

**ILPA BRIEFING****LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –  
House of Lords Amendments**

***Amendments Nos. 1-8, 24, 39, 153, 168-169, 171,  
197-205, 217-221, 231-232, 243 & 250***

**April 2012**

This Briefing provides a short commentary on the House of Lords' Amendments, which are scheduled to be considered by the House of Commons on 17 April 2012. It deals with Amendments that are of interest to ILPA by reason of their relevance to immigration whether specifically or generally. ILPA briefings on the Bill remain available at:

<http://www.ilpa.org.uk/pages/legal-aid-sentencing-and-punishment-of-offenders-bill-2011.html>

**Clause 1**

- 1** *Page 1, line 5, leave out from “secure” to end of line 6 and insert “(within the resources made available and in accordance with this Part) that individuals have access to legal services that effectively meet their needs”*

**Purpose**

The Amendment seeks to include in the Bill a statement of principle as to the purpose of legal aid provision, being effective access to justice. The words in parenthesis ensure that such principle does not over-ride the specific contents of the Bill as to legal aid provision so as to avoid any additional expenditure implications.

**Briefing Note**

The Amendment was tabled by Crossbench, Labour and Conservative peers, including two members of the Lords' Constitution Committee, whose report on Part 1 of the Bill recommended at paragraph 14 a similar (though less constrained) amendment:

<http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/222/222.pdf>

The Amendment was debated at Lords' Report (5 Mar 2012 : Column 1559):

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120305-0001.htm#1203057001720>

- 2** *Page 1, line 6, at end insert –*

*“( ) In exercising the duty under subsection (1), the Lord Chancellor must ensure that victims of domestic violence are able to access civil legal services in accordance with the financial eligibility criteria in section 20 (financial resources).”*

## **Purpose**

The Amendment seeks to preserve access to legal aid for victims of domestic violence.

## **Briefing Note**

The Amendment was tabled by Crossbench and Labour peers. The Bill makes discrete provision for access to legal aid for victims of domestic violence in relation to certain family law proceedings and certain immigration proceedings. Several concerns were expressed in the Lords' debates regarding the adequacy of provision in family law proceedings. Concerns were also expressed regarding the adequacy of the provision in immigration proceedings (e.g. at Lords' Committee, 18 Jan 2012 : Column 661).

The Amendment was debated at Lords' Report (5 Mar 2012 : Column 1576):

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120305-0001.htm#1203057001716>

The Government has recently reasserted a strong commitment that *"No one should be forced to stay in an abusive relationship..."*:

<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/april/02-domestic-violence-support>

That commitment is behind the provisions in the Bill (Schedule 1, Part 1, paragraphs 25 & 25A, see Amendment **220** below) to provide legal aid to victims of domestic violence in certain immigration proceedings, where those victims are at risk of being trapped in an abusive relationship by reason of their immigration status being dependent upon their abusive partner. However, the provisions do not go far enough. Victims of domestic violence whose immigration status is dependent on an abusive partner, who has only limited leave to enter or remain (as opposed to a partner who is a British citizen, settled or exercising European free movement rights), are not protected by those provisions. Yet such victims are equally likely to be trapped in their abusive relationship by reason of the risk to their immigration status of escaping that relationship. This includes where the abusive partner has leave that is likely to lead to settlement after periods of between two and five years (e.g. partners who have leave as investors, entrepreneurs or refugees). The Government should go further and ensure that all victims of domestic violence who may be trapped in an abusive relationship by reason of their immigration status being dependent on their abusive partner have access to legal aid for immigration advice and representation to help them to escape that abusive relationship.

## **Clause 4**

### **3 Page 3, line 27, at end insert –**

*"( ) The Lord Chancellor must ensure that the terms on which the designated person holds the post of Director are, as regards 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 of guidance given under subsection (3)) in relation to the carrying out of the Director's functions under this Part."*

**4** Page 3, line 27, at end insert –

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

**Purpose**

The Amendments seek to preserve the independence of the Director of Legal Aid Casework in carrying out his or her functions in providing legal aid in individual cases.

