

HOUSE OF LORDS – COMMITTEE**Legal Aid, Sentencing and Punishment of Offenders Bill
(HL Bill 109)****Marshalled List of Amendments
re Civil Legal Aid**

The following Numbered Amendments are taken from the Marshalled List (as at 19 December 2011) providing a short explanation of purpose in relation to each amendment relating to civil legal aid; and where possible providing a short briefing note and/or information (including links) to fuller briefings or contacts who will be able to provide further assistance as to either the specific amendment or the issue to which the amendment relates.

Amendments considered at Day 1 of Committee have been removed from this list. At the end are included amendments tabled supplementary to the Marshalled List and which are yet to be numbered:

Indication is given where ILPA supports the amendment. However, the absence of such endorsement is not indication that ILPA is either opposed or unopposed. Some amendments relate to areas outside of our close or immediate interests or expertise, and others touch on matters where there may be an alternative amendment for which we have indicated our support:

The amendments are listed in the order in which they appear on the Marshalled List:

Clause 1**5****LORD BACH
LORD BEECHAM**

Page 2, line 4, at end insert—

“() The Lord Chancellor must review the accessibility and quality of expert advice that is available for civil legal proceedings and ensure that this is maintained or improved following the commencement of this Part.”

Presumed Purpose

To probe the Government as to the likely impact of the proposals for civil legal proceedings and legal aid in terms of the quality and expertise that will in future be available to those currently eligible for legal aid or in receipt of civil legal advice generally.

Briefing Note

ILPA Lindsey House, 40/42 Charterhouse Street London EC1M 6JN Tel: 020 7251 8383 Fax: 020 7251 8384
email: info@ilpa.org.uk website: www.ilpa.org.uk

The amendment provides an opportunity to highlight the peculiar regulation to which immigration advice and representation is subjected, which means that charities and other voluntary agencies offering general advice are generally prohibited from providing advice or representation in this area. Breaching that prohibition ‘in the course of a business’ (whether for profit or not for profit) is a criminal offence. This is by reason of the regulation of the Office of the Immigration Services Commissioner, established under the Immigration and Asylum Act 1999. Without legal aid, therefore, those who cannot pay will be likely to find that there is simply no legitimate source of advice or representation in this area available to them.

After Clause 1

6

LORD BACH
LORD DAVIDSON OF GLEN CLOVA
LORD WIGLEY
BARONESS PRASHAR

Insert the following new Clause—

“Pre-commencement impact assessment

(1) The Lord Chancellor must commission an independent review to assess and report on the following areas—

(a) the expected costs and impacts of Part 1 on—

(i) children and young people;

(ii) people with disabilities, including people with learning, physical, mental and psychological disabilities;

(iii) women;

(iv) victims of domestic violence;

(v) black and ethnic minorities;

(vi) government departments;

(vii) courts and tribunals, including any changes in time and resources;

(viii) local authorities;

(b) any expected impact of Part 1 on—

(i) the incidence of homelessness;

(ii) the incidence of ill-health, or suicide;

(iii) the commission of criminal or anti-social behaviour; and

(iv) the future provision and availability of services including, but not limited to, law centres and citizens advice bureaux.

(2) The Lord Chancellor must lay a copy of the final report commissioned under subsection (1) in both Houses of Parliament at the same time as laying a draft commencement order for any other section in this Part.”

Presumed Purpose

To ensure that before commencement of the legal aid provisions (in Part 1 of the Bill), the Government has commissioned and obtained an independent review providing an impact assessment addressing the matters listed; and that the final report of the review is available to both Houses of Parliament before (or at the same time as) a draft commencement order on Part 1 is placed before them.

Clause 2

7

LORD BACH
LORD BEECHAM

Page 2, line 20, at end insert—

“() Before making arrangements under subsection (2)(c), a draft order with the proposed arrangements must be laid before, and approved by an affirmative resolution of, each House of Parliament.”

Presumed Purpose

To require that any arrangements made by the Lord Chancellor to establish (and maintain) a body for providing legal aid services shall first be set out in a draft order laid before each House of Parliament, and requiring approval by affirmative resolution.

8

LORD BACH
LORD BEECHAM

Page 2, line 23, at end insert—

“() Before making regulations relating to the payment of remuneration to barristers and solicitors in accordance with subsection (3), the Lord Chancellor shall consult—

(a) the Bar Council;

(b) the Law Society of England and Wales;

(c) the Institute of Legal Executives; and

(d) organisations representing the legal advice movement.

() Where the Lord Chancellor makes regulations in accordance with subsection (3), he or she shall have regard to the need to secure the provision of services of the description to which the order relates by a sufficient number of competent persons and bodies.”

Presumed Purpose

To probe the Government as to how remuneration rates will be set in relation to legal aid, and the impact of the recent reduction by 10% in such rates and what protection there will be in future against decisions to make further such cuts; and to consider the sustainability of legal aid.

Clause 3

9 & 10

**LORD BACH
LORD BEECHAM**

Page 2, line 35, leave out “may” and insert “must”

Page 2, line 37, leave out “may” and insert “must”

Presumed Purpose

To require the Lord Chancellor to set and monitor standards in relation to legal aid services, and to make arrangements for accreditation of those delivering such services.

11

**LORD BACH
LORD BEECHAM**

Page 2, line 40, at end insert—

“() Before making arrangements to accredit persons under subsection (2), the Lord Chancellor must consult, and have regard to the views of, the Law Society, the Bar Council and the Institute of Legal Executives.”

Presumed Purpose

To ensure that any arrangements for accreditation of those permitted to provide legal aid services are first made subject of consultation with the specified bodies.

12

**LORD BACH
LORD BEECHAM**

Page 3, line 3, leave out subsections (4) and (5)

Presumed Purpose

To remove the power in clause 3(4) and 3(5) for the imposition of charges in connection with any arrangements for accreditation of those permitted to provide legal aid services.

Briefing Note

The amendment provides opportunity to highlight the pressure on legal practitioners imposed by cuts in remuneration, with the attendant risk of the loss of their services to clients; and the extent to which successive Governments have failed to take this into account when establishing costly bureaucracy around Legal Aid.

Clause 4

13 & 17

**LORD PANNICK
LORD WOOLF
LORD FAULKS
LORD HART OF CHILTON**

Page 3, line 13, at end insert—

“() The Lord Chancellor must ensure that—

(a) the person designated as Director has such qualifications and experience in relation to securing access to legal services for individuals as the Lord Chancellor considers appropriate, and

(b) the terms on which the designated person holds the post of Director are, as regard the making and termination of the designation and otherwise, such as to ensure the Director’s independence from Ministers of the Crown (subject to any direction or guidance given under subsection (3)) in relation to the carrying out of the Director’s functions under this Part.”

Page 3, line 27, at end insert—

“() In this section “Minister of the Crown” has the meaning given by the Ministers of the Crown Act 1975.”

Presumed Purpose

To probe the Government as to the qualifications and expertise considered necessary for the role of the Director or Legal Aid Casework, and concerning assurances as to the Director’s independence in carrying out his or her functions in the delivery of legal aid services.

For further information, contact:

Harriet Deane, Bar Council, 020-7611 4509, hdeane@barcouncil.org.uk

Richard Messingham, Law Society, 020-7320 5858,

Richard.Messingham@LawSociety.org.uk

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**LORD THOMAS OF GRESFORD
LORD PHILLIPS OF SUDBURY
LORD CARLILE OF BERRIEW
LORD MACDONALD OF RIVER GLAVEN**

Page 3, line 15, leave out “or other persons (or both)” and insert “and independent persons”

Presumed Purpose

To provide opportunity to probe the Government as to who shall provide such assistance to the Director of Legal Aid Casework as is envisaged, and in particular which independent persons shall do so.

15

LORD BACH
LORD BEECHAM

Page 3, line 22, leave out subsection (4) and insert—

“(4) The Director must, except to the extent that subsection (4A) applies, act under the direction of the Lord Chancellor.

(4A) The Director must act independently when performing any functions or duties under this Part.”

Presumed Purpose

To provide opportunity to probe the Government as to the degree of independence intended to be enjoyed by the Director of Legal Aid Casework.

For further information, contact:

Harriet Deane, Bar Council, 020-7611 4509, hdeane@barcouncil.org.uk

Richard Messingham, Law Society, 020-7320 5858,

Richard.Messingham@LawSociety.org.uk

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LORD THOMAS OF GRESFORD
LORD PHILLIPS OF SUDBURY
LORD CARLILE OF BERRIEW
LORD MACDONALD OF RIVER GLAVEN

Page 3, line 23, at end insert “or to any matter the subject of legal proceedings to which any Minister of the Crown, Government department, executive agency or non-departmental public body is a party”

Presumed Purpose

To preclude the Lord Chancellor from giving directions or guidance on any matter the subject to legal proceedings to which any of the identified persons or bodies is a party.

17

See Amendment 13 (above)

Stand part

LORD BACH
LORD DAVIDSON OF GLEN CLOVA

The above-named Lords give notice of their intention to oppose the Question that Clause 4 stand part of the Bill.

