IMMIGRATION BILL

ILPA PROPOSED AMENDMENTS FOR HOUSE OF COMMONS COMMITTEE STAGE

PART III ACCESS TO SERVICES ETC., PART IV MARRIAGE AND CIVIL PARTNERSHIPS
CLAUSE 35ff

For further information please get in touch with alison.harvey@ilpa.org.uk 0207 490 1553. ILPA is happy to provide further briefing to specific amendments if these are laid/and or selected or to assist members of the Committee in deciding whether to lay them. We shall also be providing briefings for stand part debates where possible.

Clause 35 Prohibition on opening current accounts for disqualified persons

PROPOSED AMENDMENT

Clause 35, page 28, line 25, leave out lines 25 to 27.

Purpose

To permit a bank to open a bank account for a person on whom a status check cannot be carried out.

Briefing

The Explanatory notes to this clause state:

> *The second condition is that the bank or building society has been unable to carry out a status check because of circumstances that cannot reasonably be regarded as within its control. This might occur, for example, if it were unable to perform a check because of operational difficulties being encountered by the checking service for an extended period.*

This scheme is intended to work through subcontractors such as CIFAS as set out in the Home Office factsheet. The former UK Border Agency should be required to manage its subcontractors adequately, ensuring that any data passed to them is passed in accordance with the law and with data protection principles, including that it is accurate. If it cannot do so, in particular for an "extended period" that should not form the reason either for an individual to be prevented from opening a bank account or for preventing a bank from doing business with a particular client who would otherwise be allowed to open a bank account, having passed all identity and anti-fraud and anti-money-laundering checks required of anyone, wishing to do so..

There is also the question of the basis on which the former UK Border Agency has passed this data to CIFAS etc. in the first place. ILPA first entered into correspondence with Jonathan Sedgwick, then Deputy Chief Executive of the UK Border Agency, about the UK Border Agency's membership of the Credit Industry Fraud Avoidance System (CIFAS) in June 2010. Damien Green MP, then Minister for Immigration, said in his letter of 5 July 2010: "I acknowledge the freedom of information and data protection act concerns your members have registered."

The data held by members of the Credit Industry Fraud Avoidance System may be held outside the jurisdiction and may be accessed by persons who are outside the jurisdiction. Some of the companies may be incorporated in countries other than the UK.

The Home Office's use, sharing, storage and retention of data on individuals is dealt with in standard paragraphs on application forms or read at the beginning of interviews and recorded as part of the interview record. The forms of standard consent have changed over time. Particularly in the case of those who have been in the UK, with or without leave, for some time that they will have signed different versions of consent forms that are not the same as those currently in use. We consider that, at the very least, very many of the forms of consent that we have seen over the years do not form a basis for asserting that an individual has given any consent, let alone informed consent, to the sharing of their data with the Credit Industry Fraud Avoidance System, nor to the retention, use or storage of their data by the Credit Industry Fraud Avoidance System.

Under data protection principles a person cannot consent to an open-ended use of data. The reasons given for keeping and using the data are, in many of the standard consents, too broad, in light of the legitimate bases for processing data as listed in the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data[1], ratified by the UK in 1987, provides in Article 2 that 'Personal Data' is defined as any information relating to an identified or identifiable individual - known in all subsequent texts as 'data subject'. Article 6 describes 'special categories of data' including 'racial origin… health' which 'may not be processed automatically unless domestic law provides appropriate safe guards'.

Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, requires member States to enact domestic legislation on the processing of personal data to ensure and protect the fundamental rights and freedoms of natural persons as recognised under Article 8 of the European Convention on Human Rights and in the general principles of EU Law. The Data Protection Act 1998 is the relevant UK law.