**Briefing Note**

The Amendments were tabled by Crossbench, Labour and Conservative peers, including two members of the Lords’ Constitution Committee, whose report on Part 1 of the Bill drew attention at paragraph 15 to concerns that the Bill did not adequately provide for the independence of the Director of Legal Aid Casework:

<http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/222/222.pdf>

The Amendment was debated at Lords’ Report (5 Mar 2012 : Column 1597):

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120305-0002.htm#12030514000193>

**After Clause 6**

**5** Insert the following new Clause –

***“Annual report***

- (1) As soon as reasonably practicable after the end of each financial year, the Director must prepare an annual report for the financial year.*
- (2) The annual report must state how the Director has carried out the functions of the office in the financial year.*
- (3) The Director must send a copy of the report to the Lord Chancellor.*
- (4) The Lord Chancellor must –*
  - (a) lay the copy of the report before Parliament, and*
  - (b) arrange for it to be published.*
- (5) In this section “financial year” means –*
  - (a) the period beginning on the day on which section 4 comes into force and ending on the following 31 March, and*
  - (b) each successive period of 12 months.”*

### **Purpose**

This Government Amendment provides for annual reports, prepared by the Director of Legal Aid Casework on how he or she has carried out functions in providing legal aid, to be laid before Parliament and published.

### **Briefing Note**

This Amendment was referred to in Lord McNally's letter to all peers of 1 March 2012, deposited in the Library (DEP2012-0397).

## **Clause 8**

**6** *Page 5, line 35, leave out from "order" to "(whether" in line 36 and insert "–*

*(c) add services to Part 1 of Schedule 1, or*

*(d) vary or omit services described in that Part,"*

### **Purpose**

This Government Amendment extends the power of the Lord Chancellor to amend by order the provisions of the Bill concerning legal aid scope. Originally, the Bill provided such power so as to omit civil legal services only. The Amendment includes power to vary or add such services.

### **Briefing Note**

The Amendment addresses concerns expressed by peers of all parties and none, and by the Constitution Committee in its report on Part 1 of the Bill at paragraph 20:

<http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/222/222.pdf>

The Amendment will allow for relatively quick remedial action to be taken to address consequences the Government has not foreseen or ignored in removing legal aid in several areas of law. Whether such remedial action will prove adequate is open to question since experience and expertise currently available among those providing legal aid services may be lost in those areas where the Bill will remove legal aid. Nonetheless, ILPA supports the Amendment. Currently, the Bill generally removes legal aid for (non-asylum) immigration with little or no regard to the regulation of immigration advice and services (regulation which does not apply to other areas affected by the removal of legal aid) such that those in need of immigration advice or representation, who are unable to pay for this, may effectively be excluded from any lawful source of advice save through an approach to their constituency MP. The All-Party Parliamentary Group on Migration briefing provides more information: [http://www.appgmigration.org.uk/sites/default/files/APPG\\_Migration-Legal\\_Aid\\_BP-Feb\\_2012.pdf](http://www.appgmigration.org.uk/sites/default/files/APPG_Migration-Legal_Aid_BP-Feb_2012.pdf)

The Government explained the Amendment in a letter from Lord McNally to all peers of 26 March 2012 (deposited in the library on 2 April 2012, DEP2012-0594), and at Lords' Third Reading (27 Mar 2012 : Column 1252):

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120327-0001.htm#12032757001705>

As regards the impact of generally removing legal aid for (non-asylum) immigration, this was debated at Lords' Report (12 Mar 2012 : Column 69):

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120312-0002.htm#12031237001108>

### **Clause 10**

**7** *Page 7, line 24, leave out from “which” to “could” and insert “more than one form of civil legal service”*

**8** *Page 7, line 25, after second “the” insert “form of”*

#### **Purpose**

These Government Amendments are technical, concerning the criteria for providing legal aid where the person to whom it is to be provided qualifies for legal aid in respect of more than one type of ‘civil legal service’ (i.e. in respect of more than one area of law as provided by Schedule 1 of the Bill).