Presumed Purpose

To provide opportunity to probe the Government as to its intentions in establishing a Director of Legal Aid Casework.

After Clause 4

18

**LORD BACH
LORD BEECHAM**

Insert the following new Clause—

“Legal Aid Appeals

23 Decisions of the Director under this Part shall be reviewable by a first-tier tribunal established under the Tribunals, Courts and Enforcement Act 2007.

(2) The primary functions of the tribunal in respect of subsection (1) are to—

23 consider applications for review; and

(b) conduct and determine reviews,

following a decision being made by the Director in respect of eligibility for legal aid under Part 1 of this Act.

(3) A decision of the tribunal may be reviewed or appealed in accordance with the Tribunals, Courts and Enforcement Act 2007.”

Presumed Purpose

To probe the Government as to its intentions regarding the provision of an independent right of review of any refusal of eligibility for legal aid by the Director of Legal Aid Casework; by suggesting the establishment of a right of review by the First-tier Tribunal within the scheme established by the Tribunals, Courts and Enforcement Act 2007.

Clause 7

20 & 94

**LORD THOMAS OF GRESFORD
LORD PHILLIPS OF SUDBURY
LORD SHIPLEY
BARONESS DOOCEY**

Page 5, line 25, after “mediation” insert “, collaborative law”

Page 7, line 27, after “mediation” insert “, collaborative law”

Presumed Purpose

To include ‘collaborative law’ within the types of proceedings for which legal aid may be made available.

For further information, contact:

Rachel Rogers, Resolution, 020-3195 0189, rachel.rogers@resolution.org.uk

and see: http://www.resolution.org.uk/editorial.asp?page_id=53

Clause 8

21

LORD BACH
LORD BEECHAM

Page 5, line 31, leave out paragraph (a) and insert—

“(a) they are not specifically excluded under Schedule 1; and”

Presumed Purpose

To probe the Government as to the provision of legal aid in areas of civil law not expressly excluded by the provisions in Schedule 1.

22

LORD PANNICK
LORD WOOLF
LORD FAULKS

Page 5, line 35, leave out subsection (2)

Presumed Purpose

To remove the power of the Lord Chancellor to further reduce the availability of civil legal aid by removing by order any of the services specified in Part 1 of Schedule 1.

23 & 27

BARONESS BUTLER-SLOSS

Page 5, line 35, after second “by” insert “adding services to or”

Page 5, line 36, after “Schedule” insert “or by amending any description of services included in that part”

Presumed Purpose

To include with the power of the Lord Chancellor to further reduce the availability of civil legal aid by removing by order any of the services specified in Part 1 of Schedule 1, an equal power to increase the availability of civil legal aid by adding services to those specified in Part 1 of Schedule 1; and to permit amendment of the description of services in Part 1 of Schedule to the same or similar ends.

24

LORD BACH
LORD BEECHAM

Page 5, line 35, leave out “omitting” and insert “adding”

Presumed Purpose

To remove the power of the Lord Chancellor to further reduce the availability of civil legal aid by removing by order any of the services specified in Part 1 of Schedule 1; and to substitute for this order making power the power to increase the availability of civil legal aid by adding services to those specified in Part 1 of Schedule 1.

Briefing Note

See also the amendments numbered **22** to **27**. ILPA is generally supportive of these amendments, albeit each is an alternative to the others. At a minimum, the power in clause 8(2) should either be removed or the addition of the power to include services is required so as to ensure balance. As regards including services, at the meeting of the All Party Parliamentary Group on Legal Aid in June 2011, the Minister stated that there were powers to bring matters back within scope. When it was pointed out to him that this was not accurate, he said that this would need to be looked at. This remains outstanding.

For further information, contact:

Ann Lewis, Advice Services Alliance, 020-7953 3088, Ann.Lewis@asauk.org.uk

Harriet Deane, Bar Council, 020-7611 4509, hdeane@barcouncil.org.uk

Richard Messingham, Law Society, 020-7320 5858,

Richard.Messingham@LawSociety.org.uk

A joint briefing, supported by ILPA, is available at: <http://tinyurl.com/6nuf4py>

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LORD THOMAS OF GRESFORD

LORD PHILLIPS OF SUDBURY

LORD SHIPLEY

BARONESS DOOCEY

Page 5, line 36, after “from” insert “or adding to”

Presumed Purpose

To include with the power of the Lord Chancellor to further reduce the availability of civil legal aid by removing by order any of the services specified in Part 1 of Schedule 1, an equal power to increase the availability of civil legal aid by adding services to those specified in Part 1 of Schedule 1.

26

LORD PANNICK

LORD WOOLF

LORD FAULKES

Page 5, line 36, after “from” insert “, or adding services to,”

Presumed Purpose

To include with the power of the Lord Chancellor to further reduce the availability of civil legal aid by removing by order any of the services specified in Part 1 of Schedule 1, an equal power to increase the availability of civil legal aid by adding services to those specified in Part 1 of Schedule 1.

27

See Amendment 23 (above)

LORD BACH
LORD BEECHAM

The above-named Lords give notice of their intention to oppose the Question that Clause 8 stand part of the Bill.

Presumed Purpose

To probe the Government as to its intended provision for civil legal aid by this Bill.

Schedule 1

28

LORD LLOYD OF BERWICK
LORD WIGLEY

Page 115, line 5, at end insert—

“Clinical negligence

(1) Civil legal services provided in relation to the obtaining of one or more expert reports in clinical negligence proceedings.

(2) In this paragraph—

“clinical negligence proceedings” means proceedings which include a claim for damages in respect of clinical negligence;

“clinical negligence” means breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);

“expert report” means a report by a person qualified to give expert advice on all or most of the matters that are the subject of the report;

“proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in court), whether commenced or contemplated.”

Presumed Purpose

To provide legal aid for the securing of expert reports in relation to clinical negligence cases.

For further information, contact:

Peter Walsh, Action against Medical Accidents, 020-8688 9555,

chiefexec@avma.org.uk

Harriet Deane, Bar Council, 020-7611 1453, hdeane@barcouncil.org.uk

**LORD THOMAS OF GRESFORD
LORD PHILLIPS OF SUDBURY
LORD CARLILE OF BERRIEW
BARONESS DOOCEY**

Page 115, line 5, at end insert—

“Clinical Negligence

Civil legal services provided by members of the specialist panels of the Law Society or Action Against Medical Accidents (AvMA) for clinical negligence proceedings in respect of—

(a) a claim for damages in respect of an alleged breach of duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or

(b) a claim for damages in respect of alleged professional negligence in the conduct of such a claim.”

Presumed Purpose

To provide for legal aid in relation to clinical negligence actions brought by the specified members of specialist panels of the Law Society or Action Against Medical Accidents (AvMA).

For further information, contact:

Peter Walsh, Action against Medical Accidents, 020-8688 9555,

chiefexec@avma.org.uk

Harriet Deane, Bar Council, 020-7611 1453, hdeane@barcouncil.org.uk

**LORD BACH
LORD BEECHAM**

Page 115, line 7, leave out paragraphs 1 to 40

Presumed Purpose

To probe the Government as to its intended provision for civil legal aid by this Bill.

**LORD THOMAS OF GRESFORD
BARONESS DOOCEY
LORD PHILLIPS OF SUDBURY
LORD CLEMENT-JONES**

Page 116, line 1, at end insert—

“Social Welfare

Civil legal services provided in relation to a benefit, allowance, payment, credit or pension under—

(a) the Social Security Contributions and Benefits Act 1992,

(b) the Jobseekers Act 1995,

(c) the State Pension Credit Act 2002,

(d) the Tax Credits Act 2002,

(e) the Welfare Reform Act 2007,

(f) the Welfare Reform Act 2011, or

(g) any other enactment relating to social security.”

Page 137, line 29, leave out paragraph 15

Presumed Purpose

To provide generally for legal aid in relation to social welfare matters, but not for advocacy on appeals before the First-tier Tribunal (Social Entitlement Chamber). These amendments should be read together, that to page 137 being consequential upon that to page 116.

Briefing Note

ILPA is supportive of this amendment, the relationship between a person’s immigration status and any entitlement to welfare benefits being a matter of especial complexity.

