 2014.

There is currently no limitation to "exceptional circumstances" in the Home Office guidance on bail accommodation under s 4(1)(c) of the Immigration Act 1999.[89]

There is such a limitation in guidance on the provision of support to persons who have never made a claim for asylum under sections 4(1)(a) and (b) of that Act, as follows:

1.1.3 Applications from other immigration categories

> *Support under Section 4(1) (a) and (b) of the 1999 Act will only be provided to other immigration categories in truly exceptional circumstances. In considering whether such circumstances exist, Caseworkers should take account of the following:*
>
> *Support should only be provided to other persons on temporary admission if:*
>
> — *They are destitute; and*
>
> — *They have no avenue to any other form of support; and*
>
> — *The provision of support is necessary in order to avoid a breach of their human rights.*
>
> *The consideration of whether support is necessary to avoid a breach of the person's human rights will usually require an assessment of whether they are likely to suffer inhuman or degrading treatment if they are not provided with accommodation and the means to meet their essential living needs whilst in the UK. However, Caseworkers should only provide support for these reasons if it is clear that the person cannot reasonably be expected to leave the United Kingdom.*
>
> *In considering all support cases on their individual merits caseworkers must take particular account of the following:*
>
> — *Support should not be provided in cases where there are children in the household because an alternative avenue of support is available through the duties local authorities have to safeguard and promote the welfare of children under Section 17 of the Children Act 1989;*
>
> — *Support should not be provided to persons who claim that the reason they cannot leave the United Kingdom is because they are at risk of persecution or serious harm in their own country. Individuals in this position should submit a protection claim. Support may be available for such individuals under the asylum support arrangements. :(Sections 95 and 98 of the Act, and Section 4(2) for certain failed asylum seekers);*
>
> *Support should not be provided solely because the person has an outstanding non-protection based application for leave to remain in the United Kingdom (for example based on Article 8 of the European Convention on Human Rights or on long residence). A person in these circumstances can reasonably be expected to leave the United Kingdom to avoid the consequences of destitution.*

The word "exceptional" is apt to be read as implying that a grant should only be made in exceptional cases. We recall the words of Lord justice Dyson, giving the judgment of the Court of Appeal in the Legal Aid exceptional funding cases of Gudanaviciene et ors v Director of Legal Aid Casework and the Lord Chancellor [2014] EWCA 1622

> *"... that section 10 is headed "exceptional cases" and that it provides for an "exceptional case determination" says nothing about whether there are likely to be few or many such determinations. Exceptionality is not a test. ... there is nothing in the language of section 10(3) to suggest that exceptional case determinations will only rarely be made"*

In that case the guidance was found to be unlawful in that it was leading to refusals of legal aid in meritorious cases.

ILPA's response to the consultation on asylum support, from which this is adapted, can be read at http://www.ilpa.org.uk/resource/31352/ilpa-response-to-home-office-consultation-on-asylum-support-8-september-2015

[89] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438472/asylum_support_section_4_policy_and_process_public_v5.pdf

SCHEDULE 5

PROPOSED AMENDMENT

Schedule 5, page 83, line 29, at end insert –

"(*) If the Secretary of State decides not to provide support to a person under paragraph 7(2) of this Part, or not to continue to provide support for a person under paragraph 7(2), the person may appeal to the First-tier Tribunal (Asylum Support)."

Purpose

To provide a right of appeal to the First-tier Tribunal (Asylum Support) where the Secretary of State decides not to provide support or to discontinue support under this Part to enable a person to meet bail conditions.

Briefing

This section of the Bill provides the Secretary of State with the power to provide support and accommodation to individuals to enable them to comply with conditions of immigration bail. This is a necessary power to facilitate the right to liberty and release from detention .

This amendment provides for a right of appeal where the Secretary of State decides a person does not qualify for support under this provision. Without a right of appeal, there will be no scrutiny of Home Office decision-making in an area where decisions are frequently not sustainable.

The Asylum Support Appeals Project provides advice to those appealing Home Office decisions to refuse or withdraw their housing or financial subsistence in the absence of legal aid for this work. It is the experience of the project that it is rare for support to be granted to those eligible for support under similar provisions under section 4(1) of the Immigration and Asylum Act 1999. The project reports that in the 12 months from August 2012 to July 2013, it provided representation in 18 appeals involving section 4(1) of the Immigration and Asylum Act 1999, of which 11 were allowed, five dismissed, one withdrawn and one remitted.

Individuals in need of support under this provision, who would be affected by the absence of a right of appeal, include those who have never claimed asylum but who are attempting to return to their country of origin or former habitual residence and either their country will not admit them, they cannot be documented or there are delays in documenting them.[90] They may also be people who have never claimed asylum but have a claim pending before the Home Office to regularise their status such as people brought to the UK as children who are found to be have no lawful status.

Examples of destitute individuals represented by the Asylum Support Appeals Project whose cases were allowed only following appeal to the Asylum Support Tribunal include:

> 30 September 2011 A 21 year old man who arrived in the UK aged 15 and asserted that he was a British citizen. He had been waiting for seven years for the Home Office to decide his case (AS/11/09/27448, 30 September 2011).
>
> 22 November 2011 An appellant with severe mental health problems who had been certified by his doctor as unable to travel and had made a claim for leave to remain outside the immigration rules (AS/11/11/76787, 22 November 2011)
>
> 12 January 2012 A 43 year old homeless man who was waiting for a travel document so that he could return to India (AS/11/12/27777, 12 January 2012).

The consequences of a wrong decision are that a person may be left homeless and destitute and at risk of harm. Such cases may give rise to breaches of human rights under Articles 2 and 3 of the European Convention on Human Rights, as well as under Article 8. This means that the Home Office will be in breach of its international obligations and is likely to face challenges by way of judicial review (the cases may also sound in damages).

PROPOSED AMENDMENT

Schedule 5, page 84, line 33, leave out from "- (a) to "otherwise" in line 38

Schedule 5 Paragraph 8 Arrest for Breach of Bail

PROPOSED AMENDMENT

Schedule 5, page 84, line 33, leave out from "- (a) to "otherwise" in line 38

Purpose

To provide that a person arrested without a warrant and detained because it is considered that they are likely to breach any of their bail conditions or that there are reasonable grounds for suspecting that they have done

[90] The charity Refugee Action reports that its clients from India, Pakistan, and Bangladesh wait on average for 32 days to receive travel documents but, in some cases, up to 133 days, Refugee Action Jan – June 2013.

so must be brought before the First-tier Tribunal. To bring the person before the "Secretary of State, " a Home Office official, will not suffice for this stage of the proceedings.

Briefing

Under this paragraph, an individual may be arrested without a warrant where an immigration officer or police constable has reasonable grounds for believing that they are likely to fail to comply with a bail condition or they have reasonable grounds for suspecting that the person is failing or has failed to comply with a bail condition. In these circumstances, the arrested person must be brought before the "relevant authority as soon as reasonably practicable and the "relevant authority" must decide whether the arrested person has broken or is likely to break any of the bail conditions.

Where breach of bail is considered by a court or tribunal, this is uncontroversial. The individual, who will have been arrested without a warrant by an immigration officer and will be in detention,, will be brought before a tribunal judge in an open and transparent process and questioned about the circumstances leading to the suspicion that the conditions of bail may be or may have been breached. The tribunal will make a decision as to whether maintain or revoke bail after hearing evidence from both the Secretary of State and the individual.

Under paragraph 9(a) the Secretary of State may act as the "relevant authority" where she has been authorised to exercise the power of bail by the First-tier Tribunal. The Secretary of State is not a judicial body and is not in a position to examine the individual in an open and transparent process. Nor one that has the appearance of fairness, given that an immigration officer has already deprived the person of their liberty for breach of conditions, and yet the Home Office is now asked to adjudicate on whether that was lawful and/or correct.

Section 24 of the Immigration act 1971 currently provides for the arrest without warrant in similar conditions to this paragraph. It provides that unless it was a condition of a person's release that s/he was in any event to have reported before an immigration officer within 24 hours of the time of the arrest then s/he should be brought before the First-tier Tribunal or failing that, a Justice of the Peace or Sheriff. Why has a different approach been taken in the Bill?

The question as to whether a person has breached the conditions of his/her bail should be determined by an independent tribunal. This is all the more so given that the Bill permits the Secretary of State to impose such conditions as she thinks fit and to alter the conditions imposed by the Tribunal. The process envisaged would allow for the imposition of arbitrary and oppressive conditions.

Immigration Act 1971, s 24

…

(2) A person arrested under this paragraph—

(a) if not required by a condition on which he was released to appear before an immigration officer within twenty-four hours after the time of his arrest, shall as soon as practicable be brought before the First-tier Tribunal 1 or, if that is not practicable within those twenty-four hours, before in England and Wales, a justice of the peace, in Northern Ireland,] 2 a justice of the peace acting for the petty sessions area in which he is arrested or, in Scotland, the sheriff; and

(b) if required by such a condition to appear within those twenty-four hours before an immigration officer, shall be brought before that officer.

(3) Where a person is brought before the First-tier Tribunal, a justice of the peace or the sheriff by virtue of sub-paragraph (2)(a), the Tribunal, justice of the peace or sheriff —

(a) if of the opinion that that person has broken or is likely to break any condition on which he was released, may either—

(i) direct that he be detained under the authority of the person by whom he was arrested; or

(ii) release him, on his original recognizance or on a new recognizance, with or without sureties, or, in Scotland, on his original bail or on new bail; and

(b) if not of that opinion, shall release him on his original recognizance or bail.

GOVERNMENT AMENDMENT 31

Stated purpose

This amendment clarifies that transitional arrangements will be detailed in regulations.

Briefing

Contrary to the stated purpose, this amendment does not "clarify" anything. It delegates to secondary legislation the definition if the purposes for which a person subject to transitional provision is to be treated as having been granted immigration bail Again it is an indication that insufficient time has been given for the purpose of this Bill. Concerns go beyond omissions in the drafting of a paragraph. The concern is that the whole question of transitional provision has not adequately been thought throw and that it is intended to

change the status of many thousands of people in ways which may have unforeseen consequences, including for recognition of their documents and status.

There is no statement as to what consideration, if any, has been given to whether regulations should remain u under the negative procedure given this new addition.

PROPOSED AMENDMENT

Schedule 5, page 88, line 25 leave out "sub-paragraphs 2(a), (3) and (5) and replace with "subparagraph 2(a)"

Purpose

Consequential on the amendment below.

PROPOSED AMENDMENT

Schedule 5, page 88, line 33 leave out lines 33 to 34 and replace with

(*) subparagraphs 3-5 were omitted

Purpose

To provide that the Secretary of State cannot impose conditions of bail that the Special immigration Appeals Commission does not see fit to impose.

PROPOSED AMENDMENT

Schedule 5 page 88 line 37 leave out (4)

Purpose

Consequential on the amendment below

PROPOSED AMENDMENT

Schedule 5 page 88 line 39, after "Commission" insert

(*) subparagraph 4 were omitted

Purpose

Removes the restriction on the Special Immigration Appeals Commission's granting bail is directions are in place for removal within 14 days which was imposed in 2014 at the same time as such restrictions were imposed on the Tribunal

PROPOSED AMENDMENT

Schedule 5 page 39 line 1, leave out lines 1 to 5 and replace with

(*) The words "subject to sub-paragraphs (3) and (4)" in subparagraph (2) were omitted and subparagraphs (3) to (5)) were omitted

Purpose

Provides that provisions allowing the Secretary of State to override the decisions of the Tribunal and impose conditions that the Tribunal did not impose will not apply Special Immigration Appeals Commission cases.

Briefing

The Special Immigration Appeals Commission is presided over by a High Court judge and

Should not be constrained in its powers to release on bail by statute.

As set out below, there are a number of Government amendments making further inroads into the Commission's jurisdiction and allowing Home Office officials to substitute their views fort hat of the Commission.

GOVERNMENT AMENDMENTS 33, 32, 34, 35

Stated purpose

The Bill already makes provision for bail conditions to be applied by both the First-tier Tribunal and the Special Immigration Appeals Commission. This amendment inserts some further consequential provision to give this full effect.

Briefing

For the reasons described above, ILPA does not consider it appropriate that the Secretary of State should be able to overrule the Commission.

Amendment 33 simply corrects a drafting error. There is no paragraph 2(2)(a) in schedule 5. The first part of amendment 32 has the effect that where arrangements are made for electronic monitoring they may involve the exercise of functions by persons other than the Secretary of State. Given the many problems there have been with subcontractors administering electronic tagging, including in the criminal justice service, as set out in the report of the National Audit Office,[91] there are arguments for insisting that the Home Office manage this directly.

The second part of amendment 32 has the effect that when the Commission has directed hat the Secretary of State should have the power to vary bail conditions, any financial condition is to be exercised by the Secretary of State. It is to be hoped that the Commission would never use the powers the Bill gives it to devolve to the Secretary of State power to vary conditions. Should it do so it is suggested that it should still be the Secretary of State, not the commission that takes the monies and retains oversight and therefore the amendment is opposed.

Amendment 34 has the effect that if the Commission gives a direction that the Secretary of State may exercise the power to amend or remove conditions then the Commission may not exercise such powers. ILPA opposes such amendments. The Commission is presided over by a High Court judge and is specialist in matters of national security. It should retain control of those released, overall control of conditions and control of the Secretary of State.

The first part of Amendment 36 corrects a typo, there is no reference to the tribunal in subparagraph 6(5). The change in subparagraph 9 (read with that in amendment 34 simply rewords a substituted reference from "Commission" to "Special Immigration Appeals Commission". What is significant in the amendment is the insert of "(10)". The effect of this will be to empower the Secretary of State to impose a different condition in place of the condition imposed or amended by the Commission. It mocks a specialist tribunal presided over by a High Court judge if the Secretary of State, having failed to convince it by argument, can simply turn around and substitute her view of the appropriate bail conditions for this view. It is also potentially dangerous as the "secretary of State" in this context is a member of her staff who, we suggest, is more likely to make mistakes in the handling of matters of national security than this specialist expert tribunal.

It is not difficult to describe what this section does. It is therefore to be regretted that the explanatory statements provided n the order paper obscure rather than illuminate and do not assist the committee in its work of scrutiny.

GOVERNMENT AMENDMENT 36

Stated purpose

This amendment clarifies how the immigration bail powers will operate in respect of a person where a deportation order has been made in accordance with the UK Borders Act 2007

Briefing

More evidence of a Bill drafted in haste, more explanations of little use to those trying to scrutinize the bill. More use of the weasel word "clarification." As far as the amendment to the Bill goes, it simply tidies up the drafting. As to the overall effect of the amendment, it is to substitute "unless the person is granted immigration bail…" for the words "unless in the circumstances the Secretary of State thinks it inappropriate" in s 36(2) which, in its current form, is set out below.

The Minister should be pressed on whether a person against whom a deportation order is made will ever be granted bail in these circumstances, and if so, when.

Section 36 reads

36 Detention

(1) A person who has served a period of imprisonment may be detained under the authority of the Secretary of State–

(a) while the Secretary of State considers whether section 32(5) applies, and

(b) where the Secretary of State thinks that section 32(5) applies, pending the making of the deportation order.

(2) Where a deportation order is made in accordance with section 32(5) the Secretary of State shall exercise the power of detention under paragraph 2(3) of Schedule 3 to the Immigration Act 1971 (c. 77) (detention pending removal) unless in the circumstances the Secretary of State thinks it inappropriate.

(3) A court determining an appeal against conviction or sentence may direct release from detention under subsection (1) or (2).

[91] https://www.nao.org.uk/report/the-electronic-monitoring-of-adult-offenders/

(4) Provisions of the Immigration Act 1971 which apply to detention under paragraph 2(3) of Schedule 3 to that Act shall apply to detention under subsection (1) (including provisions about bail).

(5) Paragraph 2(5) of Schedule 3 to that Act (residence, occupation and reporting restrictions) applies to a person who is liable to be detained under subsection (1).

PROPOSED NEW CLAUSE

Richard Fuller

NC1

To move the following Clause—

"Detention of persons – exempted persons

In paragraph 16 of Schedule 2 to the Immigration Act 1971 after subsection (4)

insert —

"(5) A person may not be detained under this paragraph if they are a member of one

or more of the following groups of person—

(a) Pregnant women;

(b) Victims of trafficking;

(c) Victims of torture;

(d) Victims of sexual violence;

(e) Any other group as may be prescribed by the Secretary of State.""

Stated purpose

This amendment would provide that pregnant women, victims of trafficking, torture and sexual violence, and any other group prescribed by the Secretary of State, may not be detained pending an examination or decision by an immigration officer.

Briefing

ILPA opposes detention under immigration act powers and therefore supports the proposed amendment. See the Annex.

Reasons for detention all too often take the form of tick boxes and inadequate or inaccurate bail summaries served at the door of the bail hearing. In *R (S) v SSHD* [2011] EWHC 2120 (Admin) the judge held that "subsequent reviews failed to grapple with the need to understand and apply the policy requirement of exceptional circumstances, to recognise properly S's mental condition and to consider properly objective evidence as to the effect of detention on it." S was detained despite a clear (and documented) history of severe mental illness, and contrary to the clear expert advice of a number of mental health professionals without detention having to be justified at the time before any court or tribunal.

PROPOSED NEW CLAUSE

Richard Fuller

NC3

To move the following Clause—

"Time limit on detention

In paragraph 16 of Schedule 2 to the Immigration Act 1971 after subsection (4)

insert—

"(5) Subject to regulations under subsection (6), a person detained under this paragraph must be released on bail in accordance with Schedule 5 to the Immigration Act 2016 after no later than the twenty-eighth day following that one which the person was detained.

(6) The Secretary of State may by regulations make provision to vary by category of person the time limit under subsection (5).""

Presumed purpose

To impose a time limit of 28 days on detention under immigration Act powers. There is provision to limit the time limit to some rather than all detainees in subparagraph (6).

Briefing

ILPA supports a time limit on immigration detention.

When Lord Hylton moved amendments in 199992 to set a maximum time limit on detention this was in the context of proposals that all detainees would be brought before a court or tribunal seven and 28 days after their detention started93 and the number of persons detained beyond six months was 120.[94] In May 2013, the UN Committee against Torture urged the UK to "(i)ntroduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention."[95]

Practice in the UK is that increasing numbers of persons are detained, some for years on end,[96] including in circumstances where eventual release is to liberty calling into question the necessity for detention at all. Home Office migration statistics[97] show that immigration detainees who are held for any periods above one year are more likely at the end of their detention to be released from detention into the community than to be removed from the UK. Home Office statistics further show that a greater proportion of detainees who are released after such long periods in detention are released on bail than are released on Temporary Admission by the Home Office.

For the full year 2014, 57% of people leaving detention who were held for 12 months or more were released into the community and 43% were removed from the UK. Of those released into the community, 58% were bailed. For that same year, 47% of those people held for any period from one day to 12 months were released into the community, but only 15% of them achieved this through bail. The vast majority (81%) were granted Temporary admission or release by the Home Office.

Trends in earlier years are similar. According to UK Border Agency statistics, of detainees leaving detention after more than a year in 2011, 62% were released and 38% removed or deported. These proportions were exactly reversed, for detainees released after less than a year. Detention Action's September 2010 report "No Return No Release No Reason" monitored the cases of 167 long-term detainees, of whom only a third (34%) were removed or deported. Sixty-two per cent of those held for over a year were released in 2013.[98] Between 2007 and 2010, overall numbers of enforced removals and notified voluntary returns declined by 6%. Yet in the same period the number of persons detained at any one time increased by 38%.

The UK does not conform to international standards including:

— UNHCR Detention Guidelines (2012), Guideline 6: "To guard against arbitrariness, maximum periods of detention should be set in national legislation. Without maximum periods, detention can become prolonged, and in some cases indefinite".

— UNHCR/Office of the High Commissioner for Human Rights Summary Conclusions from Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons (2011):

> *2: "Maximum time limits on … administrative [immigration detention] in national legislation are an important step to avoiding prolonged or indefinite detention".*
>
> *…*
>
> *11: "Lack of knowledge about the end date of detention is seen as one of the most stressful aspects of immigration detention, in particular for stateless persons and migrants who cannot be removed for legal or practical reasons".*

UN Working Group on Arbitrary Detention Annual Report 1999, E/CN.4/2000/4/Annex 2, 28 December 1999 (Deliberation No. 5), Principle 7: "A maximum period should be set by law".

The UK is not a party to Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third country nationals, which sets a six-month limit on detention with the possibility of further detention for limited periods to a maximum of 18 months *in toto* where, despite the State's reasonable efforts, lack of co-operation by the detainee or in obtaining documentation from third countries had caused time to be extended.[99]

In *Mathloom v Greece*[100] it was held that absent the time limits on detention, Greek legislation on detention under immigration act powers did not meet the "in accordance with the law" test laid down in Article 5 of the

[92] HL Deb 19 July 1999 vol 604 cc 693-724.
[93] Immigration and Asylum Act 1999 s 44.
[94] HL Deb 28 July 1999 vol 604 cc1611-66, letter of Lord Williams of Mostyn to Lord Avebury, to which reference is made by Lord Avebury.
[95] Committee against Torture, Fifth periodic report of the United Kingdom, (6-31 May 2013).
[96] See, for example, *R (Sino) v SSHD* [2011] EWHC 2249 (Admin) (four years and 11 months) and *R (Mhlanga) v SSHD* [2012] EWHC 1587 (Admin) (five years two months). See *The effectiveness and impact of immigration detention casework: A joint thematic review*, Her Majesty's Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, December 2012, available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/thematic-reports-and-research-publications/immigration-detention-casework-2012.pdf (accessed 7 October 2014).
[97] Source: Home Office, Immigration statistics, January to March 2015'. *Table dt_06: People leaving detention by reason, sex and length of detention*. Available at http://bit.ly/1NuAxG3
[98] Home Office, *Immigration Statistics January to March 2014*, table at 06. See also *Immigration Statistics: summary points: April to June 2014*.
[99] See Case C-357/09, Kadzoev [2009] ECR I-11189, 30 November 2009.
[100] Application 48883/07, judgment 24 April 2012.

European Convention on Human Rights because it was not sufficiently precise or its consequences sufficiently foreseeable.

In the debates in on the bail provisions of the Immigration and Asylum Act 1999, Baroness Williams of Crosby said

> *One characteristic of a tyrannical or dictatorial regime is that it detains innocent people without any indication as to how long they will be detained. A few months ago, I had the obligation of visiting the last standing prison under the gulag archipelago system, Perm 65 in the Soviet Union as it then was, now Russia. I discovered that the most dreadful agony faced by people who had been at that detention centre was not knowing if or when they would ever get out. There was no clear procedure. An obligation rests upon those of us who are more privileged in a democratic society to limit that sense of being almost totally lost within the system—not knowing when, if ever, the procedures will be concluded. The main purpose of the new clause is to limit that period to a maximum of six months.*[101]

Lord Williams of Mostyn rebuked her gently

> *719. The noble Baroness spoke of the Gulag. There is no automatic application after seven days paid for at public expense, nor after the further period paid for at public expense. No reasons are given in writing. There is no presumption of bail. I take the point, but we have produced a series of circumstances which are infinitely better than that. They are very significant advances. We seek to attack a machine which is not subject to judicial overview or written reasons without a presumption of bail. Without the automatic first and second routine bail applications, applications for bail can be made, or applications for judicial review*[102].

What would he say now? When detention is without limit of time, by administrative fiat, and the detainee will never ever be brought before a court or tribunal if s/he does not instigate this? Litigation exposed that the Home Office had been operating an undisclosed, unlawful practice of detaining foreign national former prisoners on a blanket basis, without permitting officials to consider release in any circumstance.[103] Persons are detained in the UK for longer periods than in other EU countries.[104] On 11 September 2013, in response to a parliamentary question, the Minister for Immigration stated that as of 30 June 2013, 27 people had been detained for between 18 months and 24 months, 11 for between 24 months and 36 months and one for between 36 months and 48 months.[105] According to Home Office statistics, 220 people had been detained for over six months at 31 December 2013. In the context of a stated intention to reduce to an absolute minimum[106] the detention of children in families, the shortest possible time is envisaged as seven to 28 days.[107]

A significant number are unable to return to their country of origin. The majority of Bail for Immigration Detainees' clients for whom it provides legal advice and information on Section 4(1)(c) applications have one or more legal or practical barriers to their removal.[108] These individuals may move repeatedly in a cycle of extended detention, release on bail with residence in s 4(1)(c) accommodation, and then re-detention.

Lack of travel documentation is frequently a reason why a person cannot be removed. This may be for a number of reasons, including the inability of an individual to provide adequate information to support the issue of a travel document if they first came at a young age, statelessness or practical problems in proving nationality or delays with in the issuing of travel documents (e.g. for returns to Algeria). There are currently no enforced removals to a small number of countries such as Somalia and Zimbabwe and some detainees are from these countries.

Other reasons why removal is not imminent, and indeed may never happen, include outstanding family court matters; pending judicial review hearings including challenges to unlawful detention and pending appeals, including Home Office appeals.

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[101] *HL Deb 19 July 1999 vol 604 cc693-724* Baroness Williams said
[102] *Ibid*. Col 719.
[103] *R (Lumba) v SSHD* [2012] 1 AC 245.
[104] See the joint Her Majesty's Inspectorate of Prisons/Chief Inspector of Borders and Immigration report, *The effectiveness and impact of immigration detention casework*, December 2012 at 2.7. In France there is a limit of one and a half months on immigration detention, which is subject to automatic oversight by the courts. The Netherlands too has a maximum time limit of one and a half months and Spain a limit of two months.
[105] HC Deb, 11 September 2013, c 723W.
[106] HL Committee, Immigration Bill, 3 March 2014, col 1125 per the Lord Wallace of Tankerness.
[107] Immigration Act 2014, s 2.
[108] The Independent Chief Inspector of Borders and Immigration (ICIBI) carried out an inspection of the Home Office travel document processes and noted in 2014: "*despite recommendations I have made previously, I was concerned to find that the Home Office was still keeping foreign criminals, who had completed their prison sentences, in immigration detention for months or even years in the hope that they would eventually comply with the re- documentation process. Given the legal requirement only to detain individuals where there is a realistic prospect of removal, this is potentially a breach of their human rights*" (ICIBI, 2014: 2). (Source: Independent Chief Inspector of Borders & Immigration, (2014), '*An Inspection of the Emergency Travel Document Process May-September 2013*.' Available at http://icinspector.independent.gov.uk/wpcontent/uploads/2014/03/An-Inspection-of-the-Emergency-Travel-Document-Process-Final-Web-Version.pdf)

Case of Mr F

Mr F had been detained for nearly three years at the date of hearing. He was without travel documents and therefore could not be removed until this was resolved. He had a significant history of self-harm and suicide attempts in detention. He was refused bail at a hearing in 2012 because the First Tier judge did not know that Home Office initial accommodation ['Section 4 bail accommodation'] at Barry House in southeast London had the facility to monitor electronic tags where they were fitted as a condition of bail. The Home Office Presenting Officer did not enlighten the Tribunal. Counsel for the applicant had stated that monitoring was possible (Barry House was after all the release address for most detainees bailed in the south east), and was able to telephone Barry House and ask the manager to fax through confirmation of this to the hearing centre within minutes. Despite this bail was refused.

Counsel's attendance note stated:

"It was submitted by the HOPO in answer to a question by the IJ that Barry House did not allow electronic monitoring. I contacted Barry House while still at the hearing centre to confirm the tagging point but was told by the manager that they do permit electronic tagging and in fact they had residents with tags on there currently. I asked him to send a fax to the Tribunal immediately confirming this since bail had been refused on the false basis that tagging was unavailable at Barry House. He agreed to this and did indeed send the fax. I immediately told the usher of the Court to inform the IJ who was dealing with another application that this confirmation was coming through and that I wished her to reconsider the application in light of this. IJ received the fax but refused to reconsider the application stating that she would add the fax to the file for the next application. "When I told the HOPO about my telephone conversation and that I was awaiting confirmation she went and took instructions and maintained her position that Barry House does not permit electronic tagging. This is either dishonest or a very severe case of the left hand not knowing what the right hand is doing. Either way it is unacceptable…In my opinion the IJ should have reconsidered the application in light of the correct information about tagging at Barry House being provided within minutes of her refusal. She had commented that tagging provides certainty and she refused bail because she considered the applicant was a substantial risk of absconding"

CLAUSE 30 POWER TO CANCEL LEAVE EXTENDED UNDER SECTION 3C OF THE IMMIGRATION ACT 1971

PROPOSED AMENDMENT

Clause 30, page 33, line 25, leave out from "Power" to the end of line 26 and replace with

"Section 3C of the Immigration Act 1971

30. Section 3C of the Immigration Act 1971

Purpose

This amendment paves the way for both the proposed amendments below. It allows this part of the Bill to be used to correct existing problems with 3C leave.

We have presented both the problems below as separate amendments, so that the problems can be identified clearly and addressed. If they find favour, however, it will be necessary to produce a composite amendment dealing with both at once.

PROPOSED AMENDMENT

Clause 30, page 33, line 38, after "decision)" insert

"(a) In subsection 3C(1)(c) after "decided" insert "or declared invalid"

(b) I subsection 3C(2)(a) after "withdrawn" insert "nor declared invalid"

(c) "

Purpose

To ensure that a person who makes an application while they have leave (an "in time" application) which is later determined to be invalid benefits from "3C leave" for the period, if any, between the expiry of their original leave and the Secretary of State's notification to them that the application is invalid and thus to give effect to the interpretation of the law for which counsel for the Secretary of State argued in the case of Iqbal.

Briefing

This amendment would reverse the effects of the judgment of the Court of Appeal in R(*Iqbal v SSHD*) [2015] EWCA 838[109] which concerns the interpretation of section 3C of the Immigration Act 1971.

Section 3C of the Immigration Act 1971 provides that when a person makes an "in time" application (i.e. makes an application while they still have leave to be in the UK), their leave continues on the same terms and

[109] http://www.bailii.org/ew/cases/EWCA/Civ/2015/838.html

conditions until such time as the Secretary of State has made her decision on the application and then for the period during which an appeal or administrative review could be brought and while it is pending. People are asked not to apply until c. one month before their existing leave expires and it is very often the case that the application is not decided before, without the protection of 3C leave, their leave would have expired.

Section 3C reads as follows:

3C Continuation of leave pending variation decision

(1) This section applies if—

(a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,

(b) the application for variation is made before the leave expires, and

(c) the leave expires without the application for variation having been decided.

(2) The leave is extended by virtue of this section during any period when—

(a) the application for variation is neither decided nor withdrawn,

(b) an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought, while the appellant is in the United Kingdom] against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission),

(c) an appeal under that section against that decision, brought while the appellant is in the United Kingdom, is pending (within the meaning of section 104 of that Act), or

(d) an administrative review of the decision on the application for variation—

(i) could be sought, or

(ii) is pending.

] (3) Leave extended by virtue of this section shall lapse if the applicant leaves the United Kingdom.

The facts of the case can be summarised thus

Mr Iqbal was granted entry clearance in January 2007 to come to the UK as a student. He had leave to remain until 30 April 2011. On the 19 April, before leave had expired, Mr Iqbal made an application for further leave to remain as a Tier 4) Student. Unfortunately he did not submit the appropriate fee with his application because he had not appreciated that it had recently been increased by some £29. On 26 April the application and supporting documents were returned to him and he received them on the 2 May, after leave had expired. He was informed that the failure to pay the proper fee meant that his application was invalid.

Mr Iqbal submitted a further application on 6 May 2012, after his leave had expired, to remain in a temporary capacity as a student. However the college at which he planned to study lost its licence before his application was considered and his application therefore fell for refusal because the college he had identified was no longer approved.

If he had been entitled to the automatic extension of leave under section 3C, then he would have been given 60 days in which to identify another approved institution which would accept him. This is a protection put in place for students who are the innocent victims of college failures. He was not given that opportunity because the Secretary of State considered that he had no right to remain because the relevant application had been made after his leave had expired.

The Court of Appeal held that if a person such as Mr Iqbal makes an in-time application to vary their leave to remain which they genuinely (and even reasonably) think is a valid application, but after their leave expires it turns out that the application was not valid, they have been in the UK without leave and without the protection of 3C leave, even though they did not know this and had no reason to think it, between the expiry of the existing leave and the Secretary of State's decision that the application was invalid.

This means that for that period the person is in the UK unlawfully, their landlord/landlady or employer is committing a criminal offence, they are not entitled to a bank account, or to drive, etc. Whether they are unlawfully present at all, and if so for what period, all depends on whether the Secretary of State decides their application before their existing leave expires (applicants are normally asked not to submit an application until one month before their leave expires).

Unsurprisingly, the Secretary of State was no more keen on this interpretation of the law than the claimant in Iqbal. The Secretary of State argued that an application which is invalid under the rules may nevertheless be an application which engages and brings into effect section 3C. However, she argued that when a person is notified that an application is invalid constitutes a decision on the application within the meaning of section 3C.

If that decision is made before leave has expired, the person's original leave will simply expire in the normal way and section 3C has no role to play (see section 3C(1)(c)). If it is decided after the expiry, leave will terminate at the date of the decision: section 3C(2)(a). The Court of Appeal however, held that the section could not be interpreted in this way.

The Court observed

> **27.** *A number of arguments have been advanced in support of the proposition that an invalid application still falls within the terms of section 3C. …*
>
> **28.** *…as both counsel point out, it is a criminal offence for someone to work whilst here illegally, and indeed for the employer to employ them. However, it is often difficult to be sure whether an application properly complies with the rules or not. It follows that in an employment context there may be a bona fide but invalid application and unless leave is extended by section 3C, both the applicant and his employer will be committing a criminal offence once the original period of leave has expired. It may be true that a prosecution is unlikely in practice, but the risk is there and the statute should be construed so as to avoid this unfortunate result.*
>
> **29.** *Moreover, there are certain circumstances where the requirements for validity can arise after the application is made. For example, in some cases it is necessary to provide biometric information if it is sought by the Secretary of State. This will typically have to be provided weeks after the original application is lodged. The invalidity in such cases may result …in the failure to provide the information,*
>
> **30.** *I accept that there is merit in these submissions, and in particular in the concern that someone making a bona fide application may nonetheless unwittingly fall in breach of the criminal law. But ultimately I reject them. …Parliament would have known, therefore, that rules would be adopted regulating the form of applications, and identifying when breaches would render the applications invalid. It is true that Parliament would not have known how those powers would be exercised, but in my view it is a cogent reading of the section to construe the reference to an application as one which is a proper application as defined by rules which Parliament has permitted the Secretary of State to formulate.*
>
> *Is the notification of invalidity a decision within the meaning of section 3C?*
>
> **31.** *It is the Secretary of State who advances this argument. She says that the notification of invalidity constitutes a relevant decision within the meaning of section 3C. In my judgment this is wholly unsustainable. In order to constitute a decision, there must be a determination of the application to vary. That is not what the rejection of an application achieves. It is effectively telling the applicant that no decision has been made because no proper application has been received. Indeed, Mr Iqbal was told that his attempted application could not be considered. Furthermore, an applicant may, after the rejection, make a fresh application (which may sometimes be before leave has expired) so as to have the substantive issue determined. If the original application has already been determined, I can see no room in such circumstances for another determination. Moreover, if the effect is to decide the application as one refusing leave, there would be a right of appeal, which the Secretary of State submits is not the case. Ms Broadfoot submits that this would not be the effect of the rejection of the application; but if it does not have that effect I cannot see how it can possibly be a relevant decision at all.*
>
> **32.** *In my judgment, if a decision on the application for leave was intended to include a decision that there is no valid application, Parliament would have had to say so in terms…*

The effect of the amendment is to make the "wholly unsustainable" argument advanced by the Secretary of State sustainable.

PROPOSED AMENDMENT

Clause 30, page 33, line 38, after "decision)" insert

(a) leave out "and" at the end of subsection 1(b)

(b) leave out subsection 1(c)

(a) (c) In subsection 2

(c) In subsection (2) replace "The leave is extended by virtue of this section" with "The leave is extended from the day on which it would otherwise have expired"

Purpose

To correct an unintended consequence of the Immigration Act 2014 amendments whereby a person whose application is refused before their original leave expires can benefit from 3C leave is they appeal or bring an administrative review. Ensures that a person whose application is refused before their original leave expires and is still in time to bring an appeal or has brought an appeal by the time their original leave expires, benefits from the protection of 3C leave in the same way as they would had they been refused by the Secretary of State only after their original leave had expired.

Briefing

Section 3C of the Immigration Act 1971 provides that when a person makes an "in time" application (i.e. makes an application while they still have leave to be in the UK), their leave continues on the same terms and conditions until such time as the Secretary of State has made her decision on the application and then for the period during which an appeal or administrative review could be brought and while it is pending. People are asked not to apply until c. one month before their existing leave expires and it is very often the case that the application is not decided before, without the protection of 3C leave, their leave would have expired.

Without the protection of 3C leave, a person would become an overstayer, unable to work, rent property, open a bank account, drive etc., their employers and landlords/landladies liable to prosecution, even though the application was straightforward and indeed was approved without hassle as soon as the Secretary of State was able to deal with it. The only way of avoiding this situation without 3C leave would be for the Secretary of State to have to deal with all applications before the original period of leave expired, which would make enormous and unpredictable demands upon her.

Amendments were made to section 3C in 2014, as a consequence of the changes to the appeals and removals regime. In particular, provision was made for 3C leave while an administrative review could be brought or was pending.

But one effect of the redraft was to require that the original leave had already expired when the Secretary of State made her decision for the protection of section 3C to kick in for the period while an appeal could be brought or was pending. The consequence of the redraft is that if Secretary of State does manage to decide the application before their original leave expires, and refuses it, they do not benefit from section 3C while the appeal or administrative review could be brought or is pending. The problem is with s 1(c) below.

3C Continuation of leave pending variation decision

(1) This section applies if—

(a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,

(b) the application for variation is made before the leave expires, and

(c) the leave expires without the application for variation having been decided.

(2) The leave is extended by virtue of this section …

Paragraph 152 of the Explanatory Notes to the Bill implies that section 3C already covers such applicants, which may well be the intention. It says

> "A person who currently has leave and applies to extend their leave to enter or remain may well find that their leave expires while their application remains undecided, or while an appeal or administrative review against a refusal decision remains pending. To prevent people being left without leave, section 3C…provides.." [emphasis added]

Persons refused before their original leave expires may have the right to appeal or apply for administrative review, but they are effectively prevented from doing so because they run the risk of overstaying if their leave expires before the conclusion of proceedings.

What we are trying to ensure by this amendment is that a person who is refused an extension of leave before their original leave expires, continues to benefit from their original leave until it runs out, and then benefits from 3C leave for rest of any period during which an appeal could be brought and while that appeal is pending. We would thus ensure that those who make a variation application before their leave expires and whose application is refused before their leave expires are not prevented from bringing an appeal or applying for administrative review of the decision because they would become overstayers during that process, and at that point become subject to the measures in this Bill.

It may be that it will suffice to leave out subsection 3C(1)(c). The reason we have gone for a more complicated amendment is to make clear that the original leave continues until it expires and 3C leave only kicks in when the person has no leave and we are not wholly confident that the word "extended" in 3C(2) is sufficient to cover this.

CLAUSE 30 POWER TO CANCEL LEAVE EXTENDED UNDER SECTION 3C OF THE IMMIGRATION ACT 1971

PROPOSED AMENDMENT / STAND PART DEBATE

Page 33, line 26, leave out clause 30

Purpose

To remove from the Bill the power to cancel leave extended under section 3C of the Immigration Act 1971.

Briefing

Section 3C of the Immigration Act 1971 automatically extends a person's leave to enter or remain in the UK where they have limited leave to enter or remain, for example as a Tier 2 worker or as a student, and they make an application to extend or vary that leave before it expires. Their leave is extended on the same terms and conditions as their existing leave to cover the period until the Home Office decides their application, the period during which an appeal against, or administrative review of, the Home Office decision can be brought and the period during which that appeal or administrative review is pending until it is finally determined.

Clause 30 gives the Home Office the power to cancel leave extended under section 3C of the Immigration Act 1971 where it considers that the applicant has failed to comply with a condition of that to the leave or has used deception in seeking leave to remain.

The Home Office does not need a power to cancel leave extended by section 3C of the Immigration Act 1971. The Home Office bring leave under section 3C to an end, including in circumstances where it considers there has been a breach of conditions or the use of deception, by making a decision on the outstanding application and dealing with any appeal or administrative review.

This can be illustrated using the hypothetical example provided by the Government in the Explanatory Notes to the Bill (p.22, example 1). In this example, a student applies to extend his leave to remain as a student in the UK and his leave is automatically extended under section 3C of the Immigration Act 1971 whilst that application is considered. Meanwhile, the student is found to have breached his conditions because of the employment he has had and is discovered to have used deception in his application.

The Government is concerned that the student would continue to benefit from leave under 3C of the Immigration Act 1871 until the outstanding application is determined and any administrative review is concluded. However, in this scenario, the Home Office could immediately refuse the outstanding application as a breach of conditions and the use of deception are both material to the application. Leave under 3C of the Immigration Act 1971 would only continue if an administrative review were brought. Administrative review was introduced at the time of the coming into force of the Immigration Act 2014, for the Home Office to correct own casework errors in cases where, subsequent to the coming into force of that Act, there is no right of appeal. The Home Office aims to decide an administrative review within 28 days.

If the Home Office cancelled leave under section 3C of the Immigration Act 1971 instead, without making a decision on the outstanding application, the applicant would have no right of appeal or administrative review to challenge the cancellation of leave. There is currently no provision for administrative review of a cancellation of leave. The person would have no lawful status and no means of challenging any mistaken decision: the cancellation, because there is no administrative review of this and the original decision because to pursue their appeal they would have to remain unlawfully.

Even where the Home Office made a decision on the original application at the time of cancellation of 3C leave, if that decision were a refusal the applicant would have no lawful status and would be unable to work or study until any administrative review of this had been determined, despite having no control over the length of time the Home Office takes to determine their case.

Applicants unable to work would potentially lose their job whilst casework errors made by the Home Office were addressed and their case reconsidered. They would also be subject to all the proposed measures designed to create a hostile environment for those living unlawfully in the UK, including losing their home through being unable to rent and losing access to their bank account. Even where the applicant was ultimately successful the damage would have already been done through the loss of their work or home in the interim.

The quality of Home Office decision-making was highlighted as a concern during debates on the Immigration Act 2014 when appeal rights were removed. Whilst the use of deception or breach of a condition would be a valid reason to refuse an immigration application, mistakes are made, for example if the Home Office does not have sufficient evidence to support an assertion of deception; if a decision that a condition has been breached is made under the wrong rules and policy; or if a notification by an employer that an individual no longer works for them is linked to the wrong employee.

ILPA is aware of cases where applicants in a variety of categories have found themselves accused of deception where fraud was identified in the test centre that they used to take the English language tests for their visa, even though they were unaware of cheating having occurred and there was no evidence to suggest that they had cheated in the tests.

The Government argues in the Explanatory Notes that this clause addresses an anomaly with how it deals with cases where there has been a breach of conditions or the use of deception by an individual who has leave to enter or remain that is not "3C" leave. The second example in the Explanatory Notes, is of a student with valid leave to remain due to expire in two years' time. This student may have his leave immediately curtailed and be given notice of removal on discovery of any use of deception.

The different outcome for the student with leave that is not 3C leave is should, however, be a matter of concern, because it was not what parliament was led to expect during the passage of the Immigration Act 2014.

The Immigration Act 2014 removed a number of rights of appeal against immigration decisions, including the right of appeal against a decision to curtail leave.

During the passage of the Bill that became the Immigration Act 2014, the Government stated that administrative review would provide a remedy in those cases where a right of appeal had been removed.

The Government's *Immigration Bill – Statement of Intent on Administrative Review in lieu of Appeals*[110] said of administrative review:

1. *Who will be able to apply for administrative review?*

— *Individuals who will no longer have a right of appeal as a result of changes to the appeals system.*

[...]

14. *Will existing leave continue while an administrative review is conducted?*

— *Yes where an individual with leave applies for further leave before their current leave expires and, following a refusal, applies for administrative review; their current leave will be extended until their administrative review has been concluded.*

The Explanatory Notes accompanying the Bills, published on both 10 October 2013[111] and 03 February 2014[112] stated:

> *Where an application is refused and there is not a right of appeal, the applicant may be able to apply for an administrative review. Similarly, an administrative review may be sought when a person's leave is curtailed or is revoked. The Immigration Rules will set out when an applicant may seek an administrative review. In Schedule 8, Part 4 extends the effect of section 3C and 3D where an administrative review can be sought or is pending. The question of whether an administrative review is pending will be determined in accordance with the Immigration Rules.*

Despite this however, when the Home Office subsequently published the immigration Rules on administrative review,[113] decisions to curtail leave were excluded from the scope of administrative review. ILPA raised this in its comments on a draft version of the rules, but no action was taken. The rules received limited scrutiny from parliament. Adding insult to injury, the Government now seeks, by clause 32 in this current Immigration Bill, to remove section 3D of the Immigration Act 1971 on the basis it is no longer necessary. Section 3D of the Immigration Act 1971 is the provision under which a person may have their leave automatically extended whilst they bring an administrative review against a decision to curtail their leave.

The Government could achieve parity of outcomes by providing an administrative review of a decision to curtail leave, as parliament had been led to understand, during the passage of the Bill that became the Immigration Act 2014, that it would do and by ensuring that section 3D of the Immigration Act 1971 is left intact so that right may be exercised.

SCHEDULE 5 PARAGRAPH 2 CONDITIONS OF IMMIGRATION BAIL

PROPOSED AMENDMENT

Page 79, line 42, delete ', occupation or studies' and replace with 'or occupation'

Purpose

To remove the restriction on a person's studies from the list of conditions to which a person may be subject when on immigration bail.

Briefing

The introduction of a restriction on studies as a condition either of temporary admission or bail for those subject to immigration control is new. No reason for the restriction is given in the Explanatory Notes to the Bill.

Breach of a condition of immigration bail is a criminal offence and therefore has serious consequences. Those lawfully present and in touch with the authorities should not be restricted from undertaking studies.

As all those subject to immigration control will be on immigration bail, not just persons released from detention, The condition could potentially be applied to children and young people, from accessing further education and even preventing them from attending their school.

Those previously on temporary admission will henceforth be on "immigration bail." This will include persons seeking asylum. The condition could be applied to them, preventing them from learning English or undertaking other studies whilst their asylum claim is pending. This would put those recognized as refugees at a disadvantage as they start to rebuild their lives in the UK. Those refused asylum are more likely to have an

[110] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254851/SoI_Administrative_review.pdf,
[111] http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/en/14110en.pdf, para 73
[112] http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/en/14084en.htm, para 77
[113] C 395, Appendix AR.

incentive to return if they know that return with skills or qualifications and such skills and qualifications may also help to rebuild countries recovering from war.

Persons seeking asylum currently face considerable delay in the determination of their asylum claim, during which time they are not permitted to work. The Home Office now has a target of six months for the initial decision on an asylum claim if the case is straightforward and a target of 12 months for deciding a case that it considers not to be straightforward[114]. Only if a person waits for more than 12 months for a decision will they be permitted to work and then only in an occupation on the shortage occupation list. A person who does not wait more than 12 months for their initial decision will not be permitted to work while waiting for a decision on their appeal, however long the appeal may take.

Should a person appeal against a wrongful refusal they will wait a long time for an appeal. At the moment the First-tier Tribunal is listing appeals for June and July 2016. That is the initial appeal; some cases will proceed to the Upper Tribunal and higher courts

By the time an individual is recognized as a refugee, they have large gaps in their employment history which make it more difficult to get a job and to begin to rebuild their lives in the UK. Placing an additional restriction on persons seeking asylum that would prevent them from learning English or other skills they may need to integrate into the UK will limit their prospects of integration on recognition as a refugee.

ANNEX III-TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY UNDER IMMIGRATION ACT POWERS

During the evidence session on 22 October 2015 the following exchange took place between Mr Whittaker MP, the Government Whip and Jerome Phelps of Detention Action:

> **Craig Whittaker:** *Do any of you have any evidence that there is any abuse in the detention centre?*
>
> **Jerome Phelps:** *The most apposite evidence would be the series of finding by the UK courts of breaches of article 3 in relation to highly vulnerable mentally ill migrants in detention, who should not be detained anywhere except for under exceptional circumstances. Article 3, on inhuman and degrading treatment, is a very high threshold. Until recently there had never been a case of this, but in the past four years there have been six cases of desperately vulnerable people who have had complete psychiatric collapse in detention, to the article 3 breach level.*
>
> **Q 229 Craig Whittaker:** *I do not want to undermine or belittle the six cases by any stretch of the imagination, but from the thousands who have been through the system in the past four years, which is what you mentioned, it is an incredibly small part. It would therefore be very difficult to say that the system is broken. Is that right?*
>
> **Jerome Phelps:** *I do not think any of us have suggested that everyone in detention is abused. It is a small part but we have functioning safeguards, such as the bail system. What is concerning about the Bill is that it is removing some of those safeguards.*[115]

The exchange concerns breaches of Article 3 of the European Convention on Human Rights: the prohibition on torture, inhuman or degrading treatment or punishment. It is a right non-derogable at any time, including times of war or public emergency threatening the life of the nation. That torture inhuman or degrading treatment of mentally ill individuals can happen once does indeed suggest to us that the system is broken. That such a serious violation can happen more than once provides further evidence of this. We are aware of many more cases which have settled or are pending. Cases that are settled are now settled subject to confidentiality agreements so that further details cannot be given.

Cases in which the UK has detainees' rights under Article 3 of the European Convention on Human Rights, the prohibition on torture, inhuman and degrading treatment and punishment[116] can be read at the links below. We draw particular attention to:

R (S) v Secretary of State of State for the Home Department [2011] EWHC 2120 (Admin) (5 August 2011)

The Court held that the circumstances in which S was detained at Harmondsworth constituted inhuman and degrading treatment in breach of article 3. Those circumstances included:

- Detaining him despite a clear (and documented) history of severe mental illness, and contrary to the clear expert advice of a number of mental health professionals;
- Serious deterioration in his mental state, with numerous acts of self-harm, psychotic symptoms, feelings of acute anguish and distress, and allowing him to reach such a deteriorated state that he lacked capacity to make decisions in his own best interests;

[114] UKVI, *Non-straightforward cases: exclusions from the asylum processing aspiration*, 10 June 2015.
[115] http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151022/am/151022s01.htm
[116] For example *R (BA) v Secretary of State for Home Department* [2011] EWHC 2748 (Admin); *R (S) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (5 August 2011, *R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin) (17 April 2012), R (D) v Secretary of State for the Home Department [2012] EWHC 2501 (Admin) (20 August 2012); R(MD) V SSHD [2014] EWHC 2249 (Admin).

— The failure to respond assessments by the in-reach psychiatrist that he was unfit for detention and required urgent compulsory treatment in hospital under the Mental Health Act; and

— One incident in which officers encountered S, naked and bleeding, being pulled along a corridor by another detainee in view of a crowd of detainees after he had attempted suicide.

R (BA) v Secretary of State of State for the Home Department [2011] EWHC 2748 (Admin) (26 October 2011)

The Court held that the circumstances of his detention, at Harmondsworth, constituted inhuman and degrading treatment in violation of article 3 and the prohibition on torture, inhuman or degrading treatment. Those circumstances included:

— Detaining him despite a clear and documented history of severe mental illness and contrary to expert advice that detention would be likely to cause deterioration. There was *"a deplorable failure, from the outset, by those responsible for BA's detention to recognise the nature and extent of BA's illness"*;[117]

— The serious deterioration in his physical and mental health, including allowing him to reach a state where he was assessed as unfit for detention and, at one stage, on the verge of death;

— The failure, expeditiously, to make arrangements for his transfer to hospital once he had been assessed by medical staff as requiring urgent transfer; and

— The failure within the Home Office to ensure that clinical information about his deteriorating condition was accurately communicated to senior officials responsible for deciding whether he should be released. The judge referred to *"a combination of bureaucratic inertia, and lack of communication and co-ordination between those who were responsible for his welfare"* and described the Assistant Director's concern to manage press interest in the event of his death as "callous indifference to BA's plight".[118]

The judge carefully enumerates the shortcomings in the reviews "In common with the other detention reviews, no detention review checklist appears to have been completed" "The reasoning in this decision does not refer to BA's mental illness at all. It …does not comply with…the policy." He says "A crescendo of professional voices expressed the view in the course of July that he was unfit to be detained."