In *S & Marper v UK* (2008) *(Application nos. 30562/04 and 30566/04)* the Grand Chamber of the European Court of Human Rights criticised the UK Government's 'vague' definitions regarding its procedures. It is essential to have clear rules

[1] CETS No.: 108, 1981.

governing the scope and application for measures, and 'minimum safeguards concerning duration, storage, usage, access of third parties, procedures for preserving the integrity and confidentiality of data and procedures for its destruction.'[2]

The companies who are members of the Credit Industry Fraud Avoidance System have many staff and these are spread across the globe. The chances of information about, for example, a person who has sought asylum or humanitarian protection falling into the hands of their persecutors appears to us high. Even if the person's initial claim for international protection was rejected, the sharing of the information may increase the risk to them taking them above the threshold whereby they are found to be in need of international protection. In the case of those who remain in the UK but whose initial claims for asylum were rejected some time ago, circumstances in their country of origin may have deteriorated. The dangers of providing not only an individual's personal biographical information but also an address in such cases are very clear.

There will be other migrants, in whose cases there is no risk of persecution, who could find themselves disadvantaged by the sharing of information between the Home Office and the Credit Industry Fraud Avoidance System. Fraud information and alerts posted by the financial services sector may not be accurate, or may not be sufficiently detailed to identify whether an individual has done anything wrong. The risk of discrimination on the grounds of race or nationality is high. The information held by the Home Office is not in our experience sufficiently accurate or complete to ensure that the financial services agencies with which it shares information are not misled.

PROPOSED AMENDMENT

Clause 35, page 28, line 31 at end insert-

"or has made a claim for asylum which has not yet been determined by the Secretary of State or has been refused and an appeal against that refusal is pending

( ) claim for asylum has the same meaning as in section 94 of the Immigration and Asylum Act 1999;

( ) an appeal is pending for the purposes of this section when it is pending under the Nationality, Immigration and Asylum Act 2002, s 104"

Purpose

Removes from the ambit of the definition of a disqualified person a person whose asylum claim has not yet been finally determined.

Briefing

The clause as drafted appears to exclude persons on temporary admission from its ambit. Those most likely to be on temporary admission for very lengthy periods are persons seeking asylum. Many will be very poor, but some, for example those

[2] S99 *Ibid*

whose claims have been pending for more than a year and who can find work in a shortage occupation may be allowed to work. Some persons seeking asylum may be able to get some money out of their country of origin when they flee or even subsequently. It is rare, but it does happen. Those persons should be able to have a bank account.

There are other ways of achieving this result, for example the Secretary of State could indicate that she will exercise her discretion under subclause 25(3)9c) in their favour. But they should not be forgotten.

PROPOSED AMENDMENT

Clause 35, page 28, line 39, after "Secretary of State" insert "reasonably"

Purpose
To require the Secretary of State's belief that a bank or building society should not open a current account for a person to be reasonable. To probe the baroque structure of this clause.

Briefing
Clause 35 is very strangely drafted. In our experience parliamentary counsel find tidy forms of words to give effect to the intent behind a clause and therefore the drafting alerts us to difficulties with the intent behind the clause.

The clause starts with a negative, a status check must illustrate that a person is "not a disqualified person" (subclause 35(1)(a)). If it does, a bank cannot open an account for that person.

We then expect to find out what a disqualified person looks like. But we do not. Sub-clause 35(2) is wholly self-contained. It defines a person falling within sub-clause 35(2). It defines that person as in the UK, requiring leave and not having it, in other words a person with no leave, including an illegal entrant and an overstayer, or a person on temporary admission, such as a person seeking asylum.