For further information, contact:

James Sandbach, Citizens Advice, 020-7833 7007,

james.sandbach@citizensadvice.org.uk

Elliot Dunster, Scope, 020-7619 7342, elliott.dunster@scope.org.uk

A Justice for All briefing is available at: <http://tinyurl.com/cp6nmfy>

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BARONESS BUTLER-SLOSS

BARONESS O’LOAN

BARONESS BENJAMIN

LORD LOW OF DALSTON

Page 116, line 1, at end insert—

“Children affected by civil and family law proceedings

() Civil legal services provided to a person having dependent children related to—

(a) private family law;

(b) any benefit, allowance, payment, credit or pension under—

- (i) the Social Security Contributions and Benefits Act 1992,*
- (ii) the Jobseekers Act 1995,*
- (iii) the State Pension Credit Act 2002,*
- (iv) the Tax Credits Act 2002,*
- (v) the Welfare Reform Act 2007,*
- (vi) the Welfare Reform Act 2011, or*
- (vii) any other enactment relating to social security;*
- (c) all areas of employment law not otherwise covered in this Schedule;*
- (d) all areas of housing law not otherwise covered in this Schedule;*
- (e) all areas of debt-related disputes not otherwise covered in this Schedule;*
- (f) all areas of immigration and asylum law not otherwise covered in this Schedule;*
- (g) all areas of clinical negligence law not otherwise covered in this Schedule;*
- (h) consumer law;*
- (i) all areas of consumer law not otherwise covered in this Schedule;*
- (j) appeals to the Criminal Injuries Compensation Authority;*
- (k) reviews or appeals under sections 11 or 13 of the Tribunals, Courts and Enforcement Act 2007; or*
- (l) appeals to the Supreme Court.”*

Presumed Purpose

To probe the Government as to the removal of legal aid for children and in relation to children's rights in the areas specified.

For further information, contact:

Ilona Pinter, The Children's Society, 020-7841 4509,

ilona.pinter@childrenssociety.org.uk

James Kenrick, JustRights Coalition, 020-8772 9900, james@youthaccess.org.uk

A JustRights briefing is available at: <http://tinyurl.com/6qf7pk5>

**BARONESS EATON
LORD NEWTON OF BRAINTREE
LORD CORMACK
BARONESS BUTLER-SLOSS**

Page 116, line 1, at end insert—

“Children

Civil legal services in relation to advice and proceedings where the child is, or proposes to be, the applicant or respondent in proceedings, or where the child is represented by a legal guardian, including—

- (a) arrangements relating to the child’s education;*
- (b) arrangements relating to any welfare benefit, allowance, payment or credit;*
- (c) proceedings relating to debt;*
- (d) housing law;*
- (e) proceedings relating to immigration and asylum;*
- (f) proceedings relating to clinical negligence;*
- (g) proceedings relating to consumer protection law;*
- (h) appeals to the Criminal Injuries Compensation Authority;*
- (i) private family law;*
- (j) proceedings relating to a review or appeal under sections 11 or 13 of the Tribunals, Courts and Enforcement Act 2007; and*
- (k) proceedings relating to an appeal to the Supreme Court.”*

Presumed Purpose

To provide for civil legal aid in relation to the specified proceedings for child parties, or children represented by a legal guardian.

For further information, contact:

Ilona Pinter, The Children’s Society, 020-7841 4509,

ilona.pinter@childrenssociety.org.uk

James Kenrick, JustRights Coalition, 020-8772 9900, james@youthaccess.org.uk

**LORD THOMAS OF GRESFORD
BARONESS DOOCEY
LORD PHILLIPS OF SUDBURY
LORD CLEMENT-JONES**

Page 116, line 1, at end insert—

“Disability

Civil legal services provided in relation to obtaining advice and assistance in appeals to the Social Entitlement Chamber of the First-tier Tribunal in relation to a benefit, allowance, payment, credit or pension payable under any enactment relating to social security as a result of disability as defined in section 6 of the Equalities Act 2010.”

Presumed Purpose

To provide for legal aid in relation to advice and assistance in relation to benefit-related appeals before the First-tier Tribunal (Social Entitlement Chamber), where this results from any disability within section 6 of the Equalities Act 2010.

For further information, contact:

James Sandbach, Citizens Advice, 020-7833 7007,

james.sandbach@citizensadvice.org.uk

Elliot Dunster, Scope, 020-7619 7342, elliot.dunster@scope.org.uk

A Justice for All briefing is available at: <http://tinyurl.com/cp6nmfy>

**LORD THOMAS OF GRESFORD
LORD PHILLIPS OF SUDBURY
LORD CLEMENT-JONES
BARONESS DOOCEY**

Page 116, line 4, at end insert “and under section 140 of the Learning and Skills Act 2000 (learning difficulty assessments).”

Presumed Purpose

To provide for legal aid in relation to assessments (of those approaching the end of their compulsory education for whom an education authority maintains a statement of special education needs) as to such person’s training and education needs and how these may be met.

For further information, contact:

Ilona Pinter, The Children’s Society, 020-7841 4509,

ilona.pinter@childrenssociety.org.uk

James Kenrick, JustRights, 020-8772 9900, james@youthaccess.org.uk

**BARONESS EATON
LORD NEWTON OF BRAINTREE
LORD TEBBIT
LORD CRISP**

Page 117, line 7, at end insert—

“Clinical negligence

(1) Civil legal services provided in relation to clinical negligence proceedings where the clinical negligence took place at a time when the individual was a child.

(2) In this paragraph—

“clinical negligence” means breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);

“clinical negligence proceedings” means proceedings which include a claim for damages in respect of clinical negligence;

“child” means a person under the age of 18.”

Presumed Purpose

To provide for legal aid in relation to clinical negligence proceedings where the victim of that clinical negligence at that time of its occurrence is a child. See also the alternative and wider amendment in the names of the same peers (below).

LORD CRISP

Page 117, line 7, at end insert—

“Clinical negligence

(1) Civil legal services provided in relation to clinical negligence proceedings.

(2) In this paragraph—

“clinical negligence” means breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);

“clinical negligence proceedings” means proceedings which include a claim for damages in respect of clinical negligence.”

Presumed Purpose

To provide for legal aid in relation to clinical negligence proceedings generally.

For further information, contact:

Peter Walsh, Action against Medical Accidents, 020-8688 9555,
chiefexec@avma.org.uk
Harriet Deane, Bar Council, 020-7611 1453, hdeane@barcouncil.org.uk

39, 40 & 41

BARONESS BUTLER-SLOSS

Page 119, line 13, after “from” insert “or within”

Page 119, line 16, after “from” insert “or within”

Page 119, line 22, at end insert—

“() Civil legal services provided to an individual in relation to the following orders and requirements where the individual is seeking to prevent the removal of a child from that child’s usual place of residence, or to obtain the return of a child who has been so removed—

(a) a prohibited steps order or specific issue order (as defined in section 8(1) of the Children Act 1989);

(b) an order under section 33 of the Family Law Act 1986 for disclosure of the child’s whereabouts;

(c) an order under section 34 of that Act for the recovery of the child;

(d) a requirement under section 37 of that Act to surrender a passport issued to, or containing particulars of, the child.”

Presumed Purpose

To provide for legal aid in relation to the abduction of children within the UK, in a similar way to which the Government currently proposes to make provision for legal aid in relation to international abduction cases.

For further information, contact:

Ilona Pinter, The Children’s Society, 020-7841 4509,

ilona.pinter@childrenssociety.org.uk

James Kenrick, JustRights, 020-8772 9900, james@youthaccess.org.uk

Rachel Rogers, Resolution, 020-3195 0189, rachel.rogers@resolution.org.uk

A Resolution briefing is available at: <http://tinyurl.com/c2rebv7>

42

BARONESS BUTLER-SLOSS

Page 120, line 11, at end insert—

“() Civil legal services provided to an adult (“B”) in relation to a court hearing in a matter arising out of a family relationship between B and another individual (“A”) where B has abused A or there is the risk of such abuse and where the court certifies that due to the probability of cross-examination of A there is a need for both parties to be represented at that hearing.”

Presumed Purpose

To provide for legal aid in relation to family proceedings to the partner who has abused the other partner, in order to avoid the prospect that the victim of abuse is subjected to cross-examination by his or her abuser.

43

**LORD THOMAS OF GRESFORD
LORD MACDONALD OF RIVER GLAVEN
LORD PHILLIPS OF SUDBURY
LORD CARLILE OF BERRIEW**

Page 120, line 40, at end insert—

“() For the purposes of this paragraph, abuse will be presumed until the contrary is proved, where—

(a) there are ongoing domestic violence (or forced marriage) proceedings brought by the applicant for legal aid where the applicant has previously received legal aid or is funding proceedings privately or is acting as a litigant in person; or

(b) an order has been made in domestic violence (or forced marriage) proceedings brought by the applicant for legal aid, arising from the same family relationship; or

(c) there has been a finding of fact in the family courts of domestic violence by the other party giving rise to the risk of harm to the victim, but the victim has not already been granted legal aid;

(d) a non-molestation order, occupation order, forced marriage protection order or other protective order or injunction is in place against the applicant’s ex-partner (or in the case of forced marriage, against any other person); or

(e) undertakings have been given to a court in lieu of the orders referred to in (b) or (d) above; or

(f) the applicant’s partner has been convicted of a criminal offence concerning violence or abuse towards their family (unless the conviction is spent);

(g) there are ongoing criminal proceedings for a domestic violence offence by the other party towards the applicant for funding; or

(h) the applicant has been referred to a Multi-Agency Risk Assessment Conference (as a high risk victim of domestic violence) and a plan has been put in place to protect them from violence by the other party; or

(i) injury to the applicant caused by domestic violence is certified by the written medical opinions of—

*(i) the general medical practitioner of the applicant for legal aid; and
(ii) one other medically qualified practitioner.”*

Presumed Purpose

To ensure that legal aid is available to victims of domestic abuse in relation to family proceedings by setting out circumstances in which a victim's history of domestic abuse is to be presumed (unless the contrary is shown) for the purpose of establishing entitlement to legal aid. See also the alternative amendment tabled by Baroness Scotland concerning evidence that may be used to establish entitlement to legal aid.