The case shows how much deterioration can happen in a short time:

> 57… *It is of concern that when BA had been seen on 31 March, his condition had been seen to be getting worse, but that a little more than a week later, he was obviously unwell to a layman, and was saying both that his medication had run out three days earlier, and that he had not been able to see the healthcare staff. This suggests that no-one was keeping an eye on his welfare, despite the warning signs seen on 31 March 2011. This is all the more worrying when it is recalled that incarceration, stress, and lack of medication were factors which had led to BA's becoming ill in the past. The GCID note for 8 April 2011 says "subject came to the centre from hospital and his psychiatric illness is acknowledged on IS91RA". On 11 April 2011, the healthcare unit at Harmondsworth IRC were asked for an assessment of BA's mental health. There was then to-ing and fro-ing about consent forms.*
>
> 58. *BA was reviewed by the Harmondsworth IRC GP on 15 April 2011. ...*
>
> 59. *On 27 April 2011, Mr Agbeni ... asked for an assessment of BA's current mental health, his medication, and "the regularity of his appointments with the psychiatric doctor by return." Manuscript medical notes for 10 May 2011 record that an appointment to see the doctor was booked for BA for 12 May 2011 "as requested by UKBA". He was reviewed by a GP on 12 May 2011. He reported that BA was "disoriented, lying on the floor, keeps repeating 'I see demons'. H/O schizophrenia/on Olanzapine...Already on the waiting list to see psychiatrist (20.5.11)."*

BA finally saw a psychiatrist on 20 May. But it was not until 6 August that he was transferred to a mental health ward. The judge records

> 75. *On 6 July 2011, Dr Agulnik provided a preliminary psychiatric assessment. He formed the view that BA's food refusal was related to his delusional ideas. His physical condition was "not my area of expertise....gives rise to grave concern, and without more intensive and sustained treatment, could result in a lethal outcome." His physical and mental state made him unfit for continued detention, a "view supported by the Healthcare Manager". The stress and uncertainty about his status had a role in his current "decompensation into a psychotic state". Dr Agulnik considered it highly unlikely that BA could be successfully treated in an immigration detention centre, and "indeed that continuing to do so courts a real risk that he could die." He needed urgent psychiatric care which must be outside detention….*
>
> ...
>
> 84. *A file note on the same date indicates that UKBA knew that BA was considered unfit for detention,* ...

[117] Judgment, paragraph 236.
[118] Judgment, paragraph 237.

Even when the hospital told the Home Office that a bed was available for BA, no transfer took place for a further three days, despite the hospital's chasing.

R (HA) v Secretary of State of State for the Home Department [2012] EWHC 979 (Admin) (17 April 2012)

The circumstances which led the Court to find that HA had been subjected to degrading treatment included:

- Acts which *"violated his own dignity"* (prolonged periods of time in isolation; sleeping on the floor, often naked, in a toilet area; drinking and washing from a toilet; self-neglecting, including not eating properly and not washing or changing clothes for prolonged periods; and suffering from insomnia);
- Not receiving appropriate medical treatment for a prolonged period of more than 5 months;
- The use of force on him on several occasions; and
- In the second period, detaining him when the Home Office had been explicitly warned by a psychiatrist that Harmondsworth did not have the medical facilities to treat him should he suffer a relapse and that an aspect of his mental illness was paranoia about detention centre staff.

The judge observes:

> *"…under the heading 'Changes in Circumstances' the same words that had been used in the previous two reviews were repeated without in fact any record being given of any changes since the last review…" "The Defendant had no real answer to these submissions. In substance her response was to accept that the Claimant was in need of a transfer at about that time for assessment and, if necessary, treatment in a psychiatric setting but to deny that it was her responsibility that this did not happen as quickly as it might have done, that responsibility lying with others such as the Primary Care Trust."*

R (D) v Secretary of State for the Home Department [2012] EWHC 2501 (Admin) (20 August 2012).

Another case involving a schizophrenic in which a violation of Article 3 was found. Each review contains the formula "and as there are no medical or compassionate issues highlighted to date" despite the increasing evidence of mental illness. The judge describes the Home Office approach as "irrational" and "laisser-faire". The Secretary of State maintained throughout that there had been no error and no breach of Article 3 or even of Article 8 even though the Official Solicitor was acting as D's litigation friend by the time of the hearing because D's mental state was such that he could not instruct his solicitors.

Women in detention have been subjected to abuse by the staff of centres.[119] It was suggested in those cases that an attempt was made to remove the victims from the jurisdiction before they could bring a case. Such allegations are not new. We recall for example the comments of Mr Justice Munby in R (*Karas and Miladinovic) v Secretary of State for the Home Department* [2006] EWHC 747 (Admin):

> *I am driven to conclude that the claimants' detention was deliberately planned with a view to what in my judgment was a collateral and improper purpose – the spiriting away of the claimants from the jurisdiction before there was likely to be time for them to obtain and act upon legal advice or apply to the court. That purpose was improper. It was unlawful.*

HM Chief Inspector of Prisons has reported on an 84 years' old frail Canadian man suffering from dementia who died in detention in handcuffs having been kept handcuffed for five hours.[120]

Deaths, including suicides, and incidents of what is called "self-harm" but includes suicide attempts, are recorded. Home Office figures for the period July to September 2013 show 624 people on "self-harm watch" (what would elsewhere be called suicide watch) in immigration detention and 94 incidents of "self-harm" (which includes attempted suicide). In 2012 there were 208 incidents of what statistics call "self-harm" requiring medical attention and 1804 detainees formally recognised as being at risk of such harm.[121] There no figures for self-harm not requiring medical attention. Persons are detained for administrative convenience, although not for correct and sustainable decisions on applications for international protection, in the detained fast-track. In the last two years, the courts have made unprecedented findings that mentally ill men have been subjected to inhuman and degrading treatment in contravention of Article 3 of the European Convention on Human Rights.[122]

[119] Yarls' Wood affair is a symptom, not the disease, Nick Cohen, The Observer, 14 September 2013.

[120] *Report of unannounced inspection of Harmondsworth Immigration Removal Centre*, 2014, section 1, paragraph 1.3 available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2014.pdf

[121] Response to Freedom of Information of information requests, see http://www.ctbi.org.uk/96. See also the evidence of the Association of Visitors to Immigration Detainees to the Home Affairs Select Committee for its report on Asylum, Seventh report of session 2012-2013, HC 71, 8 October 2013 http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-73.htm . See also HL Deb, 27 June 2012, c71W.

[122] *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin) (5 August 2011), *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (26 October 2011), *R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin) (17 April 2012), R (D) v Secretary of State for the Home Department [2012] EWHC 2501 (Admin) (20 August 2012).

A case has revealed that the Home Office and its contractors had been operating an unlawful policy on the use of force on pregnant women and children in immigration detention.[123] The 2012 report of the Chief Inspector of Prisons on the Cedars centre in which families are detained found:

> *HE.18 Substantial force had been used in one case to take a pregnant woman resisting removal to departures. The woman was not moved using approved techniques. She was placed in a wheelchair to assist her to the departures area.*
>
> *When she resisted, it was tipped-up with staff holding her feet. At one point she slipped down from the chair and the risk of injury to the unborn child was significant. There is no safe way to use force against a pregnant woman, and to initiate it for the purpose of removal is to take an unacceptable risk.*

The Inspectorate called for force not to be used. Instead the Agency offered a consultation. It was only in the face of a legal challenge that it backed down. The case of *R (on the application of Yiyu Chen and Others) v Secretary of State for the Home Department* (CO/1119/2013) was an urgent judicial review claim challenging the Secretary of State's failure to have a policy in place in respect of the use of force against children and pregnant women. The claim was issued on 31 January 2013 following the Secretary of State's rejection of the Her Majesty's Inspectorate of Prisons' recommendation that she use force against these two groups only in situations where there is a risk of harm to self or another.

The Claimants sought urgent interim relief in the form of an injunction, prohibiting the Secretary of State from using force against these two groups until the issues were determined. On 12 February 2013 Mr Justice Collins granted an injunction prohibiting the Secretary of State's from using force against the four claimants (a pregnant woman and three children, all at risk of an enforced removal).

On 22 February 2013 the Secretary of State reinstated the former policy from Chapter 45 of the Enforcement Instructions and Guidance, which states that the UK Border Agency cannot use force against pregnant women, save to prevent harm. On 10th April 2013, Lord Taylor of Holbeach told the House of Lords that:

> *The recommendation in the report by HM Inspectorate of Prisons on Cedars pre-departure accommodation that force should never be used to effect the removal of pregnant women and children was rejected by the UK Border Agency.*[124]

The Government response to the Home Affairs Select Committee Eighth Report of session 2012-2013: The work of the UK Border Agency (April – June 2012) states:

> *The UK Border Agency would prefer that pregnant women, vulnerable adults and under 18s who form part of family groups in Cedars left the UK voluntarily and compliantly. It would not be practical to consider a blanket ban on the use of physical intervention on pregnant women and under 18s as this might encourage non-compliance and render the Agency unable to maintain effective immigration controls.*

Bhatt Murphy solicitors, who acted for the claimants in Chen, wrote to the Home Affairs Select Committee on 28 March 2013, saying

> *We are concerned that the policy position set out in that response [the government's response to the Committee] directly contradicts the assurances which have been given to the Court and the parties in this action, which is now reflected in policy guidance published on the UK Border Agency's website, and upon which the Claimants have been invited by the Home Secretary to withdraw their claim for judicial review.*

Another case exposed "disturbing" evidence of systemic failures concerning the detention of survivors of torture.[125]

25 October 2015

Written evidence submitted by Women for Refugee Women (IB 15)

Introduction

1. Women for Refugee Women works closely with women who come to the UK seeking sanctuary, to try to ensure they can achieve a fair hearing and a chance to rebuild their lives. This briefing focuses on the Immigration Bill 2015 as it relates to the use of immigration detention for women who are seeking asylum, and the provision of support to asylum-seeking women and their children.

[123] *Chen and Others v SSHD* CO/1119/2013.
[124] HL Deb, 10 April 2013, c313W.
[125] *R (EO, RA, CE, OE and RAN) v Secretary of State for the Home Department* [2013] EWHC 1236 (Admin).

Immigration detention

2. As it stands, the Bill does not address the use of immigration detention for vulnerable individuals including women who are pregnant and survivors of rape, sexual violence and torture, or the lack of a time limit on detention in the UK. However, amendments have been laid which, if moved and passed, would address these issues.

Detention of vulnerable individuals, including pregnant women and survivors of sexual violence

3. The amendment laid on the 'detention of persons – exempted persons' would be a new clause in the Bill, and would provide that women who are pregnant, and survivors of torture, trafficking and sexual violence could not be held in immigration detention.

Context

4. Around 2,000 women seeking asylum are detained every year, predominantly in Yarl's Wood detention centre, where they make up just over half of those detained. **The majority of women who have been detained after seeking asylum whom we have spoken to are survivors of rape, sexual violence or other torture.** Some women are also pregnant when they are detained; **99 pregnant women were detained in Yarl's Wood in 2014**.

5. **The previous experiences of women seeking asylum means that being locked up is particularly distressing for them**. Women we work with have told us that it forces them to relive the trauma they experienced in their home countries. For our research report *I Am Human* (2015) one woman told us: 'I felt so upset and frightened because I was arrested and locked up and tortured back home. I have scars on my feet and arms where I was beaten by police and guards, and so the situation and male guards in Yarl's Wood made me feel extremely frightened. I feel so frightened because it feels like being locked up in a prison back home.'

6. **There are high levels of mental distress in Yarl's Wood**. One in five women we spoke to for our report *Detained* (2014) said they had tried to kill themselves in detention, and 40% of women we interviewed for *I Am Human* said they had self-harmed while detained. The most recent independent inspection report into Yarl's Wood, published by the Prisons Inspectorate in August this year, found that levels of self-harm had almost tripled since the last inspection in 2013.

7. **The trauma of being detained is exacerbated by conditions at Yarl's Wood**. Our research has found that women are routinely watched by male guards in intimate situations: more than 85% of the women we spoke to for *I Am Human* said that male guards had seen them in intimate situations, including while naked, partly naked, in the shower, on the toilet or in bed. This happens when male guards burst into women's rooms without knocking, or when women who are placed on suicide watch or 'constant supervision' are watched by male officers.

8. **There are also longstanding concerns about sexual abuse at Yarl's Wood**. In June 2014 Serco, which runs Yarl's Wood, admitted to the Home Affairs Select Committee that over the past seven years, it had dismissed 10 Yarl's Wood staff members as a result of sexual contact with women held there.

9. **Healthcare in Yarl's Wood is poor**. Research by Medical Justice has shown how, alongside the distress that detention itself causes to women who are pregnant, the antenatal care and support in detention falls far short of the standards of healthcare pregnant women normally receive.

10. **The detention of asylum-seeking women is also ineffective**. In 2013, two-thirds of asylum-seeking women leaving Yarl's Wood were released to continue with their claims in the community, and so their detention served no purpose whatsoever. The release rate for pregnant women is even higher. In 2014, of the 99 pregnant women detained in Yarl's Wood, just nine were removed from the UK; thus, 90% of pregnant women were released.

11. **Detention is expensive**. It costs just under £40,000 per year to hold someone in detention. Community programmes have consistently been found to be significantly cheaper. Indeed, international evidence demonstrates that engagement-focused alternatives to detention (as used in Sweden, for instance) are not only cheaper, but support high levels of compliance with immigration processes and high rates of voluntary return for those whose cases are ultimately refused. In the UK, the Home Office evaluation of the new family returns process, which makes minimal use of detention, found that 5% of families within the new process had absconded, which is 'exactly the same as in the previous process' when children were being detained at Yarl's Wood.

12. Home Office policy guidance currently sets out that survivors of torture and trafficking, and pregnant women, are unsuitable for detention. However, our evidence and that of other NGOs and independent inspection bodies demonstrates that this guidance is routinely flouted. Additionally, Home Office guidance does not explicitly set out that survivors of rape and sexual violence should not be detained. **The amendment as laid would provide a robust guard against the use of detention for individuals who are particularly vulnerable, and for whom being locked up is extremely harmful**.

Time limit on detention

13. The amendment laid, which would be a new clause in the Bill, would introduce a time limit of 28 days on immigration detention.

Context

14. **The UK is the only country in Europe that doesn't currently have a time limit on immigration detention**. As such, asylum-seeking women who are locked up in Yarl's Wood can be held for days, weeks, or even months. In 2013, 43% of asylum-seeking women locked up in detention were held for more than a month.

15. As highlighted above, being locked up is itself distressing, and **the uncertainty caused by the lack of a time limit on detention exacerbates this distress considerably** – women simply have no idea when they might be released. Detention without time limit is also ineffective: Home Office statistics clearly indicate that the longer someone is held in detention, the less likely it is that they will be removed from the UK.

16. The recent cross-party inquiry into the use of immigration detention concluded: "We believe that the United Kingdom has a proud tradition of upholding justice and the right to liberty. However, the continued use of indefinite detention puts this proud tradition at risk." **Alongside recommendations that pregnant women and survivors of trafficking, torture and sexual violence should never be detained, the inquiry report also recommended that a 28-day time limit should be introduced for all immigration detention.** These reforms were backed by the House of Commons when the report's recommendations were debated in September 2015, and a motion was passed supporting them.

Asylum support for families

17. Clause 34 of the Bill brings into effect Schedule 6, which sets out changes to the provision of support to families who have their claims for asylum refused. Currently, families with children under the age of 18 whose asylum claims are refused can continue to receive low-level financial support and accommodation until their youngest child turns 18 or they leave the UK. **The Bill will change this, so that support for families whose claims have been refused will be stopped unless it is deemed that they faced a 'genuine obstacle' to leaving the UK**. Moreover, if ongoing support is refused or discontinued, there will be no right of appeal against this.

18. The Government has set out its belief that removing financial support and accommodation will 'incentivise' families with children who have been refused asylum to leave the UK. **All the available evidence indicates that this is not the case**. Our research has documented the many barriers women seeking asylum in the UK face in getting their need for protection recognised, including the poor levels of understanding of the types of persecution women face and a lack of recognition of their experiences as constituting persecution. Thus, although they have had their cases refused, many of the women we work with have very real and justified fears about what will happen to them if they return to their country of origin – and, if they have children, about the possible consequences for them.

19. **Parents who fear for their own and their children's safety will not be swayed to return to their home countries by the threat of being made destitute, or actual destitution**. Our report *Refused* (2012) found that despite being made destitute, not one of the 45 women we spoke to felt able to contemplate voluntary return. This was also the case when we carried out follow-up research with 30 women a year later, even though some had experienced prolonged periods of destitution, including one for 13 years, one for eight years, one for six years, and others for periods of between six months and five years.

20. **The Home Office's own evidence demonstrates that destitution does not encourage people to leave the UK**. In 2005 the Home Office initiated the 'Section 9' pilot, which trialled the removal of accommodation and financial support from families refused asylum who were deemed not to be taking 'reasonable steps' to leave the UK. The Home Office evaluation concluded that "the evidence from the pilot taken in November 2005 indicates that there was no significant increase in the number of voluntary returns or removals of unsuccessful asylum seeking families", and that the pilot "did not influence behaviour in favour of co-operating with removal".

21. **Apart from its ineffectiveness, the implementation of this provision will be extremely harmful**. Our research has documented the impact of being made destitute on women seeking asylum. Of the 45 women who spoke to us in 2012 about their experiences of destitution in the UK, 96% had relied on charities for food, 56% had been forced to sleep outside, 16% had experienced sexual violence while destitute, 18% had worked unpaid for food or shelter, and 9% had worked illegally.

22. Women we spoke told us about the serious impact of destitution on their physical and mental health. Some also explained that they had become involved in prostitution or had engaged in transactional sex to survive while destitute. **Making women and their children destitute will expose them to a multiplicity of harms, exploitation and abuse**.

23. The experience of one of the women in our network is further evidence of the harms that will be cause by such a provision. Mariana, originally from Angola, was helped to the UK by a family friend after her father was killed because of his political activities, and after her brother was also killed. Her claim for asylum was initially

refused because the Home Office wrote to her at an old address, and so she missed her substantive interview. When she discovered what had happened and made contact with the Home Office, she was eventually given a year's leave to remain, but her asylum case was subsequently refused. Following this, her lawyer told her that she was no longer eligible for legal aid, and so she represented herself at her appeal, where she was again refused.

24. She was made destitute and relied on support from friends to avoid sleeping on the streets. She became pregnant, but her boyfriend left her during the pregnancy. Before she went into labour, she stayed with a woman who had two children, where she helped to look after the children and with housework. But when she had her son, she was no longer able to stay there, so she went to social services for help. Social services said they could not help her, but as they had a statutory duty to protect her child they would take her child into care.

25. To avoid losing her child she lived underground for the next four years, staying out of contact with the Home Office. At night she and her son stayed on friends' sofas, and during the day they would "walk and walk all day, or sit on a park bench, or maybe in a library for a few hours". On one occasion, she was sexually assaulted, but was too afraid to tell the police. She has subsequently been granted refugee status, but the trauma of her and her son's experience remains with her.

October 2015

Written evidence submitted by Detention Action (IB 16)

About Detention Action

1. Detention Action is a national charity established in 1993 that aims to change the way that migrants are treated by immigration detention policy in the UK. Detention Action defends the rights and improves the welfare of people in detention by combining support for individuals with campaigning for policy change. Detention Action works primarily in Harmondsworth and Colnbrook Immigration Removal Centres, near Heathrow Airport in London and HMP the Verne in Dorset.

Summary

2. The Immigration Bill would risk seriously restricting judicial oversight of the Home Office's powers of immigration detention. The Bill would abolish the current system of 'bail addresses' that enables destitute migrants to challenge their detention through bail applications to the First-Tier Tribunal. As a result, in a significant proportion of cases the Home Office could face no judicial scrutiny of detention until the point at which an expensive and time-consuming unlawful detention challenge can be brought in the High Court.

Background

3. The number of migrants entering immigration detention in 2014 totalled 30,364.[126] 29,674 migrants left detention during the year. Of them, 53% (15,673) were removed from the UK, while almost half were released. 1% (354) were granted leave to remain in the UK, and 7% (2,111) were released on bail.[127]

4. The UK already has the least constrained powers of detention in the EU. As well as being unique in having no time limit, it is unusual in lacking automatic judicial oversight of detention, despite the interference with the fundamental right to liberty. A decision to detain is only reviewed by the courts on the application of the person detained. By contrast, in France detention has to be authorised by the courts after five days.

5. In the UK, every detainee has the right to apply for bail to the First-Tier Tribunal, which must consider whether their detention is reasonable. However, bail applicants must provide an address at which they would live if released, in order to show the court that they would be able to remain in contact with the Home Office. Some migrants can provide an address of a friend or relative who can house and support them, but many are destitute and unable to provide such an address.

6. In this context, the Home Office currently provides addresses for most detainees on application, in order to enable their access to the First-Tier Tribunal. Migrants in detention have been able to apply for bail addresses under Section 4 of the Immigration Act 1999, which are almost invariably granted (with the exception of EEA nationals). This bail address can only be used in a bail application before the First-Tier Tribunal; if bail is granted, the person is released to live at that address and receive Section 4 support.

7. Migrants released on temporary admission, temporary release or bail had a compliance rate of 90.8% in 2013 and 91.9% in Jan-Sep 2014.[128]

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[126] Home Office, *Immigration Statistics – April to June 2015, Detention tables*, table dt_01
[127] Ibid, table dt_06
[128] FOI request, cited in International Detention Coalition, *There are alternatives – A handbook for preventing unnecessary immigration detention (revised edition)*, 2015, p10.

Part 5 and Schedule 6

8. Part 5 and Schedule 6 of the Bill abolish Section 4 of the Immigration Act 1999, and replace it with a new Section 95A. The intended operation of Section 95A is unclear and would be set out in secondary legislation, but it appears that the Government is not proposing to recreate a system whereby detainees can automatically access addresses for bail applications to the Tribunal. It appears that accommodation may only be provided where the Home Office chooses to release and recognises the need for an address.

9. The Bill will provide a power, not a duty, to support refused asylum-seekers who have a 'genuine obstacle to removal' and those with pending further submissions or judicial review challenges. It restricts support to asylum-seekers or, in limited circumstances, refused asylum-seekers. There is no power under Schedule 6 to support people who have never claimed asylum, even if they cannot be returned.

10. Destitute migrants in detention, who cannot provide a private address, would not be able to be released on bail by the Tribunal unless the Home Office accepts their entitlement to an address under Schedule 6. The Tribunal will not normally consider granting bail in the absence of an address. As a result, this could allow the Home Office to prevent migrants from challenging their detention. It is unclear whether it will even be possible for migrants in detention to make applications for a bail address. In any case, there is no right of appeal if the Secretary of State decides that the person does not face a genuine obstacle to removal, so the Home Office would be able to prevent destitute migrants from challenging their detention in the Tribunal. This reliance on Home Office decision-making is unjustifiable: 61% of asylum support appeals made between September 2014 and February 2015 were successful, being either allowed or remitted by the Asylum Support Tribunal, or the refusal of support withdrawn by the Home Office.[129]

11. **The Minister could be asked to clarify whether there will be a process for migrants in detention to apply for an address on the grounds of an obstacle to removal, judicial review or fresh submissions pending.**

12. **An amendment could be introduced to create a right of appeal against refusal to grant support under Section 95A.**

13. According to the Home Office Memorandum on ECHR implications at point 115: *'Although it is envisaged that applications for the new form of section 95A support will need to be made within the grace period [following refusal of asylum], there will be provision for an application to be made out of time where certain criteria are met.'*

14. This would mean that migrants in detention who have previously been refused asylum would be unable to apply for Section 95A support, unless they are considered to meet the unspecified 'certain criteria'.

15. **The Minister could be asked whether being in detention would be a criterion that would allow out of time applications for Section 95A.**

Schedule 5

16. In addition, Clause 29 and Schedule 5 make new provision for the Secretary of State to provide support to a person bailed to an address of her choosing. It is provided, however, that the power would only be used in 'exceptional circumstances'. It also only applies: '*where a person is on immigration bail subject to a condition imposed by the Secretary of State requiring the person to reside at an address specified in the condition*'.

17. According to the Explanatory Notes at 318, the rationale is that: *'The Secretary of State's ability to require a person to live at a particular address could be undone by that person's inability (for example, in having insufficient finances) to live at that address… it is not intended that the power is available where, for example, a person proposes a bail address which the Secretary of State accepts (even if the Secretary of State accepts the bail address and imposes/mandates a residence condition for that address).'*

18. Schedule 5 and Explanatory Note 318 are unclear, since they appear to presuppose that the person is already on bail and subject to a requirement to live at a given address, for the Secretary of State to then have the power to provide that same address. **The Minister could be asked to clarify the circumstances in which the power would be used, in particular where the person is in detention.**

19. However, it appears that the intention is not to use the power to provide bail addresses to enable detainees to make bail applications to the Tribunal. Without such an address they are unlikely to be granted bail and their rights to liberty under Article 5 of the European Convention on Human Rights risk being infringed. **The Minister could be asked how it is intended that the First-Tier Tribunal would be able to exercise judicial oversight of detention of migrants who cannot provide private addresses.**

The impact on immigration detention and release from detention

20. It appears that many destitute migrants in detention will be unable to access bail addresses, where the Home Office does not consider them to face a 'genuine obstacle to removal' under Schedule 6, or where they are not asylum-seekers and the Home Office does not consider that there are 'exceptional circumstances' under

[129] Asylum Support Tribunal statistics, *1 September 2014 to 28 February 2015.*

Schedule 5. Without bail addresses, destitute migrants may be unable to access meaningful oversight of their detention in the Tribunal.

21. This would lead to an **increase in long-term detention**, causing great harm to individuals' mental health. It would also be wasteful of taxpayers' money, as detention costs over £36,000 per person per year.[130] The inaccessibility of bail would force challenges to detention into the High Court, as unlawful detention challenges would be the only available option for many in detention to seek their release. The High Court is already under significant pressure from the numbers of asylum and detention-related judicial reviews, which are far more expensive than bail applications. The Home Office has paid out almost £10 million in 2011-13 in compensation following claims for unlawful detention.

22. Increasing long-term detention is likely to result in **protests and disturbances** in an already tense detention estate. Frustration and stress is likely to increase amongst migrants in detention, as many will have no lawful steps available to seek their release. The HM Inspectorate of Prisons has repeatedly noted that long-term detention causes frustration and a tense environment. The safe management of the detention estate would be seriously undermined by depriving a substantial proportion of migrants of any opportunity legally to challenge their detention.

23. The Bill would generate **unnecessary asylum claims**. A significant proportion of migrants in detention have never claimed asylum, yet Section 95A support will only be available to people who have claimed asylum. Depending on the process adopted, this may create an incentive for non-asylum-seekers in detention to claim asylum, in order to create an entitlement to Section 95A support under Schedule 6, which would allow them to apply for bail. As a result, migrants in detention who are not granted exceptional support under Schedule 5 may feel obliged to make a groundless asylum claim to avoid indefinite detention or street homelessness. This would undermine efforts to reduce misuse of the asylum system, generating substantial unnecessary costs for the Home Office.

24. To the extent that migrants are released to homelessness, the Bill will be likely to lead to an **increase in absconding**, which will reduce the ability of the Home Office to resolve cases and increase the backlog of outstanding cases. Restricting the availability of bail addresses will lead migrants to provide an address at which they cannot live in the long-term, in order to avoid indefinite detention. They are likely to then become street homeless. Without support, it will be difficult for many to comply with reporting restrictions, and they will have little incentive to remain in contact with the Home Office.

25. The Bill would be likely to lead to **increased offending** by ex-detainees. Significant numbers of ex-offenders who have never claimed asylum are released from immigration detention because they face barriers to removal. Some have lived in the UK since they were small children, and are refused travel documentation by their countries of origin. As non-asylum-seekers, they will only in exceptional circumstances be granted an address under Schedule 5. Making ex-offenders street-homeless with no right to work would make significantly increase the likelihood of re-offending, as they seek to support themselves.

26. *Case study: T was detained for almost five years under immigration powers. He was granted Section 4 support, as he had no usable address with friends or family. He was eventually released on bail by the Tribunal after 13 failed applications. The First Tier Tribunal accepted that he was not returnable. Without access to a bail address, T would have remained in detention indefinitely.*

The opportunity to introduce a time limit on detention

27. The Immigration Bill is an opportunity for an amendment setting a time limit on immigration detention, in line with the rest of Europe. In March 2015, the first Parliamentary inquiry into the detention system as a whole called for a time limit of 28 days on immigration detention, finding the current system 'expensive, ineffective and unjust.' The inquiry concluded that 'the United Kingdom has a proud tradition of upholding justice and the right to liberty. However, the continued use of indefinite detention puts this proud tradition at risk.'[131]

28. In August 2015 the HM Chief Inspector of Prisons echoed the Parliamentary Inquiry's call for a time limit, citing 'the rigorously evidenced concerns we have identified' as requiring that 'a strict time limit must now be introduced.'[132]

29. Currently the power to detain is limited by the common law 'Hardial Singh principles'. However, on the basis of these principles, it is impossible for case owners, lawyers and migrants in detention to judge the point at which any period of detention would become unlawful. The confusion caused by leaving the limitation on

[130] The All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, March 2015, p21.
[131] The All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, March 2015.
[132] HM Chief Inspector of Prisons, *Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre, 13 April – 1 May 2015*, p8.

detention to the courts is shown by the fact that the Home Office paid out almost £15 million in 2011-14 in compensation following claims for unlawful detention.[133]

October 2015

Written evidence submitted by the Royal College of Nursing (IB 17)

1. Introduction

1.1 With a membership of more than 425,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector.

1.2 The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations. The RCN is a politically neutral organisation.

1.3 The RCN welcomes the opportunity to provide evidence to the Public Bill Committee on the Immigration Bill.

2. Executive Summary

2.1 The RCN is concerned that any new code of practice governing standards of the English language in the public sector may impinge on those currently being developed by the Nursing and Midwifery Council (NMC).

2.2 The RCN is concerned that the Immigration Bill does not specify the type of workers to which the clause imposing a skills levy will apply and whether it will also include skilled migrants working in publicly funded services. We would welcome greater clarity on this issue.

2.3 The levy, if applied to NHS trusts and other health and care providers, would penalise employers for seeking to recruit international nurses in order to fill the dangerous current shortfall of nurses.

2.4 It is unclear how a levy to fund additional apprenticeships in the health sector could address the current shortfall in highly skilled health professionals. This must be addressed through better workforce planning and an increase in nurse training places.

2.5 The current shortage of nursing staff is likely to get worse in the short to medium term even with an immediate increase in commissioned training places due to the time it takes to train a nurse. There is a real risk that the health service will struggle to provide safe nurse staffing levels in the interim.

3.1 Language Controls

3.2 The RCN accepts the principle that all nurses in the UK should have an acceptable command of English in order to communicate effectively with their colleagues and patients. The Nursing and Midwifery Council, in its public protection role, already undertakes language controls for non EEA nurses and midwives seeking to register in the UK and will shortly be introducing measures for all registrants, including EEA nurses and midwives. The RCN responded fully to the language controls consultation launched by the NMC on 1 June 2015 in relation to EEA nurses and midwives and has strongly supported language controls. The NMC will implement the new measures by January 2016.

3.3 The RCN is concerned that the new code of practice proposed by the Bill may impinge on these language control standards currently being developed by the NMC. We question whether it would be appropriate for ministers to set out standards rather than professional regulators, such as the NMC, as is currently the case.

3.4 The Immigration Bill's explanatory note makes clear that a consultation will be launched in parallel with the passage of the Bill through Parliament on the content of the code of practice. We note that this has now been published by the Government and we plan to respond fully.

4. Skills Levy

4.1 The Bill proposes to apply a 'skills levy' to employers who sponsor a non EEA migrant worker, and will allow the Government to specify the scope and rate of the levy. The RCN is concerned that the Bill does not specify the type of workers to which this clause will apply and whether it will also include skilled migrants working in publicly funded services. We will seek greater clarity on the scope of this clause.

4.2 The NHS is increasingly reliant on international recruitment of qualified nurses to make up for the shortage of UK-trained registered nurses in the UK – a direct result of insufficient numbers of UK nurse education places in higher education. This levy, if applied to NHS trusts and other health and care providers, would penalise employers for seeking to recruit international nurses in order to fill this dangerous shortfall. Furthermore, it is very unclear how using the levy to fund additional apprenticeships in the health sector could

[133] Ibid, p21.

address the large shortfall in highly skilled health professionals. This shortfall must be addressed through better workforce planning and an increase in nurse training places.

4.3 The RCN has expressed concerns for some time about the impact of previous changes to immigration rules which will force all non EEA nurses who arrived from 2011 onwards and are earning less than £35,000 to leave the country from 2017.

4.4 The RCN welcomes the decision of the Home Secretary to place nursing on the SOL in the interim until the MAC produces its final recommendations in February 2016. This means that those overseas nurses currently working in the UK will not be subject to the threshold.

4.5 We also welcome the Home Secretary's decision to commission a further review of this issue by the Migration Advisory Committee (MAC). We continue to urge the Government and the MAC to include nursing on the SOL in the medium term or to reconsider the earning threshold of £35,000 for nurses, as the failure to include nursing on the Shortage Occupation List (SOL) will exacerbate the current shortage of nurses in the UK.

4.6 The RCN predicts that the current shortage of nursing staff is likely to get worse in the next few years before the effects of any measures put in place to remedy the situation are felt. Even if commissions for nurse education places are increased immediately, there will be a shortfall as it takes three years to train a nurse. There is a real risk that the health service will struggle to provide safe nurse staffing levels in the interim.

October 2015

Written evidence submitted by the Housing Law Practitioners Association (IB 18)

About HLPA

The Housing Law Practitioners Association (HLPA) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. It has members throughout England and Wales.

HLPA has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves. Presently, meetings the take place every two months and are regularly attended by c.100 practitioners.

The Association is regularly consulted on proposed changes in housing law (whether by primary or subordinate legislation or statutory guidance). During 2015 it has given oral evidence to committees of both the Welsh Assembly (on the Renting Homes (Wales) Bill) and the House of Commons (on legal aid reforms).

Membership of HLPA is on the basis of a commitment to HLPA's objectives:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

Justin Bates and Giles Peaker are the authors of this paper. Justin is a barrister at Arden Chambers (London & Birmingham) and the vice-chair of the HLPA. He is the Deputy General Editor of the Encyclopedia of Housing Law and the author or co-author of various other books on housing law and local government law. Giles is a partner in the Housing and Public Law department at Anthony Gold Solicitors. He is the chair of the HLPA. He writes widely on housing law and edits the Nearly Legal: Housing Law news and comment website.

Clause 13

1. Cause 13 creates two new routes by which a landlord can recover possession.

2. The first is new s.33D, being inserted into the Immigration Act 2014. The Secretary of State will serve notice on the landlord, informing him that a person without a "right to rent" lives in the property (new s.33D(2)). The landlord is then given power to terminate the tenancy by giving at least 28 days written notice to the tenants (ss.33D(3)-(4)). The notice will be enforceable "as if it were an order of the High Court" (s.33D(6)). There will be no need to obtain an order for possession (indeed, the Protection from Eviction Act 1977 is expressly amended to make this point – new s.33E(4)).

3. We have the following concerns:

(a) There is no appeal mechanism for either the landlord or the tenant against the service of either notice. What happens if the Secretary of State has made an error? The only remedy that we can see would be for (i) the landlord to seek judicial review of the Secretary of State; or (ii) the tenant to seek an injunction (probably in the High Court) to prevent the landlord acting on his own notice. Both of these are likely to be expensive and, frankly, largely inaccessible to the majority of landlords and tenants.

(b) It is not at all clear what it means for a notice to be enforceable "as if it were an order of the High Court." In particular, the landlord's notice to his tenant seems intended to have the effect of terminating the underlying tenancy and removing all security of tenure. That would appear to suggest that the landlord can simply use "self-help" to recover possession, *i.e.* personally turn up and throw occupiers onto the street. There are clear risks in this, of potential violence and damage to property, for both landlord and tenant. If what the government intends is that a High Court Enforcement Officer must carry out the eviction, then that needs to be made clear.

(i) This second point is particularly important. If a possession order had been obtained and executed, even on an erroneous basis, there could be no question of the landlord having carried out an unlawful eviction or committing a trespass.[134] But this is *not* a possession order, merely a power to enforce a notice. There is an obvious risk to landlords that, if it turns out *either* notice was erroneous, they could have committed a crime;[135] a tort;[136] and a breach of contract.[137]

(c) There is no provision for rent repayment, whether as a condition of execution or at all. So, a tenant who has no right to rent could have paid rent in advance (whether monthly, yearly, etc) and, after only a matter of days/weeks, evicted pursuant to these notice provisions. The landlord is under no obligation to refund the rent for the "lost" period. There clearly should be such an obligation, akin to that which the Government has recently imposed on private sector landlords under assured shorthold tenancies in the Deregulation Act 2015.[138]

4. The second is a new mandatory Ground for possession in both the Housing Act 1988 and the Rent Act 1977, again, triggered by a notice to the landlord from the Secretary of State.

5. Whilst we have various objections to mandatory grounds[139] we recognise that *if* there has to be a new route to recovering possession, it is far preferable that it be through a court than simply as a result of the service of a notice by the landlord. This route would (probably)[140] at least allow for the court to consider whether *in fact* someone did not have a right to rent and whether the notice from the Secretary of State was valid. However, it still suffers from the absence of any rent repayment mechanism.

6. The creation of a mandatory ground against a Rent Act tenant is remarkable. Save for a tiny number of residual categories, it has not been possible to create new Rent Act tenancies since January 1989. Yet this Bill envisages bringing possession proceedings against such tenants. Given that, in order to be a Rent Act tenant today, one would have to have been occupying the property as your only or principal home since *pre*-January 1989, there would be an obvious unfairness[141] in recovering possession against someone who had only known that property as home for over 25 years.[142]

Clause 14

7. This contains the text of the two new mandatory grounds for possession, as to which, see above.

8. It also contains a new power (new s.10A, Housing Act 1988) to allow a court to transfer the tenancy from a person who has no right to rent into the name of someone who does. There are various problems with this proposal:

(a) it only arises if no other ground for possession is made out, so, in practice, it will be relatively easy to circumvent and we would prefer this restriction be removed;

[134] *E.g.* see the discussion in *Southwark LBC v Sarfo* (1999) 32 HLR 602 CA and *Brent LBC v Botu* [2001] 33 HLR 14.
[135] Unlawful eviction is a crime – Protection from Eviction Act 1977.
[136] Such as trespass to land or trespass to goods.
[137] Evicting by erroneous notice is likely to be a breach of the covenant for quiet enjoyment which is implied into all residential tenancy agreements.
[138] The 2015 Act provisions will not apply here because the Bill makes clear that, once the notice is served, the tenancy cannot be an Assured or Assured Shorthold tenancy.
[139] The absence of any judicial discretion means that individual hardship cannot be prevented. To take an extreme example, if the law requires that possession must be ordered in 14 days, even if there is clear medical evidence that an occupier will die in, say, 15 days, then the order must be made and executed.
[140] On the basis that the validity of the notice is a precedent or jurisdictional fact which must be established, although we would much prefer it if the Bill could be amended to make this clear.
[141] And possibly even a breach of Art.8, ECHR.
[142] Indeed, one would have thought that such a person would have a very strong case for being allowed to remain in the UK in any event. Certainly, this was the view of the Residential Landlords Association when giving oral evidence to the Bill Committee: "First, it is generous of you to put in a provision to allow eviction of Rent Act tenants, but it is possibly not entirely necessary, as Rent Act tenants will have lived in the UK for so long that they are almost certainly entitled to stay here anyway, irrespective of how they entered the country." http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151020/pm/151020s01.htm

(b) it makes no provision for a range of other landlord and tenant provisions to be similarly changed, *e.g.* suppose the disqualified tenant has paid a deposit, is that now transferred to the "new" tenant and, if so, how should the landlord and tenancy deposit scheme administrator respond (see Housing Act 2004 for the provisions on tenancy deposits);

(c) why has this provision not been extended to Rent Act tenants, so as to allow qualified occupiers to retain the tenancy in the same way?

October 2015

Written evidence submitted by the British Red Cross (IB 19)

FOLLOW-UP FROM OUR EVIDENCE SESSION

Non-asylum affected by changes to Section 4 (1) (Sarah Champion Q)

We don't have relevant data for non-asylum cases affected, and can't see any from the Home Office.

Further information on destitution in the asylum system

So far this year we have supported 7,215 destitute people in the system – and around 3,000 of their dependents – which is already more than in 2014.

This includes 1,039 people from Eritrea, 900 from Sudan, 631 from Iran and 463 from Syria. Around 1 in ten have actually received refugee status.

Forthcoming research from the British Red Cross, which looked at a small cohort of those who used our services, shows:

— Two-thirds of the asylum applicants who took part in Red Cross research experienced repeated hunger through lack of food. A quarter experienced it every day.

— Over 60% had no fixed abode – in our experience that instability can risk serious exploitation, including sexual exploitation we have encountered in our work.

— Over half reported worsening health

October 2015

Written evidence submitted by Amnesty International UK (IB 20)

Amnesty International UK is a national section of a global movement of over three million supporters, members and activists. We represent more than 518,000 members, supporters, activists, and active groups across the UK. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

Introduction

1. Amnesty International UK (AIUK) thanks the Committee for the opportunity provided to our Refugee and Migrant Rights Programme Director, Steve Symonds, to give oral evidence on 22 October 2015. In this submission, we elaborate on some of the answers we then gave and address further aspects of the Immigration Bill 2015-2016 (Bill 74), for which there was insufficient time. That we do not directly address any particular provision is no indication of our support for it.

2. We have reviewed the evidence given by other parties to the Committee over the four oral evidence sessions held. Rather than repeating others' evidence, we indicate agreement with the evidence of specified others. That we do not express a view on any particular aspect of any of the evidence neither indicates agreement nor disagreement with it.

3. Below, under four discrete headings, we address:

— Part 4 (Appeals).

— Part 5 & Schedule 6 (Support for certain categories of migrant).

— Detention; clause 29 & Schedule 5 (Immigration bail).

— General expansion of immigration powers.

Part 4 (Appeals)

4. By clause 31, the Bill would extend a measure introduced by the Immigration Act 2014 to all appellants facing removal.[143] That measure currently permits the Home Office to issue a certificate before or after a person initiates an appeal against his or her deportation. The issue of the certificate precludes the person from beginning or continuing the appeal from within the UK.[144]

5. The main category of case liable to be affected by this extension of the existing measure will be those who make an application to remain in the UK under the immigration rules relating to family members and long residence. The relevant rules are to be found in Part 6, Part 7, Appendix FM and Appendix FM-SE of the immigration rules, albeit members of the Committee who wish to better acquaint themselves with the "*alphabet soup of non-sequential provisions*" to which Colin Yeo of Garden Court Chambers[145] referred in his oral evidence should also consider Part 1 and Part 9 which generally apply to applications made under any part of the rules.[146]

6. Under clause 31, it is intended that children may be removed from the UK – removed from their school, from their friends and community, from family including one or other parent – before it is ultimately determined in the appeal Parliament has retained for them whether to do so would be in breach of their right to respect for private and family life. Other children with entitlement to be here, including British children, may be effectively required to leave because of the removal of their parent. Similarly, adults may be removed from the UK – removed from their partner, from their children, from their work, home and community – before that same question has been ultimately determined in the appeal retained for them.

7. The basis on which this is to take place is that even were their appeal successful there would be no human rights violation in the meantime. The recent judgment,[147] to which the Minister and Manjit Gill QC of No5 Chambers referred in oral evidence,[148] indicates that whether there will be "*a real risk of serious irreversible harm*"[149] is not the appropriate test. We have three broad concerns with this clause. Firstly, the difficulties someone may face in seeking to pursue an appeal from overseas may prevent their doing so at all. Mr Yeo offered an example in his evidence.[150]

8. Secondly, the difficulties in pursuing such an appeal may so undermine the ability of the appellant to pursue the appeal effectively that an appeal which would otherwise have succeeded will fail. We agree with the reasons given by Adrian Berry of the Immigration Law Practitioners' Association (both those he expressly listed and listed by Mr Gill with which he agreed).[151] We are not comforted by the recent judgment. That judgment described the Home Office guidance being applied in these cases as containing "*an incomplete and misleading statement of the statutory test*" and "*liable to mislead decision-makers*". The court held that in general the tribunal hearing an appeal could make arrangements to do sufficient justice to the appellant – though not wholly mitigating the disadvantage to the appellant of not being able to conduct the appeal from within the UK. We doubt this conclusion of principle will safely translate into practice and, as other witnesses, question the availability of resources to achieve justice in many cases.[152]

9. The data provided by the Minister in response to a written question from Gavin Newlands MP gives cause to think the existing measure in relation to deportation appeals is already causing injustice. The Minister indicated that of those removed under a deportation order where the existing certificate (commenced from 28 July 2014) had been applied, around one quarter (426) had brought an appeal and of these only 3% (13) had been successful.[153] This compares to 2,096 deport appeals decided in the 2014/15 year, of which 33% were successful.[154] The Home Office may say the exceptionally low success rate is demonstrative that the certificates are used in cases without merit – just as the Home Office has long argued the exceptionally low success rate in detained fast track asylum appeals confirmed it was only poor cases selected for that process rather than the process was so structurally unfair as to prejudice appellants' chances on appeal.[155] Litigation has finally

[143] Section 94B of the Nationality, Immigration and Asylum Act 2002 was introduced by section 17 of the Immigration Act 2014, partially commenced on 28 July 2014 by the Immigration Act 2014 (Commencement No. 1, Transitory and Saving Provisions) Order 2014, SI 2014/1820, and fully commenced on 20 October 2014 by the Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014, SI 2014/2771.

[144] Under section 92(6) of the Nationality, Immigration and Asylum Act 2002 as substituted by section 17 of the Immigration Act 2014.

[145] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 100 (Q213).

[146] The Introduction, 16 Parts and 26 Appendices constituting the immigration rules may be viewed at https://www.gov.uk/guidance/immigration-rules

[147] *R (Kiarie & Byndloss) v Secretary of State for the Home Department* [2015] EWCA Civ 1020.

[148] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 96 (Q203).

[149] This is the term used in section 94B(3) of the Nationality, Immigration and Asylum Act 2002, as introduced by section 17 of the Immigration Act 2014.

[150] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 95 (Q199).

[151] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 94 (Q198).

[152] e.g. *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Cols 93-94 (Q197 & Q198).

[153] *Hansard* HC, written question 11080 answered by the Minister on 14 October 2015.

[154] See Table 2.5a available at https://www.gov.uk/government/statistics/tribunals-and-gender- recognition-certificate-statistics-quarterly-april-to-june-2015

[155] e.g. This has been frequently repeated by the Home Office over several years at meetings of the National Asylum Stakeholder Forum (NASF), at which Amnesty International UK has been a member throughout the lifetime of the forum.

confirmed the structural unfairness in the latter process, which this year has been found to be unlawful.[156] Whereas the Minister, in his statement to Parliament confirming the suspension of the process, did not concede the inherent flaw in it, he did acknowledge it was not possible to evaluate the risk of unfairness in the system as it was operating.[157]

10. Thirdly, in practice this measure would be likely to disproportionately and unlawfully interfere with private and family life in many cases. It cannot be calculated how long any interference will last. Disruption to a child's contact with a parent, or removal from school and community, in particular, may have devastating effects even if the period is short. Yet there is no reason to think the period would be short. The period would, however, be indefinite; and the uncertainty surrounding that would compound the potential anguish and other harms to appellants and family members, including children. Research commissioned the Children's Commissioner reached just such conclusions in respect of family separation of resulting from the application of the immigration rules on family migration.[158] These considerations are not on the face of it addressed in the judgment to which the Minister and Mr Gill referred. We note that judgment concerned two appellants – one had no children, the other had no subsisting family life with his children.[159]

11. Our experience of the length of time to hearing of appeals in which we provide expert country evidence accords with the oral evidence of Mr Yeo[160] – nine to ten months is common, and this can be greatly extended by adjournments including those requested by the Home Office. Moreover, the Home Office often seeks permission to appeal if an appeal is allowed. Determination of that request prolongs the period to resolution, and where permission is granted the appeal's conclusion may be delayed very much longer. Mr Yeo also rightly referred to other significant consequences, which may be suffered by an appellant, including loss of job or home.[161]

12. **Accordingly, we recommend that clause 31 should not stand part of the Bill.**

13. In our oral evidence, we briefly referred to the failure of the government – when removing the right of appeal against a decision to cancel, curtail or revoke a person's leave by the Immigration Act 2014[162] – to replace that remedy with a right to apply for administrative review.[163] The explanatory notes when that Act was before Parliament had expressly indicated such a right would be provided.[164] Given the consequences of a wrongful withdrawal of someone's leave (liability to summary eviction under provisions of this Bill,[165] to detention, removal etc.), **this failure by government should be urgently made good, and we would recommend the Minister is pressed in Committee to do so.**

14. As regards the value of appeals generally, Craig Whitaker MP inquired as to the proportion of refused applicants who appeal as he was concerned to determine whether the appeals success rates quoted by witnesses represented a significant or relatively small proportion of applicants.[166] Like Mr Yeo, we are unable to provide the statistic that Mr Whittaker sought, but one difficulty with the question is that not all applicants have a right of appeal. The right has been withdrawn from various and large groups of applicants by successive Acts, most recently by the Immigration Act 2014.[167] Hence, as a proportion of all applicants, the number of successful appellants would inevitably be relatively small. What we do know is that in the year 2014/15, more than 66,000 people had their appeal determined by the First-tier Tribunal (Immigration and Asylum Chamber).[168] As to the number of dependents on those appeals, or children and partners who were directly affected by the outcomes, this too we do not know.

[156] *Detention Action v First-tier Tribunal, Upper Tribunal, Lord Chancellor & Secretary of State for the Home Department* [2015] EWHC 1689 (Admin); [2015] EWCA Civ 840.

[157] *Hansard* HC, 2 July 2015 : Col 51-53WS, where the Minister said: "*Recently the system has come under significant legal challenge, including on the appeals stage of the process. Risks surrounding the safeguards within the system for particularly vulnerable applicants have also been identified to the extent that we cannot be certain of the level of risk of unfairness to certain vulnerable applicants who may enter DFT. In light of these issues, I have decided to temporarily suspend the operation of the detained fast track policy.*"

[158] *Family Friendly? The impact on children of the Family Migration Rules: A review of the financial requirements*, Children's Commissioner, August 2015. Key findings are identified as including that "*Children… are suffering distress and anxiety as a result of separation from a parent. This is compounded by the overall stress, anxiety and practical difficulties faced by the family unit.*", "*Decision-making routinely fails to adequately consider the best interests of children and decision letters are often legally and factually incorrect.*", with several of the "*…most common emotional and behavioural problems*" listed in the executive summary.

[159] See paragraphs 76 & 100 of the judgment *op cit*

[160] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 100 (Q212).

[161] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 99 (Q212).

[162] This was done by section 15 of the Immigration Act 2014.

[163] See Appendix AR to the immigration rules.

[164] Explanatory Notes to Bill 206-EN 2013-2014 provided: "*73. …an administrative review may be sought when a person's leave is curtailed or is revoked.*" See http://www.publications.parliament.uk/pa/bills/cbill/2013- 2014/0110/en/14110en.htm

[165] See the two new eviction powers to be introduced by clause 13.

[166] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 93 (Q196).

[167] Appeal rights had before that Act been removed in large numbers of particularly out of country (entry clearance cases) cases and, by section 15, the Act removed those rights from a large number of in-country cases.

[168] See Table 2.5a in tribunal statistics *op cit.*

Part 5 & Schedule 6 (Support for certain categories of migrant)

15. The Committee has received a great deal of evidence in relation to support. We do not repeat that. We agree with the oral evidence of Mike Kaye of Still Human Still Here, save that as explained above our current experience indicates he underestimated the length of time between refusal and appeal hearing.[169]

16. In the first oral evidence session during the afternoon on which we gave evidence, the Committee took evidence from the London boroughs of Hillingdon and Croydon; and from Henry St Clair Miller of the No Recourse to Public Funds Network. In his evidence, Mr Miller explained that were a local authority to be faced with a family refused asylum, whose asylum and human rights appeal had been finally concluded and rejected, "*...it should be possible for the local authority to* [similarly conclude]*... that no assistance is required other than a return to the country of origin through assisted voluntary return.*"[170] Insofar as it goes, that answer may be correct. But what Mr Miller did not at that time go on to contemplate is the situation where the family refuses to accept an assisted return. In such circumstances, the local authority's duty to the children will no more be displaced by the non-cooperation of the adults than they would in other circumstances in which a parent or parents were acting in a way which put a child's safety or welfare at risk. Thus, the complex questions as to how best to ensure the child's safety or welfare, including considerations as to the welfare implications of taking a child into local authority care as discussed more widely in that session, will arise.

17. **We are generally opposed to removal of support, and especially concerned at the consequences to families and children. We also recommend that appeal rights be retained in support cases.**

18. Reference was made in that oral evidence session to section 55 in relation to the safety and welfare of children – that is section 55 of the Borders, Citizenship and Immigration Act 2009. During the session in which we gave evidence, Rebecca Hilsenrath of the Equalities and Human Rights Commission generally raised concerns as to the lack of equality impact assessments in relation to measures in the Bill.[171] As regards the intention to remove support for families with children, who have been refused asylum, if and when their appeal is dismissed, there was a short consultation. That consultation made but one reference to a child save in the capacity as a dependent on one or more adults.[172] The one reference was in the assertion that what was proposed would retain important safeguards for children. It was not made express what safeguards were meant. The failure to give specific consideration to children in their own right as distinct from mere appendages of parents or other adult carers remains – after six years of the section 55 duty having been commenced[173] – a feature of Home Office practice, decision-making and policy-making, which is incompatible with both that duty and the 1989 UN Convention on the Rights of the Child.