We turn to subclause 35(3). There we learn that disqualified persons are a subset of persons within subclause 35(2). They are persons in the UK, requiring leave and not having it, "for whom the Secretary of State considers that a current should not be opened. We search in vain in the Bill for any criteria on which that decision could be based. We look to the Explanatory Notes. These state:

> *The Secretary of State therefore has discretion as to who should be barred from opening current accounts. This is because there will be some individuals who face legitimate barriers which prevent them from leaving the UK, even though they do not have leave. The Secretary of State may enable these persons to open a current account.*

This looks benign. But the amendment provides an opportunity to ask:

- **Where will the criteria on which the Secretary of State bases her decision be set out?**

- **What options are open to a person unable to open a bank account who wants to challenge the Secretary of State's refusal to let him/her do so?**

CLAUSE 35 STAND PART

The Government says it wants to make the UK "*a more hostile place for illegal migrants.*"[3] There is no question that clause 35 will create a more hostile place, but for whom? There are three basic problems with the approach. Firstly, it will adversely affect those for whom the hostility is unintended. Secondly, it is blind to the real culpability of any affected individual, and will likely fall far more heavily on the innocent, naïve and minor transgressor while failing to touch the most culpable abuser of immigration controls. Thirdly, it will establish a place in which those who profit by criminal and exploitative behaviour may flourish.

In his Foreword to a detailed report[4] on *Financial Inclusion amongst New Migrants in Northern Ireland*, Andrew Barnett, Director of Calouste Gulbenkian Foundation (UK), noted:

> "*In today's climate, when economic constraint threatens heightened racial sensitivity, it is critical that we find practical ways to support inclusion and lessen exclusion, whether social or financial, of all groups, including new migrants and ethnic minorities. It is likely that demand for financial advice will continue to rise in the coming months and years and our ability to keep people involved with and actively contributing to our economy will be crucial in ensuring we make it through without the need for further cuts or devastating bail- outs. the significant minority of migrants residing in Britain should be supported and encouraged to engage with the financial system here too rather than conducting transactions on the fringes.*"

Whereas the report highlighted that some of those the Government intends to target (overstayers and undocumented migrants) have difficulty accessing financial services, it also identified refugees as often excluded. However, the report also identified others as having had difficulties, e.g. a EU national who was rejected by two institutions who demanded documentation another did not need; and a refugee who had trouble because of delays by the Home Office issuing his status papers.[5] Clause 35 can be expected to accentuate barriers that already exist, particularly for those who do not hold a British passport, have some other status document (concerning British or European citizenship, or immigration status), which is readily identifiable to the relevant financial institution. The concerns of Andrew Barnett will similarly be aggravated. This is despite the Home Secretary's previous recognition of the wider danger to civil liberties resulting from a general introduction of identity cards in the UK: "*The national identity card scheme represents the worst of government. It is intrusive and bullying, ineffective and expensive.*"[6] Having abandoned the previous administration's commitment to identity cards, the Government is now establishing

[3] Home Secretary, Second Reading, 22 October 2013 : Column 163
[4] A December 2010 report of Information Centre about Asylum and Refugees with Citizens Advice Belfast, available at http://www.icar.org.uk/FINI%20Final%20Report.pdf
[5] *ibid*, page 32
[6] Identity Documents Bill, Report, Hansard, 9 Jun 2010 : Column 345

an environment where the establishment of identity, and particular aspects of that identity concerning citizenship and immigration status, are to become routine.

And to what purpose? At Second Reading, the shadow Home Secretary said: "*How much difference will* [the hostility-creating measures] *actually make in practice... One does not need a driving licence to drive in Britain and one does not need a British bank account to take cash out of a cash machine or to earn some cash on the side.*"[7] Anyone who is sufficiently organised prior to entry or overstaying can establish an accessible overseas account. Thus, those who deliberately and knowingly set out to exploit their ability to evade immigration controls can be expected to escape the impact of clause 35. By contrast, the innocent, naïve, exploited and minor transgressor will be caught. This may include the person born in or brought to the UK and overstaying as a child, who does not even realise he or she has no permission to be in the UK; the person who becomes an overstayer by the incompetence of the Home Office in processing his or her application, or perhaps the incompetence of his or her legal adviser, or a minor mistake in an application or over a deadline; the person who is exploited by a trafficker or other controller. It is an unhappy irony that the Government is greatly extending these prospects befalling many migrants by its ongoing widespread removal of legal aid, and hence access to legal advice and justice, for those most at risk. It is critical that Parliament recognise that those vulnerable to trafficking, exploitation and control related to their immigration status is not limited to those trapped e.g. in brothels (where the degree of control would necessarily exclude their access to a bank account), but extends to a much wider range of persons – e.g. migrants trapped in abusive relationships, or forced to provide service or labour. Control in such circumstances may include psychological, emotional, financial, violence, and control over an immigration status document or passport. Clause 35 will increase the capacity for exploitative and abusive persons to exercise control to migrants caught in these situations.