For further information, contact:

Emma Scott, Rights of Women, 020-7251 6575, Emma@row.org.uk
Sophie Howes, National Federation of Women's Institutes, 020-7371 9300 x238,
s.howes@nfw.org.uk

A briefing on domestic violence and private family matters is available at:
<http://tinyurl.com/bvdatzw>

44

LORD THOMAS OF GRESFORD
LORD MACDONALD OF RIVER GLAVEN
LORD PHILLIPS OF SUDBURY
LORD CARLILE OF BERRIEW

Page 120, leave out lines 42 to 45 and insert—

““abuse” means any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults, aged 18 or over, who are or have been intimate partners or family members, regardless of gender and sexuality;”

Presumed Purpose

To probe the Government as to the definition of 'abuse' in paragraph 10, Part 1 of Schedule 1 for the purpose of the making available for legal aid in family proceedings to victims of domestic abuse; and to draw attention to the omissions in the definition currently included in the Bill as regards the means by which a victim may suffer abuse from a partner. See also the alternative amendment tabled by Baroness Scotland (below).

45

BARONESS SCOTLAND OF ASTHAL

Page 120, line 42, leave out from “means” to end of line 45 and insert “any incident or repeated incidents of threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional, and including acts of neglect, maltreatment, exploitation or acts of omission) between adults who are or have been intimate partners or family members, regardless of gender or sexuality”

Presumed Purpose

To probe the Government as to the definition of 'abuse' in paragraph 10, Part 1 of Schedule 1 for the purpose of the making available for legal aid in family proceedings to victims of domestic abuse; and to draw attention to the omissions in the definition currently included in the Bill as regards the means by which a victim may suffer abuse from a partner.

For further information, contact:

BARONESS SCOTLAND OF ASTHAL

Page 121, line 31, at end insert—

() “For the purposes of this paragraph, evidence that abuse has occurred may consist of one or more of the following (without limitation)—

(a) a relevant court conviction or police caution;

(b) a relevant court order (including without notice, ex parte, interim or final orders), including a non-molestation undertaking or order, occupation order, forced marriage protection order or other protective injunction;

(c) evidence of a relevant criminal proceedings for an offence concerning domestic violence or a police report confirming attendance at an incident resulting from domestic violence;

(d) evidence that a victim has been referred to a multi-agency risk assessment conference, as a high risk victim of domestic violence, and a plan has been put in place to protect that victim from violence by the other party;

(e) a finding of fact in the family courts of domestic violence by the other party giving rise to the risk of harm to the victim;

(f) a medical report from a doctor at a UK hospital confirming that the applicant has injuries or a condition consistent with being a victim of domestic violence;

(g) a letter from a General Medical Council registered general practitioner confirming that he or she has examined the applicant and is satisfied that the applicant had injuries or a condition consistent with those of a victim of domestic violence;

(h) an undertaking given to a court by the alleged perpetrator of the abuse that he or she will not approach the applicant who is the victim of the abuse;

(i) a letter from a social services department confirming its involvement in providing services to the applicant in respect of allegations of domestic violence;

(j) a letter of support or a report from a domestic violence support organisation; or

(k) other well-founded documentary evidence of abuse, such as from a counsellor, midwife, school or witness.”

Presumed Purpose

To ensure that legal aid is available to victims of domestic abuse in relation to family proceedings by setting out a variety of methods whereby a victim may evidence a history of domestic abuse for the purpose of establishing entitlement to legal aid.

For further information, contact:

Emma Scott, Rights of Women, 020-7251 6575, Emma@row.org.uk
Sophie Howes, National Federation of Women's Institutes, 020-7371 9300 x238,
s.howes@nfwl.org.uk

47

BARONESS BUTLER-SLOSS

Page 121, line 47, at end insert—

“() Civil legal services provided to an individual who has or it is alleged will put the child at risk of abuse in relation to a court hearing in a matter in relation to the orders and procedures set out in sub-paragraph (1), and where the court certifies that due to the probability of cross examination there is a need for them to be represented in that hearing.”

Presumed Purpose

To provide for legal aid in relation to civil proceedings to a party to the proceedings who has put a child at risk of abuse, in order to avoid the prospect that the child is subjected to cross-examination by his or her abuser.

48

**BARONESS SCOTLAND OF ASTHAL
BARONESS BUTLER-SLOSS
THE LORD BISHOP OF LEICESTER
LORD BLAIR OF BOUGHTON**

Page 122, line 10, at end insert—

“For the avoidance of doubt, no time limit shall operate in relation to any evidence supporting an application for civil legal services under paragraph 11.”

Presumed Purpose

To ensure that legal aid is available to victims of domestic abuse in relation to family proceedings by ensuring that a victim is not prevented from evidencing a history of domestic abuse for the purpose of establishing entitlement to legal aid by reason of the passage of time since the relevant evidence was first obtained or available.

For further information, contact:

Emma Scott, Rights of Women, 020-7251 6575, Emma@row.org.uk
Sophie Howes, National Federation of Women's Institutes, 020-7371 9300 x238,
s.howes@nfwl.org.uk

A briefing on domestic violence and private family matters is available at:

<http://tinyurl.com/bvdatzw>

**LORD THOMAS OF GRESFORD
LORD PHILLIPS OF SUDBURY
LORD SHIPLEY
BARONESS DOOCEY**

Page 122, line 12, after “mediation” insert “and collaborative law”

Page 122, line 13, after “mediation” insert “and collaborative law”

Presumed Purpose

To include ‘collaborative law’ within the types of proceedings for which legal aid may be made available.

For further information, contact:

Rachel Rogers, Resolution, 020-3195 0189, rachel.rogers@resolution.org.uk
and see: <http://tinyurl.com/59dfek>

51

BARONESS BUTLER-SLOSS

Page 123, line 3, at end insert—

“Exceptional family proceedings

(1) Civil legal services provided in relation to a family dispute where the LSC competent assessor for mediation certifies that—

(a) there is a point of law, or an issue of unusual complexity that requires adjudication and the particular case is unsuitable for mediation;

(b) one or both individuals has serious physical or mental health issues and the particular case is unsuitable for mediation;

(c) there are serious allegations of domestic violence which are not capable of being resolved and the particular case is unsuitable for mediation; there are serious allegations of physical, sexual or other abuse in relation to the child who is or would be the subject of the order and the particular case is unsuitable for mediation;

(d) both individuals participated in mediation in good faith but the mediation failed and the matter will not be resolved without adjudication; or

(e) there are other exceptional circumstances and the case is unsuitable for mediation.

(2) Civil legal services provided to an adult (“A”) in connection with a private children dispute between A and another individual (“B”), where the LSC competent mediator certifies that where the child who is or would be the subject of the order has no contact with A, A attended the mediation but B did not so, the mediation failed and the matter will not be resolved without civil legal services.”

Presumed Purpose

To provide for specified exceptional circumstances in which legal aid is to be provided in family proceedings.

For further information, contact:

Rachel Rogers, Resolution, 020-3195 0189, rachel.rogers@resolution.org.uk

A Resolution briefing is available at: <http://tinyurl.com/c2rebv7>

52

BARONESS BUTLER-SLOSS

Page 123, line 12, at end insert—

“() Civil legal services provided to an adult party in relation to family proceedings in the unusual circumstances where the child is a party to such proceedings and the court certifies that there is a probability that the child will have to give oral evidence.”

Presumed Purpose

To avoid a child being cross-examined by a lay person, who is not bound by professional duties and may not have understanding of the vulnerability of the child in being cross-examined.

53

**LORD THOMAS OF GRESFORD
BARONESS DOOCEY
LORD PHILLIPS OF SUDBURY
LORD CLEMENT-JONES**

Page 125, line 31, at end insert—

“Best interests of patients

16A Civil legal services provided in relation to any question whether particular medical treatment is in the best interests of a person who is incapable of giving or withholding consent to such treatment.

Exclusions

16B Paragraph 16A is subject to the exclusions in Parts 2 and 3 of this Schedule.

Definitions

16C For the purposes of this paragraph “medical treatment” has the same meaning as in the Mental Health Act 1983.”

Presumed Purpose

To provide for civil legal aid in relation to questions of the best interests in relation to medical treatment of a person incapable of giving or withholding consent to such treatment.