### **Clause 26**

**24** *Page 21, line 6, leave out subsection (2) and insert –*

*( ) Notwithstanding subsection (1), the Lord Chancellor’s duty under section 1(1) must include a duty to secure that a person eligible to legal aid advice is able to access it in a range of forms at the outset, including securing the provision of initial face-to-face advice.”*

#### **Purpose**

The Amendment seeks to ensure that those, for whom the telephone (or other non face-to-face method) does not provide an effective or adequate means by which they can access legal aid to which they remain entitled under this Bill, are not denied access to legal aid and thereby effective access to justice by the introduction of a mandatory telephone (or other) gateway to legal aid.

#### **Briefing Note**

The Amendment was tabled by Crossbench, Labour and Conservative peers. ILPA supports the Amendment, which is necessary to ensure that such legal aid as is to remain available is accessible to all who need it. A requirement to access legal aid by telephone would effectively exclude many people who are not confident in using the telephone, are unable or unwilling to explain highly sensitive matters over the telephone, are unable to explain their difficulty without the person seeing relevant paperwork or do not understand what is being explained over the telephone (and where the adviser or operator cannot see that he or she has not been understood). Those most likely to be effectively excluded in such ways include those for whom English is not a first language, those with mental health or learning difficulties, and those such

as people living with HIV/AIDS and victims of domestic violence who may be inhibited from discussing their case over the telephone.

The Amendment was debated at Lords' Report (14 Mar 2012 : Column 278):  
<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120314-0001.htm#12031470001272>

### **After Clause 58**

**39** *Insert the following new Clause –*

*“Pro bono representation*

#### ***Payments in respect of pro bono representation before the Supreme Court***

(1) *In section 194 of the Legal Services Act 2007 (power for certain courts to order losing party to make payment to charity where other party is represented pro bono) in subsection (10) for the definition of “civil court” substitute –*

*““civil court” means –*

- (a) the Supreme Court when it is dealing with a relevant civil appeal,*
- (b) the civil division of the Court of Appeal,*
- (c) the High Court, or*
- (d) any county court;*

*““relevant civil appeal” means an appeal to the Supreme Court –*

- (a) from the High Court of England and Wales under Part 2 of the Administration of Justice Act 1969,*
- (b) from the Court of Appeal under section 40(2) of the Constitutional Reform Act 2005, or*
- (c) under section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court) other than an appeal from an order or decision made in the exercise of jurisdiction to punish for criminal contempt of court;”.*

(2) *This section applies in relation to appeals to the Supreme Court only where the decision, order or judgment that is the subject of the*

*appeal is made or given on or after the day on which this section comes into force.”*

### **Purpose**

This Government-supported Amendment (originally tabled by Lord Pannick) extends current legislative provisions (section 194, Legal Services Act 2007) that allow certain courts to make an award of costs despite the other party having no costs by reason of being represented *pro bono*, such that the party against whom costs are awarded is to pay notional costs to a charity, the Access to Justice Foundation, which supports *pro bono* work. The extension is to include awards of notional costs in cases before the Supreme Court.

### **Briefing Note**

The Amendment was debated briefly at Lords’ Report (20 Mar 2012 : Column 764):

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120320-0001.htm#12032057001212>

Information on the Access to Justice Foundation is available at:

<http://www.accesstojusticefoundation.org.uk/>

## **After Clause 127**

**153** *Insert the following new Clause –*

### ***“No rehabilitation for certain immigration or nationality purposes***

*Before section 57 of the UK Borders Act 2007 (and after the italic cross-heading before that section) insert –*

#### ***“56A No rehabilitation for certain immigration or nationality purposes***

- (1) *Section 4(1), (2) and (3) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) do not apply –*
  - (a) *In relation to any proceedings in respect of which a relevant immigration decision or a relevant nationality decision, or*
  - (b) *otherwise for the purposes of, or in connection with, any such decision.*
- (2) *In this section –*