While those of most concern may escape the affect of clause 35, and those not intended to be targeted or most innocent may fall foul of the hostile environment it creates, that very environment is one providing ever greater opportunity to the flourishing of crime and exploitation. This is not merely the case for those who exploit and abuse migrants, who might otherwise establish some greater independence by accessing a bank account. The clause creates a whole new ground for those who engage in the forging and trade of false documents.

In answer to the shadow Home Secretary's concerns at Second Reading, it is surely the case that this measure will have a substantial impact in practice. However, that impact may well be to impede or exclude the access of lawful migrants and citizens to bank accounts, to add further to social problems of exploitation and criminal activity, while failing to impede the daily lives of those most intent and hence prepared on evading and abusing immigration controls.

Clause 36 Regulation by Financial Conduct Authority

PROPOSED AMENDMENT

[7] Second Reading, 22 October 2013 : Column 172

Clause 36, page 29, line 18 omit "may" and insert "must"

Purpose
Replaces the power of the Treasury to make regulations to enable the Financial Conduct Authority to make arrangements for monitoring and enforcing compliance with the prohibition, with a duty to do so. A probing amendment.

Briefing
An opportunity to probe the circumstances in which the Government might think it proper to bring the scheme into force but not make such arrangements.

PROPOSED AMENDMENT

Clause 36, page 29, line 26 leave our "in particular those"

Purpose
Ensures that regulations can only make provisions corresponding to those made in the Financial Services and Markets Act 2000 set out in subclause 36(3) rather than make provisions corresponding to any in the Act.

Briefing

Subclause 36(3) adds nothing to the bill as by subclause 36(2)(b) regulations may make provisions corresponding to any provision whatsoever of the financial Services and Markets act 200. Such a broad power suggests that how this scheme will work has not been thought through.

PROPOSED AMENDMENT

Clause 36, page 29, omit lines 31 to 32

Purpose
Removes the power to include in regulations provisions corresponding to provisions of the Financial Services and Markets Act 2000 in respect of injunctions in relation to a contravention or anticipated contravention. A probing amendment.

Briefing
To probe the circumstances in which an injunction or interdict might sought and granted.

CLAUSE 36 STAND PART

Many banks, for anti-money laundering and other checks, require production of documents proving identity. The proposals in the Bill to put this on a statutory footing make still further demands on the overstretched former UK Border Agency.

These provisions must be considered with clauses 1 and 11 of the Bill on removal and appeals. A person who has quite lawfully made an in-time application to extend

his/her leave may be wrongly refused. Under clause 1 and this clause s/he and family members will suddenly find themselves with no leave. They may no right of appeal. They may end up applying for administrative review not because they think that it will do a blind bit of good but because they want to protect their position (since, by the terms of Schedule 8, leave continues on the same terms and conditions while an administrative review is pending). They may even make an application for administrative review that they know is hopeless (because the Home Office has a settled position on a point) while applying to challenge the Home Office position by judicial review. Part III makes the consequences of a wrongful refusal, the consequences of delay, much greater, at a time when nothing has been done to lower the chances of a wrongful refusal or of a lengthy delay.

PROPOSED AMENDMENT

Page 39, leave out Clause 38

Purpose
To deny the Treasury to amend primary legislation by secondary legislation.