**LORD THOMAS OF GRESFORD
LORD DHOLAKIA
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY**

Page 125, line 38, leave out “paragraph 15” and insert “paragraphs 1 to 5, 8 and 15”

Presumed Purpose

To provide for civil legal aid for judicial review proceedings in relation to matters of personal injury or death; negligence; assault, battery or false imprisonment; trespass to goods; trespass to land; and breach of statutory duty.

**LORD THOMAS OF GRESFORD
LORD DHOLAKIA
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY**

Page 126, line 3, leave out sub-paragraphs (5) to (7)

Purpose

To remove the immigration-specific exclusions relating to legal aid for judicial review.

Briefing Note

ILPA supports this amendment. A briefing is available at: <http://tinyurl.com/cncm9m4>

**LORD THOMAS OF GRESFORD
LORD DHOLAKIA
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY**

Page 126, line 15, leave out paragraph (a)

Page 126, line 17, leave out paragraph (b)

*Page 126, line 21, leave out paragraph (a) and insert—
“(a) judicial review in connection with a matter within paragraph 26(1) of this Part;”*

Page 126, line 27, at end insert—

“(8) Sub-paragraph (5) does not exclude services provided to an individual if—

(a) the individual did not receive services in connection with the previous judicial review or appeal to which that sub-paragraph refers; or

(b) the previous judicial review or appeal to which that sub-paragraph refers was resolved by any of the following—

- (i) a grant of judicial review;
 - (ii) a decision to allow the appeal;
 - (iii) a refusal of leave, or refusal of permission, to the Secretary of State to appeal;
 - (iv) a decision to dismiss an appeal by the Secretary of State;
 - (v) an order of a court or tribunal consequent upon the withdrawal by the Secretary of State of his decision against which the application for judicial review or the appeal was brought.
- (9) Sub-paragraph (6) does not exclude services provided to an individual if—
- (a) the individual did not receive services in connection with the matters described in sub-paragraphs (6)(a) or (c);
 - (b) the appeal to which sub-paragraph (6)(c) refers was allowed; or
 - (c) the appeal to which sub-paragraph (6)(c) refers was withdrawn as a consequence of the withdrawal of the decision to remove the individual from the United Kingdom.”

Purpose

To limit the exclusions of legal aid in relation to immigration judicial reviews.

Briefing Note

These various amendments provide an alternative to amendment 55*. ILPA supports these amendments, and a briefing is available at: <http://tinyurl.com/cncm9m4>

60 & 61

LORD RAMSBOTHAM

Page 127, line 33, after “deliberate” insert “unlawful”

Page 127, line 39, at end insert—

““harm” includes loss of liberty;”

Purpose

To provide legal aid in relation to unlawful abuses of power, whether or not deliberate, including in relation to the unlawful exercise of powers to detain.

For further information, contact:

Adam Hundt, Pierce Glynn, 0117-317 8133, ahundt@pierceglynn.co.uk

Joanna Thomson, Pierce Glynn, 020-7407 0007, jthomson@pierceglynn.co.uk

And see briefing (which ILPA supports) at: <http://tinyurl.com/cp5844m>

61A & 90A

BARONESS BUTLER-SLOSS

Page 128, line 20, at end insert—

“Victims of trafficking of human beings

Civil legal services provided to a victim of trafficking in human beings (“V”) in relation to—

(a) rights to enter or remain in the UK;

(b) an employment claim relating to the experience of trafficking;

(c) a claim for damages relating to the experience of trafficking; or

(d) compensation relating to the experience of being trafficked under the criminal injuries compensation scheme.”

Page 139, line 42, at end insert—

“Advocacy for victims of trafficking in human beings in proceedings in the Employment Appeal Tribunal.”

Presumed Purpose

To provide for civil legal aid to victims of trafficking in relation to immigration, employment, damages and criminal injuries compensation.

Briefing Note

Amendment **90A** would permit civil legal aid for advocacy on behalf of such a victim in proceedings before the Employment Appeal Tribunal (being the higher tribunal dealing with error of law appeals against decisions of the decision of an employment tribunal at first instance). ILPA supports these amendments, as victims of trafficking by reason of their experience of exploitation are likely to be among the most vulnerable to being deterred by or incapable of dealing with these legal proceedings; and similarly likely to be deterred by the bureaucracy surrounding any application process to an exceptional cases funding scheme (under clause 9). See also Amendments **69A & 70A** and **71**.

62, 63, 64, 65, 66 & 67

BARONESS GOULD OF POTTERNEWTON

Page 129, line 14, leave out “indefinite”

Page 129, line 15, after “Kingdom” insert “, or a claim by the individual to a right to reside in the United Kingdom,”

Page 129, line 17, after “individual” insert “, or had a right to reside in the United Kingdom as a partner of another individual,”

Page 129, line 17, leave out “present and settled in the United Kingdom”

Page 130, leave out lines 1 to 3

Page 130, leave out lines 4 and 5

Purpose

To extend the provision of legal aid in paragraph 25, Part 1, Schedule 1 to all victims of domestic violence whose immigration status is dependent on their abuser.

Briefing Note

The amendments are necessary to meet the concern recognised by the Government in introducing paragraph 25 that victims of domestic violence, whose immigration status is dependent on their abuser, are at serious risk of remaining trapped in the abusive relationship for fear of the immigration consequences of escaping the relationship on which their immigration status is dependent. Currently, however, paragraph 25 only provides for victims whose immigration status is dependent on a British citizen or someone who has indefinite leave to remain. This does not protect, for example, the partner of a European citizen or the partner of a refugee. ILPA supports these amendments. A full briefing is available at: <http://tinyurl.com/bnvvc3>

68 & 70

LORD THOMAS OF GRESFORD
LORD AVEBURY
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY

Page 130, line 8, after “Kingdom” insert “to a person who is liable to detention under immigration laws, or”

Page 130, line 39, at end insert—

“immigration laws” has the same meaning as given in section 33(1) of the Immigration Act 1971.”

Purpose

To provide for civil legal aid in relation to immigration matters where the person is liable to detention.

Briefing Note

ILPA supports this amendment, which highlights the failure of the Government to meet its own stated prioritisation of liberty in the allocation of legal aid. Immigration decisions to remove or deport place a person’s liberty immediately at risk. Moreover, in order to be able to effectively challenge any decision to detain a person for the purpose of removal or deportation it is necessary to address the underlying immigration dispute upon which the decision to detain is founded.

69

LORD THOMAS OF GRESFORD
LORD DHOLAKIA
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY

Page 130, line 12, at end insert—

“(1A) Civil legal services provided to an individual for a matter arising out of any rule laid down under section 1(4) of the Immigration Act 1971 making provision for family members to enter or remain in the United Kingdom as the family member of a refugee or beneficiary of humanitarian protection.”

Purpose

To provide for civil legal aid in relation to refugee family reunion matters.

Briefing Note

ILPA supports this amendment. A full briefing is available at:
<http://tinyurl.com/coe43c3>

69A & 70A

BARONESS GOULD OF POTTERNEWTON

Page 130, line 12, at end insert—

“() Civil legal services provided to a specified person in relation to rights to enter, and to remain in, the United Kingdom.”

Page 130, line 39, at end insert—

““specified person” means a person—

(i) under the age of 18;

(ii) who claims an entitlement to enter or remain arising from having been subjected to gender-based violence (including domestic violence and trafficking);

(iii) whose ability to represent himself or herself is significantly impaired through physical or mental disability or illness, through old age or otherwise; or

(iv) any other cases of person as may be specified by the Secretary of State in regulations.”

Presumed Purpose

To provide for civil legal aid in relation to the immigration matters of children, victims of gender-based violence (including domestic violence and trafficking), those whose capacity to represent themselves is significantly impaired through physical or mental disability or illness, old age or otherwise, and any of persons as may be specified by regulations.

For further information, contact:

Katherine Perks, Rights of Women, 020-7251 6575, Katherine@row.org.uk
Sophie Howes, National Federation of Women’s Institutes, 020-7371 9300 x238,
s.howes@nfw.org.uk

70

See Amendment 68 (above)

70A

See Amendment 69A (above)

**LORD THOMAS OF GRESFORD
LORD DHOLAKIA
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY**

Page 131, line 3, at end insert—

“Immigration: family reunion cases, trafficking victims and onward appeals

27A (1) Civil legal services provided to an individual in relation to any rule having effect under section 3(2) of the Immigration Act 1971 making provision about a person’s entering or remaining in the United Kingdom as a member of the family of a person who is entitled to enter or remain in the United Kingdom—

(a) (in a case where the services in question do not fall within paragraph 26) under the Qualification Directive, the Refugee Convention or the Temporary Protection Directive, or

(b) as a beneficiary of humanitarian protection.

(2) Civil legal services provided in relation to any question as to whether a person who is, or claims to be, a victim of human trafficking is to be permitted to enter or remain in the United Kingdom.

(3) Civil legal services in relation to an appeal to the Upper Tribunal, the Court of Appeal or the Supreme Court insofar as the appeal relates to an issue under any enactment about immigration.