*“immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971,*

*“relevant immigration decision” means any decision, or proposed decision, of the Secretary of State or an immigration officer under or by virtue of the Immigration Acts, or rules*

*made under section 3 of the Immigration Act 1971 (immigration rules), in relation to the entitlement of a person to enter or remain in the United Kingdom (including, in particular, the removal of a person from the United Kingdom, whether by deportation or otherwise),*

*“relevant nationality decision” means any decision, or proposed decision, of the Secretary of State under or by virtue of –*

*(a) the British Nationality Act 1981,*

*(b) the British Nationality (Hong Kong) Act 1990, or*

*(c) the Hong Kong (War Wives and Widows) Act 1996,*

*in relation to the good character of a person.*

- (3) *The references in subsection (2) to the Immigration Acts and to the Acts listed in the definition of “relevant nationality decision” include references to any provision made under section 2(2) of the European Communities Act 1972, or of EU law, which relates to the subject matter of the Act concerned.”*

#### **Purpose**

The Government’s impact assessment states that the Amendment is to permit the UK Border Agency to rely on all conviction information, including as to spent convictions, in making immigration and nationality decisions.

#### **Briefing Note**

The Amendment constitutes a substantial change to the current provisions of the Rehabilitation of Offenders Act 1974, whereby those convictions which can become spent (many, the more serious, cannot become spent) can no longer be required to be disclosed or should no longer adversely affect a person save in specified circumstances (immigration and nationality, not being specified). ILPA opposes the Amendment. A fuller ILPA briefing is available at: <http://www.ilpa.org.uk/data/resources/14162/12.02.07-Briefing-on-Rehabilitation-of-Offenders.pdf>

There was no debate of this Amendment in the Lords. The Government’s impact assessment of the measures of which this forms part is available at: <http://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/laspo-rehab-of-offenders-act-ia.pdf>

### **Schedule 1**

**168** *Page 115, line 5, at end insert –*

*“Social welfare law*



- (1) *Civil legal services provided in respect of a social welfare decision relating 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 and Credit Act 2002;*
  - (d) *the Tax Credits Act 2002;*
  - (e) *the Welfare Reform Act 2007;*
  - (f) *the Welfare Reform Act 2012; or*
  - (g) *any other enactment relating to social security.*
- (2) *For the purposes of sub-paragraph (1), “civil legal services” includes independent advice and assistance for a review, or appeal to a first-tier tribunal, of such a decision.”*

#### **Purpose**

The Amendment seeks to preserve legal aid in relation to welfare benefits decisions, including advice and assistance for a review or appeal of such a decision by the First-tier Tribunal (Social Entitlement Chamber).

#### **Briefing Note**

The Amendment was tabled by Liberal Democrat, Conservative, Labour and Crossbench peers. ILPA supports the Amendment. Among the most complex of welfare benefits cases will be those where immigration law and/or European Union law is relevant to the decision in question, and absent legal advice and assistance in these cases an almost inevitable result will be denial of benefit to persons legally entitled to receive it.

The Amendment was debated at Lords’ Report (7 Mar 2012 : Column 1782):  
<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120307-0001.htm#12030760000439>

**169** *Page 115, line 5, at end insert –*

*“Social welfare law (No. 2)*

- (1) *Civil legal services provided in respect of a social welfare decision relating 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 2012; or*
  - (g) *any other enactment relating to social security.*
- (2) *For the purposes of sub-paragraph (1), “civil legal services” includes*  
–
- (a) *independent advice or assistance for an appeal to a second-tier tribunal; and*
  - (b) *independent advice, assistance and representation at a higher court of such a decision.”*

### **Purpose**

The Amendment seeks to preserve legal aid in relation to welfare benefits decisions, including advice and assistance for onward appeals against a decision by the First-tier Tribunal (Social Entitlement Chamber), including to the Upper Tribunal (Social Entitlement Chamber), the Court of Appeal and Supreme Court.