Briefing
Clause 38 contains Henry VIII powers and as such should be subject to special scrutiny. It is subject to the affirmative procedure but the affirmative procedure is not a get out of jail free card where such powers are concerned. It may provide a safeguard where such a power is considered by parliament to be essential but does not obviate the need to scrutinise whether the power is essential. Something has gone wrong with the Delegated Powers Memorandum on this point, for it says

> *...it is possible that in future the government may need to amend the definitions in order to alter the range of institutions falling bring other institutions within the scope of the restriction*

As drafted the clause could be used to deny persons without leave, including persons seeking asylum, anywhere where they could safely deposit their money. That is a Henry VIII power indeed and parliament should withhold it.

Work

CLAUSE 39 Appeals Against Penalty Notices STAND PART

Leave out Clause 39

Purpose
To maintain the status quo whereby an employer can opt to go straight to civil court to appeal against a penalty rather than being forced to exercise their right to object first

Briefing

ILPA considers that there should be an option to waive the objection and move straight to an appeal. There is no point in spending time and money on an objection in circumstances where the Home Office disagrees with the analysis of law or fact and will not change its mind. Nor should a person be obliged to incur the costs associated with an objection including legal fees.

In the event of an appeal, where the respondent concedes the appellant is right (e.g. because a civil penalty was wrongly imposed), an order has to be drawn up that addresses costs. The Civil Procedure Rules Practice Direction 52 and Costs Practice Direction are in point. The former provides that where a settlement has been reached disposing of the application or appeal, the parties may make a joint request to the court for the application or appeal to be dismissed by consent. If the request is granted the application or appeal will be dismissed. Where the Home Secretary has conceded the issue, she has no basis to resist a costs order. When the appeal is settled so that it is withdrawn as the underlying decision is accepted to be wrong, the default position that costs follow the event applies.

These provisions provide an opportunity to discuss the civil penalty regime. ILPA has opposed employer sanctions since their inception in 1996. They serve to encourage and promote discrimination in the workplace, affecting not only those with limited leave to be in the UK but also settled persons and British citizens, in particular from ethnic minority backgrounds[8].

Employer sanctions have also, particularly since the introduction of the sponsor licensing schemes under the Points-Based System[9], greatly increased the regulatory burden for businesses. They have increased businesses' reliance on lawyers.

All too often illegal working is in exploitative, sometimes dangerous conditions[10]. We recall the analysis in the report[11] of the TUC Commission on vulnerable employment[12]: "…firms that are found to be non-compliant in one area are often non-compliant in others." Disregard for the rights of migrant workers is likely to go hand in hand with disregard for health and safety, and for more general employment law and workplace standards[13]. The Commission said:

> *… it is the weak position of migrant workers that has made them vulnerable. If you increase the supply of vulnerable workers then the unscrupulous will come along to exploit them. So the worst way to respond to concern about migration is to further reduce migrant workers' rights. That will simply cause an even greater downwards pressure on standards.*
>
> …
>
> ***We have therefore concluded that there is a need for the scope of government enforcement agencies to be extended to cover a wider range of workplace rights.***

[8] See the Migrants' Rights Network *'Papers please': The Impact of the Civil Penalty Regime on the Employment Rights of Migrants in the UK*, November 2008.
[9] 27 November 2008.
[10] See, for example, the Joseph Rowntree Foundation Programme Paper: Forced labour and UK immigration policy: status matters? Peter Dwyer, Hannah Lewis, Lisa Scullion and Louise Waite, October 2011.
[11] *Hard Work; Hidden lives, the full report of the TUC Commission on vulnerable employment*, 7 May 2008.
[12] See http://www.vulnerableworkers.org.uk/ .
[13] *Hard Work; Hidden lives, the full report of the TUC Commission on vulnerable employment, op. cit.*

This recommendation should be revisited. The current regime fails to concentrate on the worst employers or on the workers most vulnerable to exploitation. It does nothing to contribute to the general raising of employment law standards that would protect migrant workers and ethnic minorities in the labour market. Instead it creates red tape and can contribute to an atmosphere in the generality of workplaces that is at best unhappy and at worst oppressive.