Exclusions

27B Sub-paragraphs (1) and (2) of paragraph 27A are subject to the exclusions in Parts 2 and 3 of this Schedule.

Definitions

27C In this paragraph and paragraphs 27A and 27B, the Qualification Directive, the Refugee Convention and the Temporary Protection Directive have the same meanings as in paragraph 26.”

Presumed Purpose

To provide for civil legal aid in relation to the following immigration matters: (i) refugee family reunion claims; (ii) claims by trafficking victims; (iii) immigration appeals to the Upper Tribunal, Court of Appeal or Supreme Court.

Briefing Note

ILPA supports these amendments. See also amendments **69** (on refugee family reunion), **78** (on onward appeals) and **61A** and **69A** (on trafficking victims).

LORD BACH
LORD DAVIDSON OF GLEN CLOVA

Page 131, line 7, at end insert “; or

() situations where a person’s financial difficulties could lead to loss of home.”

Presumed Purpose

To provide legal aid in relation to debt where this could result in a person or family losing his/her/their home.

For further information, contact:

Anne Baxendale, Shelter, 0344-515 1182, Anne_Baxendale@shelter.org.uk
 James Sandbach, Citizens Advice, 020-7833 7007,
james.sandbach@citizensadvice.org.uk

73, 74, 75, 76, 87 & 88

LORD AVEBURY
BARONESS WHITAKER

Page 131, line 44, leave out “subject to sub-paragraph (10)”

Page 132, leave out sub-paragraph (10)

Page 132, line 8, leave out “and (10)”

Page 132, leave out lines sub-paragraphs (12) and (13)

Page 137, leave out line 5

Page 137, line 5, leave out “land” and insert “buildings, not including the artilage of buildings”

Presumed Purpose

To probe the Government as to the exclusion of legal aid in relation to possession or eviction proceedings where a person is occupying, as his or her home, a vehicle or structure as a trespasser.

77

LORD AVEBURY
BARONESS WHITAKER

Page 132, line 31, at end insert—

“Mobile homes

Civil legal services provided in relation to advice under the Legal Help Scheme for matters arising under the Mobile Homes Act 1983.”

Presumed Purpose

To provide for legal aid in relation to advice only for matters in relation to agreements under which a person or family has stationed his/her/their mobile home, which he/she/they are occupying as his/her/their only or main residence, on a protected site within the terms of the Mobiles Homes Act 1983.

79

**LORD AVEBURY
BARONESS WHITAKER**

Page 136, line 6, at end insert—

“County Court and High Court planning cases

() Civil legal services provided in relation to planning injunction actions brought under the Town and Country Planning Act Section 187B and statutory challenges and appeals brought under the Town and Country Planning Act 1990 Sections 288 and 289 respectively where the result of the case may lead to “loss of home” for the Gypsy or Traveller concerned.”

Presumed Purpose

To provide legal aid in relation to certain planning injunction actions where among the issues at stake may be the loss of home to a gypsy or traveller.

80

BARONESS HOWE OF IDLICOTE

Page 136, line 23, at end insert—

“Young people with a disability

() Civil legal services in relation to advice and proceedings where the applicant or respondent is aged 24 or under and has a disability by reference to section 6 of the Equality Act 2010, including but not limited to—

(a) arrangements relating to any welfare benefit, allowance, payment or credit;

(b) proceedings relating to debt;

(c) housing law;

(d) proceedings relating to immigration and asylum;

(e) proceedings relating to clinical negligence;

(f) proceedings relating to consumer protection law;

(g) appeals to the Criminal Injuries Compensation Authority;

(h) private family law;

(i) proceedings relating to a review under sections 11 or 13 of the Tribunals, Courts and Enforcement Act 2007;

(j) proceedings relating to an appeal to the Supreme Court.”

Presumed Purpose

To provide legal aid for young people (under the age of 25 years) with a disability in relation to the areas of law specified.

For further information, contact:

Elliot Dunster, Scope, 020-7619 7342, elliott.dunster@scope.org.uk

81

**LORD BACH
LORD DAVIDSON OF GLEN CLOVA**

Page 136, line 34, at end insert—

“() all areas of housing law not otherwise covered in this Schedule”

Presumed Purpose

To provide generally for legal aid in relation to housing law.

For further information, contact:

Anne Baxendale, Shelter, 0344-515 1182, Anne_Baxendale@shelter.org.uk

82

**LORD BACH
LORD DAVIDSON OF GLEN CLOVA**

Page 136, line 34, at end insert—

“() all areas of employment law not otherwise covered in this Schedule”

Presumed Purpose

To provide generally for legal aid in relation to employment law.

For further information, contact:

James Sandbach, Citizens Advice, 020-7833 7007,

james.sandbach@citizensadvice.org.uk

A Justice for All briefing is available at <http://tinyurl.com/cuae7vx>

83

**LORD BACH
LORD DAVIDSON OF GLEN CLOVA**

Page 136, line 34, at end insert—

“() all areas of education law not otherwise covered in this Schedule”

Presumed Purpose

To provide generally for legal aid in relation to education law.

84

LORD BACH
LORD DAVIDSON OF GLEN CLOVA

Page 136, line 34, at end insert—

“() all areas of consumer law not otherwise covered in this Schedule”

Presumed Purpose

To provide generally for legal aid in relation to consumer law.

85

LORD BACH
LORD DAVIDSON OF GLEN CLOVA

Page 136, line 34, at end insert—

“() all areas of debt-related disputes not otherwise covered in this Schedule”

Presumed Purpose

To provide generally for legal aid in relation to disputes concerning debt.

For further information, contact:

James Sandbach, Citizens Advice, 020-7833 7007,
james.sandbach@citizensadvice.org.uk

86

LORD THOMAS OF GRESFORD
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY
LORD MACDONALD OF RIVER GLAVEN

Page 136, line 34, at end insert—

“Appeals where court or tribunal certifies complex point etc.

(1) Civil legal services provided in relation to an appeal to the Upper Tribunal, the Senior Courts or the Supreme Court where the relevant court or tribunal certifies that—

(a) the appeal raises a complex issue of law or an issue of fact of exceptional complexity (in which case the certificate must identify the issue),

(b) the matter is one of significant wider public interest (in which case the certificate must identify that interest), or

(c) there is some other compelling reason why the proper conduct of the appeal requires the provision of civil legal services (in which case the certificate must set out the reason).

(2) Rules of procedure applicable to the relevant court or tribunal may make provision about certificates under this paragraph.”

Presumed Purpose

To provide for civil legal aid in relation to appeals to the Upper Tribunal, Court of Appeal or Supreme Court where the court certifies that the appeal raises a complex issue, a matter of significant wider public interest or there is some other compelling reason for the granting of legal aid relating to the conduct of the appeal.

87 & 88

See Amendment 73 (above)

89

See Amendment 32 (above)

90

**LORD BACH
LORD BEECHAM**

Page 137, line 38, leave out paragraph 16

Presumed Purpose

To probe the Government as to the intended exclusion of legal aid for criminal injuries compensation claims.

Briefing Note

ILPA supports this amendment. Victims of crime with potential claims for criminal injuries compensation include victims of trafficking. Such cases may be complex by reason of the particularly vulnerability, including often substantial trauma, of victims of trafficking. This may be compounded by the actions of agencies such as the UK Border Agency, police and Crown Prosecution Service; and the inter-play between criminal law and immigration law, all of which may undermine the ability of victims of trafficking to bring or pursue a compensation claim.

For further information, contact:

Simon Cliff, Law Society, 020-7320 5939, Simon.Cliff@lawsociety.org.uk

90A

See Amendment 61A (above)

Clause 9

91

**LORD THOMAS OF GRESFORD
LORD PHILLIPS OF SUDBURY
LORD CARLILE OF BERRIEW
LORD MACDONALD OF RIVER GLAVEN**

Page 6, line 16, after “breach” insert “, or

(c) that it is in the interests of justice generally”

Presumed Purpose

To probe the Government as to the need for legal aid in relation to matters excluded by clause 8 and Schedule 1 and excluded from exceptional funding under clause 9 by reason of the latter's restriction to circumstances where refusal of legal aid would breach the Human Rights Act 1998 or enforceable European Union law rights.

92

LORD BACH
LORD BEECHAM

Page 6, line 25, at end insert—

“() In deciding whether a case constitutes an exceptional case for the purposes of subsection (4), the Director must consult and have regard to the views of the Chief Coroner.”

Presumed Purpose

To provide that the Director of Legal Aid Casework shall consult and have regard to the views of the Chief Coroner in making a decision whether to grant civil legal aid funding from the exceptional cases fund for the purposes of advocacy at an inquest.

LORD BACH
LORD BEECHAM

The above-named Lords give notice of their intention to oppose the Question that Clause 9 stand part of the Bill.

Presumed Purpose

To probe the Government as to its intentions in relation to exceptional cases funding.