### **Briefing Note**

The Amendment was tabled by Labour, Conservative and Crossbench peers. ILPA supports the Amendment, which is complementary to Amendment **168** (see above). The onward appeals to which this Amendment relates are all appeals that can only proceed on points of law, and for which permission of a relevant court or tribunal is required. The Amendment was considered in the same Lords’ debate as Amendment **168**.

**171** *Page 115, line 5, at end insert –*

*“Children under 18*

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

- (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 2012, or*
- (vii) *any other enactment relating to social security;*
- (c) *all areas of education 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) *all areas of consumer law not otherwise covered in this Schedule;*
- (i) *appeals to the Criminal Injuries Compensation Authority;*
- (j) *civil legal services relating to a review or appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007; and*
- (k) *civil legal services relating to an appeal to the Supreme Court.”*

**Purpose**

The Amendment seeks to preserve legal aid for children, who are parties or prospective parties to the specified legal proceedings.

**Briefing Note**

The Amendment was tabled by Crossbench, Liberal Democrat and Conservative peers. The Bill makes provision for legal aid for children, who are parties or prospective parties to certain family law proceedings because the Government acknowledges “*that children are not able to represent themselves*” (Government’s response to legal aid consultation). However, this concern is not limited to family law. The Government has said that exceptional cases funding (clause 9) will protect legal aid provision for children, yet in relation to immigration this is contradicted by the Government’s statements that immigration cases (including those of children) will be excluded from exceptional cases funding. Other suggestions made by the

Government include that children in need of immigration advice and representation should rely on social workers, a suggestion that is wholly inappropriate and would risk social workers being asked to act unlawfully. More information is available from the ILPA briefing at:  
<http://www.ilpa.org.uk/data/resources/14450/12.03.26-Briefing-on-Children-Amendment.pdf>

The Amendment was debated at Lords' Third Reading (27 Mar 2012 : Column 1257):  
<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120327-0001.htm#12032757001706>

The Government's suggestions relating to children and immigration proceedings were hotly debated among other matters at Lords' Report (12 Mar 2012 : Column 118):  
<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120312-0003.htm#1203132000354>

**197** *Page 125, line 38, leave out "paragraph 15" and insert "paragraphs 1, 2, 3, 4, 5, 6, 8, 12, 15 and 16"*

#### **Purpose**

This Government Amendment removes certain of the Bill's limitations on the provision of legal aid in relation to judicial review applications.

#### **Briefing Note**

At Lords' Committee (18 Jan 2012 : Column 622), the Bill was criticised strongly by Crossbench, Liberal Democrat and Labour peers for the restriction of legal aid in cases of abuse of power by a public authority to cases where there was significant harm and the abuse was dishonest or deliberate. Among peers' concerns was that cases of unlawful detention (e.g. by the UK Border Agency) would not attract legal aid unless it were asserted that the unlawfulness was dishonest or deliberate. In moving this Amendment at Lords' Report, Lord Wallace of Tankerness (7 Mar 2012 : Column 1885) for the Government asserted that it would address these concerns by ensuring that such unlawful detention cases could be brought by way of judicial review, and a damages claim could be pursued with the judicial review application. The Government's solution is, however, inadequate in that judicial review cases are often resolved before a related damages claim is considered by the court. The damages claim cannot itself be brought by judicial review, and once the judicial review application is resolved the availability of legal aid will fall away without the assertion of dishonesty or deliberateness.

This Amendment was referred to in Lord McNally's letter to all peers of 1 March 2012, deposited in the Library (DEP2012-0397).

**198** *Page 126, line 4, leave out sub-paragraph (5) and insert –*

*“(5) The services described in sub-paragraph (1) do not include services provided in relation to judicial review in respect of an issue relating to immigration where –*

- (a) *the same issue, or substantially the same issue, was the subject of a previous judicial review or an appeal to a court or tribunal,*
- (b) *on the determination of the previous judicial review or appeal (or, if there was more than one, the latest one), the court, tribunal or other person hearing the case found against the applicant or appellant on that issue, and*
- (c) *the services in relation to the new judicial review are provided before the end of the period of 1 year beginning with the day of that determination.”*

### **Purpose**

This Government Amendment seeks to ensure that successful judicial review or appeal proceedings are not a bar in themselves to legal aid for subsequent judicial review proceedings.