19. We have no confidence that this important duty to ensure the safety and welfare of children has received any adequate consideration in the formulation of other measures in this Bill; and similarly have no confidence that if commenced the powers provided by this Bill will generally be exercised with proper regard to that duty.

Detention; Clause 29 & Schedule 5 (Immigration bail)

20. Clause 29 and Schedule 5 would achieve two distinct results. They would rename the current status of 'temporary admission' as 'immigration bail'. Separately, they would transfer significant powers from an independent tribunal to the Home Office in relation to cases which (as now) are properly regarded as bail cases – i.e. cases where bail is granted by the tribunal to a person previously subjected to detention by decision of the Home Office.

21. This transfer of power to the Home Office constitutes a serious assault on the principle that a detained person should have access to independent judicial scrutiny of his or her detention. As Mr Berry pointed out, such a transfer can be expected to lead to increased unlawful detention and increased compensation payments.[174] **We are opposed to provisions in Schedule 5 which would empower the Home Office to effectively overrule or ignore the decision of an independent tribunal.**

22. We also agree with the criticism of renaming temporary admission made by Mr Berry in oral evidence.[175] When, for example, a person subject to immigration control presents to an immigration officer at a port of entry, the officer is required to determine whether the person is entitled to be admitted to the UK. If the officer is uncertain as to that question, the officer is empowered to admit the person under temporary admission with conditions (including reporting) attached while that question is investigated. Asylum-seekers claiming at a port of entry are frequently admitted on this basis because it is not possible to properly assess their claim without further enquiry than can be conducted at that time at the port. Asylum-seekers claiming at the Home Office offices in Croydon are also frequently granted this status on the same basis. However, other people are also

[169] *Hansard* HC, Public Bill Committee Immigration Bill, 20 October 2015 : Col 6 (Q1).
[170] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 122 (Q251).
[171] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 138 (Q294).
[172] See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/451088/Reforming_support_for_failed_asylum_seekers_and_other_illegal_migrants_-_Consultation_Document.pdf
[173] Section 55 was commenced on 2 November 2009 by the Borders, Citizenship and Immigration Act 2009 (Commencement No. 1) Order 2009, SI 2009/2731.
[174] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 102 (Q217).
[175] *ibid.*

admitted on this basis when there is some question in the mind of an immigration officer that it is thought needs further consideration.

23. There is no illegality on the face of the circumstances just described. Nonetheless, many commentators (and others) too readily wrongly elide these circumstances with criminality and associated risks. When we gave oral evidence, Simon Hoare MP expressed concerns regarding social cohesion with the thought that greater certainty as to the legitimacy of people's presence in the UK would ease related anxieties.[176] It appears to us that very similar concerns have underpinned much of the immigration legislation and expansion of immigration powers, which we criticised in our oral evidence.[177] We offer some further brief thoughts on this matter in the following section. However, we would emphasise here that the renaming of temporary admission as immigration bail risks, for the reasons given by Mr Berry, contributing to the very anxieties which Mr Hoare was concerned to have eased. We also agree with Mr Berry's assessment that the renaming will not assist in addressing a culture in which what is supposed to be regarded as an exceptional measure (use of the power to detain) has become normalised in Home Office practice – as we and others have observed including the cross-party parliamentary group which reported on its use in March 2015.[178]

24. Independent inspectorates have also made findings consistent with these concerns.[179] HM Chief Inspector of Prisons concluded his introduction to his most recent report on an Immigration Removal Centre (Yarl's Wood) by stating: "*...decisive action is needed to ensure that women are only detained as a last resort. Procedures to ensure the most vulnerable women are never detained should be strengthened and managers held to account for ensuring they are applied consistently. Depriving anyone of their liberty should be an exceptional and serious step.*"[180] Observations like this are only made because culture and practice have become far out of step with what purports to be the long-standing policy – that there is a presumption against detention, that it should only be used where there is no alternative and if used must be for the shortest possible time.[181]

25. In oral evidence, Jerome Phelps of Detention Action highlighted cases in which the High Court has found immigration detention of someone to have been so catastrophic for that person's mental health and the response so wilfully or recklessly lacking as to violate the UK's absolute obligation not to subject anyone to torture, inhuman or degrading treatment under Article 3 of the European Convention on Human Rights.[182] Although, as Craig Whittaker MP pointed out, these cases constitute a very small proportion of those subjected to detention, they should be of far greater concern for at least four reasons.

26. Firstly, it is extremely serious for the court to make such a finding in any case, and for the High Court to have done so five times since 2011[183] is lamentable. Secondly, with curtailment of legal aid and increased barriers to judicial review over recent years, there can be no assurance that other cases have not come to light simply because victims have not secured access to any or competent legal advice.[184] Thirdly, we cannot know if other cases have not come to light because the Home Office has settled a claim out of court to avoid the risk of such a finding. Finally, we do know there have been numerous successful unlawful detention claims[185] – both findings by courts and cases settled out of court – and even where the treatment to which the individual was subjected by reason of their detention did not cross the Article 3 threshold, the unlawful detention of someone constitutes an human rights abuse and the detention of someone – whether lawful or otherwise – can cause serious harm, particularly to mental health.[186]

27. These concerns are exacerbated by several factors. We highlight four. Firstly, immigration detention in the UK is indefinite. The only time limits in UK law or policy operate in respect of detention of children.[187] Secondly, as revealed by a recent report of Medical Justice, there is widespread, harmful and inappropriate use of segregation in the immigration detention estate.[188] The report highlights a disturbing disparity in the number of people recorded as having been subjected to segregation – the Home Office recording around 1,200

[176] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 141 (Q302).
[177] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 143 (Q306).
[178] In a detailed report citing many instances, the cross-party parliamentary group stated: "*Home Office guidance currently states that detention must be used sparingly and for the shortest possible period. What became clear during the course of the inquiry is that the standard working practices and the enforcement-focused culture of the Home Office are resulting in this guidance being ineffective. This is compounded by the lack of a maximum time limit and a lack of effective means for those detained to challenge their continued detention.*" See https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf
[179] See e.g. National Audit Office (2013) *Managing the prison estate*, HC 735, Session 2013-14, 12 December 2013; Chief Inspector of Borders and Immigration (2011) *A thematic inspection of how the UK Border Agency manages foreign national prisoners*, October 2012.
[180] See https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-20151.pdf
[181] Chapter 55 of the Home Office, enforcement instructions and guidance.
[182] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 108 (Q228).
[183] A sixth case has been referred back to the court by the Court of Appeal, but there is no outstanding challenge to the findings in the remaining cases.
[184] Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and Part 4 of the Criminal Justice and Courts Act 2015 are of especial significance.
[185] Mr Phelps referred to this in his oral evidence, see *Hansard* HC, 22 October 2015 : Col 102 (Q216).
[186] See e.g. Royal College of Psychiatrists (2013) *Position Statement on detention of people with mental disorders in Immigration Removal Centres*
[187] Section 5 of the Immigration Act 2014 introduced a statutory time limit of 24 hours for the detention of an unaccompanied child; and chapter 55 of the enforcement instructions and guidance permits the detention of an accompanied child for a period of up to 72 hours without Ministerial approval, up to seven days with such approval.
[188] See http://www.medicaljustice.org.uk/images/stories/reports/SecretPunishment.pdf

detainees to have been segregated in 2014, whereas HM Chief Inspector of Prisons' inquiries suggest the figure to be around 4,800. The report also highlights the use of segregation as a means to 'manage' mental illness and self-harm. The harmful use of segregation as a response to mental illness and self-harm has, for example, been identified by the High Court in the Article 3 cases to which Mr Phelps referred.[189] Thirdly, there is the related evidence of woefully inadequate healthcare provided in immigration detention, including in relation to mental health. For example, the most recent annual reports of Independent Monitoring Boards for Yarl's Wood and Harmondsworth each reported concerns about the provision of healthcare, highlighting mental health, the use of segregation and the detention of people clearly unfit for detention.

28. Finally, we draw attention to the Home Office immigration detention statistics to which Mr Phelps made reference.[190] He gave the data for 2014. The most recent data gives figures for the 12 months to end June 2015. It shows increasing use of detention and falling effectiveness of that use. The introduction to the Home Office publication states: "*The number of people entering detention in the year ending June 2015 increased by 10% to 32,053 from 29,122 in the previous year. Over the period there was a similar increase of 9% in those leaving detention (from 29,055 to 31,628). There was a continuing decline in the proportion of detainees being removed on leaving detention from the most recent peak in the year ending March 2011 of 64% to 49% in the year ending June 2015.*"[191]

29. **We recommend the introduction of a statutory time limit on the immigration detention of all persons subjected to this power, which could be done by amendment to this Bill.** That time limit must be sufficiently short to act as a real constraint on the use of detention and not to provide a target or justification for extending the detention of those who might otherwise be detained for a shorter period.

30. **We further recommend urgent attention to the findings and recommendation of the cross-party parliamentary group, which reported in March 2015.** As they found detention is being used disproportionately, and the many problems associated with its use could and should be largely addressed by simply detaining far fewer people.

31. **Parliament should be strengthening judicial oversight of detention not weakening it; and we support calls for the introduction of automatic and regular judicial oversight of any individual's detention.**

32. **We do not support the substitution of the name 'immigration bail' for 'temporary admission', and the Bill should be amended to retain the distinction between bail and temporary admission.**

General expansion of immigration powers

33. We agree with the oral evidence of Rachel Robinson of Liberty[192] and Mr Yeo[193] on this subject. In addition to the oral evidence we gave on this subject, we wish to emphasise four matters – partly to expand on our evidence, and partly to offer some further response to the concerns of Mr Hoare about social cohesion and anxiety to which we refer above.

34. Firstly, we are concerned that expansion of powers and targets has contributed and will continue to contribute to inefficiency, ineffectiveness and abuse by the Home Office. There is a misguided tendency at the Home Office to equate increased enforcement activity with increased effectiveness. This is not cost-effective, does not reduce any anxiety others may have yet increases the likelihood of abuse of powers. For example, the Home Secretary at Second Reading announced: "*More than 8,000 proposed marriages have been referred to the Home Office, with 120 of them being identified as shams.*" The effectiveness of these referrals was on this data at only 1.5%. (This contrasts starkly with the effectiveness of 40% or more which on a similar basis may be attributed to appeal rights, which the government continues to wish to remove or curtail.) As detailed above, while the use of detention has increased the proportion of those whose detention ends in removal has significantly reduced.

35. The report of the Chief Inspector of Borders and Immigration, to which Mr Yeo referred, into the emergency travel document process (this is a process to secure documents on which someone may be removed from the UK) revealed that: "*The Home Office was applying for too many ETDs that had little prospect of being used, rather than focusing on cases where re-documentation was likely to result in removal. This is a long-standing issue… the Home Office had not used several thousand ETDs that had already been agreed by embassies. In some instances, these agreements dated back more than ten years.*"[194] Increased activity does not equate to effectiveness. Indeed, increased activity may both indicate and produce its opposite. It is, however, likely to draw attention and – if ineffective or unnecessary – increase anxiety. It also risks inconsistency, arbitrariness and abuse – none of which contribute to the confidence anyone can have in the UK immigration system. The Home Office would be far better reducing its powers, and more responsibly targeting its efforts.

[189] See e.g. *R (MD) v Secretary of State for the Home Department* [2014] EWHC 2249 (Admin).
[190] *Hansard* HC, Public Bill Committee Immigration Bill 22 October 2015 : Col 101 (Q215).
[191] See https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2015/detention
[192] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 144 (Q306).
[193] *Hansard* HC, Public Bill Committee Immigration Bill, 22 October 2015 : Col 107 (Q224).
[194] See http://icinspector.independent.gov.uk/wp-content/uploads/2014/03/An-Inspection-of-the-Emergency-Travel-Document-Process-Final-Web-Version.pdf

36. Secondly, we remind the Committee the degree of scrutiny to which the Home Office is subject has been significantly reduced in recent years by reduction in legal aid and increased barriers to judicial review. Independent inspectorates cannot mitigate these losses. Inspectorates do valuable work, but have neither the resources nor the remit to keep constant watch on the full range of Home Office activity, still less provide safeguards or remedies in individual cases. Committee members might usefully review the website of the Chief Inspector of Borders and Immigration and consider the range of Home Office activity that inspectorate has reviewed since 2009. The range of activity is such that there will always be much activity that cannot be under review at any one time, and an ongoing dilemma about whether to follow-up inspection work on any discrete area of activity at the expense of inspecting something else.

37. Thirdly, the Home Office has frequently failed to act on its own promises to ensure the provision of training or policy instruction to ensure against inconsistency, arbitrariness and abuse. The previous Chief Inspector of Borders and Immigration had on more than one occasion raised concerns about failures to implement his recommendations even after these had been accepted by the Home Office. The Home Office has given plentiful assurances as to the provision of rules governing detention in short-term holding facilities since at least 2005,[195] all of which remain as yet unfulfilled. In the wake of the death of Jimmy Mubenga in 2010 during an attempt to remove him from the UK, we published a briefing on the use of force highlighting the urgent need to radically overhaul and improve training, monitoring, accountability and techniques used in enforced removals.[196] More than two years later, the publication of the Prisons and Probation Ombudsman's report[197] revealed there had already been serious disquiet about the standard of training on the use of force being delivered to escort staff before Mr Mubenga's death and more than two years after his death the inadequacy of training remained to be addressed. However, the Coroner's report published close to the same time indicated that a year on this still remained to be addressed.[198]

38. Finally, although this has been emphasised by many witnesses, it is necessary to repeat that the complexity of legislation, immigration rules and policy in support of these has a profoundly detrimental effect upon the Home Office as everyone else. We agree with the Home Secretary's analysis in 2013 that "*a vicious cycle of complex law and poor enforcement of its own policies*" is a key cause and symptom of the travails of the Home Office.199 We do not, therefore, understand why Parliament is now – for the second time since she gave that analysis – being asked to legislate further and compound those complexities.

39. In the circumstances, we believe it would be unwise of Parliament to accede to a further substantial expansion of powers to the Home Office at this time.

October 2015

Written evidence submitted by the Trades Union Congress (TUC) (IB 21)

Introduction

The Trades Union Congress (TUC) has 52 affiliated unions, representing almost six million members, who work in a wide variety of sectors and occupations. We welcome the opportunity to give evidence to the Committee on the Immigration Bill as we have serious concerns that the Bill will encourage irregular employment of undocumented migrants and asylum seekers, and the exploitative conditions that often accompanies this form of work, increase discrimination against BME workers and turn public sector staff into border guards.

The TUC believes that public concern about undercutting can only properly be addressed when undocumented workers have the legal right to work and a strong voice through a union to claim their rights at work. This would allow all workers to claim decent treatment and fair pay. Instead of this, however, the Bill will fuel divisions between workers, and tensions in society.

Criminalising work and wages

The TUC is concerned by the Bill's measures to make it a criminal offence to work without leave to remain, or beyond the restrictions of a visa, and classifying wages earned in such employment as the proceeds of crime. We believe this will result firstly in an inequitable situation where those with a legal right to be in the country could face a sentence of up to 51 weeks in prison simply for working slightly beyond the restrictions on their visa. This is particularly likely to affect students who, in most cases, are only permitted to work a maximum of 20 hours a week.

Criminalising undocumented migrants simply makes it harder for bad bosses to be found out. Undocumented migrants are unlikely to report an exploitative employer to the authorities when they know they are likely to

[195] Most recently, the Lord Taylor of Holbeach gave an assurance on behalf of the government that such rules would be in place before the summer 2014 parliamentary recess; see *Hansard* HL, 3 March 2014 : Col 1140.
[196] See http://www.amnesty.org.uk/sites/default/files/out_of_control_1.pdf
[197] See http://www.ppo.gov.uk/wp-content/ReddotImportContent/117-10-Brook_House12-10-2010-death-of-a-male-detainee-in-hospital.pdf#view=FitH
[198] See http://inquest.gn.apc.org/pdf/reports/Mubenga_R43.pdf
[199] *Hansard* HC, 6 March 2013 : Col 1500.

face a criminal charge for being found out. Bad employers can also threaten to report undocumented workers to the authorities if they complain about bad treatment or try to join a union and claim their rights.

This fuels unregulated employment, as employers are able to employ undocumented workers informally on a cheaper rate and on worse terms and conditions than workers they would employ legally. Encouraging unregulated working not only increases exploitation but is also a drain on the economy, as workers are not as able to contribute to taxation through their wages. Furthermore, forcing one section of the low-paid workforce to accept worse conditions has a negative impact on terms and conditions for all workers.

Undocumented migrants should be provided with employment rights separate from their immigration status so they can report bad employers and be treated on equal terms with local workers. This principle is enshrined in Article 23.1 of the Universal Declaration of Human Rights which states 'everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment'.

Director of labour market enforcement

The new Director of labour market enforcement must work closely with unions in order to accurately identify and tackle abuses in the labour market.

The TUC is concerned that in the UK migrant workers are often hired on worse contracts and pay than local workers, allowing bad bosses to use them to undercut other workers which simply fuels concern about immigration. Such abuse can only be tackled comprehensively through the extension of collective bargaining arrangements and rights to representation for unions because inspections and acting on complaints will only capture a sample of problems, whereas collective bargaining and union representation are continuous processes. The law on employment status should also be reformed to ensure that migrant workers and other vulnerable groups do not lose out on basic rights at work.

It is imperative that any centralisation of the work of the Employment Agency Standards (EAS) Inspectorate, HMRC's National Minimum Wage team, and the Gangmasters Licensing Authority does not reduce the powers or remit of each agency. The TUC was concerned that the scope and powers of the Gangmasters Licensing Authority were reduced in 2013. In order to tackle exploitation the government should instead expand the resources of these agencies. It is vital that the GLA licensing scheme which has successfully improved working conditions for migrant workers in agriculture and fresh food processing is retained and indeed extended to cover more sectors with vulnerable employment such as care, construction and cleaning.

These employment enforcement bodies must also not be used as a means of immigration control but rather be neutral agencies to which vulnerable workers, whether documented or not, are able to report exploitation and seek redress.

English language requirement for public authorities

The TUC believes the Bill takes the wrong approach to improving English language skills at work. Rather than introducing penalties, the government should support employers and trade unions to deliver workplace based English language classes, for example, through Unionlearn. A recent study by the European Commission highlighted that English language classes delivered by trade unions in Leeds were important to enable migrant workers to improve their performance at work.[200]

The TUC believes measures in the Bill to require public authorities to ensure each person who works in a customer facing role speaks fluent English are likely to increase discrimination. Unions already have considerable experience of dealing with disciplinary and grievance situations in relation to discrimination against workers whose language ability is questioned because of their accents.

The TUC questions the necessity of this provision as the government has not produced evidence to suggest those in customer facing roles in public authorities do not have an adequate level of English. In fact, evidence from unions shows adequate English language skills are already a requirement to be employed in customer facing roles in the public sector.

Requirements for document checks by landlords and banks

The TUC has concerns that the Bill's requirement for landlords to check the immigration status of tenants and banks to check the immigration status of current account holders will encourage everyday discrimination against anyone who doesn't 'look' British. These document checks will make it harder for migrants and BME groups to have access to essential services and turn staff in banking and housing into border guards. It is already too difficult for people – especially young people – to open back accounts, including the children of British citizens living abroad.

Closing off support for failed asylum seekers and their children

The TUC is opposed to government proposals to close off support currently available to failed asylum seekers via Section 4(1) and 4(2) of the 1999 Immigration and Asylum Act and for asylum seekers with children via Section 95 of the 1999 Act. While asylum seekers and their children remain in the country, local authorities

[200] http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2311&furtherNews=yes

have a duty of care towards them as stipulated in the Children's Act (1989) and the Human Rights Act (1998). The government's decision to withdraw support from asylum seekers will place additional costs on local authorities at a time when they are already spending £3.364bn on children in need of care and are suffering cuts dictated by the government's austerity programme.

The TUC believes the government must reverse cuts to local authority budgets so there are resources for them to fulfil their duty of care to failed asylum seekers and their children. We believe asylum seekers should be allowed to work so that they are able to provide for themselves and their families adequately and contribute to society.

We believe these proposals will increase poverty amongst asylum seekers and their children which is already high. These proposals are also likely to compel more asylum seekers into unregulated employment to survive, fuelling the exploitation and undercutting discussed above.

Immigration skills levy

The TUC is a longstanding advocate of a levy on all employers to increase investment in skills. We welcome proposals which will drive up employer investment in skills. However, this levy proposal should be considered in light of the government's announcement in the summer budget to introduce an Apprenticeship levy on employers. We believe there should be an integrated levy system to ensure there is synergy; having two levies operate alongside each other could cause additional confusion and increased bureaucracy.

The TUC has welcomed the government's announcement in the summer budget to introduce an Apprenticeship levy on employers. The TUC believes this levy should be extended to as many employers as possible, both to increase employer investment and participation in delivering skills and to avoid a two-tier funding system emerging. There is a danger this could lead to increased tensions between larger employers who contribute to the levy and those employers who are excluded from the scope of the levy.

We believe that levies can incentivise long term investment by employers in skills which is needed to address skills gaps in the economy and prevent the recruitment of migrants being used as a substitute for training resident workers.

We believe a levy on all employers provides a more comprehensive way to deal with investment in training than the proposed skills levy targeted at employers that recruit via Tier 2 only. Furthermore, applying a levy on all employers avoids appearing to penalise the recruitment of migrants and add to the stigma migrant workers face.

October 2015

Written evidence submitted by the Law Society of Scotland (IB 22)

Introduction

The Law Society of Scotland (the Society) aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interest of solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Society's Immigration and Asylum Sub-committee welcomes the opportunity to consider and respond to the UK Parliament Public Bill Committee's call for evidence on the Immigration Bill. The Sub-committee has the following comments to put forward:

General Comments

We are concerned about a number of provisions in the Bill. In this response we concentrate on those provisions most closely within our area of expertise. Therefore, the following comments are not exhaustive.

While we recognise that its main thrust is directed at reserved matters, the Bill nevertheless contains several provisions which are for devolved purposes. For example, the purposes of the residential tenancies provisions extend beyond immigration control since they affect landlords, tenants and potential tenants who are British citizens. These issues are discussed in detail below. Our view is that when the range of devolved matters engaged by several of the proposals are taken together, the issue of legislative consent is such that consultation, with a view to seeking the legislative consent of the Scottish Parliament should be initiated, as discussed in more detail below.

Part 1 Labour market and illegal working

Clause 8 Offence of illegal working

Illegal Working Offences

We share the concerns expressed by the Immigration Law Practitioners Association (ILPA) in their briefing for the House of Commons Second Reading of the Bill[201] about the breadth of the offences in Clause 8.

Clause 8(3) amends the 1971 Act by inserting section 24B. This states at 24B(5) *"If a person is convicted of an offence under subsection 1 in Scotland, the prosecutor must consider whether to ask the Court to act under section 92 of the Proceeds of Crime Act 2002 (making of a confiscation order)."*

This provision, we suggest, may constitute an interference with the Lord Advocate's discretion to prosecute crime in the public interest. Procurator Fiscal Deputes and Crown Counsel have an inherent professional obligation to consider whether to ask the Court to act under section 92. We welcome clarification on the purpose of imposing a unique consideration for offences under the 1971 Act, which appears to serve no practical purpose.

Clause 9 offence of employing illegal worker

Clause 9(3) appears to empower immigration officers to arrest persons, without a warrant, who are not subject to immigration control, and who may be British citizens, if they have 'reasonable grounds for suspecting' they are committing the offence of employing illegal workers. We are of the view that these powers need to be considered in the context of the proposal in Clause 9(1) to amend section 21 of the Immigration Asylum and Nationality Act 2006 (offence of knowingly employing illegal worker) so that the offence is committed not only when the illegal worker is "knowingly" employed, but also when the person is deemed to have "reasonable cause to believe" that they are employing an illegal worker. We share the concerns about Clause 9 expressed in the Written Evidence on this Bill submitted by ILPA which says:

> "*The difficulty is that the change proposed will catch not only such persons but other employers who are considered to have been negligent. The fear is that employers will be so afraid of being accused of negligence in this regard that they will be reluctant to employ anyone who does not hold a British passport or whom they regard as not looking, or sounding "British" or having a "British" name"*.[202]

Clause 10 Licensing Act 2003: amendments relating to illegal working

We share the concerns of ILPA,[203] that the powers contained in Schedule 1 are exceptionally wide and allow Immigration Officers to search licensed premises without any need for a suspicion that an immigration offence is being committed.

We note that the Bill only applies clause 10 and Schedule 1 to England and Wales, however the Secretary of State is given the power to introduce regulations to extend these sections to Scotland. The Explanatory Note to the Bill states that no legislative consent motion would be required. These provisions would alter the licensing law, which is a devolved matter.

The Sewel Convention provides that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.[204] It is our view that the effects of the proposals are not incidental to devolved matters and that consultation with a view to seeking the legislative consent of the Scottish Parliament should be initiated. We refer to Annex B in the Explanatory Notes, which state that no legislative consent motion is required. We take the view that as licencing is devolved, we would welcome clarification on this and whether clause 10 and Schedule 1 is a necessary provision.

Part 2 Access to Services

Residential Tenancies

The "*residential tenancies provisions"* in the Bill extend the right to rent scheme introduced under the Immigration Act 2014. Those provisions require landlords to check immigration status documents and not to rent to people disqualified from renting by their immigration status. The 2014 Act scheme has recently been piloted, prior to being rolled out across the UK in this Bill. As ILPA noted in their Briefing on the Second Reading of this Bill:

> "*Those who cannot prove that they have lawful leave to be in the UK (some of whom will be British citizens, without passports, or whose passports are regarded by landlords and landladies as possible fakes) will not be able to rent property at all*".[205]

We consider that the residential tenancy provisions have the potential to discriminate and to interfere disproportionately with individual rights.

[201] ILPA briefing for House of Commons Second Reading of the Immigration Bill 2015, 13 October 2015.
[202] Written Evidence Submitted by ILPA IB08 http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/memo/ib08.htm
[203] ILPA briefing for House of Commons Second Reading of the Immigration Bill 2015, 13 October 2015.
[204] Devolution Guidance note 10 and Scotland Bill Clause 2.
[205] ILPA briefing for House of Commons Second Reading of the Immigration Bill 2015, 13 October 2015.

We believe that this would require a legislative consent motion.[206] The Private Housing (Tenancies) (Scotland) Bill (SP Bill 79) was introduced in the Scottish Parliament on 7 October 2015.[207] Its purpose is to introduce a new type of tenancy for the private rented sector in Scotland. The residential tenancies provisions in this Bill have the potential to affect all those involved in the private rented sector in Scotland, regardless of immigration status, whether as landlords, as tenants or as potential tenants. We consider that the effects of the proposals, through the creation of new offences, and the proposed changes to tenancy agreements, evictions and orders for repossession, are not incidental to reserved matters. In relation to the proposal to empower the Secretary of State to amend or repeal provisions of Acts of the Scottish Parliament,[208] we are concerned that the potential for unlawful discrimination and for human rights breaches have not been fully considered. We consider that consultation with a view to seeking the legislative consent of the Scottish Parliament should be initiated.

Clause 29 and Schedule 5; Immigration Bail

Clause 29 and Schedule 5 make significant changes to the powers of the Home Secretary and the First Tier Tribunal (Immigration and Asylum Chamber) (FTT) in relation to immigration bail.

In its Briefing for the Second Reading of this Bill, Justice expressed its concern that the proposals in Schedule 5 will have a significant effect on the ability of the FTT to provide an effective safeguard again prolonged administrative detention.[209] This committee shares and endorses those concerns.

Part 4 Appeals

Clause 31 appeals within the UK: Certification of human rights claims

The Immigration Act 2014 contained a power to certify the appeals of "foreign criminals" so that other than in cases based on fear of persecution or ill-treatment abroad, the person could be removed before the appeal was determined if to do so would not breach human rights and rights under EU law and would not cause "serious irreversible harm". The proposals in this Bill would extend these measures to include anyone appealing against a human rights decision. Since rights of appeal in the UK are limited to protection and human rights claims, people whose claims are based on Article 8 ECHR will be most affected. Delays currently experienced at the Tribunal could lead families to being separated for many months while they await a hearing. In their briefing for the Second Reading of this Bill, ILPA set out their concerns regarding the proposals in part 4. As they put it:

> "*The power of one party to a case to send the other party from the jurisdiction so that they cannot appear before the court or tribunal and may struggle to present their case at all is inimical to the notion of equality of arms*".[210]

We share and endorse those concerns.

Part 5 Support for certain categories of migrant: Clause 34 and Schedule 6

Part 5 amends the asylum support regime so that support would only be available to those who claim asylum and to failed asylum seekers who make "further qualifying submissions" or who have an ongoing judicial review. In our response to the Home Office's August 2015 consultation on asylum support (which gave rise to the provisions in Part 5), we observed that there are already arrangements in place under the Immigration and Asylum Act 1999 section 4 which limit access to support for failed asylum seekers, and we raised concerns about the human rights implications of any change.[211] Our concerns about human rights breaches remain.

Schedule 6 Paragraph 9 repeals the Immigration and Asylum Act 1999 section 4 and inserts a new section 95A empowering the Secretary of State to provide support for destitute failed asylum seekers where there is a genuine obstacle to leaving the UK. The Secretary of State will be able to certify the claims of families with children whose claims for asylum has failed, and who do not have a "genuine obstacle to leaving" (s 95A (3). The term "genuine obstacle" is to be defined in regulations. This support will only be available to those who make a claim for protection, not those whose claims are based on private and family life.

We note that there is no provision in the Bill to provide support for people who have never claimed asylum, even if they cannot be returned to their country of origin. Where their destitution imperils their human rights, which is likely to be the case as they cannot work, they will be the responsibility of local authorities if their support needs are not met under the new provisions in Clause 34 and Schedule 5. In our above mentioned consultation response, we pointed out that the extent to which these proposals were likely to lead to local authorities giving support to destitute families appeared to have been underestimated.

[206] Devolution Guidance Note DGN 10 November 2005.
[207] http://www.scottish.parliament.uk/S4_Bills/Private%20Housing%20(Tenancies)%20(Scotland)%20Bill/SPBill79ENS042015.pdf
[208] The provisions of Acts of the Scottish Parliament are "not law" if they are incompatible with Convention Rights Scotland Act 1998 s29(2).
[209] Justice, Immigration Bill 2015-16, Briefing for House of Commons Second Reading, October 2015.
[210] ILPA briefing for House of Commons Second Reading of the Immigration Bill 2015, 13 October 2015.
[211] The Law Society of Scotland Consultation Response: Home Office Consultation: reforming support for failed asylum seekers and other illegal migrants" September 2015.

We are of the view that the proposals fail to take into account the extent to which local authorities may continue to provide support within the scope of their powers and responsibilities to promote the welfare of children and families in their area.

Impact on local authorities and devolved administrations

The above mentioned asylum support consultation stated that the UK Government do not intend for the cost of supporting refused asylum seekers and families to fall on local authorities.[212] We note that the reforms, in practice, would have the effect of increasing pressure on local authorities and public services such as mental health services and A and E. It is noted that previous attempts to encourage families to leave the UK, by terminating their asylum support, were not successful and that terminating support will make it more difficult for the Home Office to remain in contact with people liable for removal from the UK. This would also have the effect of undermining efforts to promote voluntary departures; such concerns were raised in the response to the asylum support consultation by the House of Commons Library briefing, as summarised.[213]

We share and endorse the concerns summarised in those responses.

As noted in our above mentioned response to the asylum support consultation, the scope for local authorities in Scotland to provide support to families could include provision under the Children (Scotland) Act 1995, the Social Work (Scotland) Act 1968 and a range of other provisions.[214] The Home Office acknowledged in their asylum support consultation document that the proposals engage issues which are devolved (Geographical scope page 2).[215] Part 5 and Schedule 6 of this Bill contain provisions which alter housing law, which is devolved: Schedule 6 repeals Immigration and Asylum Act 1999 s 4 (provision of accommodation for failed asylum seekers) and removes reference to s 4 in (inter alia) the Rent (Scotland) Act 1984 s 23A (5A) and paragraph 11B of Schedule 4 to the Housing (Scotland) Act 1998. In isolation, these amendments may be regarded as consequential to immigration, which is a reserved matter. But when these alterations to housing law are taken together with the abovementioned provisions affecting the exercise of local authority functions, health functions, child protection and welfare functions, and social work functions, our view is that these provisions on devolved matters are not incidental to a reserved matter, and consultation with a view to seeking the legislative consent of the Scottish Parliament should be initiated.[216]

Part 8

Clause 46 Immigration skills charge

The Bill proposes an Immigration Skills Charge which will apply to employers sponsoring skilled workers from outside the European Economic Area. It noted that the proceeds of these funds are likely to be used to fund apprenticeships; however, the businesses subject to the charge are still to be defined.

Scottish Government figures show that as of March 2014, 332,720 Small and Medium Sized Enterprises (SMEs) were operating in Scotland, this is 99.3% of all private businesses in Scotland.[217] Given the large number of SMEs in Scotland we are concerned that any skills levy would place a further burden on businesses. Businesses are already required to pay in order to obtain a sponsor licence and then pay an additional fee to sponsor an individual. Due to the difficulties in persuading skilled staff to move to Scotland rather than England many companies are also meeting the cost of visa applications and the Immigration Health Surcharge. A skills levy would be a further burden on SMEs.

October 2015

Written evidence submitted by Crisis (IB 23)

Summary

— Crisis has long had concerns about the Right to Rent scheme introduced by the Immigration Act 2014. We are a member of the Home Office panel to advise on the roll out of the scheme and we have been successful in increasing the routes available to people who don't have a passport to prove their identity.

— Crisis is extremely concerned that the new eviction routes proposed in the Bill will undermine the protections for tenants who do have the right to rent and set a dangerous legal precedence to move eviction cases out of the court system and make tenants more vulnerable to rogue landlords.

— We are also concerned that the harsh penalties for landlords who fail to evict tenants who don't have the correct immigration status will compound the effect of the previous Immigration Act and make

[212] Home Office Reforming support for failed asylum seekers and other illegal migrants August 2015. See also House Of Commons Library Briefing Paper Immigration Bill (Number 07304, 6 October 2015).
[213] House Of Commons Library Briefing Paper Immigration Bill (Number 07304, 6 October 2015).
[214] The Law Society of Scotland Consultation Response: Home Office Consultation: reforming support for failed asylum seekers and other illegal migrants" September 2015.
[215] Home Office Reforming support for failed asylum seekers and other illegal migrants August 2015.
[216] Devolution Guidance Note DGN 10.
[217] http://www.gov.scot/Topics/Statistics/Browse/Business/Corporate/KeyFacts.

landlords much more 'risk averse' and less likely to rent to people who are may not have easily recognisable documentation, such as homeless people, as well leading to increased discrimination against foreign nationals and people of black and minority ethnic backgrounds.

Offences and Penalties

1. Crisis is concerned that the harsh penalties for landlords who fail to evict tenants who don't have the correct immigration status will compound the effect of the previous Immigration Act and make landlords much more 'risk averse' and less likely to rent to people who may not have easily recognisable documentation such as homeless people, as well as leading to increased discrimination against foreign nationals and people of black and minority ethnic backgrounds.

2. The evaluation of the Immigration Act 2014 pilot in Birmingham shows that six of the local charities surveyed said people they represent had become homeless as a result of the scheme, while interviews with landlords found the 'potential' for discrimination. Seven of the charities reported that people who have the right to rent, but not the right documentation, were struggling to find accommodation.[218]

3. The evaluation also highlighted that there was an increased requirement for tenants to produce photo ID. Before the scheme, 53 out of 64 letting agents always required photo ID, which rose to 60 out of 64 after the scheme began. Before the scheme, 18 out of 35 landlords always requested photo ID, which increased to 26 out of 32 after the scheme began.[219]

4. Many homeless people seeking to move into private rented sector (PRS) accommodation will not have the documents they need to prove their identity, such as passport or birth certificate. Homeless people's documents often get lost or stolen during periods of moving around or when sleeping rough or living in insecure accommodation. Replacing missing documents is costly and could be prohibitive for people on low income. In high pressured rental markets, landlords will often be in a position to let their property immediately. They are unlikely to be prepared to wait for a tenant to produce the required documents, choosing instead to rent to someone who can immediately provide the evidence.

5. The Right to Rent scheme also applies to live in landlords who take in lodgers. We are concerned that this will act as a disincentive to people letting out rooms in their home at a time of great housing pressure and high demand for rented accommodation. We are supportive of new clause 9 which would protect lodgers from the right to rent scheme.

6. **Crisis therefore strongly supports amendment 73 that requires the Home Secretary to report on the likely impact to minority groups and British Citizens without passports or driving licences.**

7. **We also very strongly support new clause 7 and amendment 84 which would remove residential tenures (right to rent) provisions from broth the Immigration Act 2014 and the current immigration bill.**

Evictions

8. The Bill introduces two new easy eviction routes for landlords to remove migrants found not to have the right to rent from their properties. Crisis is extremely concerned by this. These two new routes of eviction will undermine the protections for tenants who do have the right the rent and set a dangerous legal precedence to move eviction cases out of the court system.

9. While we understand the Government's intention to make it easier for landlords to remove illegal immigrants, we are concerned that this will leave tenants who do have the legal right to rent much more vulnerable to illegal evictions.

10. **Overall, Crisis believes clause 13 should be removed from the bill.**

11. It is essential that the Home Office works closely with the Scottish and Welsh Assembly Governments, and with stakeholders in those nations, on how the proposals will work with the tenancy regimes in those parts of the UK. We are particularly concerned that the new eviction routes will undermine proposals for greater security of tenancy as set out in the new Scottish Private Tenancies Bill.

Eviction route 1

12. Clause 13 (2) section 33D removes the rights afforded to tenants by the Protection from Eviction Act (1977) and Housing Act (1988), particularly the tenant's right to challenge the notice via the court system and limits to the notice period provided.

13. This new eviction process will make tenants much more vulnerable to rogue landlords, who could falsely claim they have been notified by the Home Office that the tenant doesn't have the right to rent. Taking the courts out of this process leaves a tenant with no opportunity to challenge possession proceedings and they could be illegally asked to leave their home with limited notice (only 28 days compared to the two months' notice landlords are required to give when they serve a Section 21 no-fault eviction notice), leading to an increased risk of homelessness.

[218] Evaluation of the Right to Rent Scheme (2015), *Home Office.*
[219] Evaluation of the Right to Rent Scheme (2015), *Home Office.*

14. Cases of illegal evictions are rarely investigated and very few landlords are prosecuted; local authorities rarely use the enforcement powers they have under the Protection from Eviction Act 1977 and police forces often think that illegal eviction is a civil matter. Research from Shelter shows that 8% of tenants (650,000 tenants) indicated that one of the reasons for their last move was because they were informally asked to leave by their landlord or letting agent, without being given a legal notice. In 2011 however, only 13 successful prosecutions occurred for unlawful eviction.

15. The Home Office should only issue the letter to the landlord if every appeals route has been exhausted. A significant proportion of asylum appeals are upheld. With regards to asylum cases, in 2013 the courts overturned 25% of negative decisions after they were appealed. (Home Office asylum statistics first quarter 2014). There are particular problems with decisions for women's claims. The success rate at appeal for women has consistently been higher than that for men over a number of years. In 2013, 30% of appeals by women succeeded. **Crisis is supportive of new clause 10 which enables asylum seekers who can afford to rent privately and people with outstanding appeals or judicial reviews the right to rent.**

16. There are also a number of situations where someone's claim for asylum fails but they are unable to return to the country they have left because there is no stable state to return to or it is unclear where they should return. **The Home Office should clarify these people's status with regards to the new eviction process**.

Eviction route 2

17. Clause 13 (2) section 33E allows the landlord to terminate a tenancy if one of the tenants no longer has the right to rent but the others do. Crisis is concerned that this new eviction route will lead to people who do have the right to rent becoming at risk of homelessness. Whilst we welcome the provision which gives courts the option to transfer the tenancy to the remaining tenants who do have the right to rent, there is no obligation for the courts to do so. Both the National Landlords Association and Residential Landlords Association raised this issue in their oral evidence to the committee and pointed out that it would be very difficult to implement We are very concerned that for many tenants, the uncertainty will prompt them to begin to look for another home in order to avoid homelessness.

18. Crisis is concerned that this new proposed eviction route will make it much harder for people to share accommodation, despite the government expectation that more people will live in shared accommodation following the extension of the shared accommodation rate to single people under the age of 35. The Home Office should include information of the potential risks of having a joint tenancy in DCLG's 'How to Rent' guide, in light of the proposed new eviction route for households where some tenants do have the right to rent and other don't.

19. Crisis also seeks clarification that in situations where a person who does not have the right to rent but has been living with family and friends as a guest, rather than paying rent, the rest of the household will not face eviction.

20. **Crisis is supportive of amendment 69 which clarifies how a landlord can serve a notice terminating the tenancy.** We would stress however that landlord must have to send the notice by recorded delivery and not just by post.

About Crisis

Crisis is the national charity for single homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change. Our innovative education, employment, housing and well-being services address individual needs and help people to transform their lives.

As well as delivering services, we are determined campaigners, working to prevent people from becoming homeless and advocating solutions informed by research and our direct experience. Crisis has ambitious plans for the future and we are committed to help more people in more places across the UK. We know we won't end homelessness overnight or on our own but we take a lead, collaborate with others and, together, make change happen.

October 2015

Written evidence submitted by the Immigration Law Practitioners' Association (IB 24)

IMMIGRATION BILL: PART 5 SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT

ILPA PROPOSED AMENDMENTS FOR HOUSE OF COMMONS COMMITTEE STAGE

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on

advisory and consultative groups convened by Government departments, public bodies and non-governmental organizations and has worked closely with all parties on all immigration bills since its inception.

Further briefing will be prepared to amendments tabled.

PART 5 / SCHEDULE 6 SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT

Schedule 6 Paragraph 2

Amendment to provide a right of appeal against a decision by the Home Office to refuse or discontinue support under s95A

PROPOSED AMENDMENT

Schedule 6, Page 90, line 30, at end insert –

> "( ) If the Secretary of State decides not to provide support to a person under section 95A, or not to continue to provide support for a person under section 95A, the person may appeal to the First tier Tribunal."

Schedule 6, Page 90, line 29, leave out 'and (7)'.

Schedule 6, Page 90, line 30, at end insert –

> "in subsection (7) for 'section 4 or 95' substitute 'section 95 or 95A'"

Purpose:

To provide a right of appeal against decisions of the Home Office to refuse or discontinue support under new section 95A for asylum seekers at the end of the process who are unable to leave the UK.

This is similar to Liberty's amendment to provide for a right of appeal in relation to decisions on section 95A.

Briefing from the Asylum Support Appeals Project:[220]

The purpose of this amendment is to ensure that those who are entitled to support under new section 95A of the Immigration and Asylum Act 1999 can access this support in practice and are not left destitute if the Home Office wrongly refuses asylum support.

Refused asylum seekers who face a genuine obstacle to leaving the UK and would otherwise be destitute will be able to apply for support under the new section 95A of the Immigration and Asylum Act 1999 inserted by this Bill.

'Genuine obstacle' will be defined in regulations, but it is likely that support will be provided for some categories of persons who currently receive support under section 4(2) of the Immigration and Asylum Act 1999, which will be repealed by schedule 6 paragraph 1 to this Bill. Such groups would include those who are taking all reasonable steps to leave the UK and those who are medically unfit to travel.

A right of appeal currently exists against incorrect decisions made by the Home Office under section 4 of the Immigration and Asylum Act 1999. This right of appeal is essential to ensuring that destitute asylum seekers are able to access the support to which they are entitled.

The latest statistics from the Asylum Support Tribunal show that 62% of appeals received by the Tribunal had a successful outcome. From September 2014 to August 2015, the Asylum Support Tribunal received 2067 applications for appeals against a Home Office refusal of asylum support. 44% were allowed by the Tribunal and 18% remitted by the Tribunal (sent back to the Home Office for it to take the decision afresh) or withdrawn by the Home Office as it acknowledged its decision-making was flawed.

Asylum support cases represented by the Asylum Support Appeals Project reflect a similar statistic. The Asylum Support Appeals Project provides advice and representation to those appealing Home Office decisions to refuse or withdraw their housing or financial subsistence among other services. In 2014-15, the Asylum Support Appeals Project represented in 509 appeals related to section 4 support with 332 of these cases receiving a successful outcome, representing 65% of appeals.

The assessment of destitution by the Home Office, relevant to the question of entitlement to support under new section 95A, is the object of particularly poor quality decision-making. In 2014-2015, the Asylum Appeals Support Project represented 168 asylum seekers whom the Home Office did not believe were destitute and to whom it refused asylum support. Seventy per cent of these decisions were overturned on appeal. The Asylum Support Appeals Project has monitored decision-making on destitution since 2008, producing various research reports during this time. During this eight-year period, we have found the rate of cases overturned at appeal

[220] The Asylum Support Appeals Project provides free, high-quality legal representation and advice to asylum seekers and refused asylum seekers appealing against the Home Office decisions to refuse or withdraw their housing, financial subsistence, or both. The Project also provides asylum support advice and training to frontline organisations, advice agencies and legal practitioners working with asylum seekers.

has varied between 60% (in 2014) and 82% (2011) because the Tribunal has found the appellant to be destitute when the Home Office had refused support.

The high level of appeals overturned by the Asylum Support Tribunal indicates a serious problem with the quality of Home Office decision-making on asylum support applications. The consequences of a wrong decision are that a person may be left homeless and destitute and at risk of harm. Such cases may give rise to breaches of human rights under Articles 2 and 3 of the European Convention on Human Rights as well as under Article 8.

Children and families would be also be affected by the loss of judicial oversight of asylum support applications under section 95A. Under paragraph 7(5) of schedule 6 of the Bill, section 95(4) of the Immigration and Asylum Act 1999 is repealed with the effect that section 95 support will not continue for families at the end of the asylum process. They will instead be required to apply for support under the restricted criteria in new section 95A. There is a real risk of children and families being left homeless and destitute without independent scrutiny of Home Office decisions given the high levels of incorrect decisions made on support applications. Local authorities will be required to step in and support families who would be legally entitled to Home Office accommodation and support but have been incorrectly refused this support with no right of appeal.

Without a right of appeal to the Tribunal, the only remedy against destitution and breach of human rights will be judicial review of the section 95A decision. This would be an inadequate remedy, falling short of the requirements of article 6 of the European Convention on Human Rights as it covers the right to a fair trial in the determination of civil rights and obligations, because asylum support appeals involve the determination of questions of fact and matters that go to credibility. The right of appeal to the Tribunal ensures judicial oversight of Home Office decisions in a cost effective, straightforward and accessible way. Appeals are quick. If they are dismissed, then appellants lose their support immediately.

Without the Tribunal's overseeing the process, there will be no check on the Home Office's decision-making. Thus it will matter much less what is contained in the statute, regulations and Home Office policies, as there will be no effective mechanism for ensuring that they are followed.

Case Studies

A is a Somali woman in her late 60s. She has two children in the UK with refugee status. Her own claim for asylum was refused in 2005. She suffers from chronic mental health problems including psychotic depression and post-traumatic stress disorder. She is at risk of suicide and self-harm. She also has physical health problems which restrict her mobility and leave her in pain. She receives frequent care from her GP and her condition is reviewed every few months by a psychiatrist.

She has been on section 4 support due to her health problems since 2011. Her GP has consistently said she is unable to travel because of the impact this would have on her health. At various points the Home Office's own doctors have also agreed. Since 2011 her support has been subject to at least eight internal Home Office reviews all of which have resulted in her support continuing or being reinstated. Twice the Home Office was required to re-instate her support following a successful Tribunal appeal. On at least two other occasions the Home Office changed its mind and decided to continue to support her shortly before an appeal was going to be heard.

In the latest and third appeal, the Home Office's doctor expressed concern that continually reviewing her case was not in her best interests and that the question of her presence in the UK should be resolved once and for all. The Tribunal judge decided she was unable to travel and moreover that her mental health was too poor for her to make a decision about returning voluntarily. She continues to be eligible for support on health and human rights grounds.

B was due to give birth two days after her asylum support hearing. Her asylum appeal was listed for four months' later. She suffers from post-traumatic stress disorder as a result of the torture and rape she experienced in her home country. She is a long-term patient of the Helen Bamber Foundation, a charity which provides therapeutic and practical support to survivors of human rights violations. She had spent over a year sleeping rough in London parks, a mosque and sofa-surfing with strangers. The man she had been staying with for the last week had made it clear that she would not be allowed back once her baby was born.

In support of her application she had provided evidence from three charities confirming that they were providing her with food, hygiene items and occasional hardship payments. The Home Office refused her application on the basis that she had not proved she was destitute. The Tribunal judge found her oral testimony to be consistent, credible and compelling and allowed the appeal.

C was from East Africa and arrived in the UK at the age of 16. He had lost his family and been forced into working as a child soldier. On arriving in the UK he had initially been supported by social services and lived in foster care. At the age of 18 he was refused asylum and found himself unsupported and living on the streets in London. Five years later he was supported by the Baobab Centre (a therapeutic and support service for young people in exile), who referred him to a solicitor, who submitted further representations for him. He suffered from post-traumatic stress disorder, and received therapy from the Boabab Centre.

His application for asylum support was refused as the Home Office did not believe that he was destitute. He had been staying with someone in the community but the relationship was tantamount to abusive as he was confined to certain areas of the house, and his access to food was restricted. He was reliant on charities for food. The Tribunal judge allowed his appeal on the basis that his accommodation was not adequate and his essential living needs were not being met.

D is Palestinian. Following the refusal of his asylum claim he decided to return. However, he faced significant obstacles in doing this. He was born in Gaza but left around the age of 10. He moved with his father to Lebanon following the death of his mother and brother. He was orphaned not long after arriving and was looked after by neighbours in a refugee camp. He couldn't remember whether he ever had a Palestinian ID number which may have allowed him to obtain a travel document. He did not know anyone in Gaza or whether he had any kind of formal status in Lebanon.

He obtained support following a successful hearing in November 2014 when the tribunal judge found that he was taking all reasonable steps to leave the UK. She accepted that he had no means of confirming his identity or nationality. As he had left Gaza as a young child, it was not realistic to expect him to know his ID number or to recollect whether he had any family there. He had provided evidence that the Lebanese Embassy had refused to assist him and confirmed they would only respond to enquiries made by the Home Office.

In July 2015 the Home Office decided to terminate his support and he appealed. Despite the conclusions in the previous appeal there had been no progress. The Tribunal judge came to same conclusions as her colleague, namely that it was now up to the Home Office to help him contact the Lebanese embassy. She remitted the appeal back to the Home Office so that they could progress matters, and D remained on support.

PROPOSED AMENDMENT

Schedule 6, Page 91, line 7, at end insert -

(*) Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (withholding and withdrawal of support) is amended as follows.

(a) In paragraph 6(1), after "person" insert "who entered the United Kingdom as an adult"

(b) In paragraph 7, after "person" insert "who entered the United Kingdom as an adult"."

Purpose

This amendment seeks to ensure that all care leavers – including young asylum-seekers and migrants who came to the UK as children – are given the support they need while they are in the UK by amending Schedule 3 of the Nationality, Immigration and Asylum Act 2002 so it does not apply to people who initially came to the UK as children. It will not create an automatic right to support but make sure that a young person is not discriminated against on the basis of his or her immigration status.

Briefing

ILPA is a member of the Refugee Children's Consortium and supports this amendment put forward by the Refugee Children's Consortium and more detailed briefing will follow.

Paragraph 3 Power to support people making further submissions in relation to protection claims

PROPOSED AMENDMENT

Schedule 6, Page 91, line 37, leave out "before the end of such period as may be prescribed."

Purpose

To remove provision for a period to be prescribed in regulations, made under section 94(3) of the Immigration and Asylum Act 1999, during which an individual may be left destitute before qualifying for section 95 support on the basis of having lodged 'further qualifying submissions'.

Briefing

By schedule 6 paragraph 3(2B) of this Bill, people who have lodged 'further qualifying submissions' with the Home Office are defined as asylum seekers and will therefore qualify for support under section 95 of the Immigration and Asylum Act 1999 in the same way as those making an initial claim for asylum. This enables support to be provided under section 95 of the Immigration and Asylum Act 1999 to this group of people currently accommodated under section 4 of the Immigration and Asylum Act 1999 which is being repealed by the Immigration Bill.

'Further qualifying submissions' are defined in paragraph (3)(2C) as submissions that a person's removal breaches the United Kingdom's obligations under the Refugee Convention or its obligations to grant protection to those eligible for humanitarian protection. Such submissions may be made by persons after their asylum claim has been finally determined where new information or evidence of risk on return arises. The Secretary of State will then determine whether the further submissions may be considered as a fresh asylum claim.

As further qualifying submissions are lodged at the end of the asylum process, many individuals in this position are destitute. Further submissions must be lodged in person at the Home Office in Liverpool, so applicants may face practical and financial barriers to doing so.

The drafting of paragraph 2B(2)(c)(ii) enables the Secretary of State to prescribe in regulations a period during which she may consider the further qualifying submissions without being under a duty to provide support. During this period, the individual claimant would remain destitute.

It seems that this subsection seeks to reverse the decision in the case of *MK and AH and Refugee Action* [2012] EWHC 1896 (Admin) in which the Home Office policy of delaying 15 working days before making decisions on section 4 applications in further submissions cases was found to be unlawful. The policy was held to give rise to a significant risk of breaches of Article 3 of the European Convention on Human Rights and the Reception Directive.