Given that the maximum penalty is already £10,000 per head, ILPA is unconvinced that increasing the maximum penalty will serve significantly to affect employer behaviour. It is difficult to see how increasing the maximum penalty will offer any more of a disincentive to the exploitative employer who intentionally employs somebody without permission to work: we suggest that the fear of detection is a far greater deterrent than the severity of the penalty. For those employers who have failed to comply with the legislation by mistake or because of error, in members' experience the level of penalty is seen of little relevance to them until it is too late. The proposed change thus appears thus to be symbolic, of style rather than substance. We have seen no statistics or other analyses to suggest that the increase of the maximum civil penalty from £5,000 to £10,000 on 29 February 2008 increased compliance.

Employers have statutory employment law responsibilities as well as responsibilities under their own terms and conditions of employment. We have seen too many cases where persons subsequently given leave to remain have in the meantime lost their jobs. Employers who have wrongfully and peremptorily dismissed employees on an assumption that they have lost the right to work have lost unfair dismissal cases in the employment tribunals but by that time reinstating the employee in work may no longer be possible, for example because there is no subsisting relationship of trust and confidence between employer and employee.

Where the immigration status of an employee is unclear and that employee cannot provide documents that give the employer a defence against a civil penalty, the employer will be in violation of employment law if it suspends without pay or dismisses an employee who does have the right to work.

For example, there are significant and ongoing problems with the application process for EEA residence documents and the timely obtaining of certificates of application by those who have applied for such documents. These delays are leading to third country national family members being unable to access employment and can lead to problems with existing employers and have in some cases led to suspension and dismissal.

There are significant ongoing problems with the accuracy and efficiency of the Home Office's Employer Checking service. A third country national's inability to provide "List B" documents will not (and should not) give an employer any protection against any claim in employment law following non-recruitment, or suspension or dismissal on these grounds alone where the third country national is, in fact, exercising EU Treaty rights.

The latter point is well illustrated in the case of *Okuoimose v City Facilities Management (UK) Ltd*, UKEAT/0192/11/DA, where a third country national family

member employee's claim for unlawful deduction of wages, relating to a period of suspension without wages following her inability to provide her employer with List B documents on the date her existing EEA residence document 'expired', was upheld by the Employment Appeal Tribunal. The judge, Jeremy McMullen QC said that section 15 of the Immigration, Asylum and Nationality Act 2006, s.15 'has no application here'. He emphasised the wording of Directive 2004/38/EC, Art 25:

> *' 1. Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.'*

Employees have been treated harshly by employers who dismiss them in circumstances where the employee does have the right to work but cannot prove this with documents that meet the requirements for a statutory defence against a civil penalty. This was the case in *Kurumuth v NHS Trust North Middlesex University Hospital* UKEAT/0524/10/CEA where the employee had been waiting for a decision on her immigration application for a number of years. The Employment Appeal Tribunal held that it was acceptable for the employer to rely upon the Home Office guidance on preventing illegal working to decide whether or not the employee should be dismissed. This was despite the employee's having the right to work in the UK, although in a way not covered in the guidance. The failure of the Home Office guidance adequately to address all the bases of a right to work in the UK results in people losing their jobs. Non-EEA nationals and ethnic minorities are more likely to be affected than British citizens and thus the shortcomings in the guidance give rise to discrimination on the grounds of race. Thus, for employers, shortcomings in the guidance can result in legal expenses.

Guidance should identify as a mitigating factor the employer's having taken prompt action that respects employment law obligations on discovering that somebody may be working unlawfully. For example, suspension on full pay while a fair investigative procedure is followed.