### **Briefing Note**

ILPA supports the Amendment insofar as it goes. It addresses one aspect of ILPA’s original concerns with the immigration-specific exclusions of legal aid for judicial review cases. Nonetheless, ILPA is opposed to the Government’s compromising of its otherwise broad commitment to provide legal aid for judicial review as necessary to ensure “*that state power is exercised responsibly*” (original legal aid consultation document). Further information is provided by the ILPA briefing at:

<http://www.ilpa.org.uk/data/resources/14295/12.03.02-Briefing-on-Government-Amends-Judicial-Review-immigration.pdf>

This Amendment was referred to in Lord McNally’s letter to all peers of 1 March 2012, deposited in the Library (DEP2012-0397).

**199** *Page 126, line 12, leave out “a removal direction” and insert “removal directions”*

**200** *Page 126, line 13, leave out “direction was” and insert “directions were”*

**201** *Page 126, line 15, after “decision” insert “(or, if there was more than one, the latest decision)”*

**202** *Page 126, line 16, leave out “such a direction” and insert “removal directions”*

### **Purpose**

These Government Amendments are technical in nature, replacing references to ‘a removal direction’ with references to ‘removal directions’.

**203** *Page 126, line 27, at end insert –*

*“(7A) Sub-paragraphs (5) and (6) do not exclude services provided in relation to judicial review of removal directions in respect of an individual where prescribed conditions relating to either or both of the following are met –*

- (a) the period between the individual being given notice of the removal directions and the proposed time for his or her removal;*
- (b) the reasons for proposing that period.”*

**Purpose**

This Government Amendment would allow conditions to be prescribed which if met would permit legal aid to be provided in relation to judicial review of removal directions in circumstances where legal aid would be otherwise excluded.

**Briefing Note**

The Amendment was not debated in the Lords. It is ILPA’s understanding that the intention is to make provision for legal aid in cases where the UK Border Agency intends not to provide a person with the standard minimum or any notice of his or her removal. ILPA does not support such an intention by the UK Border Agency, which merely emphasises the need for legal aid in relation to removals generally by highlighting the degree of power available to the state and its willingness to exercise that power so as to deny effective access to the courts and justice. See further the briefing note on Amendment **198** above.

This Amendment was referred to in Lord McNally’s letter to all peers of 1 March 2012, deposited in the Library (DEP2012-0397).

**204** *Page 126, line 39, at end insert –*

*““an issue relating to immigration” includes an issue relating to rights described in paragraph 26 of this Part of this Schedule;”*

**Purpose**

This Government Amendment is technical in nature in that the same meaning of ‘an issue relating to immigration’ given in the Amendment had appeared in the sub-paragraph (5) which is to be replaced by Amendment **198** above.

**205** *Page 126, line 49, leave out ““removal direction” means a direction” and insert ““removal directions” means directions”*

**Purpose**

This Government Amendment is technical: see above viz. Amendments **199** to **202**.

**217** Page 129, leave out line 20 and insert “because I was the victim of domestic violence”

**Purpose**

This Government Amendment is technical in nature.

**218** Page 129, leave out lines 35 to 41

**219** Page 129, line 43, at end insert –

*““domestic violence” means threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other (within the meaning of section 62 of the Family Law Act 1996).”*

**Purpose**

These Government Amendment seek to introduce a definition of domestic violence in relation to legal aid in immigration proceedings that is the same as that included in the Bill in relation to family law proceedings.