The High Court cited evidence from the Red Cross about individuals who found themselves in this position, indicating that it seemed to be an almost inevitable consequence of the Home Office policy and could not be ignored:

> *"... A significant proportion of such people (i.e. destitute with further submissions pending) are "street homeless" (i.e. people sleeping on the streets). The majority are single men, although they also include single women."*
>
> *"Many of our street homeless clients report sleeping at bus stops, on night buses (in cities such as London which have night bus services), in train and bus stations. People can only get on night buses if they have been able to obtain a bus pass or ticket (which means that it is not an option for the overwhelming majority of street homeless asylum seekers). They also tell us they feel vulnerable and unsafe sleeping rough. Some report being attacked whilst sleeping rough and it is not uncommon for them to be subjected to racist abuse. [...]*
>
> *The overwhelming majority of the people who are street homeless find the experience of being in that position frightening and hugely distressing. Most of them have never experienced being homeless and lack the necessary survival skills to cope with being homeless. Many of them will not be sufficiently proficient in the English language. A lot of them, even if they speak English, are educated and from professional backgrounds. The distress and humiliation they report feeling at being homeless is particularly acute given their unfamiliarity with such a way of life. They find it particularly difficult to deal with the encounters with established groups of rough sleepers (often drug and alcohol users) which are unavoidable when someone is homeless."*

As a result of the judgment, the Home Office amended the policy so that decisions on section 4 applications had to be made within two working days for individuals in 'vulnerable' categories and within five working days for other people.[221] Amending this policy and reversing the judgment would reintroduce destitution and risk of breaches of human rights for this cohort of applicants.

Further, families with children who are currently supported at the end of the asylum process under section 95 of Immigration and Asylum Act 1999 will be affected by this policy should section 94(5) of the Immigration and Asylum Act 1999 be repealed as intended under the Bill. This means that families with children will be at risk of destitution under any policy to delay support whilst further qualifying submissions are considered.

The situation is also likely to be worse than when the policy was considered in the judgment of *MK and AH and Refugee Action*. The requirement that further submissions are lodged in the person at the Home Office in Liverpool is already prolonging destitution for many people. Previously, most applicants were able to lodge their submissions at their local reporting centres. There is no funding available to travel to Liverpool and so applicants are reliant on charities and their communities in order to lodge further submissions.

There is also a delay between being accepted for support and support being provided in practice. In straightforward cases the provision of support usually begins between one and three weeks after an application is accepted. It may take longer where the applicant has special needs. It is therefore imperative that applicants are accepted and provided with support as soon as they qualify.

Paragraph 3 Power to support people making further submissions in relation to protection claims

PROPOSED AMENDMENT

Schedule 6, Page 92, line 6, leave out from ', or' to the end of line 8

Purpose

To prevent section 95 support from terminating immediately on notification of a decision on further qualifying submissions if no period for support terminating is prescribed in regulations made under section 94(3) of the Immigration and Asylum Act 1999.

[221] Asylum Support, Section 4 Policy and Process instruction, https://www.gov.uk/government/publications/asylum-support-section-4-policy-and-process, para 1.15

Briefing

The purpose of this amendment is to prevent individuals and families from being made immediately homeless and destitute on receipt of a decision from the Home Office on their 'further qualifying submissions'.

Those who lodge 'further qualifying submissions' are eligible for support under section 95 of the Immigration and Asylum Act 1999 whilst the Home Office makes a decision on those submissions.

'Further qualifying submissions' are defined in paragraph 3(2C) as submissions that a person's removal breaches the United Kingdom's obligations under the Refugee Convention or its obligations to grant protection to those eligible for humanitarian protection. Such submissions may be made by persons after their asylum claim has been finally determined where new information or evidence of risk on return arises. The Secretary of State will then consider those submissions and either grant leave, reject the submissions without treating them as a fresh protection claim or treat the submissions as a fresh protection claim with a right of appeal.

The notification of the Secretary of State's decision on the further qualifying submissions is treated as the start of a period, to be prescribed in regulations made under section 94(3) of the Immigration and Asylum Act 1999, after which support is terminated. Under paragraph 3(5)(3A)(b), however, if no regulations are brought in prescribing a period after which support is to be terminated, or the individual is not covered by a scenario envisaged in those regulations, support can be terminated immediately. This means that applicants, including families with children, may be made immediately homeless and destitute in the following ways.

Applicants whose further submissions are accepted and are granted leave

Applicants who are granted leave would have no time to obtain the documentation that they need to apply for mainstream benefits and/or obtain work.

Individuals supported under section 95 of the Immigration and Asylum Act 1999 who are granted leave are granted a period of 28 days under which they may continue to receive section 95 support whilst applying for mainstream benefits and/or obtaining work. This period is prescribed in regulation 2(2A) Asylum Support Regulations 2000 (as amended). A period of 28 days has been found to be insufficient to protect refugees from destitution. Freedom from Torture clinicians have identified that this is the period when torture survivors under their care most frequently experience destitution, including street homelessness.[222] Two further research reports published in 2014 by the British Red Cross[223] and by the Refugee Council[224] highlight the difficulties that refugees face during this 'move on' period due to problems with Home Office and Department of Work and Pensions processes, including delays in receiving Biometric Residence Permits and difficulties obtaining a National Insurance number.

The problem of the gap between a grant of leave and access to support was vividly and tragically highlighted by the death of child EG, a little boy who starved to death in this period. The case is relevant not just to those granted leave, but to all situations in which there is a gap and an emergency response is needed. We cite from the Executive Summary of the Westminster Council Safeguarding Board Serious Case Review, as amended as directed by the High Court:[225]

> *11.1.8 An initial post mortem examination on 10.03.10 found there was no food in EG's stomach or digestive tract. EG was described by the paediatric pathologist as 'severely underweight and dehydrated' and he concluded that 'this was clearly the immediate cause of death'.*

EG's mother died two days later. The serious case review identifies the following "National issue":

> *5.1.4 Westminster Local Safeguarding Children Board should write to the National Asylum Support Service and Department for Work & Pensions to express its concern about the adverse consequences on vulnerable children and the resulting additional pressure on local professional agencies which are triggered in the transitional period between withdrawal of support by the National Asylum Support Agency and entitlement to Benefits.*

Applicants whose further submissions are treated as a fresh protection claim with a right of appeal

This group of applicants, whose submissions are accepted by the Home Office as a fresh protection claim, would have an entitlement to support under section 95 of the Immigration and Asylum Act 1999 because their protection claim would be treated in the same way as an initial asylum claim. The provision in paragraph 3(5)(3A), however, would create a gap in their support. They could be made immediately destitute and homeless under that provision and then be required to re-apply for section 95 support. In the interim period, which may be several weeks, they would be destitute and homeless.

[222] Freedom from Torture (2013) *The Poverty Barrier: The Right to Rehabilitation for Torture Survivors in the UK* at: http://www.freedomfromtorture.org/sites/default/files/documents/Poverty%20report%20FINAL%20a4%20web.pdf

[223] British Red Cross (2014) *The Move-on Period: An Ordeal for New Refugees*, at: http://www.redcross.org.uk/~/media/BritishRedCross/Documents/About%20us/Research%20reports%20by%20advocacy%20dept/Move%20on%20period%20report.pdf

[224] Refugee Council (2014), *28 days later: experiences of new refugees in the UK*, at: http://www.refugeecouncil.org.uk/assets/0003/1769/28_days_later.pdf

[225] April 2012. Available at http://www.westminster.gov.uk/workspace/assets/publications/EG-Executive-Summary-April-2012-1336483036.doc

Applicants whose further submissions are rejected

There is no right of appeal where the Home Office rejects an applicant's further submissions and so the only scrutiny of decision-making available is by judicial review. Paragraph 3(5)(3D) provides for support to be continued where permission for judicial review is granted. In order to bring a judicial review, an applicant must first apply for permission to do so as a preliminary stage and this application is decided by a judge. Permission is therefore not granted immediately and the process can take time. If support is terminated immediately on notification of the decision on further qualifying submissions, the individual is made immediately destitute and homeless, preventing them from taking advice on or exercising the legal rights available to them as well as placing them at risk of harm.

It is also the experience of the Asylum Support Appeals Project that individuals often only find out that a negative decision has been made on their further submissions when they receive a letter advising of the discontinuation of their asylum support. This may occur because separate parts of the Home Office manage decision-making and asylum support. Should the applicant's support be terminated immediately, they will have no opportunity to obtain the decision in their case and take advice on the reasons for refusal.

The experience of immediate homelessness and destitution would also prevent an individual from being able to make appropriate arrangements to return to their country of origin on receipt of a negative decision on their application.

Where an asylum application and any appeals are finally determined, Regulation 2 of The Asylum Support Regulations 2000 (as amended) prescribes a period of 21 days after which support is terminated. So why would a period not be prescribed here? A period for those whose further qualifying submissions are rejected should similarly be prescribed on the face of the Bill or in regulations with no provision for the immediate termination of support.

All of the above groups affected will include families with children, increasing the importance of ensuring there is a grace period where support is continued after a decision is made on further qualifying submissions to prevent destitution and homelessness.

PARAGRAPH 7

Amendment not to repeal s94(5) and cut off support to failed asylum seeking families with children

PROPOSED AMENDMENT:

Schedule 6, Page 93, line 37, delete '(5) omit sections (5) and (6)'

PURPOSE:

This amendment will allow destitute refused asylum seeking families to continue receiving basic support (just over £5 a day for their essential living needs with housing provided for those with nowhere to live) until their case is finally concluded, as is currently the case.

This will protect vulnerable children from being left destitute; ensure immigration controls are not undermined because the Home Office has lost contact with families who are appeal rights exhausted; and avoid a substantial transfer of costs to local authorities.

Briefing from Still Human Still Here:[226]

The proposed policy will undermine immigration control

The Government's stated policy intention in withdrawing support from families with children who have had their asylum claim and any appeal rejected is to ensure "the departure from the UK of refused asylum seekers with no lawful basis to remain in the UK." The Government will not achieve this objective because where parents, rightly or wrongly, think that their children's lives will be at risk if they return to the country fled, they will generally consider that becoming destitute in the UK is the better option available to them.

Consequently, removing support from asylum seeking families who are appeal rights exhausted will not lead to their voluntarily returning home. It will, however, undermine immigration controls as these families will have little incentive to stay in touch with the authorities once support is withdrawn. For those refused asylum seekers who do try to maintain contact with the Home Office, the practical barriers created by destitution may make this impossible (e.g. having no money for travel and communication).

Conversely, continuing support to refused asylum seekers strengthens the integrity of the immigration system because the Home Office maintains contact with people who have been refused asylum and is better able to enforce removals against individuals who do not have protection needs in the UK and do not leave voluntarily.

[226] Still Human Still Here is a coalition of some 80 organisations which includes nine City Councils the Red Cross, Crisis, the Children's Society, Mind, Citizens Advice Bureau, Doctors of the World, National Aids Trust, and the main agencies working with asylum seekers in the UK. For details, see: www.stillhuman.org.uk.

This is why Home Office staff themselves proposed, in response to a previous consultation, that refused asylum seekers should be left in their accommodation until they are removed from the UK.[227]

This is not speculation. An almost identical policy – in which families who were appeal rights exhausted had all their support removed if they failed to take "reasonable steps" to leave the UK (implementing Section 9 of the Asylum and Immigration Act 2004) – was piloted by the Government between December 2004 and December 2005. The evidence from this pilot showed that the policy did undermine immigration control. Indeed the Home Office's own evaluation of the Section 9 pilot (which involved a cohort of 116 families) concluded that:

— Nearly a third of the families disappeared to avoid being returned to their countries of origin. The rate of absconding was 39% for those in the Section 9 pilot, but only 21% in the comparable control group who remained supported. That is to say that the absconding rate was nearly double when support was cut off from asylum seeking families.

— Only one family in the pilot was successfully removed, as compared to nine successful removals in the control group and "there was no significant increase in the number of voluntary returns" of unsuccessful asylum seeking families in the pilot.[228]

As the Government's own impact assessment states that there will be "no additional enforcement activities or costs as a result of this policy", it is clear that the Government's central concern is not ensuring "the departure from the UK of refused asylum seekers with no lawful basis to remain in the UK." The proposed policy change represents an abdication of the Government's responsibilities for both immigration control and child protection.

The proposed policy will leave children destitute and vulnerable

Irrespective of whether families should or should not go home, the children of asylum seeking families are children first and foremost, and UK asylum policy should make the protection of their welfare a priority.

The Government's proposal is, however, designed to prevent statutory services assisting children who become destitute and/or street homeless when their parent or parents' application has been refused and the Home Office believes there is no obstacle to prevent the family returning home.

This policy will leave families vulnerable to abuse and exploitation and may cause long term harm to the children affected. It is incompatible with promoting the best interests of the child and the principles set out in the Children's Act 1989 and other national guidance, including *Every Child Matters*.

The consequences of withdrawing all statutory support from vulnerable families should not be underestimated. A 2011 Serious Case Review involving Child Z, found that the circumstances of the child's mother – a refused asylum seeker facing removal, with a life threatening illness, and caring for a young child with few support networks – "would challenge any individual's coping strategies." It emphasized the "need for high levels of support for someone with such vulnerabilities was clear" and the absence of this support was a major factor leading to the woman's death and her child's needing to be looked after.

A separate 2012 Serious Case Review looked at the case of an asylum seeker who developed a brain infection and could not look after her child, EG. The boy starved to death and the mother died two days later. The family became destitute during the transition from asylum to mainstream support, leaving the family "dependent upon ad hoc payments by local agencies." The review expressed "concern about the adverse consequences on vulnerable children and the resulting additional pressure on local professional agencies" when support was cut off.

Both these cases highlight the consequences of leaving vulnerable families without any support (although in the latter case the family was entitled to benefits, but could not access them) and the complex health needs of many asylum seekers. When refused asylum seekers have their support cut off this both causes illness and complicates existing health problems. The deterioration in their health will be more rapid and more pronounced than in the general population because of their vulnerability and due to the fact that they have already been living well below the poverty line (on just over £5 a day) for many months while waiting for their case to be decided. Indeed, the Home Office has cut support to an asylum seeking couple with two children by more than £30 a week this year – a reduction of nearly 20% in 2015 alone.

The health impacts of removing support from families at the end of the asylum process was evidenced in the Section 9 pilot. The Refugee Council and Refugee Action outreach teams found that most of the 35 families they worked with during the pilot had physical and/or mental health problems which were made worse by Section 9: 80% of parents had mental health problems ranging from depression to self-harming and some had been diagnosed with post-traumatic stress disorder; and 36% of parents had significant health conditions which included heart disease, sickle cell anaemia and asthma. [229]

The Immigration Bill provides no safety net or support for refused asylum seeking families, thereby greatly increasing the risk of the children and their parents coming to harm, both through destitution and through the undertaking other survival strategies, such as illegal and exploitative work, abusive transactional relationships

[227] UKBA, *Simplifying Immigration Law: Responses to the initial consultation paper*, December 2007.
[228] Home Office, *Family Asylum Policy – The Section 9 Implementation Project*, pages 3 and 7.
[229] Refugee Council and Refugee Action, *Inhumane and Ineffective - Section 9 in Practice*, 2006, page 5.

and prostitution. It is ironic that following the passage of the Modern Slavery Act 2015, the Government is proposing a policy which is likely to create the conditions in which asylum seeking families will be more vulnerable to forced labour and trafficking.

Ian Johnson, the Director of the British Association of Social Workers, said that the section 9 pilot *"places social workers and their employers in an insidious position … If this is a civilised country we live in, then there is no place for that kind of treatment of families."*[230]

The proposed policy will increase costs for local authorities

Research carried out at the time of the Section 9 pilot found that all 33 local authorities interviewed considered that section 9 ran counter to their established welfare duties and practices under the Children Act 1989.[231] Local authority staff also expressed concerns over:

— The resource implications of section 9, and whether or how the Home Office would reimburse costs arising from assessments and support of families.

— Undertaking assessments of whether a failure to support might lead to a breach of fundamental rights under the Human Right Act 1998 or the Children Act 1989.

— The risk that they were leaving themselves open to judicial review.

Peter Gilroy, the Chair of the Asylum and Refugee Task Group of the Association of Directors of Social Services, also concluded that Section 9 "*is injurious to children and families, compromises the work of local authorities and fails to address successful removals of failed asylum seekers from the UK. I also believe this policy will bring judicial challenges both to local and central government but more importantly it places vulnerable children in harm's way.*" [232]

All of the concerns highlighted above are equally relevant to the proposals in the current Bill. While the Government has stated that it is not its intention to place new burdens on local authorities, excluding refused asylum seeking families and their children from support will have exactly this effect.

During the section 9 pilot, the Home Office itself acknowledged that the "pilot placed significant demands upon local authority resources"[233] and its own impact assessment for the current Bill estimates that supporting families with an outstanding Article 8 claim alone will cost local authorities some £32 million over 10 years. This is likely to dramatically under-estimate the total costs to local authorities as it does not take into account:

— Their duty under the Children Act to prevent any child from being left destitute.[234]

— The substantial resources needed to screen and undertake statutory assessments of refused asylum seeking families who request assistance from local authorities.

— The indirect financial costs arising from destitution (e.g. healthcare and legal costs).

Issues to probe during the debate of this amendment

In relation to child protection:

The Government has stated its intention to "retain important safeguards for children".

— What are these safeguards given that it is the policy intention to leave children without any form of statutory support?

— How can leaving children destitute be compatible with the duties outlined in the Children Act?

— Does the Government accept that the consequence of this policy will be to punish children for the actions of their parents?

In relation to costs to local authorities:

The Government accepts that there will be millions of pounds worth of additional costs to local authorities from its proposals, but it is likely that the real costs will be much higher than the estimates provided by the Government (see above).

— Will the Government therefore commit to use its power under s110 of the Immigration and Asylum Act 1999, to reimburse local authorities for additional expenditure resulting from this policy?[235]

[230] Barnardos, *The End of the Road*, 2005, page 6.
[231] Barnardos, *The End of the Road*, 2005, page 27.
[232] Peter Gilroy, Briefing on Section 9, 1 November 2005.
[233] Home Office, *Family Asylum Policy – The Section 9 Implementation Project*, page 3.
[234] The average annual cost to support a family on s17 was £8,245 according to spending data from 24 authorities in 2012/3. J. Price & S. Spencer *Safeguarding children from destitution: local authority responses to families with 'no recourse to public funds'*, University of Oxford, Compass, June 2015, p.41
[235] Currently the power under s110 is used to negotiate reimbursements for local authorities for their expenditure in relation to unaccompanied asylum seeking children, but this legislation also allows central government to reimburse local authorities for any expenditure in relation to asylum seekers or people who have been asylum seekers.

Paragraph 8

Amendment to increase asylum support rates to £40.47 per person per week

PROPOSED AMENDMENT

Schedule 6, Page 93, line 38, after 'provided)' insert '(a)'

Schedule 6, Page 93, line 39, at end, insert:–

'(b) insert after subsection (8) –

(*) The weekly cash payment of £36.95 set out in Regulation 2(2) of the Asylum Support (Amendment No. 3) Regulations 2015 No. 1501 is increased to £40.47.'

Purpose:

This amendment would increase the level of support for asylum seekers who would otherwise be destitute from £36.95 a week to £40.47 a week and then subsequently ensure that the rate is adjusted in line with Consumer Price Index (CPI) each year. This would provide asylum seekers with £5.78 a day to pay for food, clothing, toiletries, travel and other necessities and thereby try to help ensure that they can properly meet their essential living needs and pursue their asylum applications. The amendment works by amending s95 of the Immigration and Asylum Act 1999 which is the overarching section under which support for persons seeking asylum is provided.

Briefing from Still Human Still Here:[236]

The rates for asylum seekers supported under section 95 of the Immigration and Asylum Act 1999, were originally set at 70% of Income Support on the basis that their accommodation and utility bills would be paid for separately.

However, in recent years asylum seekers have seen the value of this support severely reduced. Asylum support rates were frozen between 2011 and 2015 and rates for asylum seeking children were cut in August 2015 by the Asylum Support (Amendment No. 3) Regulations by £16 per week.

All asylum seekers on section 95 support who would otherwise be destitute now receive the same flat rate of support which is set at £36.95 a week, or just over £5 a day. Asylum seekers must pay for their food, clothing, toiletries, transport and other necessities with this money. This means that asylum seeking families with children are now living on rates that are some 60% below the poverty line and single adult asylum seekers receive around 50% of Income Support.

Research indicates that this level of support is not sufficient to allow asylum seekers to meet their essential living needs and pursue their asylum applications. In 2010, Still Human Still Here analysed the basket of basic goods compiled by the Joseph Rowntree Foundation for its minimum income standards report and then stripped this down so that only items needed to avoid absolute poverty were included. On this basis it concluded that 70% of Income Support is the absolute minimum required to meet basic needs.

More recent research has also provided evidence that the current level of asylum support is inadequate. For example, in 2013 Refugee Action interviewed 40 clients who were in receipt of section 95 support and found that 70% (28/40) of interviewees were unable to buy either enough food to feed themselves or fresh fruit and vegetables or food that met their dietary, religious or cultural requirements, since being on asylum support.[237]

Furthermore, 90% (36/40) of interviewees could not afford to buy sufficient/appropriate food and clothes. Of the four people who said they could meet both these essential needs, three stated that the level of support did not allow them to maintain good mental and physical health. The only individual who did not report difficulties in this respect received food and other essential items from friends.

Similar detailed research by Freedom form Torture[238] found that all 17 respondents on section 95 support who responded to detailed questions stated that overall their income was insufficient to meet their essential needs. As with the Refugee Action research, this survey indicated that asylum seekers usually had to sacrifice one essential item to meet another one.

In 2013, a cross-party parliamentary inquiry into asylum support for children and young people, which received information from more than 150 local authorities, local safeguarding children boards and child protection committees, found that "the levels of support for asylum seeking families are meeting neither children's essential living needs, nor their wider need to learn and develop. The levels are too low and given

[236] Still Human Still Here is a coalition of some 80 organisations which includes nine City Councils the Red Cross, Crisis, the Children's Society, Mind, Citizens Advice Bureau, Doctors of the World, National Aids Trust, and the main agencies working with asylum seekers in the UK. For details, see: www.stillhuman.org.uk.

[237] Refugee Action's research took place in May 2013 with asylum seekers who visited offices in Liverpool, Manchester, Leicester, Bristol, Sheffield or Rotherham for advice sessions.

[238] Freedom from Torture carried out research into the impact of poverty on torture survivors in July 2013. A total of 117 clients took part in the research across the UK, including 19 individuals who were in receipt of Section 95 support at the time and completed a detailed questionnaire about their experiences.

that they were not increased in 2012 they should be raised as a matter of urgency and increased annually at the very least in line with income support." The inquiry further recommended that the "rates of support should never fall below 70% of income support."[239] It should be emphasized that this conclusion was reached ***before*** support levels for children were cut by £16 a week.

In October 2013, the Home Affairs Committee issued a report in which it highlighted "concerns about the level of support available to those who seek asylum in the UK" and concluded that the "relative poverty" of those on section 95 support "is compounded by the fact that the vast majority of asylum applicants have not legally been allowed to work since 2002."[240]

In April 2014, the High Court handed down a judgment in a case which the Judge described as considering

> "what was sufficient to keep about 20,000 people above subsistence level destitution, a significant proportion of whom are vulnerable and have suffered traumatic experiences."

The Judge found that the Government's assessment of the amount needed by asylum seekers to avoid destitution was flawed and ordered the decision be taken again.

The ruling states that the Government failed to take account of items that must be considered as essential living needs (e.g. non-prescription medication; nappies, formula milk and other requirements of new mothers; basic household cleaning goods; and the opportunity to maintain relationships and have a minimum level of participation in society). It also found that the Government had made errors in calculating the amount required to meet essential living needs.

While the Government complied with the judgment and reviewed its decision, it still concluded that rates were adequate for single adults to meet their essential living needs (and later that they were overly generous for children). The Home Office methodology for reaching this conclusion primarily rests on the Office for National Statistics (ONS) expenditure data for the lowest 10% income group in the UK. However, the Home Office adjusted the latest ONS data (2013) in relation to several items to calculate what the support level should be for asylum seekers in 2015, as illustrated in the table.

Essential living needs	**ONS data 2013**	**Adjusted by the Home Office**
Food and non-alcoholic drink	£23.46	£24.96
Clothing and footwear	£4.62	£2.51
Toiletries	£1.23	£1.23
Healthcare	£0.69	£0.69
Household cleaning items	£1.00	£1.00
Travel	£3.62	£3.00
Communications and post	£5.23	£3.00
Subtotal	**£39.85**	**£36.39**
Adjusted for 2014 CPI (1.55%)	**£40.47**	**£36.95**

The Home Office's £1.50 upward adjustment for food is to take account of the fact that the Office for National Statisics (ONS) survey separately recorded £5 worth of additional expenditure on other food items (e.g. takeaways, canteens, etc.) and asylum seekers would still have to prepare this food at home.

The downward adjustments made to expenditure on clothing, travel and communications were based on the Home Office's assessment that this amount was more than is necessary to cover essential living needs based on its own research. Such assessments introduce a subjective element into the calculation which is likely to be influenced by budgetary and/or other political pressures.

It should be stressed that ONS data cited above do not take account of the additional needs of asylum seekers (e.g. that asylum seekers often arrive with nothing, are more vulnerable than the general population, do not have a support network, etc.). Furthermore, the ONS data do not assess whether essential living needs are met or what impact the level of spending on food or other items has on health and well-being.

For all of the above reasons the ONS data should be the minimum baseline for asylum support payments. If the unadjusted ONS data was used for the current financial year, each asylum seeker would receive £40.47 a week and the amendment would then ensure that this rate would subsequently be adjusted in line with the Consumer Price Index (CPI) each year. This would be a fairer, more efficient way of calculating what the asylum support rate should be and would depoliticise this process.

While this would still leave the rate well below 70% of Income Support, which many people consider should be the minimum level of asylum support, it would represent a modest improvement in the current situation and help to ensure that those surviving on section 95 support do not get ill, whether with mental or physical health

[239] *Report of the Parliamentary Inquiry into asylum support for children and young people*, Children's Society, January 2013, pages 24-25.
[240] Home Affairs Committee, Asylum, Seventh report of session 2013-14, paragraph 77 and Press Release 10 October 2013.

problems. This is particularly important given that many asylum seekers do spend considerable periods of time on section 95 support. At the end of June 2015, more than 3,600 asylum seekers had been waiting more than six months for an initial decision on their applications. During this time, and any subsequent appeal, asylum seekers are prohibited from working to support themselves and therefore have no choice but to rely on section 95 support.

PROPOSED NEW CLAUSE AFTER PARAGRAPH 43: Permission to work

Page 100, line 16 at end insert the following new clause-

"Permission to work

(1) The Immigration Act 1971 is amended as follows.

(2) After section 3(9) (general provisions for regulation and control) insert—

"(10) In making rules under subsection (2), the Secretary of State must have regard to the following.

(11) Rules must provide for persons seeking asylum, within the meaning of the rules, to apply to the Secretary of State for permission to take up employment and that permission must be granted if—

(a) a decision has not been taken on the applicant's asylum application within six months of the date on which it was recorded, or

(b) an individual makes further submissions which raise asylum grounds and a decision on that fresh claim or to refuse to treat such further submissions as a fresh claim has not been taken within six months of the date on which they were recorded.

(12) Permission for a person seeking asylum to take up employment shall be on terms no less favourable than those upon which permission is granted to a person recognised as a refugee to take up employment.""

Purpose

This proposed amendment would provide for asylum seekers to be able to work if their claim is not determined within the Home Office target time of six months.

Briefing

ILPA supports this amendment put forward by Liberty.

Currently those seeking asylum are only allowed to work after 12 months without an initial decision and then only if they can qualify for a limited list of skilled jobs. The integration of those recognised as refugees is made more difficult by their inability to work during the, often all too-lengthy, asylum determination procedure, while those whose claims for asylum do not succeed return to their country without having maintained or improved skills that could benefit that country. The State bears the cost of supporting persons who would be willing to support themselves.

October 2015

Written evidence submitted by Focus on Labour Exploitation (FLEX) (IB 25)

Background to FLEX

1. FLEX works towards an end to human trafficking for labour exploitation. To achieve this, FLEX works to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation by undertaking research, advocacy and by building awareness in this field. FLEX is a registered charity, number 1159611.

Submission Summary

2. This submission sets out key definitions of relevance in considering the role of the Director of Labour Market Enforcement set out in Part One of the Immigration Bill for clarity. The submission also sets out key laws and regulations of relevance to modern slavery indicators to be considered within the remit of the Director. Finally it argues that victims of modern slavery will be made more vulnerable to exploitation by the Clause 8 'offence of illegal working'.

Definitions

Human Trafficking

3. Human trafficking is an internationally recognised human rights violation and crime. The international prohibition on trafficking is found in the UN Human Trafficking Protocol which states:

> ""Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of

> payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.'[241]

4. This definition of trafficking is commonly broken down into three elements, which helps to remember and explain it clearly:

- ACT: recruitment; transportation; transfer; harbouring; receipt.
- MEANS: threat; force; coercion; abduction; fraud; deception; abuse of power; giving or receiving payments or benefits.
- PURPOSE: exploitation.

5. The crime of trafficking in persons therefore occurs when an ACT is undertaken through the use of one of the MEANS listed, in order to achieve an EXPLOITATIVE PURPOSE. This means, for example, victims of trafficking could be recruited through the means of coercion for the purpose of exploitative labour.

6. The key aspect of this crime is the use of coercive techniques to control victims, so that they may be exploited for financial or other gain. The victim's choice (to work or not to work) is removed and the exploiter controls the victim's activities and movements.

7. Trafficking for purposes of exploitation is often divided into two categories – trafficking for sexual exploitation and trafficking for labour exploitation. The term 'labour exploitation' refers to exploitation of a person's labour in industries other than the sex industry, including construction, agriculture and domestic work.

8. While the UK is a party to the UN Human Trafficking Protocol, and uses the international definition to identify victims under the National Referral Mechanism (NRM) for victims of trafficking, the trafficking provision in Section 2 of the Modern Slavery Act differs from the Protocol, and focuses on the 'movement' aspect of trafficking. It prohibits: 'the arrangement or facilitation of travel' into, within, or out of the UK with the intention to exploit.

Slavery and Forced Labour

9. Slavery and forced labour are forms of labour exploitation that are included in the definition of trafficking, and are also crimes in their own right.

10. The UK has made slavery, servitude and forced labour a crime under Section 1 of the Modern Slavery Act 2015.

11. Slavery is defined in the UN Slavery Convention of 1926 as:

> The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

12. This is not restricted to the 'legal' ownership of a person but includes all situations where a person is treated as if they are owned e.g. being bought, sold, and forced to work without pay.

13. Forced labour is defined in the International Labour Organisation's Forced Labour Convention of 1930 as:

> All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

14. The 'menace of any penalty' can include physical and psychological abuse, threats of abuse, threats to report to authorities, and non-payment of substantial wages owed and "relates to the freedom of the worker to leave the abusive employment".

15. The fact that a person willingly entered work initially does not prevent it from becoming forced labour if the worker is subsequently unable to leave.

UK laws and regulations relevant to modern slavery indicators

16. Despite the wide range of laws and regulations in place to protect workers' rights in the UK, vulnerable workers continue to face abuse. FLEX hears of cases in the UK where workers are not paid for weeks at a time, forced to work long unsociable hours without corresponding remuneration, made to work without a contract and of widespread abuse due to migrant status.[242] The enforcement of labour laws would prevent such cases from developing in to severe exploitation, and yet in the UK pro-active inspections have been reduced, meaning protections for workers are limited.

[241] Article 3, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). The two primary European prohibitions on trafficking, Council of Europe Convention on Action Against Trafficking in Human Beings (European Trafficking Convention) and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (EU Trafficking Directive), also follow the UN prohibition almost word-for-word.

[242] FLEX correspondence with potential victims of trafficking for labour exploitation and focus groups with organisations working with potential and actual victims of trafficking for labour exploitation between February-November 2014.

[243] International Labour Organisation, 2009, Operational Indicators of Trafficking in Human Beings, Indicators of trafficking of adults for labour exploitation.

LAW/REGULATION	MODERN SLAVERY INDICATORS[235]
National Minimum Wage Act 1998; National Minimum Wage Regulations 2015	Low or no salary; wage manipulation; withholding of wages
Gangmasters (Licensing) Act 2004; Gangmasters (Licensing Conditions) Rules 2009	Threat to impose worse working conditions; confiscation of documents; violence on victims; withholding of wages; isolation; bad living conditions.
Employment Rights Act 1996	No respect of labour laws or contract signed; No social protection; very bad working conditions
Equality Act 2010	Violence on victims; Abuse of lack of education/ information; Abuse of undocumented status; Threat of denunciation to authorities; confiscation of documents.
Employment Agencies Act 1973; The Conduct of Employment Agencies and Employment Businesses Regulations 2003	Debt Bondage; withholding of wages.
Health and Safety at Work etc. Act 1974; Management of Health and Safety at Work Regulations 1999;	Hazardous work; very bad working conditions
Working Time Regulations 1998; Maternity and Parental Leave Regulations 1999; Statutory Sick Pay Regulations 1982	Excessive working days or hours; withholding of wages.

Indicators of modern slavery

17. The UK National Referral Mechanism for victims of modern slavery, referral form lists a series of indicators for modern slavery. Three indicators included in this list link directly to the abuse of an individual's status in order to control and coerce them in to exploitation:

1. Distrustful of authorities
9. Passport or documents held by someone else
16. Threat of being handed over to authorities [244]

18. These aspects of modern slavery are central to FLEX's opposition to the Clause 8 'offence of illegal working'. FLEX believes this offence would mean: a) that many victims of modern slavery in the UK would not risk referral in to the UK national referral mechanism if a negative conclusive grounds decision could mean imprisonment; and b) that traffickers would use this new offence as a threat through which to coerce victims in to exploitation. Clause 8 disempowers vulnerable workers and empowers would-be exploiters.

International Labour Organisation principles of labour inspection

19. The International Labour Organization (ILO) makes clear that the role of labour inspectors is to ensure workers' rights are upheld and protected, not to combat undocumented work.[245] ILO Convention 81, the Labour Inspection Convention 1947, states that the scope of duties of labour inspectors should be focussed on enforcement and compliance with labour law and notification of abuses of such law. Convention 81, which the United Kingdom has ratified, expressly prohibits labour inspectors from carrying out duties beyond this scope where they interfere with the inspectors' impartial workplace inspections activity. The ability of labour inspectors to gain trust and uncover severe exploitation is critically undermined if their role is extended to include immigration enforcement or conducted in co-operation with immigration officials.

October 2015

Written evidence submitted by Migration Yorkshire (IB 26)

Introduction

1. Migration Yorkshire is the strategic migration partnership for Yorkshire and the Humber. Migration Yorkshire works with national government, local government, and others to ensure that Yorkshire and Humber can deal with, and benefit from, migration. We work with agencies across the statutory, voluntary, community and private sectors to help support the delivery of high quality services to migrants in a way that benefits everyone living in local communities.

2. Our submission concerns *'Support for certain categories of migrant'* (Clause 34 and Schedule 6 of the Immigration Bill 2015-16) which repeals Section 4 of the Immigration and Asylum Act 1999 (provision of

[244] National Referral Mechanism form for potential adult victims of modern slavery (England and Wales), availabile at: https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms
[245] Ibid.

accommodation for failed asylum-seekers, etc) and introduces Section 95a 'Support for failed asylum-seekers, etc who are unable to leave UK' in the Immigration and Asylum Act 1999.

3. We welcome the opportunity to comment on the potential implications of the clauses in the Immigration Bill 2015-16 to reform support for refused asylum seekers at a local level and for our partner organisations in Yorkshire and Humber. We have drawn on our recent consultation with these partner agencies in relation to the Home Office consultation on this proposed policy.

4. Migration Yorkshire is disappointed that the Immigration Bill 2015-16 includes the policy change in relation to support for refused asylum seekers in exactly the same way as it was presented in the Home Office consultation *'Reforming support for failed asylum seekers and other illegal migrants.'*[246] The Home Office consultation closed on 9 September 2015 and has not published any results or response to the consultation to date; we infer that the Bill introduced just 6 working days later was not influenced by the results of this consultation. Clearly we are disappointed that a Home Office consultation process involving many organisations who responded quickly to the unusually short timescale (5 weeks over a holiday period) does not appear to have any genuine bearing upon the introduction of the policy into legislation, despite Cabinet Office guidance that states *'Engagement should begin early in policy development when the policy is still under consideration and views can genuinely be taken into account.'*[247]

Summary

5. Migration Yorkshire does not support the repeal of Section 4 of the Immigration and Asylum Act 1999 and the introduction of Section 95a in the Immigration and Asylum Act 1999 as its replacement, as proposed under Clause 34 and Schedule 6 of the Immigration Bill 2015-16 *'Support for certain categories of migrant'*. Migration Yorkshire and our partners are convinced that removing support from refused asylum seekers will force people into desperate situations and result in indirect costs to local authorities and other services. It will not result in any significant increased returns.

6. We are also concerned about the impacts of these changes in our region that will be felt in particular by refused asylum seekers, local host communities, statutory and voluntary organisations. Key issues of concern apparent in Yorkshire and the Humber include the following:

- **Local impacts of withdrawing support for refused asylum seekers** such as increased destitution, severing of contact between refused asylum seekers and public authorities, preventable health problems, an increase in the use of illegal accommodation, illegal working, and subsequent exploitation.
- **Specific concerns around changing support arrangements for refused asylum seeking families**. There will inevitably be an exacerbation of the tension between different statutory duties performed by local authorities which is particularly disheartening in relation to the duties of safeguarding vulnerable children which should take precedent over immigration status. Ultimately this could lead to missed opportunities to safeguard the vulnerable and to prevent potential tragedy in individual cases. There will be additional costs for local authorities in relation to assessment and legal challenges, more looked after children, and more children missing education.
- **Localised, uneven and disproportionate effects of withdrawing support from refused asylum seekers upon local communities,** particularly in the larger towns and cities of those areas in the North of England participating in the asylum dispersal scheme. We are concerned about the added pressure on the voluntary and community sector at a time where austerity has brought immense pressure upon services dealing with their existing client groups, and the potential for increased tensions within and between local communities due to resource competition and misunderstandings about refused asylum seekers and undocumented migrants.
- **The broader strategic impact upon the relationship between central and local government** in relation to current and future participation in asylum and refugee schemes, since in practice the withdrawal of support for refused asylum seekers is expected to be merely a transfer from central to local government costs, experienced disproportionally among those local authorities already hosting asylum seekers in their respective areas.

7. As a partnership organisation, Migration Yorkshire has consistently worked constructively with the Home Office as well as our other partners and stakeholders, and we intend to do so in the future. In the spirit of constructive dialogue, we strongly encourage government to consider alternative options that provide a front-loaded asylum process and to adopt realistic expectations about the unwillingness of many refused asylum seekers to return to their country of origin regardless of their living conditions in the UK.

8. Ultimately, Migration Yorkshire believes that it is in everyone's interest that refused asylum seekers should be left in their Home Office accommodation until they are removed from the UK. Only in this way will local statutory and voluntary services, alongside the Home Office, know where people are and so be able to respond to them to achieve effective outcomes.

[246] UK Visas and Immigration (2015) Reforming support for failed asylum seekers and other illegal migrants. www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants

[247] Page 1 of: Cabinet Office (2013) Consultation Principles: Guidance. www.gov.uk/government/publications/consultation-principles-guidance

Detailed response

Removing support for failed asylum seekers by repealing Section 4

9. Migration Yorkshire and our partners are convinced that removing support from refused asylum seekers will force people into desperate situations and result in indirect costs to local authorities and other public services. It is unlikely to result in any significant increased returns as per the apparent aim of the policy.

10. We anticipate that the impacts of removing support are likely to include the following:

— **Most refused asylum seekers will prefer to remain in the UK even without support**, than return to the situations from which they fled. Many new asylum seekers in this region are from unstable and dangerous states such as Eritrea, Iran, Sudan and Syria.[248]

— **More refused asylum seekers will become destitute**.

— **An increase in the number of destitute individuals in the towns and cities of the region** – with all the attendant health and cohesion issues this will bring – **is likely to disproportionately affect the larger cities** (such as Leeds, Sheffield and Bradford) that already have numbers of destitute people sleeping rough and presenting challenges to local statutory and voluntary services.

— **Local agencies will lose contact with these refused asylum seekers**, who will have very little incentive to stay in touch with the authorities once support is withdrawn.

— **Unsupported refused asylum seekers will feel compelled to use illegal forms of accommodation**, stay in overcrowded and unhealthy conditions or on friends' floors potentially putting these friends in breach of their tenancy agreements.

— **Unsupported refused asylum seekers will feel compelled to undertake illegal forms of employment to survive** where the risks of exploitation and abuse are high, and even turn to minor crime in order to support themselves.

11. There is no evidence that 'behaviour change' is likely, and indeed previous evidence suggests that it is unlikely. To risk street homelessness and exploitation on an unfounded proposition is dangerous and irresponsible with profound risks.

12. Under the present system, appeals against Home Office refusals to provide Section 4 support are often successful. We believe that whatever reforms to the provision of asylum support may be made, the right of appeal against a refusal to grant support must be upheld.

Changes to support arrangements for refused asylum seekers with children

13. Changes to support arrangements for refused asylum seekers with children have generated more concern and comment from our partners than any other.

14. The implications of these proposals for families, and particularly for the children, are immense. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It is difficult to see how the current proposals do this.

15. As expected in relation to refused asylum seekers more generally, we believe removing support from refused asylum seeking families will not encourage many of those families to leave the UK (nor are they likely to be removed by the Home Office, assuming the removals system will remain the same). No matter how difficult living conditions are made for asylum seekers here, it will not overcome their real or their perceived fears about what would happen to them if they return to their country of origin. This point is well evidenced by the 'Section 9' pilot, which did not result in greater voluntary returns, forced removals or engagement with the authorities to make steps to return home. Instead, it increased absconding among the families involved in the pilot to avoid the risk of being returned to their country of origin, as acknowledged by the Home Office evaluation of the pilot.

16. We anticipate that the impacts of removing support from refused asylum seeking families in particular are likely to include the following:

— **An immediate increase in homelessness and poverty** among families, including women and children, who would be vulnerable to abuse and exploitation. This would occur if local children's services agree with the Home Office that they do not have any duty to intervene. This would inevitably increase panic and distress among family members.

— **Further tension for local statutory services between immigration and safeguarding legislation.** There is much legislation asserting the primacy of the best interests of the child e.g. UN Convention on the Rights of the Child and the Children's Act 1989. DfE statutory guidance declares that '*local authorities have overarching responsibility for safeguarding and promoting the welfare of all children*

[248] Based on figures for new asylum applicants moving into the Yorkshire and Humber region during 2014. Source: G4S' *Compass update* to the Yorkshire and Humber Strategic Migration Group, March 2015.

and young people in their area.'[249] The Home Office has a duty to regard the need to safeguard and promote the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act 2009. The Health and Social Care Act 2012 requires Government to reduce health inequalities yet families falling into destitution will negatively affect the health and wellbeing of both parents and children. A practical example was clear in the Barnardo's evaluation of the Section 9 pilot where local authorities interviewed were clear that it ran counter to their established duties under the Children Act 1989.[250] Our partner local authorities believe that they will continue to have a responsibility to safeguard refused asylum seeking families with children. Ultimately they feel that their first duty will remain to safeguard vulnerable children and no changes to immigration law will affect that.

— **A shift in costs from central to local government** if local authorities determine that a refused asylum seeking family do require support, rather than a reduction in public expenditure on this client group**.** Local government also may face legal challenges if it does not provide support.

— **An increase in looked-after children** if local children's services conclude their obligations under the Children Act override Home office guidance. Separating families in this situation is not only costly it is also not in the child's best interests.

— **Children may be removed from school, increased unauthorised absences and numbers of children missing education**. This will not only diminish children and young people's life chances, but also for example increase the burden on education services who will still be required to track the whereabouts of children.

— **Unmet safeguarding needs** if the threat of having children taken into care encourages families to go underground and off the radar of statutory safeguarding services, rather than leave the country. Similarly with the case of education, if neither central nor local government know where children are, this is likely to give rise to safeguarding concerns, with no agency or organisation able to own responsibility for children whose whereabouts are unknown. Resources would need to be spent on trying to locate and re-engage with these individuals. Ultimately, there could be missed opportunities for safeguarding children and preventing potential tragedy.

— **Further pressure particularly on voluntary organisations that support refugees and asylum seekers**, for example to support refused asylum seeking families to make the 'concrete steps' to return as a condition of continued support under Section 95a. This will occur in a broader context of increasing demands yet decreasing resources upon these organisations.

Further impacts on local areas

17. **The changes will impact disproportionately on regions such as Yorkshire and Humber which have above average numbers of asylum seekers**. The North of England with around a third of the UK's population is likely to be faced with half of the costs in the UK and half of the impacts on society. This won't just affect asylum seekers, but cost and societal impact will affect potentially all people living in the North of England.

18. **Significant indirect financial and social costs to local authorities which result from leaving asylum seekers without any form of support**. This includes costs to the NHS and public health budgets, policing, and the voluntary sector. For example, those who are of no fixed abode seek help at a much later stage in an illness than the general population, usually through A&E departments, rather than seeking (cheaper) preventative care. If additional refused asylum seekers and their dependents become destitute it could lead to significant additional secondary healthcare costs. Costs will not be spread evenly throughout the NHS but will be borne by hospitals and trusts in local authorities to which asylum seekers are dispersed.

19. **Redirected resources leaving other client groups with reduced support.** Reducing support to refused asylum seekers means that the voluntary sector's resources will be redirected and could leave other client groups without support. The present refugee sector does not have the capacity to meet this potential demand.

20. **Potential increases in far-right activity, aggravating community tensions.** There has been an increase in far-right activity in relation to asylum seekers, refugees and migrants in dispersal cities across the UK – and this has included a number of towns and cities in our Yorkshire and Humber region. Forcing refused asylum seeking families into homelessness and to compete for limited statutory support has the potential to exacerbate this. This may well have knock-on costs for community policing and negative impacts on local community relations.

Strategic impacts

21. **Changes will impact disproportionately on local authorities participating in the asylum dispersal system**. It is inevitable that local authorities who participate in the asylum dispersal programme will see higher presentations at social services from destitute asylum seekers than those which do not host people seeking asylum. In Yorkshire and Humberside only 10 council areas host asylum seekers. These local authorities will

[249] Page 6 in: DfE (2015) *Working Together to Safeguard Children*. A guide to inter-agency working to safeguard and promote the welfare of children. Statutory guidance. www.gov.uk/government/publications/working-together-to-safeguard-children--2

[250] Page 2 in: Barnardo's (2005) *The end of the road: The impact on families of section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004*. Summary Report. www.barnardos.org.uk/resources/research_and_publications/the-end-of-the-road--report-on-asylum-and-immigration/publication-view.jsp?pid=PUB-1464

be faced with ethical, financial and societal challenges with withdrawal of national support for refused asylum seekers. To shift the cost of supporting vulnerable refused asylum seeking families to local authorities in this economic climate will put practitioners and service providers in difficult ethical dilemmas around limited resources and increased need.

22. **Local authorities could be discouraged from considering participation in asylum dispersal and refugee support schemes in future.** Only a limited number of local authorities currently host asylum seekers and resettled refugees around the country. It is unlikely any council will want to participate if the implications of doing so are that they may have to pay for the support of refused asylum families and children.

Conclusion

23. We believe ending support for refused asylum seekers will be ineffective and inhumane. There is evidence that removing support from refused asylum seeking families will not result in higher rates of return but greater absconding, with a host of negative consequences. It is in everyone's interest for refused asylum seekers to be left in Home Office accommodation until they are removed from the UK. Only in this way will local services and the Home Office know where people are and so be able to respond to them.

24. If Government wishes to minimise costs to the taxpayer and ensure refused asylum seekers do leave the UK then it should review all stages of the asylum system and consider commonly understood improvements such as front loading legal aid (a pilot not introduced), more holistic caseowners and recommendations of the Independent Asylum Commission some years ago. There is evidence that suggests more holistic caseowner support after a refusal is effective at increasing update of voluntary return.

25. We fear that rather than minimising the burdens on the public purse, ending Section 4 support will merely transfer the financial cost from central government to local government. It is almost certain that local children's services will feel they have no choice other than to pay for the care of potentially destitute children. If they decide not to then they will almost certainly be challenged in the courts – and we believe such a challenge would be successful. There will also be secondary costs to local communities, the health sector and the voluntary sector.

26. If families and children are not cared for by local authorities or if those families chose to go 'underground' we have major concerns for the safety and welfare of those children and families. The impacts of destitution on vulnerable children are huge, including worsening physical and mental health, alongside an increased risk of exploitation and abuse. Policies that put children at risk run counter to multiple government duties and commitments to safeguard the rights of all children in the UK.

October 2015

Written evidence submitted by the Law Society of England and Wales (IB 27)

PUBLIC BILL COMMITTEE: IMMIGRATION BILL 2015-16

The Law Society – Summary

The Law Society of England and Wales is the independent professional body that works to support and represent its 160,000 members, promoting the highest professional standards and the rule of law.

The Law Society recognises the legitimate public policy aim to ensure that there is in place a robust system of immigration control, which is capable of tackling illegal migration and abuse of the system.

The Law Society is concerned that some of the measures proposed in the Immigration Bill (the Bill) would be counter to this legitimate aim, including:

— the proposed removal of in-country human rights appeals for all migrants, not just offenders, which we prioritise in this submission as our primary concern;

— a proposed new criminal offence for illegal working when there is already an existing offence available to the authorities;

— a proposed new offence of leasing premises (ie the extension to private landlords of the duty to undertake immigration status checks);

— the proposed withdrawal of support for the families of failed asylum seekers, as this appears incompatible with the duties placed on local authorities under the Children Act 1989 and is likely to frustrate the aim of removing more failed asylum seekers more quickly.

The Law Society understands that the government is seeking to respond to public concerns about illegal immigration, illegal working and the removal of failed asylum seekers. Our submission is not a commentary on those concerns, rather on whether the proposed measures would be a fair and effective response to them.

Part 4, Clause 31 – Appeals

1. **Purpose of clause**: to remove in-country human rights appeals for all migrants pending appeal provided that this would not cause 'serious irreversible harm' or a breach of human rights.

2. **Law Society concerns:**

The Law Society opposes the removal of in-country human rights appeals for all immigrants. The Bill is primarily aimed at illegal migrants and illegal working. It is important to understand that *legal* migrants will be those who are mainly affected by the removal of these appeal rights. In our view, this would be an unjustifiable incursion into Article 8 rights.

3. The Committee will be aware that the Immigration Act 2014 imposed out of country appeals ['deport now, appeal later'] upon deportation cases; that is, on those who had committed serious crimes and received substantial prison sentences. The Committee will also be aware that the Court of Appeal has recently determined that this regime is lawful in the context of deportation. The Bill would extend that regime to all migrants making human rights appeals, regardless of whether any illegality or criminality has been established or even suspected. Restrictions on Article 8 rights which may be deemed justifiable in one context (for example, national security) cannot be extended to other contexts without further justification.

4. The Home Office should not be permitted to 'assume' the decision of an independent tribunal ahead of any hearing of the facts; nor should appellants be placed at the considerable and obvious disadvantage of having to conduct an appeal from outside the jurisdiction. Using a test of 'serious irreversible harm' or breach of human rights as the only exception to an out of country appeal appears to be a disproportionately high bar to set for vulnerable and other appellants seeking to avoid removal from the UK.

5. Introduction of this clause would place all appellants at risk of human rights breaches while litigation is ongoing; yet the current appeal success rate is about 40%, so many of those who would be forced to leave the country are people who currently would be successful in their applications.

6. The effect of the Bill would be that people who had committed no offence and who would in fact be granted the right to stay in the UK would be forced to leave the country for an indeterminate period while their appeals were pending. In some cases, that would expose them to significant risks and mean separation from their families. Immigration appeals are currently being listed at least six months ahead, and it is not uncommon for applicants to have to wait a year or more for their appeal to be heard. There is no sign of this situation improving. With delays of this duration, out-of country appeals would in many cases cause severe disruption to family life, with potentially long-term consequences.

7. If the current appeal success rate is maintained the proposed measure could prove costly to the taxpayer, as successful appellants could seek compensation for enforced separation from their families.

8. The proposed appeal provisions would have a perverse impact on UK nationals:

the spouse of a national of any EEA member except the UK would retain a full in-country right of appeal under saving provisions for the Nationality, Immigration and Asylum Act 2002, whereas the spouse of a UK national would have to leave the country.

9. When out-of-country appeals were made, judges would be placed in the invidious position of having to decide appeals without hearing evidence from the appellant in person. Neither the tribunal nor the Home Office would be able to ask questions of the appellant, leading to hearings being decided without full knowledge of the facts. The appellant's lack of physical attendance could mean that the views and evidence of Home Office presenting officers went unchallenged. The ability of a party to proceedings to give oral evidence is a central component of a fair hearing: appellants who have not been found guilty of any crime should not be denied such a fundamental right

10. In the Law Society's view, a fairer, more humane and more effective response to public concern would be to resource the tribunals service so that it can determine appeals much more quickly.