There are implications of checks for relationships in the workplace between all migrant workers, whether or not they have permission to work, and their employers. Employers will not always "know" that an employee does not have the right to work; they may have a concern that this may be the case. In such cases the required documents to check status are not always available, for example when a person's leave is shortly to expire and those documents are with the Home Office, supporting an in-time application or when an EEA national of family member of an EEA national has applied for residence documentation. Employers are not always the sponsors of the migrant workers they employ. For example, an employer may employ a person who has permission to work as a family member of a British citizen, EEA national or settled person. To report an employee as a person who does not have permission to work or to share information that should be confidential under the contract of employment in the course of trying actively to cooperate with the Home Office investigation may put the employer in breach of responsibilities under the contract of employment, employment law statutes and other statutes.

There are situations in which an employer tries to carry out checks but makes a mistake in following the guidance. In very many of the situations where persons have been found to be working unlawfully there has been an error. For example, in one case an individual applied for further leave to remain and did not include the correct fee. The application was rejected as invalid by which time his leave had expired. In another case, the individual failed to sign the cheque that accompanied the application. The application was returned as invalid but the individual's leave had in the meantime expired. Applications that employer and employee thought were in order have been refused for technical reasons such as payslips or bank statements in formats that do not meet the requirements being provided. In these cases, the employer was then employing the individual unlawfully.

A partial check may be evidence of good faith. The Home Office consultation on the *Strengthening the Civil Penalty Regime* proposed refusing to continue to treat such a check as a mitigating factor in certain cases. This risks fettering the Secretary of State's discretion to take it into account, resulting in the unreasonable and potentially unlawful imposition of a penalty. During audits members frequently identify that employers have not complied with all the requirements set out in the legislation. For example they have not copied the documents before the first day of employment and have instead taken the copies on the first day. There are also many cases where the employers have not photocopied the cover pages of a passport. We consider it wrong that employer could not rely on the partial check in circumstances such as these where the error is technical and has made very little substantive difference. The guidance should permit those who carry out checks on the first day of employment to maintain the statutory defence.

Any changes to the civil penalty regime short of abolition must improve legal certainty and mitigate the discriminatory effect of penalties, *inter alia* by:

- making provision for all documents that evidence a right to work, for example in the situations described above, to found a defence against the imposition of a civil penalty when they have been checked;
- making clear that civil penalties can only be imposed where an employee is not permitted to work, not for not making the checks on an employee who does have the right to work, save insofar as any checks have been carried out in a discriminatory manner;
- providing guidance that helps employers accurately to determine the right to work of their employees in situations where this is not clear; and
- providing for a defence against a civil penalty where an employer reasonably believes after reasonable investigation that an employee does have the right to work in the UK.

We consider it essential that it continue to be possible to issue a warning letter for a first time breach of the right to work checks.

The impact of a civil penalty on a Tier 2, 4 or 5 sponsor or an organisation that wishes to become such a sponsor goes far beyond financial sanctions. A Tier 2, 4 or 5 sponsor will lose its licence for receiving a penalty of the maximum possible amount[14]. This is mandatory. There is no right of appeal against this decision; the

[14] See paragraph 677 (d) of the Home Office *Tier 2 and 5 of the Points Based System Policy Guidance for Sponsors* (version 07/13)).

only challenge is by way on an application for judicial review. The sponsor cannot apply for a new licence for six months from the date of the revocation[15]. A Tier 4 sponsor cannot obtain Highly Trusted Sponsor status for three years after receiving any civil penalty. A Tier 4 sponsor that cannot renew its Highly Trusted Sponsor status will have its sponsor licence revoked. An organisation cannot obtain a Tier 4 sponsor licence within 12 months of receiving any civil penalty.

A warning letter should not be automatic: there is a difference between a person who has made a mistake or been careless and a person who is exploiting and ill-treating migrant workers. Warnings are more appropriate in the former case where the consequences of a civil penalty are disproportionate.

Currently, the page of the Home Office website dealing with Preventing Illegal Working[16] provides links to some eight separate current documents, totalling some 194 pages. List A of acceptable documents[17] goes on for 12 pages and list B for 11[18]. This gives some notion of the difficulties employers face.