This definition of domestic violence was debated among several issues relating to domestic violence at Lords’ Report (5 Mar 2012 : Column 1576):

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120305-0001.htm#1203057001716>

**220** Page 130, line 5, at end insert –

*“Immigration: victims of domestic violence and residence cards*

*25A(1) Civil legal services provided to an individual (“V”) in relation to a residence card application where V –*

- (a) has ceased to be a family member of a qualified person on the termination of the marriage or civil partnership of the qualified person,*
- (b) is a family member who has retained the right of residence by virtue of satisfying the conditions in regulation 10(5) of the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) (“the 2006 Regulations”), and*
- (c) has satisfied the condition in regulation 10(5)(d)(iv) of the 2006 Regulations on the ground that V or a family member of V was the victim of domestic violence while the marriage or civil partnership of the qualified person was subsisting.*

### *General exclusions*

- (2) *Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.*

### *Specific exclusion*

- (3) *The services described in sub-paragraph (1) do not include attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on an application.*

### *Definitions*

- (4) *In this paragraph –*

*“domestic violence” means threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other (within the meaning of section 62 of the Family Law Act 1996);*

*“family member” has the same meaning as in the 2006 Regulations (see regulations 7 and 9);*

*“family member who has retained the right of residence” has the same meaning as in the 2006 Regulations (see regulation 10);*

*“qualified person” has the same meaning as in the 2006 Regulations (see regulation 6);*

*“residence card application” means –*

*(a) an application for a residence card under regulation 17 of the 2006 Regulations, or*

*(b) an application for a permanent residence card under regulation 18(2) of the 2006 Regulations.”*

### **Purpose**

This Government Amendment seeks to provide legal aid to victims of domestic violence whose immigration status is dependent on an abusive partner who is exercising European free movement rights.

### **Briefing Note**

The Amendment constitutes a positive conclusion from the further thinking on European Economic Area cases, which at Commons' Report (31 Oct 2011 : Column 689) the Minister, Jonathan Djanogly MP, informed the House was to be undertaken. While ILPA welcomes the Amendment, we remain concerned that the Government's failure to protect all victims of domestic violence whose immigration status is dependent on their abuser will mean that



victims who might otherwise have escaped abuse remain trapped in an abusive relationship by reason of their fears of the immigration consequences from seeking to escape. See further Amendment 2 above; and see the ILPA briefing at: <http://www.ilpa.org.uk/data/resources/14294/12.03.02-Briefing-on-Government-Amends-Domestic-Violence-EEA-immigration.pdf>

The Amendment was not debated, but was referred to in Lord McNally's letter to all peers of 1 March 2012, deposited in the library (DEP2012-0397).

**221** Page 131, line 3, at end insert –

*“Victims of trafficking in human beings*

*27A(1) Civil legal services provided to an individual in relation to an application by the individual for leave to enter, or to remain in, the United Kingdom where –*

- (a) there has been a conclusive determination that the individual is a victim of trafficking in human beings, or*
  - (b) there are reasonable grounds to believe that the individual is such a victim and there has not been a conclusive determination that the individual is not such a victim.*
- (2) Civil legal services provided in relation to a claim under employment law arising in connection with the exploitation of an individual who is a victim of trafficking in human beings, but only where –*
- (a) the services are provided to the individual, or*
  - (b) the individual has died and the services are provided to the individual's personal representative.*
- (3) Civil legal services provided in relation to a claim for damages arising in connection with the trafficking or exploitation of an individual who is a victim of trafficking in human beings, but only where –*
- (a) the services are provided to the individual, or*
  - (b) the individual has died and the services are provided to the individual's personal representative.*

*Exclusions*

- (4) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.*
- (5) Sub-paragraphs (2) and (3) are subject to –*

- (a) *the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3, 4, 5, 6 and 8 of that Part, and*
- (b) *the exclusion of Part 3 of this Schedule.*

### *Definitions*

- (6) *For the purposes of sub-paragraph (1)(b) there are reasonable grounds to believe that an individual is a victim of trafficking in human beings if a competent authority has determined for the purposes of Article 10 of the Trafficking Convention (identification of victims) that there are such grounds.*
- (7) *For the purposes of sub-paragraph (1) there is a conclusive determination that an individual is or is not a victim of trafficking in human beings when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the individual is or is not such a victim.*
- (8) *In this paragraph –*