Part 1, Clause 8 – Offence of Illegal Working

11. **Purpose of clause**: to create a new criminal offence of working without leave.

12. **Law Society concerns:**

The Law Society questions why there is a need to create a new offence when an illegal entrant or overstayer is already liable to a sentence of up to six months under section 24 of the Immigration Act 1971, and a person who breaches a condition of leave (such as working when work is prohibited) can receive the same conviction.

13. The creation of parallel criminal offences is wrong in principle and creates confusion. The problem is not that there is no offence that can be prosecuted or that no action can be taken against employers or employees. The problem is with the lack of resources for inspection and enforcement. The creation of additional criminal offences is not going to help with that.

Part 2, Clause 12 – Offence of leasing premises

14. **Purpose of clause**: to make it an offence for a landlord or agent to knowingly lease a property or has reasonable cause to believe that a property in their control is occupied by person who is disqualified as a result of their immigration status. In such circumstances landlords and agents face being fined or potentially being imprisoned for up to five years.

15. **Law Society concerns:**

Risk of promoting unlawful discrimination

There are reportedly over 400 relevant documents that are issued by countries within the European Economic Area. An obligation to check the immigration status of a tenant would seem likely to result in some landlords only being willing to rent to British passport holders, notwithstanding the Code of Practice issued by the Home Office in an attempt to mitigate the risk of unlawful discrimination.

16. The Bill appears to assume that all prospective tenants who were born in the UK will hold a valid passport, but many people do not, so the proposed new offence would put some UK citizens at risk of being refused accommodation unjustifiably.

17. A person might have a right to rent property without being able to evidence it (for example 'Zambrano'251 carers of British citizens). A person's immigration status can also change. The likelihood is that faced with the complexity of whether a person has the right to rent, a landlord is likely to choose not to rent to any perceived foreign national.[252] The obligation to undertake such checks seems likely to increase the risk of claims being pursued against landlords under the Equality Act 2010.

18. **Disproportionate impact on live-in landlords**

It appears disproportionate to apply the duty to carry out immigration status checks to live-in landlords who often let rooms on a short term basis for a few weeks or months, perhaps to friends or family. These landlords do not have to comply with the majority of housing legislation – for example, there is no requirement for a live-in landlord to:

— register a deposit; or

— evict by means of a possession order or comply with any restrictions in respect of section 21 of the Housing Act 1988.

19. **New criminal sanctions**

Clause 12 of the Bill would introduce a new section 33C into the Immigration Act 2014 which imposes the following penalties for a landlord or agent who commits an offence under that clause:

— if conviction on indictment to a term of imprisonment up to five years and/or a fine of up to £3,000; or

— on summary conviction, a term of imprisonment up to 12 months and/or a fine.

20. According to a recent government survey approximately 57% of private landlords manage their own properties:[253] these are significant penalties for ordinary homeowners to face.

21. It is unclear from the legislation how a landlord would be treated if the necessary checks were not carried out and that responsibility had been delegated to a managing agent.

22. As the government has just announced that the West Midlands Right to Rent pilot of the Immigration Act 2014 civil provisions is to be extended across England from 1 February 2016, it is unclear why, if that pilot was as successful as is claimed, additional criminal sanctions are now required.

23. Our view is that the success of the pilot has not been established – the scale and duration of the pilot, and its timing, did not permit a proper assessment. There have been suggestions of evidence of discrimination.[254] It is of some concern that the decision to extend the pilot was taken while the Bill is still going through Parliament, which seems a missed opportunity for scrutiny.

Part 2, Clause 13– Eviction

24. **Purpose of clause**: to enable landlords to terminate the tenancy of the property is occupied by a person disqualified as a result of their immigration status.

[251] Ruiz Zambrano (European citizenship) [2011] EUECJ C-34/09 (08 March 2011)

[252] "No Passport Equals No Home": An independent evaluation of the 'Right to Rent' scheme "*42% of landlords said that the Right to Rent requirements have made them less likely to consider someone who does not have a British passport. 27% are reluctant to engage with those with foreign accents or names. Checks are not being undertaken uniformly for all tenants, but are instead directed at individuals who appear 'foreign"*. – p 11

[253] Department for Communities and Local Government, Private Landlords Survey 2010 - "*Almost half of all landlords (43%), either due to convenience or for professional reasons, have hired agents to undertake the letting and management of their portfolios while other landlords prefer to undertake the letting and management themselves."* -

[254] http://www.economist.com/news/britain/21660589-panicky-response-refugee-crisis-may-do-more-harm-good-crisis-mismanagement. Also see the report referenced in Footnote 2.

25. **Law Society concerns:**

Removal without a court order

Clause 13 introduces new section 33D into the Immigration Act 2014. If the Secretary of State becomes aware that a person without a right to rent occupies a property, she can serve a notice on the landlord. The landlord can then serve a notice on the tenant, giving 28 days notice, bringing the tenancy to an end. That notice is enforceable as if it were an order of the High Court. The service of the notice by the Secretary of State has the effect of turning the tenancy into an excluded tenancy (section 3A, Protection from Eviction Act 1977).

26. This means that a tenant who in other circumstances would have had the protection of a court process can now be evicted solely at the instigation of the Secretary of State.

27. The removal of the safeguard of judicial enquiry is a radical curtailment of tenant security and raises questions of how compliant this legislation would be with Article 8 of the Human Right Act 1998.

28. The landlord could request that the High Court enforces the notice; however the Bill does not provide a clear procedure as to how this would work in practice. It also remains to be seen how enthusiastic the High Court will be to lend its powers of enforcement to a possession order that had not been sought or made by a lower court. There is an absence of a clear form of redress in the event of error by the Secretary of State.

29. **Other procedures for ending an agreement**

Clause 14 also introduces new mandatory grounds for possession for Rent Act 1977 and assured tenants. It is unlikely that these grounds will be used much in practice. A person who is a Rent Act 1977 tenant would have been here since 1989 and would therefore have an exceptionally strong case to be allowed to remain in the UK.

30. Where immigration status is unclear, housing associations are more likely to grant or extend 'starter' tenancies (assured shorthold tenancies) and to use the accelerated possession procedure (where no enquiry is made of circumstances) leading to potential unfairness. It is also likely that in similar circumstances, private landlords will be more inclined to use the accelerated possession procedure on tenants who may have a right to rent but are unable to demonstrate it easily.

Part 2, Clause 14 – Order for possession of dwelling-house

31. **Purpose of clause:** the creation of a new mandatory ground allowing landlords to evict a disqualified tenant without obtaining a court order.

32. **Law Society concerns:**

New mandatory ground

Clause 14 provides for a new mandatory ground of possession for a landlord following receipt of a notice from the Secretary of State. A new ground 7B is proposed, which would be inserted into the existing possession procedures under the Housing Act 1988, to be available when someone is disqualified from renting as a result of their immigration status.

33. This proposed new ground 7B would almost certainly engage Article 8 of the Human Rights Act 1998. In the Law Society's view, there is a strong likelihood of human rights challenges which could result in a lengthy and costly process for a social landlord to secure possession.

34. The proposed legislation lacks some detail: it is unclear about timescales for eviction; secure tenancies are not referred to and there is no similar amendment to the Housing Act 1985 proposed.

Part 3, Clause 34 – Support for certain categories of migrant

35. **Purpose of clause:** to remove support for failed asylum seekers with children (who currently get accommodation and an allowance of £5 a day per person)

36. **Law Society concerns:**

Local authority duties under the Children Act 1989

It is difficult to see how the proposals under this clause for removing support from families can be reconciled with local authorities' statutory duties under the Children Act 1989. A local authority has a duty to all children in its area who are in need, so it is obliged under the Act to assess the needs of families and of those children, and to provide services accordingly.

37. **Support as a means of enabling removal**

As other witnesses have testified, experience of previous legislation shows that support for refused asylum seekers enables the authorities to remain in contact with them, ultimately to remove them. Families without support are likely to abscond.

38. **Quality of decision-making**

The proposal to remove the right of appeal appears to be a cynical response to the fact that nearly two-thirds of the cases that go to the asylum support tribunal result in support being given, either because the tribunal upholds the appeal or the Home Office withdraws its original decision.

39. It is a legitimate policy aim to be able to take sanctions against people who have no right to be in this country and are frustrating efforts to remove them or not co-operating with a voluntary returns mechanism. The proposals in this clause would not achieve that aim, and might well serve to frustrate it.

October 2015

Written evidence submitted by the Anti-Trafficking and Labour Exploitation Unit (ATLEU) (IB 28)

HOUSE OF COMMONS COMMITTEE STAGE OF THE IMMIGRATION BILL 2015

About ATLEU

The Anti Trafficking and Labour Exploitation Unit ("ATLEU") was founded by five lawyers who had developed a niche practice working with victims of trafficking. They established ATLEU to provide a sustainable, comprehensive and dedicated legal service to help victims of trafficking and labour exploitation ("victims") to obtain safety, recovery and redress and to develop policy and jurisprudence to enhance victims' rights. ATLEU has been operating since November 2012, initially in partnership with Islington Law Centre, and since April 2013 as an independent charity. Its charitable objects are to promote the interests of those who have suffered and who suffer abuses of human rights, in particular trafficking, through legal representation and strategic casework. ATLEU's registered charity number is 1151675.

General comments

We have had sight of the briefing prepared by the Immigration Law Practitioners' Association for the second reading of the bill and endorse their conclusions and amendments.

We are concerned that provisions in the Immigration Bill jeopardise the stability available to victims, potentially discouraging them from staying away from situations that could lead to exploitation and endangering their long term recovery. The Bill therefore has the potential to run counter to the government's stated aim to combat modern slavery and the UK's obligations under international law that seeks to protect victims of trafficking.

Part 1 – Labour Market and Illegal Working

We agree with the comments of ILPA about the potential for this bill to be used to ensure better protection for migrant domestic workers. We attach our submission to the review of the Overseas Domestic Worker visa containing case studies relevant to this area for more background. We ask parliamentarians to seek assurances about the timing of the review and publication so that it can be considered during the passage of this Bill.

Part 2 – Access to services and Part 3 – Enforcement (Section 3c leave)

One of the stated aims of the Council of Europe Convention on Action Against Trafficking in Human Beings is to protect victims. This arises from an acceptance of the factors that make them more at risk from harm, for example, poor mental health, physical ill health, lack of ability to self determine. The Explanatory Report to the Convention explains particular needs of victims of trafficking and why stability is so important for people recognized as victims of trafficking for example:

- Victims who break free of their traffickers' control generally find themselves in a position of great insecurity and vulnerability.
- Victims should have standards of living capable of ensuring their subsistence through measures such as appropriate and secure accommodation, psychological and material assistance.
- Psychological assistance is needed to help the victim overcome the trauma they have been through and get back to reintegration into society. The Convention provides for material assistance because many victims, once out of the traffickers' hands, are totally without material resources.
- Two common features of victims' situations are helplessness and submissiveness to the traffickers due to fear and lack of information about how to escape their situation.
- Access to the labour market, vocational training and education helps victims reinte-grate socially and take greater charge of their lives.
- The greater victims' confidence that their rights and interests are protected, the better the information they will give. Availability of residence permits is a measure calculated to encourage them to cooperate.

(The report is available in full here: www.coe.int/t/dghl/monitoring/trafficking/Source/PDF_Conv_197_Trafficking_Erev.pdf).

Risks to our client group from these parts:

— Individuals who have just escaped a situation of exploitation may have no documenta-tion on them. This could be because it has been withheld or destroyed by their employer or they took the chance to flee without having time to locate paperwork. This Bill has the potential for discrimination against potential victims of trafficking who do not have documents to prove their status or identity.

Case study 1

A support organisation for domestic workers contacted us with their concern about how they would find shelter for individuals attending their drop in after they had just escaped exploitation. A responsible organisation like this one views it as important that any referral into the NRM is done with the informed consent of an individual, and assistance from an interpreter if needed. A woman arrived at this organisation's drop in on the weekend when there was only one member of staff and a full waiting room. Her case could not be discussed in detail that day and an immediate NRM referral could not physically be done by the staff member or explained to the client, even if this was appropriate. The staff member felt that if the Immigration Bill had been enacted at that time she may have been unable to find any hostel willing to accommodate this woman overnight, but did not want to make an inappropriate or uninformed NRM referral. She would have had nowhere to house this woman if she was turned away because of lack of documents.

— Victims have particular support needs – A number of our clients are granted residence permits as victims of trafficking on leaving a situation of exploitation, once recognized with this trafficking status by the Home Office. This can be before a protection claim is decided or even when there is no protection claim made. Applications to extend these short term residence permits can take time to be decided and because of their experiences, victims of exploitation are particularly in need of a safety net for their support and security in the gap between obtaining a final decision on their case.

Case study 2

Our client is from Tanzania and began work for her trafficker at the age of 15 in her home country. She is illiterate and has worked in domestic service all her life. She has been diagnosed by a psychologist as having post traumatic stress disorder, as being of low average intelligence and having the social functioning age of a 12 year old. She entered the UK on a domestic worker visa valid from October 2006 to work for the same individual she had worked for in Tanzania. She was subject to very poor conditions which she endured only on the understanding that her employer would pay money into an account in Tanzania that could be used for her daughter (which was not done after 2008). She was assisted by the police to leave her employer in March 2010 and referred to the UK Home Office to be considered as a victim of trafficking in September 2010. She was then confirmed as a potential victim of trafficking by the Home Office the same month. In November 2011 the Home Office decided conclusively that our client was a victim of trafficking and granted her a residence permit valid to 4 November 2011. In October 2011 our client applied for leave to remain as a refugee and this was refused on 2 November 2011. On 4 November 2011 our client made an in time application for further leave to remain as a victim of trafficking under Home Office policies for discretionary leave to remain for this group of individuals. This was considered to be out of time by the Home Office and they wrongly told the DWP that our client had no leave to remain leading to her in destitution with her benefits stopped. Our client faced huge arrears of rent with no housing benefit in payment. A support organisation was so concerned they helped her apply for two small charitable grants but our client did not even have the bus fare to come and collect the money. The support worker wrote:

> *"She is consequently in a position where in spite of her entitlement to benefits having been clearly established, still one month later, having no income, inadequate food and being in large rent arrears. She does not seem to be able to take responsibility to look after her basic needs without direct individual support from someone she trusts… When talking about planning her basic needs (even a few days ahead) she has again used the phase 'one by one' with me. It appears to me she does not plan for or think about her medium or long term prospects."*

Eventually she gained the support of the local authority. A judicial review was issued challenging among other things the Home Office conclusion that the application was out of time. It was not until June 2013 that a consent order was signed by solicitors for the Home Office agreeing that our client's leave to remain would be considered to be continuously valid from 4 November 2011 and a new decision be made on her application. On 2 July 2014 the Home Office ostensibly refused our client's application for further leave to remain. She appealed against this decision and a hearing took place in March 2015. The judge issued a decision in April 2015 stating that our client had not formally been refused leave to remain yet by the Home Office so this matter needed to be reconsidered by them. Therefore her application for further leave to remain remains outstanding although we have nothing from the Home Office in writing to confirm this. We have recently had to make representations on behalf of our client to ensure she could continue to access public funds and education as she could provide no documents that were expected of her by the DWP or the college to show her entitlements. It was the opinion of a psychologist in 2015 that she had been traumatised by both her experiences in the UK and Tanzania.

This case highlights:

- Examples of vulnerabilities that are not uncommon in the subjects of exploitation.
- How errors can arise within the Home Office while an application is considered.
- The lengthy process for making a decision on an application and going through the appellate system.
- If central government gives up its responsibility to support those who are in need then this can fall on the local authority, ultimately saving no public money, merely shifting the cost burden elsewhere. This makes no financial sense in our view and we fear local authorities will be in the same position as with this client if the provision about continuing leave is removed by the Immigration Bill. We are most concerned about those who may feel they can no longer cope if financial support is not available to them via legal channels. This would leave them with fewer choices, and make it more likely that they could return to a situation of exploitation simply to ensure they have shelter and food.

— Security is essential for recovery – Having access to basic services and a recognition of continuing leave in order to do so (via section 3c of the Immigration Act 1971) is vital to ensure that our clients are given security of accommodation and financial support to allow them to recover from their experiences while they are waiting for extensions of leave to be decided or for court cases about any such application to be determined if initially refused by the Home Office. If the Bill allows the Home Office to cancel continuing leave after an application for an extension of leave is submitted, or requires service providers such as banks to check immigration status (and request documentary proof of continuing status) then individuals whose original documents are with the Home Office will be put in an invidious position. They will be disproportionately affected by the resulting sense of insecurity and lack of support because they often do not have the personal resources to assert their rights to people in positions of authority. Many of our clients are from poor backgrounds and are without the benefit of any or advanced education, and often have been subject to treatment that leave them in a submissive mindset or affected by trauma that takes many years to recover from. If they are unable to easily access a source of financial support while they are in this stage of recovery they can be re-traumatised by the resulting insecurity, and could be liable to re-exploitation as a means of supporting themselves.

Case study 3

Our client is from Sri Lanka. She was a victim of domestic violence with psychological damage from her past experiences. She was subject to trafficking into the UK. She was recognized as such by the UK government. She has had a residence permit granted in 2011 to enable her to remain in the UK and pursue a compensation claim but a further extension was refused in October 2014 as it was deemed there was no need for her to be present in the UK while enforcement proceedings for the compensation claim took place. She had an appeal hearing against the refusal in May 2015 but a judge held the appeal could not proceed since our client had not been served with reasons for refusal by the Home Office. The Home Office then did this and the appeal was lodged again. A request for reconsideration was made to the Home Office which has not been answered. The case is complex and relies on our client's right to reparation for past breaches of Article 4 ECHR against her, Article 8 ECHR and Article 15 of the Convention on Action Against Trafficking regarding her ability to guarantee compensation for damage caused. Our client has outstanding continuing leave but because she has no recognized documentary proof of this from the Home Office due to the way her case has progressed (the Home Office failed to issue her with the biometric residence permit she was entitled to) she has been unable to secure a job and relies on benefits. She has been diagnosed by a clinical psychologist as having depression and post traumatic stress disorder and as requiring a stable, secure environment to recover from her experiences, including financial security and access to choices of employment where her employment rights will be respected. The psychologist said her mental health is unlikely to improve without a high level of support from the authorities and in her personal life.

This case highlights:

- *How financial security and support is part of the recovery package for victims of trafficking.*
- *How gaps in support already occur and are not adequately remedied by the authorities for those who need help most.*
- *Misunderstandings among the wider public about legal entitlements in the ab-sence of clear documentary evidence to this effect.*

— Victims unable to advocate for themselves – We already deal with requests to prove immigration status for clients who have faced demands for documentation from the DWP after an application to extend their leave has gone in. Sometimes no acknowledgment letter arrives from the Home Office after an application is submitted, or the letter that does arrive is silent about continuing entitlement to work or access public funds. Receiving such requests already leaves our clients panicked at the prospect of their support ceasing if they cannot provide the explanations required. The number of specialist providers of free legal advice is reducing and we already have more referrals than we can handle so the government should not rely on the assumption that there will always be legally aided immigration

advisers to help people explain their entitle-ments. Answering these requests is in any case done out of goodwill as it is not something you can charge to the Legal Aid Agency. We can only anticipate this situation getting worse, to the detriment of the health and wellbeing of our clients, if the Immigration Bill is enacted in its current form.

PART 4 – APPEALS

Risks to our client by this part:

— Arguments engaging Article 4 and 8 ECHR often arise in cases involving victims of trafficking, even where there is no protection argument raised. It would be incredibly difficult to mount a challenge to a negative human rights decision made by the Home Office if our client was overseas. Our client group would be unlikely to have the resources or familiarity with modern technology to allow us to take instructions by skype or keep in regular contact with them. As many clients who fall into exploitation have little or no education they could not be expected to maintain any written communica-tion with us or to draft any documents needed for an appeal themselves. Victims of trafficking are often submissive, frightened of authority figures and find it hard to establish relationships of trust. Face to face relationships are essential when working with individuals who have been subject to abuse and exploitation, especially to maintain hard won confidence and trust, which can easily be eroded if someone feels insecure again.

Case study 4

This is from the reported case of EK (Article 4 ECHR: Anti-Trafficking Convention) Tanzania [2013] UKUT 00313 (IAC) (www.bailii.org/uk/cases/UKUT/IAC/2013/00313_ukut_iac_2013_ek_tanzania.html)

Our client was a woman from Tanzania trafficked to the UK as a domestic servant and then internally trafficked after escaping from her first employers. She became very ill as a result of an untreated pulmonary condition while she was living with her trafficker. The government made a decision to remove our client in July 2010 but she was able to appeal within this country. Her case was initially unsuccessful at the First Tier Tribunal and her asylum claim was dismissed. However it was successful at the Upper Tribunal on Article 4 grounds in June 2013 with the Tribunal holding as follows:

"In our view, it is appropriate to start from the appreciation that the appellant's medical condition is linked to the breach of her rights under Article 4 of the Convention, in other words that the State should recognise a degree of responsibility for it. From this starting point it is difficult to see that to remove the appellant at this stage, when she suffers from such serious physical and mental health prob-lems, from the care of the medical regime which she presently benefits from, and to return her to a country where facilities for the proper care of her present and likely needs are absent, to the extent that her life expectancy will be greatly reduced, can be seen as a return with due regard for her dignity. The reality of the appellant's situation is that she is a very ill woman who will require on-going care of a specialised nature and is likely to have to undergo major surgery of a dangerous sort. It is now clear, from the combined evidence of Dr Davidson and Ms Lees, that the sort of specialist care which the appellant will definitely require on an on-going basis, as well as the specialist care which she is likely to need on an emergency basis to combat life threatening infection and the specialist care which she is likely to need in the context of the anticipated major surgery, is unlikely to be available to her in Tanzania. For the same reasons, it is equally difficult to resist the conclusion that, having regard to the appellant's personal situation, it would be unreasonable to compel her to leave the United Kingdom at this time."

This case highlights:

— Applications will rely on arguments brought under the ECHR and these may not engage Article 3 ECHR even if a medical condition is raised. Our client did raise asylum arguments that would now allow her still to have an in country right of appeal. But the case shows how Article 4 ECHR is one of the most effective gateways to support for victims of trafficking.

— Individuals could endanger their own wellbeing and that of their children if re-moved from a country of security while they are recovering from exploitation.

Case study 4

— Article 15 of the Convention on Action Against Trafficking sets out the provision that victims should be enabled to obtain compensation for damage suffered. It is our experience that where victims are hindered in their ability to pursue claims for compensation while in the UK, for example because of an inability to access legal aid, and subse-quently return to a country of origin, efforts to pursue the claim go no further as it is so hard to maintain contact with them when the individual is separated from support networks and communication systems in this country.

Case study 5

Our client was trafficked to the UK for the purposes of labour exploitation. The client was subjected to both physical and verbal abuse. The client was refused legal aid on the basis that he had not demonstrated that he could not obtain advice and assistance on a no-win-no fee basis. The client had limited English and was traumatized and vulnerable as a result of his experiences, his ability to locate an advisor able to act on a no-win-no fee basis and pay disbursements as and when they fell due was therefore extremely limited. The client returned to his country of origin whilst efforts continued to obtain legal aid. Only after 6 months of written representations was the Legal Aid Agency willing to concede that the client was entitled to legal advice and assistance. However, without the client being pre-sent in the UK pursuing a complaint was not possible. The client's means in his home country were such that he became homeless and therefore unable to access a telephone or computer by which to make contact and provide instructions to pursue his matter.

Although part 4 relates to immigration appeals this case highlights:

— Problems that can arise with victims of exploitation when they are unable to pursue a face to face relationship with an adviser or be within a support network in the UK.

October 2015

Annex

REVIEW OF THE OVERSEAS DOMESTIC WORKERS ("ODW") VISA

We were requested to provide any further evidence we may have in respect of the proposi-tion that ODWs with safe and secure alternative employment are:

(a) more likely to engage in bringing a former abusive employer to account under the Civil Law; and

(b) more likely to be effective witnesses in criminal proceedings.

Civil claims

In our view, good evidence that ODWs who are safe and secure in alternative employment are more likely to bring abusive employers to account is to be found in the track record of victims of trafficking and modern slavery who have brought claims against their traffickers and exploiters. The great majority of compensation claims brought in the UK against traffickers by victims of human trafficking (whether or not held in domestic servitude) have been brought by an ODW present in the UK on a visa which permitted her, once released from the exploita-tion, to obtain safe and secure alternative employment.

Civil compensation claims by victims of trafficking and modern slavery outside of domestic servitude are rare. The only judgment in favour of a non-ODW victim of which we are aware is AT and ors v Dulghrieru and ors [2009] All ER (D) 194 (Feb), a sex trafficking case.

Whilst it might be argued that enforcement or tracing are more difficult in other forms of trafficking, this, in our view, cannot account for the remarkable fact that ODWs have brought the very great majority of UK claims. It is no coincidence that victims of trafficking who, until recently, enjoyed relatively secure immigration status and the ability to engage in lawful employment, were the victims who were able to pursue abusive employers in the courts.

Solicitors at the Anti-Trafficking and Labour Exploitation Unit have brought well over a hundred cases for victims of modern slavery and human trafficking into domestic servitude. To illustrate, between May 2009 and April 2012 inclusive, we assisted a total of 105 domestic workers. The great majority of these workers were able to lawfully engage in alternative employment because of their visa status.

The experience of ALTEU lawyers is that the mental state and behaviour of clients on a tied visa is very different from that of clients brought in under a visa whereby they may change employers and obtain safe and secure new employment. Even where it proves possible to assist a "tied" worker to work with the police and/or bring a claim, the inherent uncertainty and insecurity of their situation too often renders it impossible in practice for them to pursue matters.

For an abused ODW to give evidence against her former employer in criminal proceedings or to bring a civil claim against them requires very considerable courage and tenacity. Abused workers have frequently been told by their employers that they have no possibility of bringing the employer to account, and that they will be imprisoned or deported if they challenge or seek to leave the employer. The confidence of abusive employers in making these threats is illustrated by the number of such threats which have been made in writing, often in the form of supposedly contractual documents. In one case, such was the employer's confidence in their position that they sought to rely on such a document before an Employment Tribunal to "prove" that the employee had no right of redress.

For an ODW to be able to participate in criminal or civil proceedings they accordingly need considerable levels of support and to be in a safe and secure situation. If a worker may not lawfully obtain alternative employment, experience shows that this is hard to achieve. In ATLEU's experience, even for those in the National Referral Mechanism, the strain can prove too much and proceedings have to be discontinued.

Further, it is important to understand that leaving an abusive employer is difficult (emotionally and/or physically) and sometimes dangerous. In our experience, many ODWs with the right to change employer are

unaware of this right; their employers deliberately mislead them. It is when they discover that they are permitted to lawfully change employer that they can be supported to leave. In contrast, ODWs on a tied visa do not have this option. They can be advised of the National Referral Mechanism (if they are victims of trafficking) in order to give them confidence to leave. However, in our experience ODWs understand and relate to the concept of lawfully obtaining alternative employment. By contrast, they find the NRM very difficult to understand and, in any event, it may involve one or more changes in location and the accommodation is only temporary; it does not give them the same confidence to risk leaving.

Criminal prosecutions

Civil compensation claim can also be an important route into criminal prosecutions. ALTEU has run several cases where a successful civil claim has been the catalyst for a police investi-gation. For instance, in one case the police attended the Employment Tribunal to gauge the prospects for a potential prosecution of the employer/ trafficker.

The advantage of safe and secure alternative employment for ODWs assisting the police in prosecutions is that they are able to source employment with accommodation. We are frequently contacted by organisations nationwide seeking our advice in respect of victims of trafficking who are witnesses in criminal prosecutions but who have no accommodation after the 45 day period. Whilst in our experience some witnesses are housed via police contacts or ad hoc charitable assistance, this is by no means standard in all areas. Criminal prosecutions for slavery and trafficking cases are lengthy and the victim will need accommodation for a long period. Without safe accommodation – or indeed any accommodation – the ability of a victim to give evidence is dramatically reduced. Witnesses can be at grave risk of intimidation and violence from traffickers during the criminal process.

In the extensive experience of all lawyers working for ATLEU, almost every victim who has been involved in a criminal trial was present in the United Kingdom under a visa whereby they could change employer.

Case Studies

We enclose case studies of a) ODWs on a visa which permitted them to change employers lawfully and b) ODWs on a visa who were not permitted to change employers lawfully. These cases are representative of our experience and illustrate the differences in the women's approach to civil proceedings against their traffickers and their ability to assist the police. It is notable that most of the ODWs on a tied visa were accepted into the National Referral Mechanism.

ODWs with the right to change employer

Case A

An African woman kept in domestic servitude and subjected to violence by her employer. Her employer knowingly misled her that she was not permitted to obtain alternative employment; she was told that if she challenged the employer or sought to leave her employment she would be imprisoned. Her employer told her that the employer controlled the UK police.

Following a beating, the victim was advised by a neighbour that in fact she could lawfully change her employer and that leaving the abusive situation would not render her unlawful. She then ran away from the abuser.

She was still too scared to sustain a police complaint.

However, after the intervention of a support organisation and ATLEU lawyers, she was reassured of her lawful residency. She was then able to reapply to the police to investigate her former abuser.

The police refused to investigate the matter. However, the victim was able to successfully bring a claim for compensation against her employer in the Employment Tribunal.

Using the Tribunal findings of fact, it was possible to judicially review the police's failure to investigate, which directly led to the police investigating the matter and then the prosecution of the employer. It was the knowledge that – contrary to the threats made by the abuser – she could (and later did) obtain new employment that enabled the victim to bring a claim for compensation and then to ensure that the police took action. (It is to be hoped that following the Modern Slavery Act, the police would today be willing to take action without the threat of judicial review.)

Case B

A North African woman was trafficked into the United Kingdom and subjected to violence.

Following her escape with the assistance of a support agency and ATLEU lawyers, she was able to understand that she was lawfully present in the United Kingdom and might obtain alternative employment. With our assistance she was referred to the police to make a complaint.

Although the police did not act upon this complaint, it was on record. Once civil proceedings were commenced against the traffickers, they made an allegation to the police of theft against the worker. When the police sought to investigate the allegation against the worker, the fact that she already made an allegation of trafficking against the traffickers led to the police refusing to take the traffickers' allegations further.

The victim was extremely scared of the authorities. The police in her native country were bribed by the traffickers to physically assault her brother in order to try to find her where abouts in the United Kingdom.

The victim was able to assist the police in two separate criminal trials and is currently bringing a compensation claim in the Employment Tribunal against her traffickers.

Case C

A victim of trafficking from Southern Africa. During the employment the employer sent the worker a letter stating if she did not comply with the employer's demands then she would be returned to her native land. This she believed.

Following escape from the trafficking situation, she was advised that she could be lawfully resident in the United Kingdom and obtain alternative employment. With the victim's active assistance, the police brought the first prosecution for the offence of trafficking into the Unit-ed Kingdom for exploitation, contrary to section 4(1) and (5) of the Asylum and Immigration (Treatment of Claimants) Act 2004. The victim is currently pursuing an Employment Tribunal claim against the traffickers.

ODWs without the right to change employer

Case D

A young woman was trafficked via the Gulf. In the Gulf and in the UK she was subjected to serious sexual violence.

Although she was conclusively recognised as a victim of trafficking and was housed under the National Referral Mechanism, she remained extremely vulnerable. As is not uncommon, she was moved a number of times around the country. She was also housed in areas where she was socially isolated and there were few or no members of her own community and who spoke her language. She was acutely aware that she had no right to remain in the United Kingdom save via a residence permit to bring a claim against her former trafficker.

ATLEU lawyers became concerned following reports from the support agency that she was vulnerable to exploitation from members of her own community on whom she was depend-ent and she then disappeared. Accordingly, no civil claim could be brought and there was no realistic opportunity to request that the police investigate the matter further.

Case E

An ODW was conclusively recognised as a victim of trafficking and she brought court proceedings for compensation against her trafficker. However, she was refused a residence permit and was removed from the UK by immigration authorities during the proceedings, which accordingly had to be discontinued. This was of particular concern as her trafficker was known to have trafficked at least one other woman into domestic servitude on a previous occasion and it was therefore highly desirable that this trafficker be brought to account.

Case F

An ODW who was recognised as a victim of trafficking brought civil proceedings against her trafficker. She had brought an asylum claim that would have permitted her to remain in the UK. However, this had been refused in circumstances where ATLEU lawyers had overturned other similar refusals successfully on appeal and there were accordingly good prospects of the client being granted asylum in time.

She was offered employment and accommodation in a private household – on an illegal basis –, which she felt unable to refuse. ATLEU lawyers were accordingly concerned at the risk of her being further exploited.

She later advised ATLEU that she was unable to meet with her lawyers to pursue her claims because she was unable to leave the house where she was currently working because her employers were on holiday and she was locked in with no key. Her claim could therefore not be pursued and her immigration status could not be regularised.

Written evidence submitted by the National AIDS Trust (NAT) (IB 29)

IMMIGRATION BILL: PUBLIC BILL COMMITTEE

About NAT

NAT (National AIDS Trust) is the UK's HIV policy and campaigning charity. Over the past decade our work on immigration policy has included interrogating the myth of HIV health tourism, advocating for

improved testing and access to HIV services in the asylum process, and publishing clinical best practice advice for healthcare teams working with HIV positive detainees, in collaboration with the British HIV Association (BHIVA).

Our work is focussed on achieving five strategic goals:

— Effective HIV prevention in order to halt the spread of HIV
— Early diagnosis of HIV through ethical, accessible and appropriate testing
— Equitable access to treatment, care and support for people living with HIV
— Enhanced understanding of the facts about HIV and living with HIV in the UK
— Eradication of HIV-related stigma and discrimination.

Summary

HIV treatment is available to everyone living in the UK, regardless of immigration status, but it must be adhered to exactly to be successful. In 2012, the Government removed any residency-based restrictions on access to HIV treatment in light of the immense public health benefit of universal access. Access to and adherence to HIV treatment means that a person living with HIV can maintain good health and become effectively non-infectious by supressing their viral load, the amount of HIV present in the body. By contrast, poor adherence increases the risk of poor virological control, which is associated with illness, increased risk of HIV transmission and in some extreme instances, death.

Although most people living with HIV in the UK now have a normal life expectancy and good quality of life thanks to access to treatment, there remains a significant minority who are disempowered. Migrant and asylum seeking people in the UK, especially those born in sub-Saharan Africa, carry a disproportionately large burden of HIV.[255] Migrants and asylum seekers with HIV also have greater vulnerabilities than the general HIV population, often exacerbated by living in extreme poverty and financial hardship.[256]

Financial hardship and destitution undermine the ability of asylum seekers living with HIV to manage their condition and adhere to treatment. Sufficient fresh and nutritious food is essential in order to take HIV medication as prescribed. Access to suitable warm clothing, travel costs to hospital appointments and potential accommodation adaptations are needed to avoid heightened health risks posed by having a compromised immune system.[257] Adults and children living with HIV and their families should be supported to maintain their health and manage their condition for as long as they remain in the UK, irrespective of their immigration status.

Our primary area of interest in the Bill therefore relates to proposals included in **Part 5**, which we believe will undermine the ability of people living with HIV to manage the condition and remain healthy.

Clause 34/Schedule 6: Support for certain categories of migrant

NAT has strong concerns with the implementation of schedule 6 (page 90, line 7) as brought into effect by clause 34 of the Bill, which will remove statutory accommodation and subsistence support from appeals-rights-exhausted (ARE) asylum seekers and people currently on immigration bail or temporary release from detention.

Repeal of section 4

1. Schedule 6 will repeal of section 4 of the Immigration Act 1999 (page 90, line 12). Section 4 currently allows for the provision of accommodation and basic subsistence support for ARE asylum seekers living with HIV who would otherwise be destitute. This will include those who remain in the UK due to health-related barriers to removal or where the Home Office is otherwise satisfied it is not currently possible for them to return to their country of origin.

2. Section 4 support will be replaced by a new form of support under section 95A. Section 95A provides a power to support ARE asylum seekers who can show a 'genuine obstacle' to leaving the UK – but not a duty to do so. It is worth noting that already, under the current section 4 regulations the applicant must show they are 'taking all reasonable steps to leave the UK.' The Bill does not provide any detail on what support will be available under s95A or how eligibility will be determined.

3. NAT believes that the removal of section 4 support will push ARE asylum seekers living with HIV further into destitution which undermines their ability to manage a serious life-long condition. We are not confident that the protection offered by section 95A will be sufficient to protect the human rights of ARE asylum seekers living with HIV, who will not be able to maintain their treatment regime and self-manage their condition without accommodation or subsistence support.

4. There is also a risk that individuals' inability to manage HIV-related health needs due to destitution will have a broader public health impact. HIV treatment must be adhered to exactly in order to be effective. While

[255] 47% of new UK HIV diagnoses in 2014 were in people born outside of the UK (32% outside of Europe). African-born people represented 20% of new UK diagnoses in 2014. PHE National HIV surveillance data tables https://www.gov.uk/government/statistics/hiv-data-tables
[256] NAT and THT, 2010, *Poverty and HIV: 2006-2009*. THT, 2013, *Poverty and HIV*.
[257] NAT and THT, 2010, *Poverty and HIV: 2006-2009*. THT, 2013, *Poverty and HIV*.

treatment can completely supress the virus in the body, failure to take treatment as directed leaves people living with HIV vulnerable to opportunistic infections such as TB. Poor adherence also creates a risk of the development of drug resistance, limiting the treatment options for the individual and also anyone else who acquires that strain of the virus. Finally, those who are not adhering to effective treatment are much more likely to transmit the virus to others.

5. The public consultation document on the removal of support for ARE asylum seekers suggested that ARE asylum seekers remain in the UK because of the existence of asylum support payments. This is entirely unsupported by evidence. A significant proportion of the small number of ARE asylum seekers who remain in the UK do so despite not receiving any form of Home Office or local authority support. This is due to, amongst other things, their own perceived need for sanctuary in this country.

6. Rather than strengthening the integrity of the immigration system by supposedly encouraging ARE asylum seekers to leave the UK, we feel that restrictions to support payments would actually undermine the system through forcing people into destitution, homelessness and ill health without addressing the true barriers people face in leaving the UK. We anticipate the removal of basic subsistence support may even encourage some ARE asylum seekers to lose contact with the immigration system as they will have little incentive to remain in contact with the authorities once support is withdrawn. We are particularly concerned that if the latter were to happen, it would be detrimental to those living with HIV who may also avoid accessing HIV treatment and care services out of fear of being detected by the authorities.

7. **NAT opposes the repeal of section 4 support and introduction of section 95A in its place.**

Removal of section 95 support for ARE asylum seeker families

8. Schedule 6 also has the effect of removing access to section 95 support for ARE asylum seekers who have children. This will also have a devastating effect for the health of children who are living with or affected by HIV.

9. Parents who are living with HIV and lose their section 95 support will struggle to manage their own health needs, as described in points 3-4. This challenge grows exponentially if the family unit also includes children who are themselves HIV positive. Inability to meet these basic health needs will have an impact on the wellbeing of the family as a whole, increasing the demands they need to make on the NHS in future. By contrast, safe housing and a basic level of subsistence support will allow an HIV-affected family to self-manage their health needs at much lower cost.

10. The provision of section 95 support to ARE asylum seeking families plays another crucial public health function: NAT is aware that asylum seeking parents with refusal of final appeal use the s95 support they are given to directly prevent vertical (mother-to-child) transmission of HIV through the use of infant formula milk. UK national HIV guidelines recommend exclusive formula-feeding of infants born to mothers who are HIV positive, in order to prevent transmission of HIV to the infant through breast-feeding.[258] There is no NHS entitlement to free formula feed, meaning that destitute mothers must rely on the limited income support that is available from the Home Office to purchase this.

11. The removal of section 95 support from ARE asylum seekers families contradicts the aim of retaining important safeguards for children. Children are dependent on adults, cannot be held responsible for the actions of adults and must not be made to suffer for the consequences of any adult actions around asylum claims. In those cases where there are children living with HIV, every effort should be made to ensure that they have the resources needed to help manage their condition and remain healthy. Cutting off support to these children and the caregivers on whom they rely is irresponsible, unethical and fails on providing safeguards for some of society's most vulnerable children.

12. **NAT opposes the removal of section 95 support from ARE asylum seekers with children. We support the following amendment proposed by ILPA and Still Human Still Here:**

> Schedule 6, Page 93, line 37, delete '(5) omit sections (5) and (6)'

The right to appeal decisions on asylum support applications

13. Finally, NAT believes that proposed changes to remove the right of appeal against a decision to stop providing support (Schedule 6, Part 2) is fundamentally wrong. The right of appeal for support decisions is essential in preventing asylum seekers from incorrectly being denied support and forced into destitution. Evidence obtained by Still Human Still here has found that between 1 September 2014 and 28 February 2015, the Asylum Support Tribunal allowed 252 cases and remitted a further 71 cases back to the Home Office to retake the decision. This shows that the Home Office has the ability to make the wrong decision. Given the impact that a refused decision for support can have on the health of ARE asylum seekers living with HIV, the ability to challenge refused support decisions is critical.

14. **NAT recommends that proposals to remove the right to appeal in schedule 6, part 2 of clause 34 must not be upheld under any circumstances and supports amendments proposed by ILPA to this effect:**

[258] British HIV Association (BHIVA) and Children's HIV Association (CHIVA) Position Statement on Infant Feeding in the UK, Available here: http://www.bhiva.org/documents/Publications/InfantFeeding10.pdf

Proposed amendment

Schedule 6, Page 90, line 30, at end insert–

"( ) If the Secretary of State decides not to provide support to a person under section 95A, or not to continue to provide support for a person under section 95A, the person may appeal to the First tier Tribunal."

Schedule 6, Page 90, line 29, leave out 'and (7)'.

Schedule 6, Page 90, line 30, at end insert –

"in subsection (7) for 'section 4 or 95' substitute 'section 95 or 95A'"

October 2015

Supplementary written evidence submitted by Lord Green of Deddington K.C.M.G., Chair of Migration Watch UK (IB 30)

I am grateful for the opportunity to provide evidence to your Committee on 20 October. I write now, as requested, to provide answers to the two questions for which there was no time.

Migration Watch accept that prosecutions against illegal workers are possible under various provisions of the law, but we believe that there is psychological advantage in making illegal work itself a criminal offence. At present, there is an impression that it is much easier to work illegally in Britain than elsewhere, as the Mayor of Calais has recently pointed out.

As regards to the treatment of failed asylum seekers with children, we are clear that they have no right to remain in the UK and should leave but, where children are involved, we believe that the process should take this into account.

As for the motivation of asylum seekers, we believe that some may be driven solely by practicality but others clearly have other factors in mind – for example, the existence of a community, a language that they speak, employment opportunities, etc. Again, evidence from the Mayor of Calais to the Home Affairs Committee showed that many asylum seekers in Calais are equipped with knowledge of life in the UK.

I attach a fuller note on these points.

Finally, two members commented that my use of the term "these people" was disparaging but they were unable to describe the context. It was as follows:

> "Our view is that it simply has to be an offence to work illegally in this country. I cannot see how it can be otherwise. For starters, these people are unquestionably undermining the wages of British workers or immigrant workers….."

I can see no difficulty about using this term in this context.

Yours sincerely

A F Green
Chairman, Migrationwatch UK

MIGRATION WATCH UK FURTHER SUBMISSION OF WRITTEN EVIDENCE TO PUBLIC BILL COMMITTEE ON IMMIGRATION BILL 2015

PART 1 CLAUSE 8 – OFFENCE OF ILLEGAL WORKING

Mr Starmer raised the issue of whether there was a requirement for an offence of illegal working in order to proceed with prosecutions against those working illegally in the UK.

It is an offence to enter the country illegally, and to overstay a visa under Section 24 of the Immigration Act 1971. Therefore, if someone subject to immigration control does not have valid leave to remain they are already committing an offence if they are found to be working. If a student with leave to remain but without the right to work is found working they are already breaking the law under the same Act by failing to observe a condition of their leave.

However, the key point is that there is a perception that it is far easier to work in the United Kingdom than elsewhere in Europe, notably France, as an illegal immigrant This perception must be addressed. The British Red Cross and the Mayor of Calais believe that illegal immigrants in Calais attempting to cross the Channel to get to the UK do so in the belief that it is far easier to find work in the black economy.[259] Giving evidence to the Home Affairs Committee in September 2015, Natacha Bouchart, the Mayor of Calais said: 'We have also heard a lot that there is a lack of regulation about combating illegal employment practices in this country. The

[259] http://www.bbc.com/news/uk-29074736

migrants say that when they get to England they can easily find work here, "We are not supervised; we are not controlled and we can find accommodation. We can have some kind of benefit every week"'.[260]

An offence of working without leave to remain or without the permission to work could have a psychological effect; it shows that the UK is not a place that tolerates illegal working and that the UK is not a 'soft touch'.

Enforcement action in addressing this perception is, of course, critical but we believe that the approach should be two fold.

Part 5 Clause 34 – Support for Certain Categories of Migrant

Mr Hoare questioned the logic of suggesting that in cases of failed asylim seekers with children there should be an exemption or a different style of treatment.

To follow on from our response on the day, the policy proposals require through consultation to ensure that the right solution is arrived at. In cases where no children are involved the correct soluton is obvious: failed asylum seekers who have exhasted their appeal rights and face no impediment to returning home should leave the country and their finanial support should cease. In cases where children are involved there is a danger that, if Home Office support is withdrawn, the costs of support are merely shifted to local authorities who have obligations under the Children Act 2004. It is therefore prudent to assess these obligations to ensure that the right outcome is achieved. The desired policy is one which maximises the number of failed asylum seekers leaving the country after their appeal rights have been exhausted.

In principle failed asylum seekers with children have no right to remain in the UK and should leave but, as children are involved, the process should take this into account.

Asylum Seekers and the UK – Ms McLaughlin noted a Swansea University Report on behalf of the Refugee Council which found that asylum seekers do not seek to come to the UK but that destination is determined by practicality and demands of the situation.

Of course, the experience of asylum seekers across Europe and of those that come to the UK varies greatly. There is no doubt that the final destinations of some asylum seekers are determined solely by practicality and demands of the situation, but there is no doubt as well that some asylum seekers are driven by other factors such as, for example, the existence of a community from their home country, language and employment and housing opportunities in a particular country. As the evidence from the Mayor of Calais to the Home Affairs Committee showed, many asylum seekers/migrants are equipped with knowledge of life in the UK, often relayed from people who have successsfully made the crossing to the UK. Just as many migrants/asylum seekers crossing Europe are currently telling the world's media that they are planning to go to Germany, there are also some who plan to come to the UK.

October 2015

Written evidence submitted by the United Nations High Commissioner for Refugees (IB 31)

UNHCR is entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees.[261] As set forth in its Statute, UNHCR fulfils its international protection mandate by, inter alia, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."[262]

UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees ("the 1951 Convention")[263] according to which State parties undertake to "co-operate with the Office of the United Nations High Commissioner for Refugees […] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention." The same commitment is included in Article II of the 1967 Protocol relating to the Status of Refugees.[264]

The UN General Assembly has also entrusted UNHCR with a global mandate to provide protection to stateless persons worldwide and to engage in prevention and reduction of statelessness. UNHCR's Executive Committee has further requested UNHCR to undertake "targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons." The Executive Committee also requests the Office "to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions." UNHCR thus has a direct interest in national

[260] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/migration-crisis/oral/21356.html

[261] See Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para. 1, available at www.unhcr.org/refworld/docid/3ae6b3628.html ("Statute").

[262] *Ibid.*, para. 8(a).

[263] UNTS No. 2545, Vol. 189, p. 137.

[264] UNTS No. 8791, Vol. 606, p. 267.

legislation that regulates the protection of stateless persons, including implementation of the 1954 Convention relating to the Status of Stateless Persons.

In line with the above mandate and insofar as they affect persons of concern to UNHCR, we welcome the opportunity to comment on the following provisions of the Immigration Bill 2015 (Bill):

Illegal Working (Clause 8, Schedule 1)

UNHCR is concerned that the criminal offence of illegal working under Clause 8 of the Bill may have a disproportionate impact upon victims of trafficking with international protection needs. By definition, the purpose of trafficking of persons is the exploitation of the victim including through forced labour or services.[265] Many victims of trafficking with international protection needs will be forced to act in contravention of the law and could, therefore, fall within the draft illegal working provision. In UNHCR's view the consequences of conviction and imprisonment of a term up to 51 weeks could exacerbate any vulnerabilities and have a detrimental impact on the prospect of integration and/or eventual naturalisation for victims of trafficking who receive refugee status or humanitarian protection.[266] UNHCR fully supported the inclusion of non-penalisation for victims of trafficking in the Modern Slavery Act 2015[267] and strongly recommends that the defence outlined in Section 45 of that Act[268] be referenced within the provision on illegal working in order to avoid wrongful prosecutions and delays in naturalisation in these cases.

UNHCR notes that stateless persons may also fall within Clause 8 and be subject to the punitive elements of the provision. In contrast to the asylum procedure, which currently provides limited circumstances for asylum-seekers to undertake employment,[269] the Statelessness Determination Procedure (SDP) does not provide similar access. Applicants in the SDP can experience lengthy delays in receiving a decision, and with no clear support mechanism attached to the procedure, UNHCR is concerned that stateless persons may feel compelled to work in contravention of the proposed illegal working provision. In the long term, a conviction for working illegally is also likely to delay the prospect of stateless persons obtaining nationality through naturalisation. To address this, UNHCR recommends that individuals awaiting a determination of statelessness receive the same standards of treatment as asylum-seekers whose claims are being considered.[270] Allowing individuals awaiting statelessness determination to engage in wage-earning employment, even on a limited basis, may reduce the pressure on State resources and would contribute to the dignity and self-sufficiency of the individuals concerned.[271]

UNHCR recommends:

The defence outlined in Section 45 of the Modern Slavery Act 2015 is referenced within the provision on illegal working in order to avoid wrongful prosecutions of victims of trafficking.

Provision is made for individuals awaiting a determination of statelessness to receive at least the same standards of treatment as asylum-seekers whose claims are being considered, including access to employment in certain situations.

Access to Services (Clauses 12-18, Schedules 2 and 3)

The Bill extends the "right to rent" scheme across the UK alongside criminal sanctions for breaching the provisions; it brings in requirements on banks to check the immigration status of current account holders and facilitate the closure of those held by "illegal migrants"; further, it introduces a new offence for driving whilst not lawfully resident in the UK and related powers of search and seizure. These come as part of a package designed to make it "much harder for illegal immigrants to stay in the UK when they have no right to do so."[272] While UNHCR recognises the importance of maintaining immigration control, it is not aware of consideration being given by the Government to the direct or indirect impact these measures may have on persons of concern to UNHCR who are entitled under UK law to access services, particularly given the complex and often evolving legal status they can have in the UK. In UNHCR's view it is of critical importance that persons in need of international protection are given appropriate access to services and benefit from a welcoming environment so as to ensure their effective integration in the UK.

[265] UNHCR Guidelines on International Protection No 7: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of refugees to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, para 9.

[266] Annex D: The Good Character Requirement, Section 2.1 provides that a sentence of 12 months imprisonment will mean a nationality application will normally be refused unless 10 years have passed since the end of this sentence. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406368/Chapter_18_Annex_D_v02.pdf.

[267] Draft Modern Slavery Bill: Written Evidence to the Parliamentary Joint Committee (February 2014) available at: http://www.unhcr.org.uk/fileadmin/user_upload/docs/Draft_Modern_Slavery_Bill_-_UNHCR_Written_Evidence_-_February_2014_01.pdf.

[268] Modern Slavery Act 2015, Section 45: Defence for slavery or trafficking victims who commit an offence.

[269] See Immigration Rules, para 360 and Asylum Policy Instruction, Permission to Work (April 2014) available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299415/Permission_to_Work_Asy_v6_0.pdf.

[270] UNHCR Handbook on the Protection of Stateless Persons, para 145.

[271] UNHCR Handbook on the Protection of Stateless Persons, para 146.

[272] UK Home Office, Immigration Bill 2015/16, Factsheet –Banks (Clause 18), September 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461702/Banks.pdf.

UNHCR is aware of the Joint Council for the Welfare of Immigrants' independent evaluation of the "right to rent" provisions which indicates that the scheme has contributed to discrimination; landlords are less likely to rent to those with foreign accents and names or those who do not possess a British passport, and checks are not being carried out uniformly but are directed at individuals who appear "foreign".[273] At the same time, the recently published Home Office Evaluation of the Right to Rent raises concerns regarding the potential for discrimination and that the scheme could present difficulties for British citizens with limited documentation.[274] The evaluation did not, however, consider the particular situation asylum-seekers, refugees and stateless persons with permission to be in the UK might face in accessing rental accommodation. Nonetheless, due to the findings of these evaluations, UNHCR is concerned that the "right to rent" provisions, and their extension under the Bill, may have a detrimental impact on the reception and integration of persons of concern to UNHCR given their background and, in many instances, their vulnerabilities.