For further information:

A joint briefing (which ILPA supports) is available at: <http://tinyurl.com/79ds3ok>

Clause 10

93

LORD BACH
LORD BEECHAM

Page 7, line 23, leave out subsection (4)

Presumed Purpose

To probe the Government as to its intentions behind the provision in clause 10(4) requiring the Lord Chancellor to secure that in circumstances where an individual may qualify for legal aid under more than one description of services that legal aid is provided under the ‘most appropriate’ description.

94

See Amendment 20 (above)

LORD BACH
LORD BEECHAM

Page 7, line 30, at end insert—

“() Before making regulations under subsection (1)(b), draft regulations with the proposed criteria must be laid before, and approved by an affirmative resolution of, each House of Parliament.”

Presumed Purpose

To require the Government to lay draft regulations regarding (non-financial) eligibility for legal aid before both Houses of Parliament, and requiring approval by way of an affirmative resolution in each House.

Clause 11

96

LORD THOMAS OF GRESFORD
LORD PHILLIPS OF SUDBURY
LORD CARLILE OF BERRIEW
LORD MACDONALD OF RIVER GLAVEN

Page 8, line 16, after “review” insert “by an independent panel”

Presumed Purpose

To require an independent panel to deal with reviews of decisions by the Director of Legal Aid Casework to refuse civil legal aid.

97 & 98

LORD BACH
LORD BEECHAM

Page 8, line 18, leave out “may” and insert “must”

Page 8, line 19, leave out “or other person”

Presumed Purpose

To require provision for an appeal against any decision of the Director of Legal Aid Casework to refuse civil legal aid, and for such appeals to be before a court of tribunal only (not some other person).

After Clause 11

99

LORD THOMAS OF GRESFORD
LORD SHIPLEY
LORD PHILLIPS OF SUDBURY
LORD MACDONALD OF RIVER GLAVEN

Insert the following new Clause—

“Funding

(1) The Lord Chancellor may make funding available for the obtaining of civil legal services on matters not included in Schedule 1 where it appears to the Lord Chancellor that the provision of such services would promote efficiency, the saving of costs or the attainment of justice.

(2) The Lord Chancellor may make arrangements for such purposes by—

(a) funding public bodies, law centres, citizens advice bureaux and not-for-profit advice and support agencies to facilitate the provision of such services; and

(b) supporting the delivery of such services through the provision of grant in aid to providers of civil legal services, including any consortia or partnership arrangements with public bodies, into which they may choose to enter.”

Presumed Purpose

To provide residual power to the Lord Chancellor to make funding available for civil legal services in relation to matters not within Schedule 1.

99A

LORD PHILLIPS OF SUDBURY

LORD WOOLF

LORD FAULKS

Insert the following new Clause—

“Report reviewing claims for clinical negligence

(1) In discharging his functions under section 1(4) above, the Lord Chancellor shall have regard to the report of a review under this section.

(2) The Lord Chancellor must, before the end of the period of one year beginning with the day on which this Act is passed, appoint an independent person to review generally claims for clinical negligence and means of improving the modes, procedures and outcomes relating to the same.

(3) The review must address, in particular,

(a) the accessibility, cost, effectiveness, openness, fairness, proportionality and speediness of such claims, and

(b) any other matters the Lord Chancellor considers appropriate.

(4) After the person appointed under subsection (2) has completed the review, he or she must compile a report of conclusions.

(5) As part of their conclusions the reviewer may propose such voluntary scheme or schemes as he or she shall see fit.

(6) In this section “claims” shall mean claims and complaints made by patients receiving services provided in the United Kingdom and commissioned in England in respect of a liability in tort or contract owed in respect of personal injury or loss arising in connection with breach of a duty of care owed to any person in connection with the diagnosis of illness, or in the care or treatment of any patient of an NHS body, a primary care or independent provider.

(7) The Lord Chancellor must lay before Parliament a copy of the report compiled under subsection (4).”

Presumed Purpose

To provide for an independent review of the accessibility, cost, effectiveness, openness, fairness, proportionality and speediness of clinical negligence proceedings within one year of the passing of the Bill.

Clause 20

109

**LORD THOMAS OF GRESFORD
LORD MACDONALD OF RIVER GLAVEN
LORD PHILLIPS OF SUDBURY
LORD CARLILE OF BERRIEW**

Page 15, line 8, at end insert—

“() For the purposes of subsection (1), “financial resources” shall include all the realizable property of the individual subject to a restraint order under section 41 of the Proceeds of Crime Act 2002 (restraint orders) and subsections (4) and (5) of that section are hereby repealed.”

Presumed Purpose

To provide for the taking into consideration of realizable property subject to an order under section 41 of the Proceeds of Crime Act in considering a person’s financial eligibility for legal aid.

110

**LORD BACH
LORD BEECHAM**

Page 15, line 24, leave out “, by telephone or by other prescribed means”

Presumed Purpose

To ensure that decisions on a person’s financial eligibility for legal aid are provided in writing (and not by telephone or any other prescribed means).

Clause 21

111

**LORD BACH
LORD BEECHAM**

Page 17, line 15, after “individual” insert “or person”

Presumed Purpose

To probe the Government as to whose financial resources may be the subject of an information request or disclosure under the terms of clause 21.

Clause 22

112

**LORD BACH
LORD BEECHAM**

Page 17, line 31, leave out subsection (3)

Presumed Purpose

To prove the Government as to the circumstances in which a person may be required to pay following his or her receipt of legal aid services, including a payment in excess of the cost of services he or she has received.

113

**LORD THOMAS OF GRESFORD
LORD SHIPLEY
LORD PHILLIPS OF SUDBURY
LORD CARLILE OF BERRIEW**

Page 17, line 35, after “may” insert “not”

Presumed Purpose

To preclude any requirement that an individual to whom civil legal services are provided may be required to make a payment in excess of the cost of the services he or she receives.

Clause 26

Stand part

**LORD BACH
LORD BEECHAM**

The above-named Lords give notice of their intention to oppose the Question that Clause 26 stand part of the Bill.

Presumed Purpose

To probe the Government as to the means by which the Lord Chancellor may make legal aid services available, and in particular as to the Government’s intentions that those eligible for legal aid may be without choice in selecting from whom and by what means they obtain those services.

For further information, contact:

Richard Messingham, Law Society, 020-7320 5858,

Richard.Messingham@LawSociety.org.uk

A joint briefing (which ILPA supports) on the telephone gateway is available at:

<http://tinyurl.com/8yfbdz6>

Unnumbered Amendments (as at 22 December 2011):

Schedule 1

LORD THOMAS OF GRESFORD

LORD SHIPLEY

LORD CARLILE OF BERRIEW

LORD PHILLIPS OF SUDBURY

Page 131, line 7, at end insert—

“(c) a [demotion] order under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988”

Presumed Purpose

To provide for civil legal aid where a secured or assured tenant is subject to proceedings against him or her by a local housing authority, housing action trust or registered social landlord for a demotion order on the grounds of anti-social behaviour for the purposes of having his or her tenancy summarily terminated.

For further information, contact:

Anne Baxendale, Shelter, 0344-515 1182, Anne.Baxendale@shelter.org.uk

LORD THOMAS OF GRESFORD

LORD SHIPLEY

LORD CARLILE OF BERRIEW

LORD PHILLIPS OF SUDBURY

Page 131, line 7, at end insert—

“(1A) Services provided to an individual under sub-paragraph (1) shall include services in relation to the entitlement of the individual to welfare benefits relating to housing costs.”

Page 131, line 16, after “(1)” insert “, (1A)”

Presumed Purpose

To probe the Government as to the likely consequences of failing to provide for civil legal aid in relation to welfare benefits relating to housing costs leading to the prospect of persons losing their homes, and the inadequacy of providing for civil legal aid at the latter stage only.

For further information, contact:

Anne Baxendale, Shelter, 0344-515 1182, Anne_Baxendale@shelter.org.uk

James Sandbach, Citizens Advice, 020-7833 7007,

james.sandbach@citizensadvice.org.uk

LORD THOMAS OF GRESFORD

LORD SHIPLEY

LORD CARLILE OF BERRIEW

LORD PHILLIPS OF SUDBURY

Page 131, line 17, leave out “paragraph 14” and insert “paragraphs 1 to 6, 8, 12, 14 and 15”

Presumed Purpose

To provide for civil legal aid in relation to court orders for sale, eviction and demotion orders in respect of a person’s home including in relation to personal injury or death; negligence; assault, battery or false imprisonment; trespass to goods; trespass to land; damage to property; breach of statutory duty; claims for damages against a public authority for breach of Convention rights; matters arising from or relating to business; and/or welfare benefits.

LORD THOMAS OF GRESFORD

LORD SHIPLEY

LORD CARLILE OF BERRIEW

LORD PHILLIPS OF SUDBURY

Page 132, line 5, leave out “and” and insert “or”

Presumed Purpose

To probe the Government as to the circumstances in which a person may be excluded from civil legal aid in relation to eviction or court orders for sale of his or her home by reason of an assertion as to his or her current or previous trespass.