*“competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention;*

*“employment” means employment under a contract of employment or a contract personally to do work and references to “employers” and “employees” are to be interpreted accordingly;*

*“employment law” means an enactment or rule of law relating to employment, including in particular an enactment or rule of law conferring powers or imposing rights on employees or otherwise regulating the relations between employers and employees;*

*“exploitation” means a form of exploitation described in section 4(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation);*

*“personal representative”, in relation to an individual who has died, means –*

- (a) *a person responsible for administering the individual’s estate under the law of England and Wales, Scotland or Northern Ireland, or*
- (b) *a person who, under the law of another country or territory, has functions equivalent to those of administering the individual’s estate;*

*“the Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 March 2005);*

*“trafficking in human beings” has the same meaning as in the Trafficking Convention.”*

### **Purpose**

This Government Amendment seeks to preserve legal aid for victims of trafficking in relation to immigration proceedings, and compensation or damages claims against their traffickers.

### **Briefing Note**

ILPA supports the provision of legal aid to victims of trafficking. However, the Amendment is flawed insofar as access to legal aid for immigration proceedings is to be dependent on a ‘conclusive’ or ‘reasonable grounds’ decision by a competent authority that the person is or may be a victim of trafficking. This risks excluding certain victims of trafficking from the immigration advice and representation it is intended they should receive, and which they need; and in some instances may discourage victims from escaping their situation of exploitation and abuse. Further information is provided by the ILPA briefing at:

<http://www.ilpa.org.uk/data/resources/14449/12.03.26-ILPA-briefing-trafficking-Lords-3R.pdf>

This Amendment was referred to in Lord McNally’s letter to all peers of 26 March 2012, deposited in the library on 2 April 2012 (DEP2012-0594), and was subject to a short debate at Lords’ Third Reading (27 Mar 2012 : Column 1290):

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120327-0002.htm#12032760000998>

**231** Page 136, line 23, at end insert –

*“Terrorism prevention and investigation measures etc*

*39A(1) Civil legal services provided to an individual in relation to a TPIM notice relating to the individual.*

*(2) Civil legal services provided to an individual in relation to control order proceedings relating to the individual.*

*Exclusions*

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

*Definitions*

*(4) In this paragraph –*

*“control order proceedings” means proceedings described in paragraph 3(1)(a) to (e) of Schedule 8 to the Terrorism*

*Prevention and Investigation Measures Act 2011 (“the 2011 Act”);*

*“TPIM notice” means a notice under section 2(1) of the 2011 Act.”*

**Purpose**

This Government Amendment seeks to ensure that legal aid remains available in relation to the use of ‘terrorism prevention and investigation’ measures.

**Briefing Note**

This Amendment was referred to in Lord McNally’s letter to all peers of 1 March 2012, deposited in the library (DEP2012-0397).

**232** Page 136, line 30, leave out paragraphs (a) and (b) and insert –

- “(a) the exclusions in Parts 2 and 3 of this Schedule, except to the extent that regulations under this paragraph provide otherwise, and*
- (b) any other prescribed exclusions.”*

**Purpose**

This Government Amendment is technical in nature, relating to cases where legal aid is provided to an individual whose case concerns two or more connected issues.

**243** Page 139, line 12, leave out “paragraph 25” and insert “paragraphs 25, 25A or 27A(1)”

**Purpose**

This Government Amendment seeks to ensure that the provision of legal aid to victims of domestic violence and victims of trafficking (see Amendments **220** and **221** above) includes legal aid for representation before the First-tier Tribunal (Immigration and Asylum Chamber).

**250** Page 141, line 3, at end insert –

- “( ) when proceedings are related to other proceedings.”*

**Purpose**

This Government Amendment provides for regulations to be made as to when proceedings are related to other proceedings, a matter which will be relevant to whether legal aid is provided.

***For further information please get in touch with:***

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