UNHCR recommends:

The Home Office evaluates the impact of the Right to Rent scheme and other proposals related to access to services on asylum-seekers, refugees and stateless persons with permission to be in the UK to determine whether they give rise to discrimination. If it is not possible to protect such persons from discrimination related to these initiatives, UNHCR recommends that they be withdrawn.

Bail (Clause 29 and Schedule 5)

The Bill introduces a new "consolidated framework" for immigration bail and removes temporary admission, temporary release and release on restrictions as alternatives to detention. According to international law, the detention of asylum-seekers is justified only as far as it is determined to be necessary and proportionate for the pursuit of a legitimate purpose in each individual case. While liberty must always be considered, alternatives to detention are part of the necessity and proportionality assessment of the lawfulness of detention. UNHCR's own commissioned research had highlighted concerns that the alternatives currently offered in the UK – temporary admission, temporary release, release on restrictions and bail – have not always been effective or sufficiently accessible to asylum-seekers.[275] It is UNHCR's view that there is considerable scope for introducing effective alternatives to detention to complement, rather than diminish, what is currently in place in the UK. Many alternatives to detention used in other countries are relatively inexpensive and provide comprehensive services in the community to asylum-seekers, while supporting the efficient operation of the asylum system.[276]

In this context, UNHCR is anxious about the proposal to further restrict the categories of alternatives to detention available to persons of concern to UNHCR in the UK. UNHCR is particularly concerned about the potential removal of temporary admission, temporary release and release on restrictions which are frequently used for asylum-seekers and are capable of providing less onerous alternatives to detention than bail. UNHCR is concerned that the proposed bail regime comes with further limitations on judicial powers, including the ability of the Home Office to impose conditions that were not considered appropriate by the Tribunal in the initial grant of bail. Additionally, the draft provisions expand on the use of electronic monitoring measures, with no elaboration on what should be the exceptional circumstances in which they can be applied. Forms of electronic monitoring – such as wrist or ankle bracelets – are considered harsh, not least owing to the perceived criminal stigma attached to their use; and should as far as possible be avoided.[277]

UNHCR considers that, for bail to be genuinely available to asylum-seekers, bail hearings would preferably be automatic.[278] Despite seeking to expand the application of bail in the UK through Clause 29 and Schedule 5, the Bill misses the opportunity to introduce this important measure to ensure effective access to alternatives to detention.

UNHCR is also concerned that the limitations on the availability of bail accommodation previously provided under Section 4(1) of the Immigration and Asylum Act 1999, which is now proposed to be repealed and replaced with provisions where such accommodation is only provided in "exceptional circumstances," will impact negatively on persons of concern to UNHCR. It is UNHCR's view that the provision of bail accommodation under Section 4(1) and the relevant regulations[279] is an important element of the bail system for those who would otherwise not qualify due to lack of a bail address to which they could be released. Limiting this to exceptional circumstances and without clear guidance (as is currently the case) on what such circumstances

[273] Joint Council for the Welfare of Immigrants, "No Passport Equals No Home": An independent evaluation of the 'Right to Rent' scheme, 3 September 2015, available at http://www.jcwi.org.uk/sites/default/files/documets/No%20Passport%20Equals%20No%20Home%20Right%20to%20Rent%20Independent%20Evaluation_0.pdf.

[274] UK Home Office, Evaluation of the Right to Rent Scheme, October 2015 available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf.

[275] UNHCR, *United Nations High Commissioner for Refugees (UNHCR) Inquiry into the use of Immigration Detention Written evidence to the Parliamentary Joint Committee*, 1 October 2014.

[276] UNHCR, *Canada/USA Bi-National Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons*, February 2013, available at: http://www.refworld.org/docid/515178a12.html.

[277] UNHCR, Detention Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at: http://www.refworld.org/docid/503489533b8.html.

[278] *ibid.*

[279] The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 available at: http://www.legislation.gov.uk/uksi/2005/930/contents/made.

are would, in UNHCR's view, further curtail opportunities for release on bail and could potentially lead to prolonged and/or unlawful detention.

UNHCR recommends that the Bill is used as an opportunity to address shortcomings identified in the use of the detention estate, including through the recent cross-party Parliamentary Inquiry into the use of Immigration Detention.[280] Provision should be made to introduce a time limit on the use of immigration detention, improve judicial oversight of detention, and scale back on the use of detention, including through the introduction of a wider range of community-based alternatives to detention.

UNHCR recommends:

The new "consolidated framework" for immigration bail and removal of temporary admission, temporary release and release on restrictions as alternatives to detention under Clause 29 and Schedule 5 are not introduced.

Not to repeal Section 4(1) of the Immigration and Asylum Act 1999 and to maintain the current regulations which provide a bail address to those who would otherwise not qualify for bail.

A maximum time limit on the length of time anyone can be detained in immigration detention is introduced. At the end of the maximum period, persons must be released automatically. UNHCR would support the 28 day time limit proposed in the report of the Parliamentary Inquiry into the use of Immigration Detention.

Automatic bail hearings for immigration detainees are introduced.

Appeals (Part 4, Clause 31)

Clause 31 would amend Section 94B of the Nationality, Immigration and Asylum Act 2002. UNHCR welcomes the fact that Refugee Convention and Article 3 ECHR appeals would not be affected by the proposed removal of appeal rights in Part 4 of the Bill. UNHCR is, however, concerned that Clause 31 of the Bill, which permits the Secretary of State to remove the right to an in country appeal on human rights grounds, save where removal or required departure from, or refusal of entry to, the UK would be unlawful under Article 6 of the Human Rights Act, including where certification would give rise to "serious irreversible harm", would negatively affect persons of concern to UNHCR.

Human rights appeals are complex and the proposed legislation would have particular consequences on persons of concern to UNHCR in Article 8 ECHR cases. Article 8 appeals can have a significant importance in assuring that fundamental family and private life rights are upheld in the UK, including for asylum-seekers, refugees and stateless persons. In such cases, the central question, defined in UK and European case law, is whether removal from (or refusal of entry to) the UK constitutes a disproportionate interference in a person's private or family life. Despite the Secretary of State's assertion (in the Home Office Memorandum of 17 September 2015, Para. 98) that requiring an appeal to be brought from abroad is not an assessment "that the human rights claim is bound to fail at appeal," to certify an Article 8 appeal on the basis that requiring an appellant to pursue his or her appeal from outside the UK would not cause "serious irreversible harm" appears to presume that removal would not constitute a disproportionate interference in a person's private or family life.

UNHCR is concerned that the requirement that certain human rights appeals be brought from outside the UK would adversely impact on the right to an effective remedy for persons of concern. Human rights appeals often require reports by medical, psychological, social work, or other experts which may be difficult or impossible to undertake if the appellant is required to pursue an appeal from outside the UK. In addition, the removal of in country appeal rights can adversely affect a person's access to quality legal advice and ability to participate fully in his or her own appeal, particularly for persons in areas where limited technological services are available and for persons who have limited financial resources.[281] Notwithstanding the possibility of judicial review of certification under Section 94B of the Nationality, Immigration and Asylum Act 2002, particularly in view of the complexity of such cases and the difficulties that some appellants face in accessing appropriate legal advice for judicial review proceedings, UNHCR is concerned that Section 94B as amended would result in persons of concern to UNHCR being unjustly denied the right to pursue an appeal from within the UK. These concerns are compounded by the limited availability of legal aid funding for some human rights, including Article 8, cases. It is UNHCR's considered view that separation of families for an extended period of time while an initial appeal and any further appeals are being considered could negatively impact persons of concern to UNHCR.

UNHCR notes that the separation of families poses hardships for children in particular, and observes that the Secretary of State is required to consider the best interests of children when making any immigration decision affecting them.[282] UNHCR's own research conducted in 2013 found that not all children in the cases reviewed

[280] UK Parliament, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration*, 3 March 2015.

[281] UNHCR is aware, for example, that in a case involving the application of Section 94B (in its current form), an appellant requested to participate in a Tribunal hearing from abroad, but was told that he must cover the costs of all technological services, both outside the UK and at the Tribunal.

[282] See, for example, *R (on the application of RA) v Secretary of State for the Home Department IJR* [2015] UKUT 00292 (IAC). It was found that the Secretary of State was in breach of her duty under Section 55 of the Borders Act in not considering the best interests of the child and as such the removal to Nigeria had been unlawful. UNHCR has also observed in its own research that not all children in the sample audit had their best interests determined and that, as a result, asylum and immigration decisions that affected the children were being taken without due consideration to the child's best interests.

had their best interests determined and that, as a result, asylum and immigration decisions that affected the children were being taken without due consideration to the child's best interests.[283]

UNHCR also remains concerned that the proposed legislation would give significant discretion to the Secretary of State to assess what constitutes "serious irreversible harm" and observes that the threshold of this standard is high. It is UNHCR's view that the amendments in the Bill that are aimed at restricting the right to an in country human rights appeal should not be adopted.

UNHCR recommends:

Not to introduce Clause 31, which serves to extend the "deport first/appeal later" provisions of the Immigration Act 2014.

Support for certain categories of migrants (Clause 34, Schedule 6)

UNHCR acknowledges the Government's intended objective to ensure that those without a legal basis to be in the UK should leave the country. However, UNHCR remains concerned about the Government's aims to reclassify refused asylum-seekers as illegal migrants in order to restrict their access to alternative support. The use of the term "illegal migrant" as a means of referring to a person who has had their asylum claim refused could be construed as associating those who have sought asylum with criminality, despite the fact that they may not have been involved in criminality and that the right to seek asylum is recognised in international human rights law.[284] Further, UNHCR is concerned that the use of such language risks contributing to an unwelcoming environment for those seeking asylum in the UK.

UNHCR notes the intended aim of the policy is to encourage failed asylum-seeking families to return home voluntarily. UNHCR also recognises that the efficient return of persons found not to be in need of international protection is key to the effective functioning of the international protection system as a whole. However, evidence suggests that the removal of support does not necessarily contribute to increased returns. This was demonstrated through the UK's Section 9 Pilot of 2005. The evaluations of this pilot (including by the Home Office) demonstrated that removing support (which resulted in destitution) did not promote compliance, and instead many individuals felt compelled to disengage and disappear in order to avoid return. Only one of the 116 families subject to the pilot returned to their country of origin, while around a third disappeared.[285] UNHCR's own research has also suggested that the removal of social/material assistance from refused asylum-seekers can encourage them to go 'underground.'[286] The same study found that conversely, the provision of support, including counselling and competent legal advice, may encourage compliance and visibility, and therefore support returns in the long run.[287] It is crucial that these considerations, including the potential inter-relationship between support for rejected asylum-seekers and assisted voluntary return are taken into account by the Home Office to ensure that its proposals do not risk undermining effective return policies and practices.

UNHCR is also concerned that some families with dependent children will be left without support if it is considered that they do not fulfil the criteria of the proposed Clause 95A provision. Acknowledging, that children are children first and foremost, any development in asylum and support policy should ensure that their welfare is protected and the principle of the best interests of the child respected. Whilst a child's welfare is primarily a parental responsibility it does not absolve the State of its established duty to take appropriate measures to assist parents and others responsible for the child and in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.[288] The proposed amendments to the Bill risk the State falling short of this duty.

UNHCR is particularly concerned that the Bill proposes to restrict local authorities' obligations to assist refused asylum-seeking families. There is a risk that this will result in the destitution of children, who have little to no control over the governing and core decision making concerning their lives. The risk is that not only will children become cut off from services, but also from service providers. In addition to leaving families and children vulnerable to abuse and exploitation, such measures would be contrary to duties to safeguard children under Section 55 of the Borders, Citizenship and Immigration Act 2009, the Children's Act 1989 and national statutory guidance.[289]

[283] UNHCR *Considering the Best Interests of a Child within a Family Seeking Asylum*, December 2013, pp. 8 and 27, available at: https://www.judiciary.gov.uk/wp-content/uploads/2015/04/ra-and-bf-v-sshd-1-2.pdf.

[284] Article 14, Universal Declaration of Human Rights.

[285] Barnardo's, 'The End of the Road,' the impact on families of Section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004 http://www.barnardos.org.uk/the_end_of_the_road_asylum_report_summary.pdf, and Refugee Council/Refugee Action, "Inhumane and Ineffective – Section 9 in Practice" A Joint Refugee Council and Refugee Action report on the Section 9 pilot, 2006 http://www.refugeecouncil.org.uk/assets/0001/7040/Section9_report_Feb06.pdf.

[286] Alternatives to Detention of Asylum Seekers and Refugees', Ophelia Field, 2006, para 147 & 156, available at http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4474140a2&query=ophelia%20field.

[287] *Ibid*.

[288] UN Convention on the Rights of the Child, Article 27- right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

[289] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf.

UNHCR's 2013 audit of family asylum claims[290] observed that none of the dependent children in the cases reviewed had been interviewed at any stage of the asylum process. This was despite UNHCR's observation of instances where it would have been appropriate to interview a dependent child, not only due to their right to be heard, but also because the substance of the asylum claim suggested evidence from the child would be needed to facilitate a sufficiently comprehensive consideration of the family's application. This suggests that in some instances the international protection needs of children may not be fully explored or recognised and provides further support for the retention of assistance for refused asylum-seekers with children.

Provision of support to Stateless persons:

The Statelessnes Determination Procedure (SDP) does not provide applicants (and their dependants) with recourse to any form of accommodation or financial assistance.[291] In UNHCR's view, the status of those awaiting statelessness determination must also reflect applicable human rights such as assistance to meet basic needs.[292] Currently some applicants submitting claims under the SDP receive support through Section 4 of the Immigration and Asylum Act 1999. This provides a vital means of support from destitution as evidenced by the findings in UNHCR and Asylum Aid's joint research 'Mapping Statelessness in the United Kingdom.'[293]

Clause 95A in its current form does not take into account the predicament of applicants in the SDP. By definition stateless persons are not considered a national by any State under the operation of its law;[294] therefore, efforts made to leave the United Kingdom will remain limited. In the event that Clause 95A is introduced, it should be expressly recognised that applicants in the SDP and their dependants can benefit from the provision and that they are considered to "demonstrate a genuine obstacle to leaving the United Kingdom" for its purposes. It is UNHCR's recommendation, however, that the Bill instead be used as an opportunity to provide for the provision of support to statelessness applicants and their dependants akin to asylum support.

No right of appeal against a decision to refuse or discontinue support:

UNHCR notes that reports produced by the Asylum Support Appeals Project on the quality of asylum support decisions, evidences that in a high number of cases the Home Office decision to refuse asylum support is overturned or reconsidered at appeal.[295] According to their most recent briefing 64.5% (435 cases) that they represented were overturned at appeal last year.[296] These statistics underline the importance of the appeal procedure in ensuring that correct decisions are made with respect to support. UNHCR is, consequently, concerned that the proposed amendment provides no accompanying appeal right against a decision to refuse or discontinue support and is of the firm view that a right of appeal ought to be provided. In UNHCR's view the impact of this provision risks subjecting refused asylum-seekers and stateless persons to lengthy periods of destitution.

UNHCR recommends:

Not to repeal Section 94(5), which would cut off support to failed asylum seeking families with children.

Provision is made for individuals awaiting a determination of statelessness to receive at least the same standard of accommodation and financial support assistance as asylum-seekers whose claims are being considered.

UNHCR London

October 2015

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[290] UNHCR, Untold Stories...Families in the Asylum Process, June 2013, available at: http://www.refworld.org/docid/51c027b84.html

[291] Home Office Statelessness Guidance (April 2013), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/258252/stateless-guide.pdf.

[292] UNHCR Handbook on the Protection of Stateless Persons, para 146.

[293] The study found that of the 37 participants interviewed, 28 had experienced destitution with 11 participants experiencing rough sleeping or homelessness following withdrawal of Section 4 support. See UNHCR and Asylum Aid 'Mapping Statelessness in the United Kingdom', page 101, available at http://www.unhcr.org.uk/fileadmin/user_upload/images/Updates/November_2011/UNHCR-Statelessness_in_UK-ENG-screen.pdf.

[294] Article 1(1) 1954 Convention on the Status of Stateless Persons.

[295] Asylum Support Appeals Project, The next reasonable step, recommended changes to Home Office policy and practice for Section 4 support granted under Reg 3(2)(a), September 2014, available at: http://www.asaproject.org/wp-content/uploads/2014/11/The-Next-Reasonable-Step-September-2014.pdf.

[296] Asylum Support Appeals Project, Briefing Note: Home Office Consultation on Reforming Support for Failed Asylum Seekers and other Illegal Migrants, 21 August 2015, available at: http://www.asaproject.org/wp-content/uploads/2015/08/ASAPs-consultation-response-briefing.pdf.

Further written evidence submitted by the Immigration Law Practitioners' Association (IB 32)

IMMIGRATION BILL ILPA PROPOSED AMENDMENTS FOR HOUSE OF COMMONS COMMITTEE STAGE PART 6 BORDER SECURITY AND PART 7 LANGUAGE REQUIREMENTS FOR PUBLIC SECTOR WORKERS

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organizations.

PART 6 BORDER SECURITY

Clause 35 Penalties related to airport control areas

PROPOSED AMENDMENT/STAND PART

Page 35 line 18, leave out lines 18 to 25 (Clause 35)

Purpose

To remove the new civil penalty scheme for airport control areas from the Bill.

Schedule 7 Penalties relating to airport control areas

PROPOSED AMENDMENT/STAND PART

Page 102, line 7, leave out Schedule 7

Purpose

Consequential on the above. Removes Schedule 7, which sets out the detail of the civil penalty scheme from the Bill.

Briefing

This part creates yet another civil penalty regime, this time targeting airlines and port officers who allow passengers to disembark without being presented to immigration control where a control zone has been designated. Zones are designated in statutory instruments laid before parliament and subject to the negative procedure under Schedule 2 to the Immigration Act 1971, at paragraph 26(3A).[297] Unlike the case of landlords and landladies, who will be subject to criminal offences because civil penalties are considered insufficient, this conduct is already a criminal offence. Why then impose a civil penalty? If the criminal offence did not deter the conduct, why should a civil penalty?

The Explanatory Notes offer no explanation as to why a civil penalty regime is required other than this will make the legislation "simpler to enforce." The criminal offence, set out in s 27 of the Immigration Act 1971, requires that the person act "knowingly" or fails without reasonable excuse to comply with a direction given. The civil penalty also uses a "reasonable steps" test. The criminal offence carries a penalty of a fine of not more than level 5 on the standard scale or with imprisonment for not more than six months, or both. It is unclear therefore what is simpler about the new regime, which brings with it all the bureaucracy of a civil penalty regime.

PROPOSED AMENDMENT

Schedule 7, page 104, line 27, leave out line 27

Purpose

To remove the possibility for the Secretary of State to increase a penalty when the carrier lodges a notice of objection.

Briefing

This is a provision that has been inserted into successive civil penalty regimes and one that ILPA has challenged each time. It is a deterrent to challenging the Secretary of State's decision.

[297] Immigration Act 1971, Schedule 2, paragraph 26(3A).

Why should the Secretary of State get two bites at the cherry? This encourages hasty and sloppy decision-making (albeit in port's favour not the Secretary of State's own) at first instance because anything that has been overlooked can be put right later.

PROPOSED AMENDMENTS

Schedule 7, page 105, leave out lines 6 to 14

Purpose

Removes the requirement that a person on whom a penalty has been imposed first object to the notice before appealing. Again, a feature present in other civil penalty regimes, but one which ILPA has challenged each time.

Schedule 7, page 105, line 17 leave out from "on" to the end of line 17.

Purpose

Consequential on the above. Maintains the time limit of 28 days for appealing, but against the original decision rather than a decision on the notice of objection.

Briefing

There should be an option to waive the objection and move straight to an appeal. There is no point in spending time and money on an objection in circumstances where the Home Office disagrees with the analysis of law or fact and will not change its decision. Nor should a person be obliged in these circumstances to incur the costs associated with an objection including legal fees.

In the event of an appeal, where the respondent concedes the appellant is right (e.g. because a civil penalty was wrongly imposed), an order has to be drawn up that addresses costs. The Civil Procedure Rules Practice Direction 52 and Costs Practice Direction are in point. The former provides that where a settlement has been reached disposing of the application or appeal, the parties may make a joint request to the court for the application or appeal to be dismissed by consent. If the request is granted the application or appeal will be dismissed.

Where the Home Secretary has conceded the issue, she has no basis to resist a costs order.

When the appeal is settled so that it is withdrawn as the underlying decision is accepted to be wrong, the default position that costs follow the event applies.

PROPOSED AMENDMENT

Schedule 7, page 106 line 35 after "email" insert "if the person has consented to service by email"

Purpose

To provide that service cannot be effected by email unless the person has agreed to this,

Briefing

Service by email is desirable but, given that provision can be made for deemed service using the powers in paragraph 28F(2), it is desirable that consent be obtained before documents are served by email so that those who do not consider their technology to be sufficiently robust can decline service by this method.

SCHEDULE 8 MARITIME ENFORCEMENT

The structure of this Schedule is to make provision first for English waters, then Scotland Waters, then Northern Ireland waters. Therefore many of the amendments below are formulated in groups of three with the same point made for each. Where the effect is identical, a purpose is given once.

There are also amendments that are linked – for example confining the powers given to ports. Again, we have grouped these amendments.

PROPOSED AMENDMENTS

Schedule 8, page 109, line 35 at beginning insert

"(*)Hot pursuit can only be commenced when a ship is in United Kingdom waters."

Purpose

Probing amendment, to provide the Minister with an to confirm at ion that hot pursuit will only start when the ship is in territorial waters, as required by the UN Convention on the Law of the Sea which provides at Article 111

Article 111

Right of hot pursuit

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

6. Where hot pursuit is effected by an aircraft:

(a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*;

(b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.

8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

PROPOSED AMENDMENT

Schedule 8, page 111, line 47 leave out from "every" to the end of line 47 and replace with "a hovercraft"

Purpose

A probing amendment. Omits reference to the word ship including "every kind of vessel used in navigation" and says instead that a ship includes a hovercraft. Does not on its face limit the definition or expand it.

Briefing

A probing amendment to give the Minister an opportunity to explain what is meant by "every type of vessel used in navigation" and thus the ambit of the Schedule.

PROPOSED AMENDMENTS (ONE EACH FOR ENGLAND, SCOTLAND AND NORTHERN IRELAND)

England and Wales

Schedule 8, page 112, line 42, leave out "or has been,"

Scotland

Schedule 8, page 117, line 19, leave out "or has been,"

Northern Ireland

Schedule 8, page 121, line 42, leave out "or has been,"

Purpose

Probing amendments. Each amendment limits the powers of an officer to cases where an offence is being committed, depriving the officer of the powers where an offence "has been" committed and thus to test the temporal limits of the clause.

Proposed amendments

England and Wales

Schedule 8, page 113, line 21, leave out lines 21 and 22

Scotland

Schedule 8, page 117, leave out lines 41 and 42.

Northern Ireland

Schedule 8, page 122, leave out lines 21 and 22

Purpose

To limit the officers' powers to search to cases where they have reasonable grounds to suspect that the specified offences are being committed rather than offences "in connection" with them.

Briefing

The specified offences are assisting unlawful immigration, assisting an asylum-seeker to arrive in the UK, and assisting entry to the United Kingdom in breach of a deportation or exclusion order If the interest to ensure that powers exist where the offences are offences of aiding and abetting, conspiracy etc, then this could and should be specified rather than the vague "in connection with". Article 8 of the European Convention on Human Rights protects rights to private life, home and correspondence and Article 8(2) provides

> 2. There shall be no interference by a public authority with the exercise of this right 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 wellbeing 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."

Article 1 of Protocol 1 to the Convention beings

> "(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The European Court of Human Rights has explained[298] that the requirement that any interference be "in accordance with the law" requires not only that the domestic legal system sanction the interference but that the provision is accessible and sufficiently precise to enable a person reasonably to foresee the consequences of their actions and thus provides adequate safeguards against arbitrary interference with rights. There must be real doubt as to whether these provisions are sufficiently precise to meet that test.

Proposed amendment

England and Wales

"Schedule 8, page 113, line 28 leave out "information about himself or herself" and replace with "his or her name, date of birth and details of his or her national identity documents, destination and purpose of journey"

Scotland

"Schedule 8, page 118, line 6 leave out "information about himself or herself" and replace with "his or her name, date of birth and details of his or her national identity documents, destination and purpose of journey"

Northern Ireland

"Schedule 8, page 122, line 28 leave out "information about himself or herself" and replace with "his or her name, date of birth and details of his or her national identity documents, destination and purpose of journey"

[298] See Huvig and Krushlin, 24 April 1990, C-176/B

Purpose

To remove the opened-ended power for an officer to ask a person questions about him/herself and set out the specific information that can be required.

Proposed amendment

England and Wales

Schedule 8, page 113, line 29 at end insert

> "(*) If in the course of questioning or otherwise a person expresses to or in the presence of an immigration officer, a fear of return that may be a claim for asylum" then the person shall be taken to the UK for that case to be considered."

Scotland

Schedule 8, page 118, line 7 at end insert

> "(*) If in the course of questioning or otherwise a person expresses to or in the presence of an immigration officer, a fear of return that may be a claim for asylum" then the person shall be taken to the UK for that case to be considered."

Northern Ireland

Schedule 8, page 122, line 29 at end insert

> "(*) If in the course of questioning or otherwise a person expresses to or in the presence of an immigration officer, a fear of return that may be a claim for asylum" then the person shall be taken to the UK for that case to be considered."

Purpose

To remove the opened-ended power for an officer to ask a person questions about him/herself and set out the specific information that can be required.

Briefing

In *Hirsi Jamaa and Others v. Italy* (Application no. 27765/09), a case concerning "pushbacks" of refugees in the Mediterranean to Libya, the European Court of Human Rights found Italy to owe all obligations under the European Convention on Human Rights to those in need of international protection that it had taken onto on a ship flying its flag and under control of its personnel. But in these cases immigration officers will be boarding ships that fly other flags. They have powers to control the ship; although a person is not guilty of the offence in paragraph 11 of Schedule 8 of obstructing an officer in immigration and Wales if they have "reasonable excuse" not to do so and this would appear to give some control back to the Master.

The reports of the Children's Commissioner for England and Wales *Landing in Kent* and *Landing in Dover* brought to light the 20 April 1995 "gentleman's agreement"[299] between England, Belgium and France allowing for the summary return of those refused entry within 24 hours. Although it was said not to apply to asylum cases after 1 September 1997, it was found to have been applied after that date to unaccompanied children and there was concern that they might not have had an opportunity to articulate a claim for asylum. The same concern applies here, in cases of those with a claim for asylum or victims of forced labour or trafficking.

Proposed amendments to replace "elsewhere" with "at port"

These amendments are all concerned with replacing "elsewhere" with "at port" so that immigration officers' powers can be exercised on the ship or at a port but not anywhere in the country. They are in groups of three according to the particular power restricted.

Powers to search and obtain information

England and Wales

Page 114, line 9, leave out "elsewhere" and replace with "at port"

Scotland

Page 118, line 32, leave out "elsewhere" and replace with "at port"

Northern Ireland

Page 123, line 9, leave out "elsewhere" and replace with "at port"

[299] https://www.gov.uk/government/publications/gentleman-s-agreement

Purpose

To limit powers of search to the ship and the port rather than a power than to the ship any other place.

Briefing

The paragraph provides a power to search and obtain information if an officer has reasonable grounds to suspect that there is evidence on the ship relating to an offence under sections 25, 25A and 25B of the Immigration Act 1971 "or an offence connected with an offence under any of those sections." It is stated that this power may be exercised on the ship "or elsewhere."

Powers of arrest and seizure

England and Wales

Schedule 8, page 114, line 22, leave out "elsewhere" and replace with "at port"

Scotland

Schedule 8, page 118, line 46, leave out "elsewhere" and replace with "at port"

Northern Ireland

Schedule 8, page 123, line 22, leave out "elsewhere" and replace with "at port"

Purpose

Limits the powers of arrest without warrant and seizure of "anything found on the ship which appears to the officer to be evidence of an offence under s 25, s 25A or 25B of the Immigration Act 1971, to the ship and the port. In particular, would require that an arrest on land outside the port were effected with a warrant.

Protective searches of persons

England and Wales

Schedule 8, page 115, line 4, leave out "elsewhere" and replace with "at port"

Scotland

Schedule 8, page 119, line 26, leave out "elsewhere" and replace with "at port"

Northern Ireland

Schedule 8, page 124, line 4, leave out "elsewhere" and replace with "at port"

Purpose

Limits the powers of search for the protection of the applicant or others, of property or of the ship to the ship and the port.

Search for nationality documents

England and Wales

Schedule 8, page 115, line 41 leave out "elsewhere" and with "at port"

Scotland

Schedule 8, page 120, line 19 leave out "elsewhere" and with "at port"

Northern Ireland

Schedule 8, page 124, line 41 leave out "elsewhere" and with "at port"

Purpose

Limits the powers to search for nationality documents to the ship or port. See clauses 24 and 25 for powers given detainee custody officers to search persons in detention for nationality documents.

Briefing

The Home Office Enforcement Guidance and Instructions at Chapter 31 rely on the (dubious) authority of *Singh v Hammond* [1987] 1 All ER 829, [1987] Crim LR 332 as authority for its stop and search operations, for example at tube stations. The Home Office takes the case as authority for the proposition that powers in statute to examine persons 'who have arrived in the United Kingdom' can be used not only at port but in-country. Its enforcement guidance and instructions provide at Chapter 31.

In Singh v Hammond, the Court held that:

> *'An examination [under paragraph 2 of Schedule 2 to the Immigration Act 1971] ... can properly be conducted by an immigration officer away from the place of entry and on a later date after the person has already entered ... if the immigration officer has some information in his possession which causes him to enquire whether the person being examined is a British citizen and, if not, ... whether he should be given leave and on what conditions.'*

To avoid such creep of powers here, the limitation to port should be specified.

The word port is already used in the Bill, for example in 113 line 6. Ports of entry are defined in the Immigration Act 1971 at s 33(2A) (3) as follows:

> "3) The ports of entry for purposes of this Act, and the ports of exit for purposes of any Order in Council under section 3(7) above, shall be such ports as may from time to time be designated for the purpose by order of the Secretary of State made by statutory instrument."

In any event, immigration officers on land already have considerable powers of search and arrest, including without warrant, of entry of premises including business premises of search without warrant and of seizure in connection with these offences, under sections 28A to 28I of the Immigration Act 1971.

PROPOSED AMENDMENT

England and Wales

Schedule 8, page 114, line 14, after "without warrant" insert "on the ship or with warrant elsewhere"

Scotland

Schedule 8, page 118, line 37, after "without warrant" insert "on the ship or with warrant elsewhere"

Northern Ireland

Schedule 8, page 123, line 14, after "without warrant" insert "on the ship or with warrant elsewhere"

Purpose

To provide that arrest other than on the ship must be with a warrant.

Briefing

Once off the ship and not at port, a warrant for a person's arrest could be obtained.

PROPOSED AMENDMENT

England and Wales

Schedule 8, page 114, line 25, after "believe" insert "the person is concealing and"

Scotland

Schedule 8, page 11, line 3, after "believe" insert "the person is concealing and"

Northern Ireland

Schedule 8, page 123, line 25, after "believe" insert "the person is concealing and"

Purpose

To outlaw speculative searches. The Bill as drafted requires the officer to have reasonable grounds to believe that the item for which s/he is searching might be used to cause physical injury etc. but there is no requirement in the Bill that the officer have reasonable grounds to believe that the item is concealed on the person.

PROPOSED AMENDMENTS

England and Wales

Schedule 8, page 114, line 28, leave out"(b) cause damage to property"

And

Schedule 8, page 114 line 39 leave out"(b) cause damage to property"

Scotland

Schedule 8, page 119, line 6, leave out"(b) cause damage to property"

And

Schedule 8, page 119 line 17 leave out"(b) cause damage to property"

Northern Ireland

Schedule 8, page 123, line 28, leave out"(b) cause damage to property"

And

Schedule 8, page 123 line 39 leave out"(b) cause damage to property"

Scotland

Schedule 8, page 114, line 29, leave out"(b) cause damage to property"

And

Schedule 8, page 114 leave out"(b) cause damage to property"

Northern Ireland

Schedule 8, page 114, line 29, leave out"(b) cause damage to property"

And

Schedule 8, page 114 leave out"(b) cause damage to property"

Purpose

The provisions are concerned with "protective" searches. An officer can search a person for anything which the officer has reasonable grounds to believe the person might use to cause physical injury, cause damage to property or danger the safety of any ship.

Briefing

The first and third are indeed about "protective" searches, the third is about protecting property other than in circumstances where the ship could be endangered and this is not sufficient cause to award an immigration officer additional powers of search without warrant.

PROPOSED AMENDMENTS

England and Wales

Schedule 8, page 115, leave out line 44.

And

Schedule 8, page 116, leave out lines 4 to 6

Scotland

Schedule 8, page 115, leave out line 22.

And

Schedule 8, page 116, leave out lines 26 to 28

Northern Ireland

Schedule 8, page 124, leave out line 44.

And

Schedule 8, page 125, leave out lines 4 to 6

Purpose

To prevent immigration offers carrying out searches in accordance with this part to be accompanied by persons who are not immigration officers. The first amendment removes the power for immigration officers to be accompanied by these unspecified assistants, the second for such persons to perform any of the officer's functions, under the offers supervision.

Briefing

The persons concerned may be operating on the property of others, the ship. They will have powers of arrest without warrant, of search, of arrest and of seizure. The Bill proposes that persons wholly unspecified may be able to carry out all of these powers, without limitation, under the supervision of an immigration officer. Immigration Officer's little helpers? Pretend immigration officers? Any powers under this section should be exercised by immigration officers.

There are very many safety concerns about the operation of these powers, whomsoever exercises them: for example, about the safety of ordering ships to stop in traffic separation schemes or in circumstances where they might be stranded on an ebbing tide; about diversions to unsuitable ports, for example ports which are too small for merchant ships, or excessively difficult for yachts to reach in the prevailing weather conditions; and about costs associated with unwanted port calls. A Master may be able to defend his/herself from prosecution for refusing to comply with an unsafe order by arguing that s/he had "reasonable excuse" (paragraph 11(1)(b) of the new Schedule 4A inserted by paragraph 8 of Schedule 8 to the Act) not to do so, but the issue is less an ultimate prosecution than safety on board when an unsafe command is given. A Master may assert that s/he is under no obligation to comply with a particular order but the immigration officer or "assistant" may disagree and the resulting altercation may put the ship in danger.

As set out in the Explanatory Notes

> *Sub-paragraph (5) increases the maximum period of imprisonment to 51 weeks after the commencement of section 281(5) of the Criminal Justice Act 2003.*

PROPOSED AMENDMENT

England and Wales

Schedule 8, page 116, leave out lines 13 to 19

Scotland

Schedule 8, page 116, leave out lines 35 to 40

Northern Ireland

Schedule 8, page 125, leave out lines 13 to 19

Purpose

To remove the immunity from both prosecution and civil suit for immigration officers, English and Welsh constables and "enforcement officers" for anything done "in the purported performance of functions under this Part of this Schedule if the courts is satisfied that the Act was done in good faith and that there are good grounds for doing it.

Briefing

This is not only immunity from prosecution, but also from civil suit. This is not only immunity from suit when performing functions under this act, but immunity when acting "in purported performance of functions under this part.

The only purported justification given for the immunity in the Explanatory Notes is that

> "378 In order to carry out their functions, relevant officers require some protection from prosecution"

This is asserted not argued or evidenced. As the discussions surrounding Part 3 have evidenced, the exercise of powers by immigration officers must be subject to careful oversight and they should never be given *carte blanche* in the way suggested by this clause.

PROPOSED AMENDMENT

England and Wales

Schedule 8, page 121, line 19, leave out paragraph 23

Scotland

Schedule 8, page 121, line 1, leave out paragraph 22

Northern Ireland

Schedule 8, page 125, line 19, leave out paragraph 23.

Purpose

To remove from the Bill the offences of obstructing an immigration officer in the performance of functions under this part or failing without reasonable excuse to comply with a requirement made by a relevant officer.

Briefing

Given the safety concerns above it a member of a crew must know that they need not to comply with a "relevant officer's instruction" n immigration officer's instruction where they deemed it unsafe and indeed can obstruct that immigration officer where s/he is endangering those on board or in the proximity of the ship.

PART 7 LANGUAGE REQUIREMENTS FOR PUBLIC SECTOR WORKERS

Clause 38 Language requirements for public sector workers

PROPOSED AMENDMENTS

Page 36, line 29, leave out "fluent" and replace with "adequate"

Page 27, line 16, leave out "fluent" and replace with "adequate"

Purpose

The level of English required by Part 7 is unchanged by these amendments, it remains "a command of spoken English which is sufficient to enable the effective performance of the person's role. What is changed is the label given to that level. The first amendment changes the word "fluent" to "adequate" in the obligation placed on the public authority. The second amendment changes it in the definition of the standard of English required.

Briefing

The requirement to have "a command of spoken English which is sufficient to enable the effective performance of the person's role" would appear uncontroversial in any sensible recruitment process. But the label "fluent" does not capture this. It suggests a higher standard of spoken English than is required for many roles, for example those when interaction with the public is simple and formulaic.

That public authorities would recruit a person to a post to who did not have an adequate level of English to enable the effective performance of a person's role is difficult to understand. It seems likely to happen only where the public authority was unable to find anyone to carry out the

PROPOSED AMENDMENTS

Clause 38, page 36 line 35 at end insert

> (3A) A public authority must operate an adequate procedure for enabling complaints to be made by a person who works for it about bullying, harassment and discrimination by members of the public making complaints under subsection (3) and for the consideration of such complaints.

Purpose

To protect staff of public authorities from those members of the public who use the complaints procedure as a means of bullying, discrimination or harassment.

Clause 38, page 36, line 37, after "(3)" insert "and (3A)

Purpose

To provide for a public authority to have regard to a code of practice in determining the adequacy of its complaints procedure for its employees complaining of bullying, discrimination and harassment as per the clause above.

Briefing

There is concern that the requirement to operate a complaints procedure where persons do not speak "fluent" English could lead to discrimination against workers who speak "fluent" English as defined in the clause, i.e. *** but who speak English with an accent, or do not have the fluency of a native speaker.

PROPOSED AMENDMENT

Clause 38, page 37, line 18 at end insert

> "A public authority shall put in place such support as is required to enable a person working for it in accordance with subsection 5(a), (b), (e) or (f) in a customer facing role when this section comes into force to speak fluent English where it judges that, with such support, the person will be able to speak fluent English within three months of the coming into force of this section."

Clause 41 Duty to issue Codes of Practice

Proposed amendment

Clause 41, page 38, line 29, at end insert

"( ) the procedure to be operated by such a public auhority for enabling complaints to be made to it by a person who works for it about bullying, harassment and discrimination by members of the public making complaints to the authority about breaches by the authority of section 38(1) in respect of that person.

Proposed amendment

Clause 41, page 38 line 35 at end insert

"and is free from bullying, discrimination and harassment at work in this context"

Purpose

To empower a Minister making a code to include such provision as s/he considers appropriate for securing that a worker is free from bullying, discrimination at work in the context of complaints about their ability to speak English.

November 2015

Written evidence submitted by Shelter (IB 33)

The Immigration Bill 2015 brings in tougher punishment for landlords and letting agents who let to individuals without the 'right to rent' because of their immigration status. It also allows people without the 'right to rent' to be evicted without the landlord needing to obtain a court order. This Bill builds on the 'right to rent' scheme introduced in the Immigration Act 2014, which made it unlawful for a private landlord to let to a person who cannot prove they have a 'right to rent' and introduced a penalty fine for landlords who rented a property to renters without the right to rent.

There is a real danger that the increased sanctions could create further barriers for households who do have a 'right to rent' (e.g. British nationals) in accessing a private rental. Those who already struggle to rent privately, such as households claiming housing benefit and families with children, and appear to landlords to potentially not have the 'right to rent', will be particularly at risk of being excluded from the private rented market.

The removal of the courts from the eviction process could result in families with children being turned onto the streets with no notice of the eviction time, and could lead to illegal evictions.

Key proposals provided by this Bill include:

- A new criminal offence for renting out property to adults disqualified from renting as a result of their immigration status, carrying a maximum five year prison sentence for the worst offenders.
- Two new routes for evicting private tenants deemed not to have a 'right to rent':
  - New powers for landlords to evict tenants without the 'right to rent' via the service of a 28 day notice without the need for a court possession order.
  - Or apply for a court possession under a new mandatory possession ground. However, landlords are unlikely to choose this route as it would incur court costs and take longer to evict.'
- In the case of joint tenancies, where one or more tenants has the 'right to rent', all tenants would be evicted via the landlord's notice. Alternatively, where the landlord has sought a court possession order, the court can order that the tenancy can be transferred to the remaining 'qualifying tenants'.

Background

- The decline of homeownership and social housing mean that 1 in 4 families in England now rent privately,[300] but some struggle to find private landlords to take them on. Shelter research[301] in 2015 revealed that 36% of landlords won't or prefer not to let to families with children.
- The research also revealed over a third (37%) of landlords admit that '*It's natural that stereotypes and prejudices come into it when I decide who to let to*', even before the 'right to rent' is rolled out UK-wide.
- It also found that around half of landlords who make decisions on letting to migrant tenants say the Immigration Act 'right to rent' checks are going to make them less likely to consider letting to people who don't hold British passports or who 'appear to be immigrants'.

[300] Survey of English Housing, DCLG, 2013/14 – 24% of households with children are renting privately

[301] YouGov Plc, total sample size was 1,071 landlords. Fieldwork was undertaken between 24th June – 14th July 2015. The survey was carried out online

For more information contact Shelter Public Affairs Team: public_affairs@shelter.org.uk. Proposals in detail:

New criminal offence for renting out property to adults disqualified from renting as a result of their immigration status.

1. The Bill creates new criminal offences for landlords and letting agents who don't comply with the right to rent scheme or fail to evict tenants who don't have the right to rent. It introduces a maximum sentence of five years of imprisonment for a landlord who knowingly rents out his property to someone who doesn't have the right to rent. It will also be a criminal offence for a landlord or agent to continue renting out a property when the Home Office has informed the landlord that the tenant doesn't have the 'right to rent'.

2. We believe that the impact of these stronger sanctions will lead to landlords being more likely to discriminate against BME renters, people with English as a second language and British nationals without proof they have a right to rent. This could compound the problems already faced by families on housing benefit, who already face discrimination in the private rental market: close to two-thirds (63%) of landlords either refuse, or prefer not to, let to benefit claimants.

3. People who are unable to produce documents may struggle to find anywhere to live. Some households (especially those who have fled domestic violence or been illegally evicted), can have good reasons for not having all the documents required to prove they are British or have valid permission to be in the UK.

4. Our concerns are borne out by our own landlord research (see 'background' section above). In addition, the Home Office evaluation of the trial 'right to rent' scheme indicates a potential for discrimination. Furthermore, an independent evaluation undertaken by the Joint Council for the Welfare of Immigrants found the 'right to rent' checks are making it harder for people to find accommodation – including those who have every right to rent in the UK. It also found that landlords are prepared to discriminate against those with a complicated immigration status and those who cannot provide documentation immediately.

Eviction without going through courts

5. The Bill will significantly weaken tenants' protection from eviction, by making it possible for landlords to evict people who are deemed to have no 'right to rent', without the need for a court possession order. If the Secretary of State becomes aware that a person without a right to rent occupies the property, he will serve a notice on the landlord. The landlord can then serve a notice on the tenant, giving 28 days' notice, bringing the tenancy to an end. Clause 13(2) line 32 states that 'the notice is enforceable as if it were an order of the High Court'. **We urge the Government to provide clarity on this point.** Does this mean the landlord can carry out a 'self-help' eviction or would a High Court enforcement officer be required? In either case, tenants (including families with children) may have no prior notice of the eviction time.

6. This takes away a crucial legal safeguard, enshrined in the Protection from Eviction Act, which is to stop people being turned onto the streets by their landlord without the oversight and approval of a court. This means there will be no protection for tenants from being wrongly evicted.

7. Those without the 'right to rent' will face rapid eviction, as well as others who are unintentionally or mistakenly affected by this legislation. It will result in no-court eviction of joint tenants (including student flat-mates) who do have a 'right to rent', or families with children, who should have a 'right to rent' but are subject to an erroneous notice because of anomalies with their immigration status, perhaps because of administrative delays at the Home Office itself. Where families have been evicted and are street homeless, local authority children's services departments may face a significant increase in providing both accommodation and subsistence under the Children Act 1989. It could also impact on housing and homelessness departments.

We therefore support Amendment 86 to Clause 13(2), which would protect families with children from summary eviction under these provisions without the normal safeguards that protect against unlawful eviction. This is to ensure that families with children are protected against being made homeless with the associated risks to the safeguarding and protection of children.

We also support Amendments 84-90 and NC8-NC12.

November 2015

Written evidence submitted by the Home Office on reform of support for certain categories of migrant (IB 34)

Prior to the introduction of the Immigration Bill, we concluded a public consultation on reforming support for failed asylum seekers and other illegal migrants. The consultation closed on 9 September. We received 873 responses from a variety of stakeholders including local authorities, devolved administrations, non-governmental organisations, campaign groups and individuals. These responses helped to inform our policy before the Bill was introduced. We have now published the response to the consultation. It can be found on GOV. UK and I am additionally enclosing a copy.

The government believes that support should be provided to certain categories of migrant where this is required by our international obligations, but it should not be provided to those who have had their applications refused, who have exhausted any right of appeal they may have and who could and should leave the UK. Part 5 of the Bill restricts the support we give to people whose asylum claims have been found unsubstantiated, and their dependants, to those who are destitute and face a genuine obstacle to leaving the UK.

The government has also now published a policy equality statement on reforming support for failed asylum seekers and other illegal migrants. This can be found on GOV. UK and is also enclosed.

Both documents are available online at:

https://www.gov.uk/government/publications/immigration-bill-part-5-support-forcertain-categories-of-migrant

I am copying this letter to members of the Committee and I will place a copy of this letter in the House library.

November 2015

Further written evidence submitted by the Immigration Law Practitioners' Association (IB 35)

SUPPLEMENTARY BRIEFING MATERIAL ON PART 5 SUPPORT FOR CERTAIN CATEGORIES OF MIGRANTS ETC.

Please find below briefings on the proposed amendment 227 tabled on asylum support rates and on the proposed new clause on permission to work for asylum seekers from Still Human Still Here.

Amendment to increase asylum support rates

PROPOSED AMENDMENT 227

Schedule 6, Page 93, line 38, after 'provided)' to end of line 39, and insert –

The heading becomes "Support for asylum-seekers, etc", and

insert after subsection (8) –

(*) The weekly cash payment set out in Regulation 2(2) of the Asylum Support (Amendment No.3) Regulations 2015 No. 1501 for each individual is increased to no less than 60% of the rate of Income Support payable to single adults aged 25 or over.

Purpose

To ensure asylum seekers have the support they need to pay for food, clothing, toiletries, travel and other necessities and thereby try to help ensure that they can properly meet their essential living needs and pursue their asylum applications. The amendment works by amending section 95 of the Immigration and Asylum Act 1999 which is the overarching section under which support for person seeking asylum is provided.

Briefing from Still Human Still Here:[302]

This amendment would increase the level of support for asylum seekers who would otherwise be destitute from £36.95 a week to £43.86 a week and ensure that the rate is increased in line with Income Support each year.

The rates for asylum seekers supported under section 95 of the Immigration and Asylum Act 1999, were originally set at 70% of Income Support on the basis that their accommodation and utility bills would be paid for separately.

However, in recent years asylum seekers have seen the value of this support severely reduced. Asylum support rates were frozen between 2011 and 2015 and rates for asylum seeking children were cut in August 2015 by the Asylum Support (Amendment No. 3) Regulations by £16 per week.

All asylum seekers on section 95 support who would otherwise be destitute now receive the same flat rate of support which is set at £36.95 a week, or just over £5 a day. Asylum seekers must pay for their food, clothing, toiletries, transport and other necessities with this money. This means that asylum seeking families with children are now living on rates that are some 60% below the poverty line and single adult asylum seekers receive around 50% of Income Support.

Research indicates that this level of support is not sufficient to allow asylum seekers to meet their essential living needs and pursue their asylum applications. In 2010, Still Human Still Here analysed the basket of basic goods compiled by the Joseph Rowntree Foundation for its minimum income standards report and then stripped

[302] Still Human Still Here is a coalition of some 80 organisations which includes nine City Councils the Red Cross, Crisis, the Children's Society, Mind, Citizens Advice Bureau, Doctors of the World, National Aids Trust, and the main agencies working with asylum seekers in the UK. For details, see: www.stillhuman.org.uk.

this down so that only items needed to avoid absolute poverty were included. On this basis it concluded that 70% of Income Support is the absolute minimum required to meet basic needs.

More recent research has also provided evidence that the current level of asylum support is inadequate. For example, in 2013 Refugee Action interviewed 40 clients who were in receipt of section 95 support and found that 70% (28/40) of interviewees were unable to buy either enough food to feed themselves or fresh fruit and vegetables or food that met their dietary, religious or cultural requirements, since being on asylum support.[303]

Furthermore, 90% (36/40) of interviewees could not afford to buy sufficient/appropriate food and clothes. Of the four people who said they could meet both these essential needs, three stated that the level of support did not allow them to maintain good mental and physical health. The only individual who did not report difficulties in this respect received food and other essential items from friends.

Similar detailed research by Freedom from Torture[304] found that all 17 respondents on section 95 support who responded to detailed questions stated that overall their income was insufficient to meet their essential needs. As with the Refugee Action research, this survey indicated that asylum seekers usually had to sacrifice one essential item to meet another one.

In 2013, a cross-party parliamentary inquiry into asylum support for children and young people, which received information from more than 150 local authorities, local safeguarding children boards and child protection committees, found that "the levels of support for asylum seeking families are meeting neither children's essential living needs, nor their wider need to learn and develop. The levels are too low and given that they were not increased in 2012 they should be raised as a matter of urgency and increased annually at the very least in line with income support." The inquiry further recommended that the "rates of support should never fall below 70% of income support."[305] It should be emphasized that this conclusion was reached **before** support levels for children were cut by £16 a week.

In October 2013, the Home Affairs Committee issued a report in which it highlighted "concerns about the level of support available to those who seek asylum in the UK" and concluded that the "relative poverty" of those on section 95 support "is compounded by the fact that the vast majority of asylum applicants have not legally been allowed to work since 2002."[306]

In April 2014, the High Court handed down a judgment in a case which the Judge described as considering

"what was sufficient to keep about 20,000 people above subsistence level destitution, a significant proportion of whom are vulnerable and have suffered traumatic experiences."

The Judge found that the Government's assessment of the amount needed by asylum seekers to avoid destitution was flawed and ordered the decision be taken again.

The ruling states that the Government failed to take account of items that must be considered as essential living needs (e.g. non-prescription medication; nappies, formula milk and other requirements of new mothers; basic household cleaning goods; and the opportunity to maintain relationships and have a minimum level of participation in society). It also found that the Government had made errors in calculating the amount required to meet essential living needs.

While the Government complied with the judgment and reviewed its decision, it still concluded that rates were adequate for single adults to meet their essential living needs (and later that they were overly generous for children). The Home Office methodology for reaching this conclusion primarily rests on the Office for National Statistics (ONS) expenditure data for the lowest 10% income group in the UK. However, the Home Office adjusted the latest ONS data (2013) in relation to several items to calculate what the support level should be for asylum seekers in 2015, as illustrated in the table.

[303] Refugee Action's research took place in May 2013 with asylum seekers who visited offices in Liverpool, Manchester, Leicester, Bristol, Sheffield or Rotherham for advice sessions.

[304] Freedom from Torture carried out research into the impact of poverty on torture survivors in July 2013. A total of 117 clients took part in the research across the UK, including 19 individuals who were in receipt of Section 95 support at the time and completed a detailed questionnaire about their experiences.

[305] *Report of the Parliamentary Inquiry into asylum support for children and young people*, Children's Society, January 2013, pages 24-25.

[306] Home Affairs Committee, Asylum, Seventh report of session 2013-14, paragraph 77 and Press Release 10 October 2013.

		Adjusted by the
Essential living needs	ONS data 2013	Home Office
Food & non-alcoholic drink	£23.46	£24.96
Clothing and footware	£4.62	£2.51
Toiletries	£1.23	£1.23
Healthcare	£0.69	£0.69
Household cleaning items	£1.00	£1.00
Travel	£3.62	£3.00
Communications and post	£5.23	£3.00
Subtotal	**£39.85**	**£36.39**
Adjusted for 2014 CPI (1.55%)	**£40.47**	**£36.95**

The Home Office's £1.50 upward adjustment for food is to take account of the fact that the Office for National Statisics (ONS) survey separately recorded £5 worth of additional expenditure on other food items (e.g. takeaways, canteens, etc.) and asylum seekers would still have to prepare this food at home.

The downward adjustments made to expenditure on clothing, travel and communications were based on the Home Office's assessment that this amount was more than is necessary to cover essential living needs based on its own research. Such assessments introduce a subjective element into the calculation which is likely to be influenced by budgetary and/or other political pressures.

It should be stressed that ONS data cited above do not take account of the additional needs of asylum seekers (e.g. that asylum seekers often arrive with nothing, are more vulnerable than the general population, do not have a support network, etc.). Furthermore, the ONS data do not assess whether essential living needs are met or what impact the level of spending on food or other items has on health and well-being.