LORD THOMAS OF GRESFORD

LORD SHIPLEY

LORD CARLILE OF BERRIEW

LORD PHILLIPS OF SUDBURY

Page 132, leave out line 32 and insert—

“Risk or damage to health or safety in rented home”

Page 132, line 34, leave out “serious”

Page 132, line 34, after “safety” insert “or damage to the person or property”

Page 132, line 35, leave out “family” and insert “household”

Page 132, line 36, after “risk” insert “or damage”

Page 133, line 1, leave out sub-paragraph (3)

Page 133, line 23, at end insert—

““member of the individual’s household” means any person who occupies as his or her home the premises which also constitute the individual’s home.”

Presumed Purpose

To extend the protection of the availability of civil legal aid in relation to health and safety as regards tenants so as to cover a person’s household as defined (rather than restricted to the family members currently specified in the Bill) and damage to both person and property.

For further information, contact:

Anne Baxendale, Shelter, 0344-515 1182, Anne_Baxendale@shelter.org.uk

**LORD THOMAS OF GRESFORD
LORD SHIPLEY
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY**

Page 132, line 39, at end insert—

“(1A) Where such arrangements as are specified in sub-paragraph (1)(c) are made or purport to be made, services shall not be withdrawn on the account only of such arrangements where the individual continues to qualify for services in accordance with sections 10 and 20 of this Act and regulations made thereunder.

(1B) For the avoidance of doubt, where services are or have been provided with a view to securing such arrangements, services may continue to be provided in connection with a claim for damages in respect of the same deficiency or deficiencies.”

Presumed Purpose

To probe the Government as to the intended availability of civil legal aid in relation to health and safety and tenancy once a landlord (or other responsible party) has agreed or begun to make, or has made, arrangements said to remove or reduce the relevant health and safety risk, including in relation to any outstanding damages claim.

For further information, contact:

Anne Baxendale, Shelter, 0344-515 1182, Anne_Baxendale@shelter.org.uk

**LORD THOMAS OF GRESFORD
LORD SHIPLEY
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY**

Page 132, line 43, leave out “6 and 8” and insert “1, 2, 6, 8 and 12”

Presumed Purpose

To provide for civil legal aid in relation to health and safety and tenancy including in relation to personal injury or death; negligence; damage to property; breach of statutory duty; and claims for damages against a public authority for breach of Convention rights.

**LORD THOMAS OF GRESFORD
LORD SHIPLEY
LORD CARLILE OF BERRIEW
LORD PHILLIPS OF SUDBURY**

Page 133, line 43, at end insert—

“(c) a claim for damages in respect of the harassment by any person of a residential occupier.”

Page 133, line 46, at end insert—

“(3) For the purposes of sub-paragraph (1)(c)—

(a) “residential occupier” has the same meaning as in section 1(1) of the Protection from Eviction Act 1977; and

(b) a person (“A”) shall be taken to have harassed a residential occupier (“B”) where A

(i) does an act or acts likely to interfere with the peace or comfort of B or members of his household, or encourages or incites another person to do so; or

(ii) persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, or encourages or incites another person to do so.”

Presumed Purpose

To provide for civil legal aid in relation to a claim for damages for harassment directed at intimidating or coercing a person to quit his or her property.

For further information, contact:

Anne Baxendale, Shelter, 0344-515 1182, Anne.Baxendale@shelter.org.uk

BARONESS MASSEY OF DARWEN

Page 136, line 23, at end insert—

“Social welfare law for children and young people

Civil legal services provided in relation to advice and proceedings where the applicant or respondent is aged 24 or under, or where the child is represented by a legal guardian, limited to cases concerning—

(a) any welfare benefit, allowance, payment or credit;

(b) proceedings relating to debt;

(c) housing law; and

(d) employment.”

Page 136, line 34, at end insert—

“Social welfare law for children and young people

Civil legal services in relation to advice and proceedings where the applicant or respondent is aged 24 or under, or where the child is represented by a legal guardian, including—

(a) arrangements relating to any welfare benefit, allowance, payment or credit;

(b) proceedings relating to debt; and

(c) housing law.”

Presumed Purpose

To provide for civil legal aid for children or young people, under the age of 25 years, in relation to welfare benefits etc., debt, housing and/or employment.

Briefing Note

These two amendments are very similar, save that by the word “including” the latter would not be restricted to the listed matters.

For further information, contact:

Ilona Pinter, The Children’s Society, 020-7841 4509,

ilona.pinter@childrenssociety.org.uk

James Kenrick, JustRights Coalition, 020-8772 9900, james@youthaccess.org.uk

A JustRights briefing is available at: <http://tinyurl.com/6qf7pk5>

BARONESS MASSEY OF DARWEN

Page 136, line 34, at end insert—

“Young people with a disability or who lack mental capacity

Civil legal services in relation to advice and proceedings where the applicant or respondent is aged 24 or under and has a disability or lacks mental capacity, including—

- (a) arrangements relating to any welfare benefit, allowance, payment or credit;*
- (b) proceedings relating to debt;*
- (c) housing law;*
- (d) proceedings relating to immigration and asylum;*
- (e) proceedings relating to clinical negligence;*
- (f) proceedings relating to consumer protection law;*
- (g) appeals to the Criminal Injuries Compensation Authority;*
- (h) private family law;*
- (i) proceedings relating to a review or appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007; and*
- (j) proceedings relating to an appeal to the Supreme Court.”*

Presumed Purpose

To provide for civil legal aid for children or young people, under the age of 25 years, who are disabled or lack mental capacity in relation to welfare, debt, housing, immigration, clinical negligence, consumer protection, criminal injuries, private family law, reviews or appeals before the Upper Tribunal or the Court of Appeal (in relation to decisions of the Upper Tribunal) and or proceedings before the Supreme Court.

For further information, contact:

Ilona Pinter, The Children’s Society, 020-7841 4509,

ilona.pinter@childrenssociety.org.uk

James Kenrick, JustRights Coalition, 020-8772 9900, james@youthaccess.org.uk

A JustRights briefing is available at: <http://tinyurl.com/6qf7pk5>

BARONESS MASSEY OF DARWEN

Page 136, line 34, at end insert—

“Care leavers

Civil legal services in relation to advice and proceedings where the applicant or respondent is a care leaver aged 21 or under, including—

- (a) arrangements relating to any welfare benefit, allowance, payment or credit;*
- (b) arrangements relating to their education;*
- (c) proceedings relating to debt;*

- (d) housing law;
- (e) proceedings relating to immigration and asylum;
- (f) proceedings relating to clinical negligence;
- (g) proceedings relating to consumer protection law;
- (h) appeals to the Criminal Injuries Compensation Authority;
- (i) private family law;
- (j) proceedings relating to a review or appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007; and
- (k) proceedings relating to an appeal to the Supreme Court.”

Presumed Purpose

To provide for civil legal aid in relation to young people leaving the care of a local authority up until the age of 21 years and in relation to welfare, education, debt, housing, immigration, clinical negligence, consumer protection, criminal injuries, private family law, reviews or appeals before the Upper Tribunal or the Court of Appeal (in relation to decisions of the Upper Tribunal) and or proceedings before the Supreme Court.

For further information, contact:

Ilona Pinter, The Children’s Society, 020-7841 4509,

ilona.pinter@childrenssociety.org.uk

James Kenrick, JustRights Coalition, 020-8772 9900, james@youthaccess.org.uk

A JustRights briefing is available at: <http://tinyurl.com/6qf7pk5>

LORD RAMSBOTHAM

Page 130, line 12, at end insert—

“() Civil legal services provided in relation to rights to enter and to remain in the United Kingdom to a specified person.”

Page 130, line 39, at end insert—

““specified person” means a person—

(a) under the age of 18; or

(b) such other class of person as may be specified by the Secretary of State in regulations.”

Presumed Purpose

To provide for civil legal aid to children and any other person (e.g. ‘vulnerable group’) as may be specified in regulations in relation to immigration matters.

Briefing Note

ILPA supports this amendment, which would provide for children, who cannot reasonably be expected to represent themselves in immigration proceedings and whom in some cases may without legal aid fall to be supported by local authorities for the purposes of paying for legal representation.

For further information, contact:

Ilona Pinter, The Children's Society, 020-7841 4509,
ilona.pinter@childrenssociety.org.uk

LORD RAMSBOTHAM

Page 136, line 14, at end insert—

“Children

38A (1) Civil legal services provided to a child.

(2) In this paragraph “child” means a person under the age of 18.

(3) Sub-paragraph (1) is not subject to the exclusions in Parts 2 and 3 of this Schedule, with the exception of paragraphs 9 to 11, and 13 and 14 of Part 2.

(4) Sub-paragraph (1) does not permit services to be provided in relation to sections 12, 14 or 15.”

Presumed Purpose

To provide for civil legal aid to children save as to matters relating to conveyancing, the making of wills, trust law, company or partnership law or matters arising out of or in connection with business.

For further information, contact:

Ilona Pinter, The Children's Society, 020-7841 4509,
ilona.pinter@childrenssociety.org.uk