This amendment ensures that any asylum seeker who would otherwise be destitute will receive no less than 60% of income support which is currently equal to £43.86 per week. This is just above what an asylum seeker would receive if the unadjusted ONS data were used to set the level of asylum support payments. This is a fairer, more efficient way of calculating what the asylum support rate should be and would depoliticise this process.

While this would still leave the support rate well below 70% of Income Support, which Still Human and most other organisations still consider should be the minimum level of asylum support, it would represent a modest improvement in the current situation and help to ensure that those surviving on section 95 support do not get ill, whether with mental or physical health problems. This is particularly important given that many asylum seekers do spend considerable periods of time on section 95 support. At the end of June 2015, more than 3,600 asylum seekers had been waiting more than six months for an initial decision on their applications. During this time, and any subsequent appeal, asylum seekers are prohibited from working to support themselves and therefore have no choice but to rely on section 95 support.

Proposed New Clause After Paragraph 43: Permission to work

Page 100, line 16 at end insert the following new clause–

"Permission to work

(1) The Immigration Act 1971 is amended as follows.

(2) After section 3(9) (general provisions for regulation and control) insert—

"(10) In making rules under subsection (2), the Secretary of State must have regard to the following.

(11) Rules must provide for persons seeking asylum, within the meaning of the rules, to apply to the Secretary of State for permission to take up employment and that permission must be granted if—

(a) a decision has not been taken on the applicant's asylum application within six months of the date on which it was recorded, or

(b) an individual makes further submissions which raise asylum grounds and a decision on that fresh claim or to refuse to treat such further submissions as a fresh claim has not been taken within six months of the date on which they were recorded.

(12) Permission for a person seeking asylum to take up employment shall be on terms no less favourable than those upon which permission is granted to a person recognised as a refugee to take up employment.""

Purpose

This proposed amendment would provide for asylum seekers to be able to work if their claim is not determined within the Home Office target time of six months.

Briefing from Still Human Still Here:[307]

Allowing asylum seekers who have been waiting six months for a decision on their cases to work has several benefits:

— It provides asylum seekers with a route out of poverty. More than 3,600 asylum seekers have currently been waiting more than six months for an initial decision on their cases and surviving on just over £5 a day.

— It reduces the burden on the taxpayer as asylum seekers who are able to work will not need to be supported for extended periods and instead can contribute to the economy through increased tax revenues and consumer spending. It also safeguards their health and prevents them from having to resort to irregular work.

— It avoids the negative consequences of prolonged economic exclusion and forced inactivity (e.g. poverty, detrimental impact on mental health and self-esteem, break up of marriages and families, etc.).

— Other EU countries allow asylum seekers to work after nine months and eleven of them grant permission to work after six months or less if a decision has not been made on their asylum application.

— For those asylum seekers who are eventually given permission to stay, avoiding an extended period outside the labour market is key to ensuring their long term integration into UK society and encouraging them to be self-sufficient.

Alleviating destitution amongst asylum seekers

The Government has defended its current policy, which effectively prohibits asylum seekers from working, on the basis that asylum seekers are "provided with support and accommodation while we determine whether they need our protection and until they have exhausted the right of appeal."[308]

While it is true that asylum seekers are supported, it is highly questionable whether the level of support provided is adequate, as asylum seekers receive just over £5 a day to meet their essential living needs of food, clothing, toiletries and transport and to pursue their asylum application (housing and utility bills are paid for separately for those who need it).

At the end of June 2015, more than 3,600 asylum seekers had been waiting more than six months for an initial decision. An asylum seeker spends an average of around 18 months on Section 95 support.[309] Asylum seekers who have to survive solely on this level of support for extended periods of time will suffer a negative impact on their mental and physical health.

If the Government cannot take an initial decision on an application within its own target timeframe of six months, then it should give asylum seekers a route out of poverty and an opportunity to restore their dignity by providing for themselves, rather than leaving them dependent on handouts from the Government.

A cross-party parliamentary inquiry into asylum support for children and young people, which was chaired by Sarah Teather MP and included seven other parliamentarians, noted in January 2013 that "…asylum seeking parents are prevented from working, leaving families dependent on state support. This means parents are left powerless and lose their skills while children are left without positive role models. The government's own research has highlighted that this can lead to high levels of unemployment and under-employment once a family gains refugee status."

The inquiry based its findings on evidence from over 200 individuals and organisations, including local authorities and safeguarding boards and specifically recommended that asylum seeking parents and young adults should be given permission to work if their claim for asylum has not been concluded in six months.

Benefits for the economy and society

The potential financial savings from allowing asylum seekers to work include reduced asylum support costs and increased tax revenues. In addition, asylum seekers will have increased disposable income which can be spent in the wider economy. There will also be a number of indirect financial savings for statutory and voluntary agencies, including the avoidance of increased physical and mental health problems and the consequent financial costs to the NHS.

More than half of all asylum applicants are provided with protection in the UK, either after the initial decision or on appeal. The process of integration for these people begins when they arrive in the UK, not when the

[307] Still Human Still Here is a coalition of some 80 organisations which includes nine City Councils the Red Cross, Crisis, the Children's Society, Mind, Citizens Advice Bureau, Doctors of the World, National Aids Trust, and the main agencies working with asylum seekers in the UK. For details, see: www.stillhuman.org.uk.

[308] Earl Attlee, House of Lords Hansard, Col. 30, 17 March 2014.

[309] House of Lords Hansard, 5 March 2013, Col. 1457.

Government recognises them as a refugee and gives them permission to stay. An extended period of exclusion from the labour market can have a long term impact on refugees' ability to find employment.

Conversely, early access to employment increases the chances of smooth economic and social integration by allowing refugees to improve their English, acquire new skills and make new friends and social contacts in the wider community – all of which help to promote community cohesion. The vast majority of asylum seekers want to work and contribute to society and are frustrated at being forced to remain idle and dependent on benefits.[310]

It is also likely that allowing asylum seekers to work would reduce public hostility towards them, as many people are unaware that asylum seekers are effectively prevented from working. Surveys of public attitudes have shown that the majority of people think asylum seekers should be allowed to work: a survey by IPPR in 2005311 found that 51 per cent of people thought asylum seekers should be allowed to work, with 29 per cent saying they should not. A more recent survey in 2011 also found that more people agreed with the statement that asylum seekers should be allowed to work while their claims are being processed than disagreed with it.[312]

Will permission to work be a pull factor?

The Government has stated that "The purpose of the current policy is to deter economic migration, because people would be able to come here, claim asylum and after a while be able to work. With this policy, we can deter economic migration through the asylum route and therefore properly determine the genuine cases."[313]

However, the Government has provided no evidence to support its claim that allowing asylum seekers who have not received an initial decision after six months permission to work would encourage "abuse of the asylum route by economic migrants".

On the contrary, all the available evidence suggests that permission to work does not act as a pull factor for asylum seekers. This is reflected in Home Office research and was confirmed by a review of the 19 main recipient countries for asylum applications in the OECD in 2011[314] which concluded that policies which relate to the welfare of asylum seekers (e.g. permission to work, support levels and access to healthcare) did not have any significant impact on the number of applications made in destination countries.

Furthermore, eleven other EU countries already allow asylum seekers access to the labour market after six months or less of waiting for a decision on their claims. These countries are Austria, Belgium, Cyprus, Finland, Greece, Italy, Netherlands, Poland, Portugal, Spain and Sweden.[315] All these countries have had these policies in place for many years and none of them have had to change the policy because of any abuse of the asylum route by economic migrants. In fact, the great majority of these countries consistently receive less asylum applications than the UK.

The recast EU Reception Conditions Directive reduced the period when asylum seekers can be excluded from the labour market pending an initial decision on their claim to nine months. However, the UK has not signed up to this Directive, which means it will be one of the only countries in Europe where asylum seekers can only apply for permission to work after waiting for more than one year for an initial decision on their case. In this respect, almost all of the 27 EU states have a more generous policy than the UK.

Furthermore, in practice the UK Government effectively prohibits asylum seekers from working even after one year as they are only allowed to work in highly skilled "shortage occupations". Once again this is not the policy in many other European countries, for example Belgium, Latvia, Norway, Poland, Spain and Sweden all allow asylum seekers to work in any job, including being self-employed, once they are granted permission to work.

The Government's contention that granting permission to work to asylum seekers who have not received a decision after six months will "make it more attractive to seek asylum in the UK for those motivated by economic reasons"[316] is not plausible. Those motivated to come to the UK for economic reasons are unlikely to make an asylum application and bring themselves to the attention of the authorities on the basis that they might be able to apply for permission to work in six months time.

The Government's opposition to granting permission to work after six months is on the grounds that it *might* lead to an increase in unfounded claims, even though it generally accepts that it has no evidence to support this position. Indeed, the Government itself has conceded in responding to a previous amendment to allow asylum seekers permission to work that "it may be broadly true" that "there is little hard evidence that the change you propose (to allow asylum seekers to work after six months) would result in more asylum applications."[317]

[310] Doyle L, *"I hate being idle: Wasted skills and enforced dependence among Zimbabwean asylum seekers in the UK,* Refugee Council, 2009.
[311] Lewis, M, *Asylum: Understanding Public Attitudes*, IPPR, 2005.
[312] Question in the British Social Attitudes survey, 45% responded positively (3,000 people surveyed, carried out in 2011).
[313] Earl Attlee, House of Lords Hansard, Col. 32, 17 March 2014.
[314] Hatton, T. *Seeking Asylum: Trends and policies in the OECD*, Centre for Economic Policy Research, 2011.
[315] Information taken from the European Commission, SEC(2008)2945 and from a more recent Ad-Hoc Query on access to the labour market for asylum seekers compiled by the European Commission on 14 February 2013.
[316] Letter from Earl Attlee to Lord Roberts, 31 March 2014.
[317] Letter from Earl Attlee to Lord Roberts, 31 March 2014.

Conclusion

Granting permission to work to asylum seekers who have been waiting for an initial decision for more than six months will help to avoid the negative impact on asylum seekers of prolonged forced inactivity and impoverishment and allow them to contribute to the economy. This will deliver financial savings to the Government and the taxpayer as asylum seekers who are working will not need to be supported.

This policy is already in place in many other EU countries and was specifically supported by 132 MPs in the previous parliament as well as the cross-party parliamentary inquiry into asylum support for children and young people (January 2013). There is also broad based support for this policy outside parliament, as reflected in motions on this issue which have been approved by the General Synod of the Church of England, the Greater London Assembly and many City Councils, including Bristol, Bradford, Coventry, Oxford, Kirklees, Leicester, Liverpool, Manchester and Swansea.

November 2015

Written evidence submitted by the Airport Operators Association (AOA) (IB 36)

Introduction

1. This response is submitted on behalf of the Airport Operators Association (AOA), the trade association representing the interests of 50+ UK airports. The AOA is the principal body the UK Government, parliamentarians, and regulatory authorities consult with on airport and aviation matters.

2. Aviation contributes some £52 billion to the economy, supports around one million jobs and provides more than £8 billion in tax revenues to the Exchequer. Over 72% of inbound visitors arrive by air.

3. The AOA is pleased to have the opportunity to respond to the call for written evidence on the Immigration Bill. Our members have grave concerns surrounding the decision by ministers to include in the new Immigration Bill provisions for a new civil penalty to be levied against air carriers and airport operators in the event of the misdirection of passengers.

Immigration Bill – Part 6

4. There is an overarching concern in our sector that plans to impose a new civil penalty for airlines or airport operators who fail to direct passengers to immigration control is wholly disproportionate given that out of 117 million passenger arrivals in the UK in 2014, under 1,000 arriving passengers were not brought to the immigration control due to port operator or carrier error.

5. While the number of misdirected passengers is already extremely low in proportion to the number of passengers passing through our airports, our airports are working hard in partnership with airlines and ground handlers to reduce this further. Bearing in mind the complexity of operations at airports in terms of the number of different players involved in seeing passengers through to immigration control – including airlines and ground handlers – there is a need to be realistic about the challenges involved in how airports, carriers and ground handlers can reduce extremely low numbers still further.

6. The AOA believes that the proposals will inflict costs and burdens on all airports when a more proportionate course of action would be to work with those operators that are not taking appropriate action.

7. Furthermore, airports have in recent years started reporting a wider scope of incidents and improved their reporting of incidents, meaning that while there may in fact be no more incidents than previously, there has been an elevation in terms of statistics. For example, in some cases incidents are reported whereby passengers are misdirected only momentarily before the mistake is corrected and passengers are re-directed down the correct channels.

8. The detail of the civil penalty scheme, including the maximum penalty amount and the considerations which would inform decisions to impose a penalty, shall be specified in secondary legislation (subject to the negative resolution procedure) and codes of practice. The AOA has concerns around the potential impact of these proposals and is seeking further clarification as to how and under what circumstances fines might be levied and how heavy those fines might be.

9. The AOA expresses its concern that passengers may ultimately suffer as a result of disproportionate enforcement under the provisions of this bill. It is unrealistic to reduce the number of misdirected passengers to zero in the short term and new rules will inevitably have to be factored into airport running costs, with those additional costs ultimately being passed onto the passengers.

November 2015

Written evidence submitted by the Solicitor General concering measures on bank accounts (IB 37)

IMMIGRATION BILL – MEASURES ON BANK ACCOUNTS

During the course of the Immigration Bill Committee consideration on Tuesday the honourable member for Holborn and St Pancras expressed general support for the Government's measures on bank accounts but concern about the position of individuals who might find their accounts closed in error. I outlined the safeguards that will be in place to prevent this occurring and to correct an error in the rare event that one does occur. As requested, I am writing to confirm these details.

As I said on Tuesday, the Home Office will only share the details of those migrants who are liable for removal or deportation from the UK, such as those who have exhausted all appeal rights. This will include people who have been served with a deportation order or enforcement papers or who have absconded from immigration control. They will be fully aware of the reasons why they are considered to be disqualified persons.

Details of such individuals are already shared with the anti-fraud organisation Cifas for the purpose of enabling banks to comply with the Immigration Act 2014, and to assist in the prevention of fraud. The accuracy of the data is subject to rigorous checks by the Home Office before it is shared.

This is reflected by the fact the Home Office receives very few complaints or enquiries from banks and individuals regarding the current sharing of data under section 40 of the Immigration Act 2014. Only three official complaints have been received since the Home Office started to share data with Cifas in 2011.

Under the new provisions the Home Office will be notified by banks when they believe an account holder is a disqualified person. It will then carry out a further thorough check before the bank will be required to take any action to close an account. The bank will be notified if circumstances have changed and the person is no longer disqualified. This double check will act as a further safeguard to make sure that the bank acts on the most up to date information.

Individuals whose accounts are subject to closure will be informed by their bank of the reason why, provided that it is lawful to do so. If, despite all the checks, a person still considers they are lawfully present and that incorrect information has been provided, they will be given the information they need to contact the Home Office swiftly so that any error can be rectified. As is currently the case with data provided to Cifas, the Home Office will be able to correct any error in real time so that the person's details will be immediately removed from the data which is shared with banks. In the unlikely event that an account is closed by mistake, the situation regarding the person's status can be swiftly rectified in this way without the serious consequences for the individual that have been envisaged.

If an account is closed, any credit balance will not be withheld from the individual but returned to them by the bank in the normal way.

I hope this letter assists the Committee. I am copying this letter to Committee members and will place a copy in the library of the House.

November 2015

Written evidence submitted by the Home Office on Definition of 'worker' and Test of 'reason to believe' (IB38)

Following consideration of the Bill by the Committee on 27 October 2015, I undertook to write on two points; firstly to provide more information on a technical point on clause 3 of the Bill relating to the effect of the definition of 'worker', and secondly to set out the rationale for the test of 'reason to believe' in relation to powers of entry under licensing provisions in paragraph 22(2) of schedule 1.

Definition of 'worker'

As I said yesterday, the definition in clause 3(6), which amendments 63 and 64 sought to change, only defines worker in relation to one aspect of the Director's remit. Specifically, it only defines worker in relation to offences committed under sections 2 and 4 of the Modern Slavery Act 2015 i.e. clause 3(4)(e). The definition of worker in all the other Acts within the Director's remit is unaffected.

This definition is not about granting new rights or about curtailing offences; it is simply about creating the right remit for the Director of Labour Market Enforcement, which I believe the clause does. We are clear that this remit will give the Director the ability to tackle the broad spectrum of labour exploitation from non-compliance to the most serious harm against workers.

The definition of worker in the Employment Agencies Act 1973 is unaffected and the Employment Agencies Standard Inspectorate will continue to take action against rogue employment agencies and businesses regardless of whether the worker is here legally or illegally.

Similarly, the definition of worker in the Gangmasters (Licensing) Act 2004 is unaffected. The GLA will continue to take action against rogue gangmasters regardless of whether the worker is here legally or illegally. This matches the concerns raised by during debate about targeting rogue and exploitative employers.

Furthermore, the definition in the National Minimum Wage Act 1998 is also unaffected. This will continue to apply only to legal workers. These provisions are not about extending rights to illegal workers, but about bringing together strategic oversight under one person. We do not think it is appropriate to give illegal workers the right to national minimum wage. Of course, the employer who employs an illegal worker and pays them less than the national minimum wage, will still be committing an offence under section 21 of the Immigration, Asylum and Nationality Act 2006, which comes with a higher penalty. The Bill also includes measures to enable us to take a tougher enforcement approach to employers of illegal workers, including increased prison sentences if they employ people whom they know or reasonably suspect are illegal workers.

The definition of worker in clause 3(6) also has no effect on section 1 of the Modern Slavery Act 2015. All offences of slavery, servitude and forced or compulsory labour will be within the remit of the Director, whether or not the victims had the right to work in the UK. This is because we think it would be illogical to exclude those who are forced to work from the purview of the Director of Labour Market Enforcement. Indeed all of the offences of trafficking, under sections 2 and 4 of the Modern Slavery Act 2015, that involve slavery, servitude and forced or compulsory labour will also be within the remit of the Director, again this is whether or not the victims had the right to work in the UK (this is the effect of clause 3(4)(e)(ii)).

The definition in clause 3(6) also has no effect on the trafficking offences that are criminalised by sections 2 and 4 of the Modern Slavery Act. The only effect the definition has is on which types of trafficking offences are within the remit of the Director of Labour Market Enforcement, so as to focus the Director's remit on the labour market. In relation to offences that involve sexual exploitation, removal of organs, securing services etc. by force, threats or deception, and securing services etc. from children and vulnerable persons, they will only be within the Director's remit if they relate to workers or work seekers, which the definition provides, means legal workers. While we feel it would be useful for the Director's remit to include measures to tackle these aspects of modern slavery, we do not think that other types of trafficking are best dealt with by the Director.

The Government is committed to tackling all forms of modern slavery, regardless of the status of the victim. We have set out in the Modern Slavery Strategy and the Modern Slavery Act 2015 enhanced powers and an improved approach. The lead responsibility for tackling modern slavery offences operationally is held by the National Crime Agency and the police. It is a very serious offence, carrying a maximum sentence of life imprisonment, to traffic an illegal worker for any form of exploitation. However, we do not think it is appropriate that such offences are within the remit of the Director of Labour Market Enforcement. Instead they will be dealt with operationally by the police and the National Crime Agency. As with all modern slavery offences, they will be within the remit of the Independent Anti-slavery Commissioner who will encourage good practice and drive improvements in the public sector's response.

During the debate, the honourable Member for Sheffield Central asked whether limiting the remit of the Director of Labour Market Enforcement to only certain types of trafficking would leave the UK in breach of article 3 of the Council of Europe Convention against Trafficking in Human Beings as it would amount to discrimination on the basis of nationality. I do not believe that this would be the case.

Article 3 focuses on ensuring that the implementation of the Convention's provisions and, in particular, measures to protect and promote the rights of victims are not applied in a discriminatory fashion. That is why identification and support for victims of human trafficking is undertaken through the National Referral Mechanism, with the same tests applying and the same rights to support, regardless of immigration status or nationality. In addition, protections for victims such as the statutory defence in section 45 of the Modern Slavery Act 2015 and the Director of Public Prosecution's guidance on non-prosecution also apply regardless of immigration status. The law enforcement response to modern slavery is led by the National Crime Agency and the National Policing Lead, with the Independent Anti-slavery Commissioner encouraging good practice and improvement in that response; helping to ensure modern slavery offences are treated as a heinous crime regardless of the immigrations status of the victim.

I do not consider that defining the Director's remit not to include all forms of trafficking or modern slavery is a breach of the Convention, particularly given the strong measures we are taking to tackle modern slavery, whatever the status or characteristics of the victim. I am concerned that this line of argument leads to the perverse conclusion that a Director with a primary focus on the labour market should have no role in tackling modern slavery, to avoid any suggestion of discrimination, which I do not believe is the intention or the result sought by the honourable Member. The drafting of the clause achieves the right balance in giving the Director a remit that is focussed on the labour market, but able to look at modern slavery where appropriate. To go wider would risk weakening that focus and encroaching on matters best addressed by the Independent Anti-slavery Commissioner.

I hope that this explanation will give Committee members the necessary reassurance that the clause, as drafted, does not in any way undermine the UK's efforts to prevent trafficking; neither does it reduce the protections available to vulnerable people who fall victim to this crime.

Test of 'reason to believe'

Under existing section 179 of the Licensing Act 20013, a constable or authorised person may enter premises if they have 'reason to believe' they are being used for a licensable activity to see whether the activity is being carried out in accordance with any issued licence. Paragraph 22 amends that section to also enable an immigration officer to enter premises which he has 'reason to believe' are being used for a licensable activity, but only with a view to seeing whether immigration offences are being committed in connection with that activity. The effect of the amendment is simply to align the powers of immigration officers to enter a premises with those of constables and other authorised persons already contained in the Licensing Act, specifically the wording used in paragraph 22 ensures that the wording in the new section 179(1A) is consistent with that used in paragraph 179(1). This will facilitate joint operational working on licensed premises and provide the flexibility for immigration officers to enter licensed premises without a warrant. That is why this test is framed slightly differently to the 'reasonable grounds' test that appears elsewhere in the Bill.

Finally, I have sought to ensure that Parliament is equipped with adequate supporting materials when considering the Immigration Bill. I am writing to draw the Committee's attention to two additional documents we published yesterday that may assist in further discussion. The first is a Policy Equality Statement for Part 2 of the Bill, and the second is an impact assessment of the provisions on illegal working in licensed premises. Both are available on our website: https://www.gov.uk/government/collections/immigration-bill-2015-16.

I am copying this letter to members of the Committee and I will place a copy of this letter in the House library.

October 2015

Written evidence submitted by Hansen Palomares Solicitors (IB 39)

1. Summary

1.1 Research carried out by us and others indicates a serious level of unlawful discrimination on grounds of nationality in the private rented sector.

1.2 If the Bill becomes law unlawful discrimination on grounds of nationality will in all likelihood become worse.

1.3 Evictions by private landlords without a court order, which are currently unlawful, will become lawful if the tenant/occupier is a "disqualified person".

1.4 Private landlords will be encouraged and have effective immunity to carry out unlawful evictions of tenants/occupiers they believe to be disqualified persons.

1.5 County court judges will be required to make decisions on issues of immigration law of which most have little or no experience. This will lead to errors, injustice and court time being spent on appeals.

2. Who we are

2.1 We are a law firm located in Lambeth, London since 1995. Most of our work is in relation to housing, including the defence of possession claims and applications for housing by homeless people.

2.2 Since May 2014 we have been conducting factual research with the assistance of a community organisation, Citizens UK, to test the incidence of unlawful discrimination in the private rented sector.

3. The Immigration Act 2014 ("the 2014 Act")

3.1 The 2014 Act introduced 'Right to Rent' checks which mean that, before granting a tenancy, landlords and agents are required under s 22 to ensure that the prospective tenant and occupiers are not disqualified by their immigration status from remaining in the United Kingdom, i.e, is not a "disqualified person". Under ss 23 – 24 the Secretary of State has power to issue to issue a penalty notice requiring payment of up to £3,000 by a landlord/agent who authorised a disqualified person to occupy premises under a tenancy agreement.

3.2 Some tenancies are excluded from these checks, notably social housing tenancies provided as a result of statutory provisions. In general therefore the 2014 Act applies to the private rented sector only.

3.3 Under s33 of the 2014 Act the Secretary of State in October 2014 issued a code of practice to prevent contravention of the Equality Act 2010 by landlords or agents when they seek to comply with the 2014 Act. However, by virtue of s 33(6)(a) a breach of the Code does not make a person liable in civil or criminal proceedings.

4. Immigration Bill 2015

4.1 Clause 12 of the Bill seeks to amend the 2014 Act so that it would be a criminal offence punishable by fine or imprisonment for a landlord and/or agent to authorise a disqualified person to occupy premises (see clause 12(2) creating new sections 33A and 33B to the 2014 Act). Punishment would include imprisonment for

up to 5 years on conviction on indictment or up to 12 months on summary conviction (see proposed additional section 33C(1) to the 2014 Act).

4.2 Eviction of a residential occupier without a court order is currently a criminal offence (s1 Protection from Eviction Act 1971). Such conduct would be legalised by clause 13 of the Bill provided it is in respect of a "disqualified person":

> 4.2.1 New Clause 33D imported by the Bill into the 2014 Act would enable a private landlord to serve 28 days' notice of termination on receipt of notification from the Secretary of State that a tenant/occupier is a disqualified person (s 33D (1) and (4)). The landlord's notice would have the effect of a High Court order (s 33D (6).). The tenancy would be excluded from the Protection from Eviction Act 1977 (s 33E (4)). A private landlord would therefore be able to evict a tenant without a court order.
>
> 4.2.2 In addition to legalising conduct by landlords which under current law would be a criminal offence these provisions of the Bill will encourage unscrupulous private landlords to commit acts which will continue to be unlawful. Some will not wait for 28 days to evict an occupier designated a "disqualified person" by the Secretary of State. Others will evict without a court order someone they suspect to be a "disqualified person". Landlords would calculate that most evicted occupiers are unlikely to go to the authorities and that damages in a civil claim would be low and in many cases less than the legal costs of the landlord obtaining a possession order.

4.3 Social landlords, unlike private landlords, would have to apply for a court order to obtain possession from a "disqualified person". It is not apparent why private sector tenants should have less protection than social housing tenants since, on the whole, private landlords are less likely than social landlords to act in a responsible manner.

5. Claims for possession

5.1 The provisions for social landlords are in Clause 14 of the Bill. It adds to the Housing Act 1988 a new ground (Ground 7B) for social landlords to obtain mandatory orders for possession where the Secretary of State has served notice on the landlord and the court is satisfied that the tenant is a disqualified person.[318]

5.2 Claims for possession are normally heard in the county court (see rule 55.3 of the Civil Procedure Rules). As noted above, before granting a possession order to a social landlord the court would need to be satisfied that the tenant is a disqualified person. However, most judges in county courts have little or no experience of deciding issues of immigration law, which is a specialist area with a separate specialised forum, the Immigration and Asylum Tribunal Chamber. They are therefore likely to make mistakes which would result in injustice, mistakes, possession orders which should not have been made and court time being spent on appeals.

6. Equality Act 2010 ("the 2010 Act")

6.1 It is unlawful under the 2010 Act to discriminate in relation to protected characteristics. Race, including nationality, is a protected characteristic (see s9 of the 2010 Act).

6.2 Section 149 of the 2010 Act requires public authorities and those who exercise public functions to have due regard to the need to eliminate discrimination prohibited by the Act, to advance equality of opportunity and to foster good relations between persons who have a protected characteristic and those who do not.

7. Our factual research

7.1 We have gathered data on the incidence of discrimination in the private rented sector by comparing responses by landlords and/or agents to "mystery shoppers" likely to be perceived as British or non-British enquiring about the availability of properties for rent. The nationality of the enquirers was not provided and responses were therefore on the basis of appearances, names and/or accents.

7.2 Up to now we have carried out 75 tests in London and the Midlands:

> 7.2.1 24% (18 tests) showed straight forward unlawful discrimination. Properties were offered for viewing to the person who appeared to be British but not to the person who appeared not to be British.
>
> 7.2.2 An additional 11% (or 8 tests) showed more subtle discrimination. For example, a promise of a call back was only made to the person who appeared to be British and not to the person who appeared not to be British, or the apparently non-British person was asked about receipt of benefits whereas the apparently British person was not.
>
> 7.2.3 Therefore, in 35% of the tests (or 26 tests) there appeared to be evidence of unlawful discrimination.

[318] This clause also applies to private tenancies protected under the Rent Act 1977, but it is mostly unlikely that in practice any such tenancies will be affected by the Bill.

8. Local Authorities and Borough Councils

8.1 In addition to the above research we have made requests under the Freedom of Information Act to all 33 London Boroughs and 9 other Borough Councils in England and Wales.

8.2 They are all Local Housing Authorities who have duties under the Housing Act 1996 ("the 1996 Act"), to provide assistance, to people who are homeless. An applicant who satisfies *all* the requirements of the 1996 Act is owed the "full housing duty". This requires the Authority to ensure that temporary accommodation is provided to the applicant and any family members until permanent accommodation is secured. The 2014 Act and the current Bill do not apply to offers of accommodation pursuant to this duty.

8.3 However an applicant who satisfies only some of the requirements of the 1996 Act can still be eligible for assistance from the Local Housing Authority to find accommodation. Assistance is only provided if the applicant is deemed eligible, which means having immigration permission to remain in the UK. The level of assistance is not defined in the 1996 Act but in our anecdotal experience it often means very basic assistance such as providing a list of private landlords to the applicant and with no direct contact taking place between the Local Housing Authority and the landlord in respect of the individual applicant.

8.4 In the FoI requests (a sample is attached)[319] we asked Local Housing Authorities to provide information about their practices when referring people to the private rented sector and for data on homeless applications from April 2012 to September 2014. All Local Housing Authorities, bar one, provided data in response. This showed that:

> 8.4.1 Approximately 58,009 applications were made to them for housing assistance during the April 2012 to September 2014 period. This constitutes approximately 20% of the UK total.[320]
>
> 8.4.2 Approximately 11.8% (6,874) of those seeking housing assistance from the respondents were non-EU nationals and just under 10% (5,220) were non-British EU nationals.
>
> 8.4.3 More than 23% (13,701) of eligible applicants were referred to the private rented sector.
>
> 8.4.4 The Local Housing Authorities showed no consistent approach when selecting private rented sector landlords for their referral lists. Some Authorities displayed elements of good practice, such as requiring landlords to be registered with an Accreditation Scheme, but others had no requirements whatsoever.

9. Other evidence

9.1 On 3 September 2015 the Joint Council for the Welfare of Immigrants published its *'"No passports equal No Home": An independent evaluation of the 'Right to Rent' scheme'*.[321] This report found that:

> 9.1.1 42% of landlords surveyed for the Report said that the Right to Rent requirements had made them less likely to consider someone who does not have a British passport.
>
> 9.1.2 27% of landlords were reluctant to engage with those with foreign accents or names.
>
> 9.1.3 Checks were not being undertaken uniformly for all prospective tenants, but were instead directed at individuals who appeared to be 'foreign'.
>
> 9.1.4 65% of landlords were much less likely to consider tenants who could not provide documents immediately.
>
> 9.1.5 69% of landlords did not consider that they should be made to undertake checks of immigration status.
>
> 9.1.6 77% of landlords were not in favour of a national roll out of the Right to Rent scheme.

10. Conclusions

10.1 There is evidence of significant unlawful discrimination in the private rented sector against those *perceived* to be non-British nationals when trying to obtain accommodation.

10.2 The proposed increased penalties in the Bill for landlords/agents will in all likelihood lead to increased unlawful discrimination as landlords/agents seek to avoid dealing with those they deem to be non-British nationals out of fear of a criminal conviction and/or because of the burden of additional checks on those who appear to be non-British nationals.

10.3 A significant number of applicants to Local Housing Authorities for housing assistance (almost 12% in our sample) are non-EU nationals and likely to be affected by the 2014 Act and the current Bill. Many Local Housing Authorities have no systems in place to ensure that those they refer to the private rented sector will be safe from unlawful discrimination by reason of nationality.

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[319] Not published.

[320] The number of applications during the same period in the whole of the UK was 315,985.

[321] http://www.jcwi.org.uk/sites/default/files/documents/No%20Passport%20Equals%20No%20Home%20Right%20to%20Rent%Independent%20Evaluation_0.pdf

10.4 In the private sector the Bill legalises conduct towards a "disqualified person" which would be a criminal offence if it had been towards anyone else.

10.5 The Bill would encourage unscrupulous private landlords to evict unlawfully anyone perceived as possibly being a "disqualified person".

10.6 In the social housing sector county court judges will be required to decide immigration issues when dealing with possession claims issued under the proposed new Ground 7B of the Housing Act 1988. This is likely to lead to erroneous possession orders, injustice and increased court time being spent on appeals.

10.7 In the circumstances, we submit that Clauses 12, 13 and 14 of the Bill should not be passed into law.

10.8 Should Clauses 12–14 be passed we would suggest the following amendments to ensure compliance with the Equality Act 2010:

> 10.8.1 All landlords in the private rented sector must have accreditation with an approved scheme (such as the London Landlords Accreditation Scheme or the National Landlords Association) before being able to grant a tenancy and such accreditation must include training/information in respect of their obligations not to discriminate on grounds of race/nationality.
>
> 10.8.2 Section 33(6) of the 2014 Act should be amended so that a breach of the Code of Practice (under s33 of the 2014 Act) does make a person liable in civil or criminal proceedings.

November 2015

Further written evidence submitted by the British Medical Association (IB 40)

IMMIGRATION BILL – NEW CLAUSE 1

1. The British Medical Association (BMA) is an apolitical professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 160,000, which continues to grow each year.

2. The BMA represents and support doctors working in immigration removal centres (IRCs) and have a long-standing interest in promoting fundamental human rights in the context of healthcare. We advocate for individuals and marginalised populations whose health-related rights are infringed, both in the UK and internationally. We have repeatedly expressed concerns about the health and wellbeing of those held in immigration detention, and the quality of the health services they receive, most recently to the Joint Inquiry into the use of Immigration Detention in the United Kingdom, and to the Home Office Review into the welfare of vulnerable people in detention.

3. This briefing highlights the BMA's support for New Clause 1 regarding the 'Detention of persons-exempted persons', which we believe will better protect the health and wellbeing of vulnerable persons, whose needs are often unmet in detention.

New Clause 1 – 'Detention of persons—exempted persons'

4. The BMA supports the inclusion of New Clause 1 in the Immigration Bill.

> *"Detention of persons – exempted persons*
>
> i. In paragraph 16 of Schedule 2 to the Immigration Act 1971 after subsection (4)
>
> ii insert —
>
> iii "(5) A person may not be detained under this paragraph if they are a member of one
>
> iv or more of the following groups of person—
>
> (b) Pregnant women;
>
> (c) Victims of trafficking;
>
> (d) Victims of torture;
>
> (e) Victims of sexual violence;
>
> (f) Any other group as may be prescribed by the Secretary of State.""

5. We acknowledge that the use of detention as a response to immigration involves many complex political and legal issues. The detention of people who are not convicted of a criminal offence must, however, be a measure of last resort, used only in exceptional circumstances. In particular, we have a number of concerns about the health needs of many detained individuals, and how adequately these are addressed in detention.

6. In detaining individuals, and limiting their fundamental liberty rights, the state assumes an obligation to protect and promote their health and wellbeing. This means that detained individuals in immigration removal centres (IRCs) should have available to them the same range of services and quality of care as those in the community. In addition, given their complex and often traumatic histories, they may require additional dedicated health services.

7. We have concerns that the healthcare provided in the immigration detention estate cannot meet these needs and that the state's obligations to some detained individuals are not being met.

8. Individuals detained for immigration purposes are a diverse population with varied health needs. In addition to having the same basic health needs as the wider population, there are a number of conditions which are more prevalent amongst the detained population, including communicable diseases and chronic conditions, which may have gone either undetected or untreated due to a lack of interaction with, or failings of health services both in the UK and in countries of origin.[322, 323] There may also be a number of medical conditions – both physical and mental – which require specialist medical attention. This is likely to be where individuals have been the victim of traumatic experiences, such as torture, trafficking, and other forms of violence, including sexual violence. 324 Combined with these specific physical health needs are a range of mental health problems, including, depression, anxiety and PTSD, which can be a consequence of past traumatic experiences.[325, 326]

9. There are many reasons why healthcare provision might be inadequate in the detention setting. Detained individuals themselves may struggle to access healthcare due to language difficulties and other cultural issues (including trouble accessing an interpreter); a lack of knowledge about their rights to healthcare and how to access it; and negative perceptions of healthcare, often due to their previous experiences and interactions with healthcare professionals. Where detained individuals do access healthcare, the quality of healthcare provided across the immigration detention estate can also vary drastically from site to site as a result of a lack of consistency in the services available.

10. The BMA urges the Committee to vote upon, and accept New Clause 1.

November 2015

Written evidence submitted by Bail for Immigration Detainees (BID) (IB 41)

BAIL FOR IMMIGRATION DETAINEES: EVIDENCE TO THE PUBLIC BILL COMMITTEE ON THE IMMIGRATION BILL

1. Bail for Immigration Detainees is an independent charity established in 1999 to challenge immigration detention in the UK. We assist detained asylum seekers and migrants in removal centres and prisons to secure release from detention through the provision of free legal advice, information and representation.

2. While detention exists, BID aims to challenge long-term detention and to improve access to justice for immigration detainees. We seek an immediate to end the separation of families for immigration purposes and to the detention of vulnerable people.

3. BID believes that asylum seekers and migrants in the UK have a right to liberty and access to justice. They should not be subjected to immigration detention.

4. The Immigration Bill proposes a wide range of measures, covering illegal working, border security, and access to services. This evidence focuses primarily on changes to immigration bail and the provision of bail addresses.

5. BID is a member of the Immigration Law Practitioners' Association (ILPA) and the Refugee Children's Consortium (RCC). Each of those organisations has also produced briefings on this Bill, which cover other areas of concern. We would also draw attention to their evidence and proposed amendments.

[322] Burnett A and Fassil Y (2002) *Meeting the health needs of refugee and asylum seekers in the UK: an information and resource pack for health workers*. London: Department of Health.
[323] Health Protection Agency (2006) *Migrant health: infectious diseases in non-UK born populations in England, Wales, and Northern Ireland. A baseline report*. London: HPA.
[324] Burnett A and Peel M (2001) "The health of survivors of torture and organised violence" BMJ 2001; 322: 606.
[325] Robjant K, Robbins I, Senior V (2009) "Psychological distress amongst immigration detainees: a cross sectional questionnaire study." *Br J Clin Psychol* 2009 Sep; 48 (Pt 3): 275-86.
[326] Robjant K, Hassan R, Katona C. "Mental health implications of detaining asylum seekers: systematic review." *Br J Psychiatry* 2009 Apr; 194(4): 306-12.

Time limit on detention

6. During its debate on the *Inquiry into the use of immigration detention* in September 2015, the House of Commons unanimously agreed to support the report's recommendations. Among these was a recommendation that a time limit for immigration detention of 28 days – other than in exceptional circumstances – be introduced.

7. **BID welcomed the recommendation of the inquiry that a maximum period of detention of 28 days should be introduced via statute, and believes that the Immigration Bill should be amended to include such a provision.** We remain wary that any time limit must not simply become the norm – detention has the potential to be harmful or unlawful from the very first day, and so the Home Office should operate in theory and in practice with a presumption against the use of detention. Any such time limit should be operated alongside a new and robust system for reviewing the decision to detain early in the period of detention, via some form of automatic court hearing and a statutory presumption that detention is to be used only exceptionally and for the shortest possible time.

8. BID's policy paper *Safeguards against arbitrary and prolonged detention* compares the lack of time limit in immigration detention with other powers of detention.

Type of Detention	*Maximum Period*	*Powers*
Following arrest by the police	24 hours (extendable to 36 hours by police superintendent, to 96 hours by a magistrate)	Criminal
Immigration detention (parents with their minor children)	72 hours (extendable to 7 days with ministerial authority)	Immigration
Pre-charge (arrested under the Terrorism Act)	14 days (in stages)	Terrorism
Post-charge custody time limit (remand)	56 – 182 days	Criminal
Immigration detention (adults)	None	Immigration

9. During the full year 2014, 857 people leaving detention from an IRC had been detained longer than 6 months. This represented just 2.9% of all people leaving detention. 36.5% of people leaving detention had been detained for more than 28 days. Among people detained for 28 days or less, just 62.7% were removed from the UK, and 37.3% were released into the community – suggesting that in at least a third of cases, the decision to retain in the first place was unnecessary.

Changes to Immigration Bail

10. BID recognises that existing laws and regulations around immigration detention, bail and support are complex, fragmented and in need of consolidation. Schedule 5 of the Bill seeks to do this.

11. It is the Home Office's stated policy that immigration detention be used as a last resort and for the shortest possible time. As was observed by the joint inquiry into immigration detention, this policy is "not being adhered to, or having its desired effect." We are concerned that the explanatory notes for Schedule 5 – reflecting the intentions for the Bill, begin from the starting point that:

> "Prior [to this schedule] there were a number of provisions under which **a person who would otherwise have been held in immigration detention**, could be released or have avoided being detained altogether." [emphasis added].

12. **We believe that, in attempting to devise a consolidated framework, it is necessary to simultaneously addressed the use of immigration detention, alternatives and limits and restrictions.**

13. The decision to end the use of temporary admission and temporary release and to replace them with the new framework for immigration bail is indicative of a negative attitude towards people's right to liberty. The connotations of being 'released on bail' rather than 'temporarily admitted' are entirely negative; it appears that the Bill is seeking to normalise the detention of all foreign nationals with irregular immigration status or outstanding claims and appeals.

14. The Secretary of State's power to detain a person for immigration purposes is limited by existing laws – provisions that this Bill does not seek to amend. A person may only be legally detained to allow investigation as to whether that person should be permitted to enter the UK, or for the purpose of removing the person from the UK – and then only for a "reasonable time".

15. We fail to see that an argument can be made for how a person who cannot be lawfully detained can be granted 'immigration bail'. Put simply – if detention is not possible, then there is nothing for them to be bailed from. Any suggestion otherwise would appear to be a move to give people – including those seeking decisions on their immigration cases – a negative label with little basis.

16. The futility of this attempt at consolidating the framework around temporary admission and bail without fundamental reform is even more apparent given the Home Office's continued misuse of immigration detention provisions as they currently exist. Over the 12 months to June 2015, 32,053 people had been detained under immigration powers for some period of time. Statistics on bail hearings are shown in the table below.

Immigration bail at the First-tier Tribunal (IAC) January – December 2013[327]

		% of total number of applications received	*% of applications fully heard (i.e. not withdrawn)*
Bail applications received	12,373		
Bail applications heard	12,248		
Grants of bail	2,717	22.18	34.68
Refusals of bail	4,973	40.60	63.47
Withdrawals	4,538	37.05	

17. In the year to 30 June 2014, 36% of people leaving detention were detained for seven days or less, and of these, 1% were bailed, compared with 60% who were removed. **But, of those people leaving detention who had been detained for 12 months or more, 30% were bailed, 24% were granted temporary admission or release, and just 44% were removed**. Longer-term detainees were still less likely to be removed at the end of their detention. Of the 5 detainees who left Immigration Removal Centres in 2013 after spending 48 months or more in detention, only 20% were removed from the UK.

18. The technical matters presented in the Bill regarding grants of bail, conditions and procedures appear to be needlessly confused, and we believe that there will need to be considerable clarifying amendments. Provisions that blur lines of accountability and responsibility between the First Tier Tribunal and the Secretary of State are unnecessary and unwelcome, and we would suggest that the Government ought to reconsider them.

Bail Addresses

19. BID submitted a response to the Government's recent consultation, "Reforming support for failed asylum seekers and other illegal migrants". In that response, we draw particular attention to the proposed removal of section 4(1)c of the Immigration and Asylum Act 1999. We are disappointed that the drafting of this Bill has pre-empted the conclusions of that consultation.

20. Schedule 5, section 7 of this Bill empowers the Secretary of State to grant an address for the purpose of bail, while Schedule 6 amends the Immigration and Asylum Act 1999 to insert a new section 95A on providing support for failed asylum seekers who are unable to leave the UK.

21. However, the new section 95A would not be accessible to people who have not previously claimed asylum, and the powers in section 7 of schedule 5 would be exercised only when "the Secretary of State thinks that there are exceptional circumstances which justify the exercise of the power." It remains to be determined what will quantify an exceptional circumstance, **however the likelihood appears to be that the removal of section 4(1)c of the 1999 Act will result in a large number of detainees denied access to a bail address.**

22. For detainees who are unable to propose a private address to support their application for bail and who can no longer obtain such an address via Section 4(1)c bail support as it stands, release from detention on bail would be impossible in our view. Without section 4(1)c support from the Home Office, a detainee who would otherwise have relied on such a bail address will be unable to lodge their application for release on bail. In BID's extensive experience it is normal practice for HMCTS hearing centres to refuse to list bail applications for a hearing without a bail address, save in very unique circumstances.

23. **53% of BID's clients rely on a section 4(1)c bail address to support their application. Abolishing this provision would leave thousands of detainees unable to apply for bail, with the potential for their detention to become unlawful as a result.**

[327] Source: HM Courts & Tribunals Service, *'Bail management information period April 2012 to March 2013'* & *'Bail management information period April 2013 to December 2013'*, produced for HMCTS Presidents' stakeholder meeting. This is the most recent full year for which data is available.

Home Office Section 4(1)c bail accommodation: applications, grants by accommodation type, and refusals of support since January 2010

	Number of APPLICATIONS RECEIVED for s4 (1)c bail accomm[328]	*Number of grants for Initial Accomm*	*Number of grants for Standard Dispersal Accomm*	*Number of grants for Complex Bail Accomm*	*Total number of grants for the year*
2010	3,367	1,916	66	19	2,001
2011	3,138	1,568	218	55	1,841
2012	3,465	1,961	382	35	2,378
2013	3,841	2,081	529	14	2,624
2014	3,635	2,233	613	14	2,860

(Source: Data obtained from the Home Office by BID through a series of FOI requests since 2011)

November 2015

Written evidence submitted by Robert Buckland, the Solicitor General concerning Clause 31 – Legal Aid for Judicial Review (IB 42)

IMMIGRATION BILL: COMMITTEE STAGE CONSIDERATION OF CLAUSE 31 – AVAILABILITY OF LEGAL AID FOR JUDICIAL REVIEW OF CERTIFICATION UNDER SECTION 94B

During the course of our constructive debate on Clause 31 of the Immigration Bill [Appeals within the United Kingdom: certification of human rights claims] on 5 November the honourable member for South Shields asked how a judicial review against a decision to certify a claim under this power would be funded. I promised to write setting out the position.

Legal aid is generally available for judicial review, subject to the case having sufficient merit and the individual satisfying the financial means test. In order for legal aid to be made available, the judicial review must be of specific benefit to the individual and cannot be on a repeat immigration matter that was previously determined within one year.

Subject to meeting these exceptions and exclusions, legal aid would therefore be available for judicial review of certifications under s94B.

I hope this provides the honourable member with the assurances she was seeking.

November 2015

Written evidence submitted by Oxford Against Slavery (IB 43)

1. Oxford Against Slavery (OAS) is a rights group which specialises in issues of forced labour and trafficking. It is a member of the Oxford Hub's Rights and Development Network.

2. The term 'modern slavery' will be used throughout this document to refer to the phenomena of trafficking *and* forced labour. Although a legal distinction is often made between the two, in this instance it is appropriate to use this inclusive term to reference the general practice of depriving a person of their freedom for the purpose of exploitation.

Summary of submission

3. Although the majority of this Bill is outside of OAS's area of expertise, there are several key elements of the Bill that we believe relate strongly to issues of modern slavery. A number of its provisions will serve to: (a) Undermine the neutrality of labour inspection, and subsequently compromise the ability of the relevant authorities to identify and assist victims of modern slavery, (b) further marginalize vulnerable groups, pushing them into the hands of exploitative employers, (c) deprive potential victims the opportunity to be properly identified as victims of human trafficking. OAS fears that these effects of the Bill will undermine some of the important gains made with the passing of the Modern Slavery Act earlier this year.

(a) Labour inspection and the erosion of trust

4. In theory OAS supports the idea of increased regulation of labour standards. However, we are concerned that the role of the Director of Labour Market Enforcement (as proposed in Part One of the Bill) is not sufficiently separated from immigration enforcement. The fact that the issues of labour inspection and illegal

[328] Some individuals made more than one application during this period.

working are presented under the same heading leads us to question the degree of autonomy that will be granted to the Director.

5. It is our belief that effective labour inspection can only be carried out if the duties of the inspector are confined to the rights of workers. A conflict in aims may arise if labour inspection is tied too closely with immigration enforcement, as it often those with uncertain immigration status that are most vulnerable to exploitation.

6. It is for this reason that the International Labour Organization's Labour Inspection Convention, 1947 (No. 81) – which the UK has ratified – explicitly prohibits practicing labour inspectors from being charged with duties beyond labour inspection.[329]

7. In the United States there is a memorandum of understanding signed between the Immigration and Customs Enforcement Department of Homeland Security and the Department of Labor to ensure that the work of the former does not compromise the work of the latter.[330] Here the importance of impartial labour inspection is acknowledged in a manner that is vital for identifying cases of forced labour.

8. **Recommendation:** OAS supports the following amendments (both proposed by the committee on 22 October) which will help promote effective labour inspection. The proposed amendments are listed below, with our editions denoted by square brackets:

(a) Clause **1**, page **1**, line **6**, after subsection (1) insert – "The primary [we would further suggest replacing primary with 'sole'] purpose of the Director of Labour Market Enforcement is to secure the enforcement of labour market legislation, as defined in Section 3(3) of this Act."

(b) Clause **3**, page **3**, line **33**, at end insert – "A person is not prevented from being a worker, or a person seeking work, for the purposes of this section by reason of the fact that he [or she] has no right to be, or to work, in the United Kingdom."

Though far from a perfect solution these two amendments are a very small step towards making the role of the Director of Labour Market Enforcement more clearly focused on workers' rights, and ensuring individuals are not left open to exploitation because of their immigration status.

9. Additionally Clause 8 *'offence of illegal working'* will have substantial consequences for the identification of modern slavery victims.

10. The Home Office's *Review of the National Referral Mechanism for victims of human trafficking* concedes that there is already a strong resistance to referral amongst human trafficking victims. In some cases officials reported that almost 50% of potential victims refused to be referred through the National Referral Mechanism (NRM) out of a distrust for the authorities.[331]

11. Many victims of trafficking are brought into the country illegally or have their passports confiscated upon arrival, and so will be aware that if they are referred but are unable to prove their status as a victim of trafficking they may face a prison term of up to 51 weeks. This will undoubtedly discourage many genuine victims from coming forward, and make the mandate of the Independent Anti-Slavery Commissioner considerably more difficult.

12. **Recommendation:** OAS thus opposes clauses 8 of the Bill.

(b) Making potential victims of modern slavery more vulnerable

13. OAS is concerned that by rescinding some of the assistance that was previously available to failed asylum seekers this Bill may create a cohort of vulnerable persons who would be especially at risk to exploitation and modern slavery.

14. OAS shares the concerns presented by the UNHCR in its submission relating to the reclassification of failed asylum seekers outlined in clause 34, schedule 6, and clauses 94 and 95. It is unnecessary to restate the UNHCR's evidence in relation to these particular clauses, though it is important to add that our support for the UNHCR's proposals is due to their implications for potential victims of modern slavery. Many failed asylum seekers (who do not meet the provisions of clause 95(a)) may be deprived of support from the government, whilst simultaneously being forbidden from working in the country. Thus, with no means to support themselves, these persons make prime targets for exploitative employers and traffickers.

15. **Recommendation:** OAS thus supports the UNHCR's case for increased care for failed asylum seekers, on the grounds that they may otherwise be vulnerable to modern slavery.

(c) Insufficient time for correct identification of modern slavery victims

16. OAS believes that limitations to the right to appeal from within the United Kingdom will lead to a number of genuine victims being deported before they have been correctly identified.

[329] International Labour Organization No. 81, Concerning Inspection in Industry and Commerce, Geneva, 1995.
[330] US Department of Homeland Security, *Revised Memorandum of Understanding between the Departments of Homeland Security and labor Concerning Enforcement Activities at Works*, Washington D.C., 2011.
[331] Home Office, *Review of the National Referral Mechanism for victims of human trafficking*, November 2014, p. 20.

17. The Home Office's *Review of the National Referral Mechanism for victims of human trafficking* acknowledges that:

> ***"awareness of the National Referral Mechanism and trafficking is less well established than it should be amongst frontline staff.*** *Far too often* ***a victim is dependent on whom they meet [and] how well trained those people might be*** […] stakeholders consulted from across the system agree that victims may be seen in terms of their other needs […] ***an immigration enforcement officer may see an illegal worker*** *and a police officer may see an offender."*[332]

18. Additionally the Independent Anti-Slavery Commissioner Strategy Plan stated that at present "many forces fail to correctly record and investigate modern slavery crimes."[333]

19. Both documents makes clear that awareness of how to identify modern slavery amongst frontline staff is severely lacking.

20. Furthermore victims of modern slavery almost always have their passport and document confiscated by their exploiter, and are often trafficked into the country illegally, meaning that to an immigration officer they may seem to be illegal migrants. Thus far too often victims are treated as illegal migrants first, and victims of slavery second.

21. If genuine victims are deported before they have the opportunity to appeal a negative decision on the grounds of the provisions of the Modern Slavery Act, they are likely to be re-trafficked when they return to their country of origin and so deprived of the chance to launch an appeal.

22. The 'deport first appeal later' attitude of the Bill (specifically seen in clauses 31 and 32) is thus deeply worrying and will result in the premature deportation of countless unidentified victims of modern slavery.

23. **Recommendation:** OAS opposes Clauses 31 and 32.

November 2015

Letter from the Home Office on support for certain categories of migrant (IB 44)

IMMIGRATION BILL – SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT

Schedule 6 to the Immigration Bill reforms arrangements for the provision by the Home Office of support to failed asylum seekers and other illegal migrants. It restricts the availability of such support, consistent with our international and human rights obligations, and removes incentives for migrants to remain in the UK where they have no lawful basis for doing so.

As I said in debates on these provisions and amendments to them in Committee on 5 and 10 November, we are continuing to consult with local authority colleagues in particular on the detail of the new arrangements and how they will work in practice. We are clear that we want to encourage and enable more migrants without any lawful basis to remain here to leave the UK in circumstances where they can do so. I thank the Local Government Association and other colleagues for their continuing engagement with us on these issues.

In particular, as I mentioned in Committee, we have been discussing with local government colleagues whether changes to Schedule 3 to the Nationality, Immigration and Asylum Act 2002, which controls access to local authority social care for migrants without immigration status, would be helpful. Our public consultation on asylum support highlighted concerns that the framework provided by Schedule 3 to the 2002 Act and associated case-law was complex and burdensome for local authorities to administer and involved complicated assessments and continued litigation to establish what support should be provided in what circumstances. The Committee heard similar concerns from local authority colleagues in their oral evidence to us on 22 October.

We have listened carefully to what local authority colleagues in England have told us about the scope for simplifying and strengthening some of these provisions. I have today tabled amendments to the Immigration Bill, a copy of which is enclosed. These make changes to the availability of local authority support in England for certain categories of migrant. Immigration is a reserved matter and immigration legislation makes provision for migrants' access to local authority services. We have in mind to amend the Bill at a later stage to extend these provisions to the rest of the UK once we have had further dialogue with the Devolved Administrations.

The new Schedule makes two key changes. First, it simplifies the way in which local authorities in England assess and provide accommodation and subsistence for destitute families without immigration status. It enables local authorities to continue to provide under section 17 of the Children Act 1989 for any other needs of a child or their family which must be addressed to safeguard and promote the child's welfare.

Second, the new Schedule prevents adult migrant care leavers who have exhausted their appeal rights and have established no lawful basis to remain here from accessing local authority support under the 1989 Act. It makes alternative provision for their support before they leave the UK.

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[332] Home Office, *Review of the National Referral Mechanism for victims of human trafficking*, November 2014, p. 17.
[333] K. Hyland, *Independent Anti-Slavery Commissioner Strategic Plan 2015–2017*, 2015, p. 2.

It may assist the Committee if I comment on some specific provisions of the new Schedule.

Support for families without immigration status

Paragraph 7 inserts a new paragraph 7B in Schedule 3 to the 2002 Act. This provides a new simplified definition of a person without immigration status who will generally be ineligible for the forms of local authority support listed in paragraph 1(1) of Schedule 3. It replaces the convoluted immigration status definitions in paragraphs 6 to 7 A of Schedule 3.

Paragraph 8 inserts a new paragraph IOA in Schedule 3 to the 2002 Act, under which regulations will be made by the Secretary of State, subject to Parliamentary approval, to enable local authorities to provide for the accommodation and subsistence needs of destitute families without immigration status in circumstances in which case-law and human rights considerations may well mean that the local authority should provide support. These are where:

— The family has an outstanding specified immigration application or appeal (i.e. in a non-asylum case for which Home Office support is not provided);

— The family has exhausted appeal rights and has not failed to co-operate with arrangements to leave the UK (and does not qualify for the support available from the Home Office under section 95A of the Immigration and Asylum Act 1999 inserted by Schedule 6 to the Bill for failed asylum seeker families with a genuine obstacle to departure at the point their appeal rights are exhausted); or

— The provision of accommodation and subsistence support is necessary to safeguard and promote the welfare of a dependent child.

Paragraph 4 inserts a new paragraph 3A in Schedule 3 to the 2002 Act, which means that accommodation and subsistence support will be provided to a destitute family under the regulations made under the new paragraph IOA of Schedule 3 rather than under section 17 of the 1989 Act.

There is no general obligation on local authorities to accommodate illegal migrants who intentionally make themselves destitute by refusing to leave the UK when it is clear they are able to. Schedule 3 to the 2002 Act already provides that a range of local authority social care is unavailable to failed asylum seekers and others who remain in the UK unlawfully, except where, following what can be a complex and burdensome assessment process, the local authority decides that the provision of such support is necessary to avoid a breach of human rights or on the basis of other exceptions for which Schedule 3 provides. The new Schedule will simplify the complex human rights assessment process, much of it concerned, in line with caselaw, with immigration matters which are for the Home Office and the courts to determine, which the local authority often has to undertake before it can assess and provide for the family's social care needs.

The main social care need of families without immigration status seeking local authority support is accommodation and subsistence to prevent destitution. A June 2015 study by the Centre on Migration, Policy and Society at the University of Oxford on local authority support for such families[334] found that the welfare needs of the children at the point of referral to the local authority were overwhelmingly accommodation and subsistence needs. However, the new Schedule will ensure that section 17 of the 1989 Act will remain available to the local authority, together with its other Children Act powers and duties, to deal with any other needs of the child or their family which the local authority considers must be met to safeguard and promote the child's welfare while the family's immigration status is resolved and, where it is established that they have no lawful basis to remain here, before they leave the UK. The local authority's duty to provide for the child's schooling and to address any special educational needs will also be maintained.

I am confident that these reforms of Schedule 3 to the 2002 Act will simplify the basis on which local authorities deal with destitute families without immigration status and maintain essential safeguards. I am also satisfied that they are compatible with our obligations under the UN Convention on the Rights of the Child, particularly Article 3 which requires that children's best interests are a primary consideration in all decisions affecting them, and with section 55 of the Borders, Citizenship and Immigration Act 2009, under which the Secretary of State must have regard to the need to safeguard and promote the welfare of children in the UK in carrying out immigration functions.

Support for adult migrant care leavers

Paragraph 2 of the new Schedule amends paragraph 1(1) of Schedule 3 to the 2002 Act so that adult migrant care leavers (who are nearly all former asylum seeking children whose asylum and any other human rights claims have failed) who have exhausted their appeal rights and have established no lawful basis to remain here are prevented from accessing local authority support for care leavers under the Children Act 1989. Those provisions under the 1989 Act are geared to supporting the needs and onward development of young adults leaving local authority care whose long-term future is in the UK and are not appropriate to the support needs, pending their departure from the UK, of adult migrants who the courts have agreed have no right to remain here.

[334] https://www.compas.ox.ac. uk/media/PR-20 15-No_Recourse_Public_Funds_LAs.pdf

Paragraph 8 inserts a new paragraph 108 in Schedule 3 to the 2002 Act under which regulations will be made by the Secretary of State, subject to Parliamentary approval, to enable local authorities to provide for the support of adult migrant care leavers who have:

— Exhausted their appeal rights in respect of their asylum claim but have an outstanding specified immigration application or appeal and are destitute; or

— Exhausted their appeal rights and do not qualify for Home Office support under the new section 95A of the 1999 Act inserted by Schedule 6 because there is no genuine obstacle to their departure from the UK, but the local authority is satisfied that support needs to be provided. This will enable the local authority to ensure that support does not end abruptly and there can be a managed process of encouraging and enabling departure from the UK.

Paragraph 4 inserts a new paragraph 38 in Schedule 3 to the 2002 Act, which means that support will be provided to the adult migrant care Ieaver under the regulations made under the new paragraph 108 of Schedule 3, or under the new section 95A of the 1999 Act, rather than under the 1989 Act.

I look forward to debating the rationale for and intended operation of these new provisions when the Committee resumes its work on 17 November.

I am copying this letter to members of the Committee and am placing a copy in the House Library.

November 2015

Written evidence submitted by René Cassin (IB 45)

About René Cassin

1. René Cassin is a UK-based human rights non-governmental organisation that works to promote and protect universal human rights, drawing on Jewish experience and values. Throughout history, Jewish people have been forced to seek asylum from persecution many times. We believe that the British public and the Jewish community in particular, have an important stake in maintaining domestic protection for vulnerable minority groups, including refugees and asylum seekers. René Cassin works to promote and protect the rights of asylum seekers, especially those detained and deprived of their liberty for indefinite periods of time.

Introduction

2. The lack of a time limit on how long asylum seekers can be detained results in periods of detention which can last a number of years. This policy in effect means that the UK has thousands of people locked up every year without a trial and without a time limit. As a result, detention has been described as 'worse than prison because in prison you count your days down and in detention you count your days up…and up…and up'.[335]

3. There have been numerous calls for a time limit to be introduced to the detention system in the UK. These have come from sources such as the UN Committee against Torture336, the Equality Commission,[337] HM Inspector of Prisons[338] and the Joint Inquiry by the All Party Parliamentary Groups on Refugees and Migration.[339] We believe their advice should be followed and a **28-day time limit should be inserted into the Immigration Bill**. This would bring the UK into line with the rest of the European Union, save a significant amount of public money and restore the UK's proud and longstanding tradition of protecting human rights and civil liberties.

The Legal Argument

4. While the UK does not explicitly have a policy of indefinite detention, in practice it operates as such. The Hardial Singh principles,[340] which limit the scope of detention, contain the requirement that the period of detention must be 'reasonable in all circumstances'. This leads to a lack of clarity over the length that asylum seekers can stay in detention. This uncertainty is not only damaging to the mental health of detainees, it gives rise to the possibility of asylum seekers being held without charge for inordinate periods of time and goes against one of the fundamental pillars of the rule of law, legal certainty. Introducing a **28-day time limit** would help to resolve all of these issues.

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[335] This comes from a speech delivered by a man called Souleymane, of the Freed Voices Group. Full speech available here: http://detentionaction.org.uk/indefinite-detention-this-is-happening-on-your-doorstep

[336] UN Committee Against Torture, Concluding Observations on the Fifth Periodic Report of the United Kingdom.

[337] Equality Commission and Human Rights Commission, *Is Britain Fairer? The state of equality and human rights* 2015.

[338] HM Inspectorate of Prisons, *Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre,* 2015.

[339] All Party Parliamentary Groups on Refugees and Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, 2015.

[340] See ILPA Information Sheet: 'Detention 2' May, 2015.

The Efficiency Argument

5. The use of detention is on the rise. Since 2008, the numbers of asylum seekers in detention has increased by 35%, yet numbers of enforced removals have actually declined by 24%.[341] This suggests that detention is increasingly seen simply as a means for warehousing people, out of sight and out of mind.

6. Without a time limit, Home Office officials have no clear deadline by which to decide to return asylum seekers. It creates an inefficient system that lacks urgency in the decision making process and results in vulnerable people being detained for periods far longer than is necessary.

7. The absence of a time limit seems all the more illogical with the knowledge that the longer a person is detained, the less likely they are to be removed from the UK. According to 2013 Home Office statistics, only 37% of those released from detention after more than a year were removed or deported. Almost two-thirds were released back into the UK, their protracted, traumatic and expensive detention effectively having served no purpose. By contrast, 57% of people detained for under 28 days left the UK.[342]

The Political Argument

8. The UK is unique within the EU for having no time limit on detention and routinely detaining asylum seekers for years. It is the only Member State of the EU to not sign up to the EU Returns Directive, apart from Ireland which sets its own time limit of 21 days.

9. Britain has a proud tradition of upholding civil liberties. However, as the 2015 Parliamentary Inquiry into the Use of Detention in the United Kingdom concluded, 'the continued use of indefinite detention puts this proud tradition at risk'.[343] The UK is lagging behind its European counterparts on this issue. A **28-day time limit** would reinforce its proud tradition and help restore the British reputation on the world stage.

The Financial Argument

10. Indefinite detention is an expensive system for two reasons: the actual cost of detaining asylum seekers at Immigration Removal Centres and the amount in compensation that the UK government has had to pay to those unlawfully detained. Independent researchers found that the amount of tax payers' money spent detaining those who are eventually released is £76 million each year.[344] The introduction of a **28-day time limit** would help identify unreturnable people much earlier and greatly reduce this exorbitant figure.

Summary

11. It has been demonstrated that indefinite detention is not only an expensive system, but also an uncertain one which undermines the UK's tradition of protecting civil liberties. **The Immigration Bill provides the perfect opportunity for an amendment setting a 28-day time limit on detention**. René Cassin believes this is an opportunity which should not be missed.

November 2015

Written evidence submitted by the Association of Labour Providers (IB 46)

Introduction

The Association of Labour Providers (ALP) is a trade association supporting and representing those organisations that supply seasonal, agency and contingent labour into the UK food production, horticultural and agricultural sectors. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters Licensing Authority (GLA).

The ALP has approximately 270 organisations of all sizes that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the ALP Constitution. ALP member organisations supply approximately 60-70% of the temporary workers into the sectors regulated by the GLA.

The ALP provides a range of services to help labour providers achieve labour standards compliance and good practice in the supply of workers. The ALP is a lead development partner in "Stronger Together" (www.stronger2gether.org) – a multi-stakeholder UK initiative to reduce modern slavery in supply chains.

This paper outlines the position with regard to the regulatory framework for the recruitment and labour supply sectors. The paper focuses on maintaining a level, competitive playing field for business, reducing exchequer fraud and offering protection for vulnerable workers through intelligence led, proportionate enforcement.

[341] Enforced removals fell from 17,239 in 2008 to 13,051 in 2013. Home Office, *Immigration Statistics, Key Facts*.
[342] Home Office, Immigration Statistics Oct. – Dec. 2013, Detention, table dt_06.
[343] See above, no.5.t P33.
[344] Matrix Evidence, *An Economic Analysis of Alternatives to Detention, Final Report Sept. 2012*.

ALP Evidence

1. Industry supports the licensing of labour providers

1.1 The July 2014 Home Office Migration Advisory Committee (MAC) report, **Migrants in low-skilled work**, concludes:

> "The counter-balance to a flexible labour market is to ensure that employers comply with the minimum protections for workers and that these are enforced. MAC found that the incentives to comply are weak. There are some serious gaps in protection, especially for migrant workers. There exist real disincentives for individuals to challenge poor employment practices and to raise grievances.
>
> UK labour law is not providing a minimum level of protection in all cases resulting in a playing field that is not level. There is the risk of a continuum of exploitation starting with failure to pay minimum wages and ensure decent working conditions, leading to workers being forced to accept sub-standard accommodation, being forced to pay for things that they do not need through deductions from their wages, having their passport retained, and losing both work and accommodation with no prior notice.
>
> The evidence is consistent with increasing migrant exploitation enabled by insufficient regulation of recruitment."

1.2 The ALP conducts a biennial survey of labour providers' views on the GLA. April/May 2015 survey results show the strongest support among business for licensing, a perception that the GLA is doing a good job and has improved conditions for workers and generated an improved level playing field:

Licence Holders views on the GLA	*2008**	*2011*	*2013*	*2015*
In favour of licensing	79%	71%	81%	93%
Perceiving the GLA doing a good job	69%	49%	55%	73%
Significantly improved conditions for workers	21%	12%	16%	27%
Slightly improved conditions for workers	39%	30%	47%	52%
Significantly reduced Fraud/Illegal acts	19%	18%	17%	22%
Slightly improved Fraud/Illegal acts	41%	51%	48%	57%
GLA significantly improved level playing field	–	12%	29%	15%
GLA slightly improved level playing field	–	30%	21%	52%

*2008 survey conducted by Universities of Liverpool and Sheffield.

2. The GLA licensing regime should be retained in the UK food and agricultural industry labour supply chain

2.1 The GLA licensing regime, since its formation, has contributed to significant improvements in labour standards within the regulated sectors of food processing, agriculture and horticulture, and shellfish gathering. Legitimate businesses want, and have a right to expect, a "level playing field" in order to compete fairly within the law, as do those using their services. To enable this fair competitive trading environment to continue it is essential that a regulator is maintained within the food industry labour supply chain that effectively prevents rogue businesses from undercutting legitimate labour providers, either through tax evasion, worker exploitation or both.

2.2 Surveys of ALP members and GLA licensed labour providers consistently demonstrate strong support, currently 93%, in favour of the GLA licensing of labour providers. There is wide support for an intelligence-led, risk-based proportionate compliance and enforcement regime. Statutory licensing of labour providers sectors is also supported by retailers, growers and food producers for whom it facilitates a fairer competitive trading environment and protection from reputation damage. To remove licensing would be a significant backwards step.

3. An appropriate balance between the GLA's mutually reinforcing activities of compliance and enforcement needs to be retained

3.1 The GLA's remit is divided between "compliance" activity which is part of the Home Office "Prevent" strategy and ensures that new and existing licence holders comply with the GLA licensing standards and "enforcement" activity which is involved with enforcing the criminal offences of providing labour into the sectors regulated by the GLA without a licence and using labour provided by unlicensed labour providers. To retain the credibility of the licensing regime, an appropriate level of resources need to be allocated to compliance activities to ensure that there are not licensed, yet non-compliant, gangmasters.

4. The GLA should be given additional tools to better enable it to perform its role

4.1 On 24 May 2012, the Minister of State for Agriculture and Food issued a Written Ministerial Statement announcing plans to introduce administrative fines and penalties for low-level and technical minor offences, including a measure similar to a Repayment Order to achieve rapid reimbursement to an exploited worker of wages or other payment which has been removed. This has yet to be implemented though is supported. Such measures will enable the GLA to better deliver access to remedy to workers and ensure a more level playing field for labour providers.

5. The remit of the GLA should be extended

5.1 The Joint Committee on the Draft Modern Slavery Bill Report stated that the GLA. "has been much praised as an internationally-respected model of good practice. The weight of evidence we received suggested that expanding the GLA's powers and industrial remit would yield positive results."

5.2 It is extensively documented that exploitation of vulnerable workers is widespread across a number of high risk sectors in the UK. The GLA has developed a specialist expertise on uncovering human trafficking for labour exploitation and forced labour and there are undoubtedly benefits in joint working with other enforcement bodies to extend this knowledge and experience to other employment sectors.

5.3 Whilst there are sectors believed to harbour higher levels of exploitation, such as hospitality, care and construction, it is not proposed to limit the extension of remit to such defined sectors. Such definition of sectors is difficult to achieve (the draft guidance for sectors which come within the current scope of GLA licensing extends to 34 pages). The remit of such a body is better defined by the type of exploitation it enforces. The GLA should have investigative powers into the more extreme forms of abuse of vulnerable workers. Such forms of abuse should be consulted upon during the review of the GLA. The GLA should be awarded investigative powers into employment businesses and agencies not currently subject to GLA licensing.

5.4 The GLA should remain as an Executive Non-Departmental Public Body (NDPB) with its own Board and budget.

5.5 The GLA should continue with its specialist remit on uncovering human trafficking for labour exploitation and forced labour. However, this role should be extended to all employers and employment businesses in all sectors and working with NCA, police, UKHTC and others to tackle this.

5.6 There should be a joined up approach with co-ordinated risk based tasking operations and sharing of intelligence databases between the GLA, Employment Agencies Standards Inspectorate, the National Minimum Wage Labour Provider Compliance unit and HMRC Specialist Investigations Labour Providers unit.

5.7 There should be Service Level Agreements developed between the GLA and Acas and the Modern Slavery Helpline to ensure that relevant intelligence is passed over to the GLA to facilitate the investigation of complaints.

5.8 The Government should appropriately fund the GLA to undertake its designated responsibilities.

5.9 Any extension of remit should not be at the expense of the removal of statutory licensing of labour suppliers to the UK food industry.

6. Burden on Business

6.1 The GLA does not place a burden on consistently compliant businesses. Instead it supports responsible business in being able to compete effectively on a level playing field.

6.2 The GLA conducts compliance inspections on only approximately 10% of licence holders in any year. These are intelligence-led inspections based on risk profiling and operational tasking where information has been received by the GLA that the licensing standards are being breached. The GLA has no reason, nor the resources, to visit "consistently compliant businesses".

6.3 The only requirement for "consistently compliant businesses" is to complete the annual licensing renewal with payment of the appropriate fee.

November 2015

Written evidence submitted by the Office of the City Remembrancer, City of London Corporation (IB 47)

1. The City of London Corporation supports the Government's aim of retaining and strengthening the United Kingdom's economic base by boosting domestic employment and strengthening trade. The desire to restrict and reduce the numbers of migrants entering the UK, in response to broader public worries about the impact on jobs and communities, is recognised by the UK's financial and business services sector.

2. There are serious concerns regarding the operation of the Tier 2 General system and particularly over the level of the current cap. These views have been expressed by representatives of leading City firms and trade associations including through a working group on migration issues brought together by the City Corporation.

3. It is important to stress that the motivation of such companies is not to import skills in order to drive down salaries. They are aware that they operate in a global market for talented people, who are capable of applying their skills in a number of centres. Encouraging them to do so in the UK (in areas including IT, life sciences and specialist engineering as well as financial and professional services) tends to create and anchor here foreign businesses which in turn employ UK-based workers, while generating taxes, export revenue and corporate earnings.

Clause 46: Immigration Skills Charge

4. An Immigration Skills Charge as envisaged in Clause 46 of the Bill has the potential to act as a deterrent to investment. Together with the healthcare charge, these additional charges may be perceived as another tax on investing in the UK that is not payable in other markets. Although there is little detail on it available at the moment, if applied universally it would prove more punitive to smaller businesses.

5. Many City stakeholders already provide extensive training and professional development programmes for UK resident workers. Major City businesses, including investment banks, insurers, lawyers and accountants, are significant contributors of funding, supplementary resources and employee time and goodwill towards regeneration, training and social development programmes in disadvantaged areas of inner London and elsewhere.

6. Before any decision is taken to impose a Skills Charge, City stakeholders believe any existing arrangements businesses have to provide skills training both within their businesses but also to the community at large need to be considered. It is also recommended that businesses subject to such a levy be assessed on their size and any businesses that fall within a sector deemed strategically important be exempt.

7. The UK is and remains a desirable location for talented people. Economic growth, comparative political stability and attractive living standards enable it to compete for the best talent, but it should not be assumed that it will always be the preferred location.

November 2015

Written evidence submitted by the British Retail Consortium (BRC) (IB 48)

1. The British Retail Consortium (BRC) is the trade association for the entire retail industry. Our members account for 80% of all UK retail sales. Diverse and exciting, our industry spans large multiples, independents, high streets and out of town, from online to bricks, selling goods across all sectors from clothing, footwear, food and homeware to electricals, health & beauty, jewellery and everything in between, to increasingly discerning consumers.

2. Our mission is to make a positive difference by advancing vibrant and consumer-focused retail. We stand for what is important to the industry and work in partnership with our members to shape debates and influence outcomes.

3. This evidence is only in relation to changes to labour market enforcement, specifically the role of the Gangmasters Licensing Authority (GLA). It confirms our position as retailers, who are a key part of the supply chain for GLA-licensed sectors.

Labour Market Enforcement

4. As responsible retailers our members know their customers expect them to play a positive role in their supply chains, both in the UK and abroad. Our members have invested significant resources both with their suppliers and NGOs to ensure appropriate labour standards apply in their supply chains. However, alongside our own investment in auditing and training we know that tackling these issues requires a partnership approach with Government intervention and effective enforcement being a key part.

5. We lobbied for the Transparency in Supply Chains clause of the Modern Slavery Act and the creation of the Gangmasters Licensing Authority (GLA). Alongside this, our members have supported the Supply Chain Protocol signed with the GLA and other supply chain representatives to ensure rapid dissemination of intelligence to identify and tackle suspected abuses. Our members are also key supporters of the Stronger2gether initiative, which is designed to reassure victims of forced labour that they will be safe and well-treated when they report abuse.

6. Labour exploitation is an extremely complex area that transcends national boarders and sectors of the economy. Exploitation is inherently hidden and therefore very difficult for retailers to prevent or identify without sufficient support from Government. It is vital that Government implements and enforces laws that effectively prevent, identify and remedy instances of labour exploitation. We ask Government to:

(a) Maintain the current licensing system for agriculture, horticulture, shellfish gathering and food processing sectors.

(b) Ensure the GLA has sufficient resources to carry out its essential work.

(c) Expand the licensing system into sectors deemed to be of high risk of labour exploitation.

(d) Provide the GLA with powers needed to effectively tackle labour exploitation.

7. These points align with the UK Government's commitment to the UN Guiding Principles for Business and Human Rights, which recognise States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms.

Role of Gangmasters Licensing Authority and licensing system

8. BRC and its members commend the efforts and achievements of the Gangmasters Licensing Authority.

9. Through its licensing scheme and co-ordinated approach with law enforcement bodies, the GLA has played an essential role in raising labour standards and preventing the exploitation of vulnerable workers in the UK food supply chain. It also acts to create a fair and competitive trading environment by granting licences to businesses operating in compliance with the GLA standard. This barrier to entry prevents rogue businesses from accessing the market and undercutting legitimate labour providers through worker exploitation, therein creating a level (and competitive) playing field.

10. We understand from research conducted by the Association of Labour Providers (ALP) that overwhelmingly GLA licence holders are in favour of licensing, perceive that the GLA is doing a good job and believe that it has improved conditions for workers.

11. However, labour exploitation occurs in more sectors than those currently covered by the GLA and its powers within the licensed sectors are limited. For example, when signs of modern slavery are identified by GLA inspectors they do not have the power to detain the offenders, help the victims or collect evidence.

12. We believe that a licensing regime is the best way forward and support the GLA in their mission. We support retaining the licensing system for the existing sectors covered by the GLA as well as support the expansion of the role and powers of the organisation proposed in the Labour Market Enforcement consultation. The GLA and other enforcement agencies have access to intelligence that is not available to businesses so the role enforcement agencies play is vital in tackling labour exploitation.

13. We do however have a concern that resources at the GLA are already stretched at a time when their role is only going to get tougher. It is essential that the GLA is sufficiently resourced to expand its work to protect workers. Reducing GLA inspections increases the burdens on retailers to carry out additional checks on suppliers.

14. In addition, whilst we support an expansion of GLA powers this should not dilute its existing work of monitoring and managing labour standards across the board.

November 2015

Written evidence submitted by Frances Macfarlane (IB 49)

1. **Illegal Working:** The proposed bill will drive illegal workers even more 'under the radar' and will increase exploitation and the number of people in a condition of modern day slavery. It will also make genuine employers undertake aspects of the effective policing of employee status which will only add to their administrative burden and risk making them unwitting criminals if they fall short of what is expected.

2. **Landlords & Tenants:** This policy will encourage discrimination against groups of people who have a right to live here and who may have the misfortune to, for example, not have a current UK passport, or other papers which would prove their right to reside here. This has been shown by research done by The Economist' & the Joint Council for the Welfare of Immigrants when a pilot scheme was conducted in the West Midlands.

3. **Asylum Support:** This Bill removes asylum support from asylum seekers whose claims have been rejected. Unfortunately many of these families may be unable to leave the country for good reasons, such as lack of documentation due to fleeing at very short notice, not being accepted as citizens of their former country etc. These proposals will leaves families & children homeless and with no means of support. Lt is completely unacceptable & inhumane that legislation acts in a way that makes families with young children destitute.

This Bill could seriously undermine community cohesion, particularly if it makes more difficult for ethnic minorities to find housing and/ or employment and if it increases 'stop and search' of these groups.

November 2015

Written evidence submitted by the Local Government Association (LGA), Association of Directors of Children's Services (ADCS), Convention of Scottish Local Authorities (COSLA), the No Recourse to Public Funds (NRPF) Network and the Welsh Local Government Association (WLGA) (IB 50)

1. Summary

Changes to support for certain categories of migrant (clause 34 and Schedule 6)

1.1 The changes to the asylum support system set out in Schedule 6 are likely to result in increased referrals to local authorities of families who have been refused asylum in the UK. Data from the No Recourse to Public Funds Database (NRPF) highlights that of the 34 local authorities who participate, they are supporting 2154 households described as being 'without recourse to public funds' with accommodation and other financial support. This support is at an average cost of £16,667 which represents an annual expenditure of £32 million.[345]

1.2 If support for those seeking asylum is withdrawn as a result of non-compliance with return, then the proposed changes in the Immigration Bill represent a clear and currently unfunded transfer of responsibility from the Home Office to local authorities. This includes costs of assessing and, if necessary, supporting those requiring support.

1.3 The Government is tabling amendments which seek to create a new stream of support for destitute families and former looked after children in England who have no immigration status. Under their proposals accommodation and financial support will no longer be provided to such people under the Children Act 1989. We are working with the Home Office to ensure that safeguarding responsibilities to children and their families remain in place and that any new burdens on authorities are assessed and met.

1.4 The wider measures within the Bill seek to create a 'hostile' environment for migrants who have no migration status, thereby increasing the risk of presentations to local authorities if there are children or other vulnerabilities to address. The changes are likely to particularly affect the most vulnerable, such as families with children, adults who require care and former looked after children. We are worried that the proposed measures will significantly increase the numbers of destitute adults and families within communities, leading to safeguarding and cohesion concerns.

1.5 The average time on local authority support for a single case remains in excess of two years. Local authorities are committed to working with the Home Office to improve compliance with immigration processes for families on local authority and asylum support. We wish to work with Government to ensure that the immigration system works more effectively by, for example, getting decisions right on asylum applications, minimising the impact of the lengthy appeals process on extending local authority support, and on progressing cases to removal should the claim be unsuccessful. We also wish to see that local authority supported cases are given priority.

1.6 We are not convinced that the removal of support will encourage an increase in the numbers of refused asylum seekers and other unlawfully present migrants leaving the UK. As previous 'Section 9' pilots in 2004-5 demonstrated, removal of support does not necessarily encourage an increase in the numbers returned. The proposed provisions in the Bill could serve to encourage people to go 'underground', reducing both their engagement with the removals process and with statutory services, thus increasing their risk of exploitation. We wish to work with Government to explore how families can best engage with the removals process and the local government role, if any, in this.

English language provisions (clauses 38 and 41)

1.7 The proposals in clauses 38 and 41 to require customer-facing public authority staff to speak fluent English will have legal, financial and employment implications for councils, even though the vast majority of council staff speak fluent English. The draft code of practice published by the Cabinet Office is clear that the fluency duty applies to existing staff as well as any newly recruited staff. Although council staff are as diverse as the communities they serve, and councils will always seek to ensure their staff have an adequate standard of English to communicate with residents the provisions mean councils will need to review their HR policies and practices. The code could also mean they have to offer staff training or redeployment where they do not meet the standard, and will require local authorities to establish and operate appropriate complaints procedures. The Cabinet Office is working with the LGA and councils to properly assess the new burden impact of these measures.

Further information

2. Changes to support for certain categories of migrant (clause 34 and Schedule 6)

2.1 Directors of Children's Services have a statutory duty set out in the Children Act 2004 to secure the best outcomes for all children and young people in a local area and for keeping them safe. Local authorities are required to intervene to prevent and alleviate child homelessness.

[345] For further information please visit the No Recourse to Public Funds website at: http://www.nrpfnetwork.org.uk/Pages/Home.aspx

2.2 Councils support the existence of a safety net for migrants who face restrictions to the welfare state on account of their immigration status. This support avoids the most vulnerable in our society becoming homeless and at risk of significant harm.

2.3 Local authorities already face a considerable cost burden in providing this safety net support. The table below sets out the numbers of cases and costs to local authority budgets from three separate sources:

— *The NRPF Connect database:* This is a Home Office funded database used by local authorities to record NRPF caseloads and by the Home Office to verify immigration status and progress supported cases. There is no statutory requirement to use NRPF Connect, to date 34 local authorities have decided to join.[346]

— *A survey of London Boroughs undertaken by London Councils in 2015* focusing on the costs of supporting NRPF cases in the Capital in the financial year 2014/2015.

— *Centre on Migration Policy & Society (COMPAS), Safeguarding Children from Destitution, Local Authority responses to families with NRPF, June 2015*. This is a major study from Oxford University into the area of NRPF service provision, responsibilities under s17 Children Act 1989 and local authority practice.

Data Source	*Data period*	*LAs participating*	*Number of households reported*	*Number of dependants*	*Average per annum cost per household*	*Annual expenditure*
NRPF Connect database	Quarter 2 data – as at 30/09/15	34 local authorities signed-up to use database.	2154	3825	£16,667	**£32 million** (accom. and subsistence expenditure only)
London Councils survey	Financial year 2014/15	32 London Boroughs participating in survey	Estimated 3200 during the year (2500 at year end)	Not provided	Between £16,000 and £26,000 for majority of local authorities	**£50 million** (including staff time and other costs)
COMPAS	Financial year 2012/13 – *Family cases only*	137 local authorities responding to survey.	3391	5900	Not provided	**£28 million** (estimated cost, accom. Subs only).

2.4 Data from the three sources outlined above confirms that NRPF service provision is not short term in nature, with the average time for a single case to remain on local authority support being in excess of two years.

2.5 We are concerned that the proposed measures within the Immigration Bill will significantly increase the numbers of destitute adults, families and homeless children within communities, creating safeguarding and cohesion issues.

2.6 There is a parallel concern that those who are not covered by local authority statutory duties, such as single adults with no children or care needs, will have no access to support and will become destitute.

2.7 We appreciate that in the asylum support reform consultation response, the Home Office appears to accept responsibility for engaging with families during the grace period. However without further detail of this, and without confirmation of how long the grace period will be, it is difficult to assess how this may impact on the take up of voluntary return and Home Office enforcement of returns.

2.8 There are currently low rates of assisted voluntary returns and enforced returns by the Home Office to people's country of origin. In the year ending March 2015, 1,820 Assisted Voluntary Returns and 23,406 voluntary departures took place. 12,498 enforced removals were undertaken; less than in the preceding year.[347] In 2014-15, one per cent of Home Office outcomes recorded on NRPF Connect were removals. Low removal rates also indicate to refused asylum seekers and migrants who have no immigration permission that an enforced return is an unlikely outcome of their particular case.

2.9 Many families successfully apply for leave to remain under the Immigration Rules, thereby lengthening the period of support from social services whilst claims are decided. The average time on local authority support for a single case remains in excess of two years.

[346] A full list of participating local authorities is available at www.nrpfnetwork.org.uk/nrpfconnect
[347] *Immigration Statistics, January to March 2015*. Home Office, 21 May 2015.

2.10 The Home Office's processes regarding progressing cases to removal were criticised by the Chief Inspector of Borders and Immigration in his report, *An Inspection of Overstayers: How the Home Office handles the cases of individuals with no right to stay in the UK*.[348]

2.11 The costs of NRPF Service provision remain unfunded despite the work of local government to urge for funding and reimbursement arrangements. Indeed, financial remuneration through the New Burdens doctrine is increasingly important given the scale of cuts to local authority budgets.

Assumptions regarding behavioural changes

2.12 A key objective of the proposals is that the changes will remove financial incentives for refused asylum seekers and other unlawfully present migrants to remain in the UK and, as a result, will return to their countries of origin. Local authorities are concerned that this behavioural change will not take place as widely as intended. Between December 2004 and December 2005, a pilot was undertaken in a number of local authority areas where asylum support was terminated for refused families by the Home Office enacting paragraph 7A of Schedule 3 of the Nationality Immigration and Asylum Act 2002. In their report assessing the impact of the 'Section 9' pilots, Barnardos found that 35 out of 116 families had disappeared, losing all contact with public services.[349]

2.13 Following concerns raised during the consultation period, the Home Office appears to have accepted responsibility for engaging with families to encourage return once they are refused asylum, during the 'grace period' before support is stopped.

2.14 We welcome the recognition that engagement in the removals process is easier to achieve when children and their families are known to the Home Office or authorities. We wish to work with Government to develop how any scheme will run, building on existing good practice that seeks to safeguard children, and to what extent any local authority involvement will be required.

2.15 It is likely that costs to local authorities will be higher where families have 'gone underground' and present to councils at a later stage with significant safeguarding concerns following a period of destitution and forced dependency on informal and potentially exploitative living arrangements. We are therefore keen to work with the Home Office to explore why there are currently low rates of enforced removals and family returns, and why the removal of support is seen to be the deciding factor in leveraging compliance with returns.

Improvements to the current system

2.16 Local authorities are committed to working with the Home Office in improving compliancy with immigration processes for families on local authority asylum support.

2.17 Such work includes providing clear guidance and training support to local authorities on statutory duties via the NRPF Network, including existing exclusions to social services support under Schedule 3 Nationality Immigration and Asylum Act 2002; better data-sharing arrangements as exampled through the NRPF Connect database; local authorities paying for Home Office embedded officers to support assessment and review processes; and an opportunity to contribute to discussions about how Home Office removal processes may be made more efficient following refusal of applications for LTR in the UK.

2.18 Local authority supported cases should be prioritised and there are existing joint mechanisms to achieve this. NRPF Connect is a national database used by local authorities and the Home Office. It allows local authorities to obtain timely immigration status information from the Home Office; the database provides information on cases which the Home Office can then prioritise for case resolution. Since April 2015, across the 34 local authorities using NRPF Connect, 1659 referrals have been recorded.

2.19 Stopping support will need to result in those refused asylum leaving the UK. We wish to work with Government to ensure that case resolution, including removals, becomes more effective. From the experience of local authorities, the failure to achieve returns is result of procedural and case-working delays, as opposed to the reluctance to co-operate with the return process. Resolution of cases is also not solely achieved by voluntary departure.

Next steps

Government amendments

2.20 Previously local authorities have raised concerns about the unfunded transfer of costs from the Home Office to councils and the complexity of applying the exclusions to social services support under Schedule 3, Nationality Immigration and Asylum Act 2002. Government has tabled amendments to the Bill seeking to create a new stream of support for destitute families and former looked after children in England who have no immigration status. Accommodation and financial support will no longer be provided to such people under the

[348] *An Inspection of Overstayers: How the Home Office handles the cases of individuals with no right to stay in the UK (May – June 2014).* Vine, J. Independent Chief Inspector of Borders and Immigration, December 2014.

[349] *The End of the Road, the impact on families of section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004.* Barnardos & the Refugee Children's Consortium, Autumn 2005, page 6.

Children Act 1989, although this will remain accessible to European Economic Area (EEA) nationals and non-EEA nationals who are lawfully living in the UK.

2.21 We are keen to continue to explore with the Home Office how to simplify the current complex system of administering support for destitute families and former looked after children in England who have no immigration status. This includes seeking an assurance from Government that where a local authority has concerns in relation to safeguarding or child protection issues for care leavers or children in migrant families without status, they would retain the ability to act on these concerns and that they would be prevented from becoming destitute whilst remaining in this country. Assuming the Government's amendments are passed, we would wish to engage with Government on how any statutory guidance will clarify the operation of the new arrangements in order to support councils in implementing them.

Funding

2.22 The recognition from the Home Office that any new arrangements should be assessed under the new burden assessment is positive. However despite these positive developments, we remain concerned that the outcome of the legislation will be an increased number of referrals to social services, resulting in increased costs to councils. All available data shows that local authorities can be supporting adults and children from vulnerable migrant groups for a number of years. We therefore welcome the offer by the Home Office that local government continues to work with them to explore how families can engage in the returns process, and how local authority supported cases can be prioritised.

Transitional arrangements

2.23 Instances of destitution could increase because of the measures in the Bill to limit the ability of migrants to remain self-supporting and to withdraw asylum support in specified circumstances. This is why we are recommending that Government sets out in greater detail how it provide transitional support to those who are no longer eligible for their support but have not yet left the country.

2.24 During Committee Stage the Government has recognised the need to identify, clarify and address how the different legislative context for local authorities in Wales and Scotland will apply in relation to its proposal and this is an important development.

3. Language requirements for public sector workers (clauses 38 and 41)

3.1 The provisions in Clause 38 of the Immigration Bill requiring public authority staff in a customer-facing role to speak fluent English will have legal, employment and financial implications for local authorities given the diverse range of services provided by councils and the diverse workforce they employ, which reflect the communities' councils serve.

3.2 The Cabinet Office published the draft code of practice which will apply to public sector workers on 19 October 2015, and is seeking views on the proposals set out in it. The draft code covers which workers might be considered to be in a customer-facing role, what standard could be required to meet the fluency duty, what action public authorities could take where staff do not meet the fluency requirements, and the introduction of a complaints system to cover the duty.

3.3 The draft code defines a customer-facing role as one where regular and anticipated interaction with the public is an intrinsic part of the job. The code suggests that staff in a council's call centre or a teaching assistant would be caught by this definition, but a council street cleaner would not be. Being fluent means having a command of spoken English or Welsh (in Wales) which is sufficient to enable the effective performance of their role. Ultimately it will be up to councils to decide themselves what roles the new duty applies to and what levels of fluency are required in what roles. The code though applies to existing staff as well as newly recruited staff.

3.4 Although councils make every effort to ensure their staff have an adequate standard of English to communicate with residents, councils will need to review their HR practices and policies, revise selection and appointment practices as well as employment contracts so they are compliant with the code and ensure consistency when advertising for similar types of customer-facing roles. Where a member of staff does not meet the required standard councils will have to consider providing training or re-training so staff have the opportunity of meeting the standard. If the member of staff is unable to meet the necessary standard adjustments to their role will need to be considered, such as moving them to a non-customer-facing role. Councils will also need to have procedures in place to allow members of the public to complain where they feel a worker is not fluent enough in English or Welsh.

3.5 The impact assessment produced by the Cabinet Office for the draft code anticipates that between 0.4-1.2 per cent of public sector workers might be affected by the introduction of the new duty, but they do not have all the information needed to properly assess the financial impact of introducing the new duty. The LGA and councils will be working with the Cabinet Office so there is a proper assessment of the impact and to ensure that the new burdens on councils are fully funded.

4. Licensing

4.1 Clause 10 and Schedule 1 of the Immigration Bill introduce amendments to the Licensing Act 2003 which require licensing authorities to make additional checks on applicants for personal and premises licences.

4.2 While illegal working does occur in some licensed premises, it more commonly involves sales staff or auxiliary workers and almost never involves someone licensed to run the premises. The LGA's joint work with the National Fraud Initiative in the Cabinet Office during the past year did not reveal any illegal workers licensed to run an alcohol premises.

4.3 The LGA has held constructive discussions with the Home Office to refine these proposals and target them more effectively. Councils already work closely with the Border Agency and the new powers of entry and closure will simplify this work, which is to be welcomed. We are less convinced that the additional checks on applications will identify significant numbers of illegal workers, but they are not burdensome and we do not oppose them.

4.4 There are also proposals to introduce comparable checks to the taxi licensing regime. These are expected to be introduced via amendment at a later stage in the bill process. Licensing authorities inform us that there are more instances of illegal working discovered when checking applicants to be a taxi driver, with around 330 applicants revealed to have no right to work by the National Fraud Initiative during the last year. Councils therefore believe that these additional checks will be a welcome additional tool for councils in ensuring that applicants are 'fit and proper' people to be driving licensed vehicles.

4.5 It is important that the additional requirements for alcohol and taxi licensing remain light touch and do not impose requirements that run counter to councils' obligation to accept all applications for alcohol licences online (under the Provision of Services Regulations 2009). It is also important that the Home Office commits to providing effective training for licensing authorities on identifying forged documents, as this will be a new skill for them to apply.

November 2015

Letter from the Home Office to the Residential Landlords Association (IB 51)

Thank you for your letter of 23 October about the Immigration Bill 2015-16. You have raised concerns about clause 12 which contains new offences of renting to an illegal immigrant and about the roll out of the Right to Rent scheme.

The Immigration Act 2014 provided for restrictions to the access that illegal immigrants have had to the private rented sector through the Right to Rent scheme. The ease by which illegal immigrants have been able to secure rented accommodation has made it easier for some to obtain a foothold here and allows them then to look for employment that much more easily. In addition, there are a small minority of landlords who choose to knowingly rent to illegal immigrants. These landlords are often breaking multiple rules and laws and are often the same landlords who cause significant concerns to local authorities and who damage the reputation of the majority of landlords.

The Right to Rent scheme relies upon a landlord or agent conducting a check of documents as prescribed in law. The list of acceptable documents was formulated by my officials after extensive engagement with bodies representing landlords, lettings agents, housing charities and the further and higher education sector. Particular regard was given to the position of our lawful residents, including settled and lawfully remaining migrants in prescribing the right to rent checks in law.

Throughout the engagement that my department has had with the private rented sector, landlords and agents have voiced a number of concerns. They were equally concerned with addressing potential discrimination and the position of lawful residents who do not have a passport. The evaluation of the first six months of the Right to Rent scheme has shown that the checks are working well and that whilst respondents had raised the same concerns, there was no hard evidence of discrimination or of people without passports being placed at a disadvantage in accessing the rented accommodation. Whilst the evaluation found that most landlord and agents found the checks undemanding, you will be aware, that I have asked my officials to look again at the list of acceptable documents and they have had constructive engagement with Panel members in this respect, not least the RLA. I have considered your suggestion that local authorities issue a single, readily identifiable document or certificate confirming their right to rent but this would not be practical as local authorities do not hold information on all individuals in the United Kingdom, and would need to see evidence as to a person's identity and status in order to consider issuing a certificate. This would place unnecessary additional costs and burdens on local authorities when the list of acceptable documents already provides numerous options to provide evidence of right to rent, including, in combination with another document, a letter from a local authority.

The other concerns that we have heard throughout from landlords and agents related to the minority of rogues who will ignore any regulations and the position of a landlord who has an illegal immigrant in their property. The measures in the Immigration Bill address these concerns.

You have raised concerns that landlords who have sitting tenants may be liable for prosecution and that many landlords and agents may now be worried that they have to conduct right to rent checks in relation to residential tenancy agreements that pre-date the roll out of the Right to Rent scheme. I wish to make it clear that the Government is not requiring and has not suggested that landlords and agents conduct these checks save where the Right to Rent scheme has commenced and the tenancy agreement is entered into after the scheme is in force. Landlord and agents with sitting tenants will not be caught by the new criminal offences, unless it can be proven, beyond reasonable doubt, that they have knowingly committed the offence of renting to illegal immigrants or have had reasonable cause to believe that the tenants or occupants are illegal immigrants. In order to pursue prosecution, this will entail evidencing both the physical offence in law and the 'mens rea', the mental element where matters such as intent are critical to a conviction. Unless these provisions are available, there is significant potential for rogue landlords to seek to avoid a prosecution by claiming that a tenancy predated the new offences, whether this is in fact the case or not.

I have made clear in Parliament, we are taking on these offences for the most serious cases where there is a pattern of knowingly renting to illegal immigrants or the most serious cases and the Home Office investigation and prosecution teams will be provided with clear guidance in these respects and this guidance will also form part of any brief provided to the Crown Prosecution Service and their counterparts in Scotland and Northern Ireland by the Home Office. Both this guidance and the Government's comments in Parliament as to the intent of the policy can be taken into consideration by the CPS in making their charging decision and by the courts.

In looking at the support to landlords, you have raised the matter of the numbers of staff employed in serving the Landlords Checking Service. Current staffing reflects the levels of demands seen to date, about 10 checks a week. In preparing for the implementation of the first phase of the Right to Rent scheme, a new team of officers was convened and they and other call centre staff undertook training (contingency plans allowed for any peak in calls to be rerouted quickly to other call centres). The service has earned complimentary comments from the private rented sector. It has answered all calls within the published service standards. The checking service is now being expanded and more officers have now undergone training in the scheme.

In looking forward, I am concerned that we continue to take all available steps in ensuring that our lawful residents are able to navigate the right to rent checks. The scheme has been in place now for 11 months in the United Kingdom's second largest conurbation. The evaluation showed that there is still some work to do to raise awareness amongst tenants and we will work to ensure we communicate the measures to the wider community of landlords and agents across England. I have convened a sub Committee of the Panel that brings the sector's representatives and my officials together with a clear focus on these matters.

Finally, you have asked for an opportunity to meet to discuss further. As you will know, I meet with the RLA on a very regular basis through the Landlords Consultative Panel. The RLA has attended all of the Panel meetings to date and also met with my officials in July, August and October to discuss proposals for the Bill and changes to the list of acceptable documents under in the Right to Rent scheme The RLA was also given the opportunity to provide evidence to the Immigration Bill committee. For these reasons I do not consider a specific meeting to be needed but I look forward to the RLA's participation at the next Panel meeting. I am grateful for RLA's continued constructive engagement with the Home Office.

November 2015

Written evidence submitted by the Gatwick Detainees Welfare Group (IB 52)

About Gatwick Detainees Welfare Group

1. Gatwick Detainees Welfare Group (GDWG) is a registered charity who visit and support people held under Immigration Act powers in the Gatwick area.

Summary

2. GDWG are extremely concerned that the Bill proposes the removal of bail addresses that enables those detained migrants who have no access to a private address in UK to apply for immigration bail to the Immigration and Asylum Tribunal (IAT). The result of this change could effectively mean that many people in detention will be unable to challenge their detention, other than via a costly and time-consuming unlawful detention challenge in the High Court.

Background

3. In 2012 there were almost two and a half thousand unique applications for section 4(1) bail accommodation, suggesting that these people were unable to access any other accommodation for their bail application. Having an address acceptable to the Tribunal to be released to is a prerequisite for being granted bail. If you don't have an address, you cannot be released on bail.

4. The UK is unique in Europe in having no time limit on detention, and unusual in the lack of automatic judicial oversight.

Part 5 and Schedule 6

5. Part 5 and Schedule 6 of the Bill abolish Section 4 of the Immigration Act 1999, and replace it with a new Section 95A. It is as yet unclear how Section 95A will work, and secondary legislation is going to be required. However, it seems that the government is proposing a system where an address will only be provided when the Home Office chooses to release, and not when a detainee wishes to challenge their detention via the Tribunal.

6. This new power to grant an address at the Home Office's choosing appears to extend only to asylum seekers and, in limited circumstances, failed asylum seekers. Most people in detention have either previously had their asylum claims refused, or have never claimed asylum. This will effectively deny destitute migrants in detention the right to have their detention scrutinised by the Tribunal, unless the Home Office choose to grant them an address under Schedule 6. In other words, the Home Office will have the power to prevent detained migrants from applying for bail. There will be no right of appeal against this if the Secretary of State decides that there are no genuine obstacles to removal. Our own experience has shown us repeatedly that the Home Office will frequently argue that there is no barrier to removal even where the fact of a prolonged detention and failed removals suggest strongly otherwise.

7. This power to effectively refuse access to judicial scrutiny of detention risks breaching the right to liberty under Article 5 of the European Convention on Human Rights.

Schedule 5

8. Clause 29 and Schedule 5 are confusing and unclear, in that they appear to give the Secretary of State the power 'in exceptional circumstances' to grant support to someone who is already on bail and living at an address of their own. Further clarification of this schedule is required, but it appears that it is not designed to supply a bail address for a detainee to apply for bail to the Tribunal.

The likely impact of the proposed legislation

9. We believe the proposals in the Bill would lead to the following:

10. **Abuse of the asylum system.** If people in detention know that the only way to apply for a bail address is by claiming asylum, it is likely there will be an increase in asylum applications.

11. **Increased use of Judicial Review.** Those in detention who cannot access a bail address will be forced therefore to apply for Judicial Review, which will put even greater burden on the courts. There is also the probability that there will be an increase of unlawful detention litigation as the only recourse left to those unable to challenge their detention any other way, with very costly implications.

12. **Increase in long-term detention.** With no time limit on detention, the UK already sees significant numbers of people who spend many months or years in detention. With no access to bail addresses, it is likely this number will increase yet further, at huge financial and human cost.

13. **Promoting absconding.** Without access to bail addresses, it is inevitable that detainees will be released on temporary admission or by the High Court to destitution and homelessness. This will of course mean it will be almost impossible for the Home Office to keep track of these people should they wish to detain and remove them at a later date, and will also make reporting requirements much less likely to be adhered to.

14. P**romoting criminality and exploitation.** Making people street homeless, many of whom will be ex-offenders, is going to lead to an increase in criminal behaviour as these people try to survive without any food, shelter or support. It will also put people at risk of exploitation and illegal working.

15. **Increase in protests and disturbances in detention.** Our experience tells us that frustration at not knowing when you will be released increases both individual and collective protest actions in detention. If the possibility of challenging detention is effectively removed from a large section of the detention population there will undoubtedly be an escalation in this, making centres less safe and more difficult to manage.

16. **Reducing voluntary return.** While the Home Office appears to favour enforcement tactics rather than engagement to try to ensure compliance with immigration decisions, international evidence is clear that in fact supporting and stabilising people is a much more effective way of allowing them to make rational decisions about their future, including the inevitability for some of the fact they will have to return to their home countries. Our experience at GDWG tells us that the more the Home Office try to force people into compliance through strong-arm tactics such as indefinite detention, the more many of those people effectively dig their heels in and try to fight. There is a real risk that removing the ability to access bail accommodation will compound this. Community-based engagement models in other countries have shown that much higher levels of voluntary return can be achieved this way.

November 2015