The problems with documents stem from the guidance's being based upon a civil penalty regime that does not include all the documents that could evidence a person's right to work. The circumstances that are not catered for are principally:

- British citizens born outside the UK (and therefore without a UK birth certificate) who do not have a UK passport;
- People with leave under sections 3C or 3D of the Immigration Act 1971;
- Family members of EEA nationals exercising Treaty rights in the UK who do not have a current family permit or residence card. As a matter of EU law, these documents are not required, although families are entitled to obtain them; and
- Individuals from EU accession states who have the right to work, e.g. where they have been working lawfully for another employer for a period of 12 months. It is often very difficult for Romanian and Bulgarian nationals to demonstrate their right to work, for example where they have been working lawfully for another employer for a period of 12 months. This is also likely to be the case for Croatian nationals who have been working lawfully in the UK for 12 months on 30 June 2013.

The system is meaningless if a person who has the right to work cannot prove it. Meanwhile, checks properly carried out do not evidence a right to work. For example the documents asked for in lieu of passports at the moment do not necessarily prove that someone has the right to work. At the moment in the guidance[19] under List A someone can produce a birth certificate and an official

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[15] *Op.cit.* paragraph 678.

[16] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/ (accessed 12 August 2013).

[17] *Full guide for employers on preventing illegal working in the UK*, UK Border Agency May 2013, page 14. Available at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/comprehensiveguidancefeb08.pdf?view=Binary (accessed 12 August 2013).

[18] *Full guide for employers on preventing illegal working in the UK*, UK Border Agency May 2013, page 26.

[19] *Full guide for employers on preventing illegal working in the UK*, UK Border Agency May 2013, page 14).

document bearing their National Insurance number. Neither of which bears a photograph. These documents prove nothing for someone born after 31 December 1982 when birth in the UK ceased to confer British citizenship without more. Furthermore, where leave is curtailed, this is extremely unlikely to be shown on a vignette or biometric residence permit.

The Home Office should issue a letter immediately upon receipt of an in-time application for leave to remain. This would state what the person's current leave is and that it continues until the application has been determined and all appeal rights have been exhausted. Such a letter would be useful to an employee with continuing leave and mention of it could also be incorporated into guidance to avail the employer of a defence against a civil penalty for a specific period.

At the moment reliance on biometric residence permits is impossible, as most people with a right to work in the UK do not have a biometric residence permit. This will continue to be the case for a very considerable period of time. There will always be a need even for a person with a biometric residence permit to be able to rely on alternative documents to evidence their right to work, for example in cases of loss or theft of the document, or when it expires but the person has continuing leave.

The employer getting in touch with the Employers' helpline receives either confirmation that there is an application with the Home Office or is told that the Home Office cannot confirm that it has received such an application. The Home Office never confirms that it has not received an application. Where the Home Office cannot confirm that it has received an application, the employer is left having to investigate the employee's immigration status on its own, for example by taking evidence of the employee having posted their application.

Employers are not infrequently given inaccurate information when they check with the Employers' helpline. Even if the helpline accurately reports what is on the Home Office database, what is on that database may be inaccurate because an application has not been entered on the database. We have seen for example situations where the Home Office computer only has records of the main applicant's name and application and perhaps 'plus one dependant' without the name of that dependant or perhaps no record of the family member at all. The Employers Checking Service will then say there is no record of the person who has made a valid in-time application. Examples include where there is no record of a spouse or partner. The employer needs confirmation from the Employer Checking Service to establish a defence and, given inaccurate or incomplete advice, may dismiss or suspend a worker, including on terms not compatible with employment law.

There were a lot of delays in getting settlement applications in protection cases entered on to the computer for a long time, resulting in employees being sacked, or not being considered for jobs. Many employers will not take the trouble to get in touch with the Employers Checking Service, with the result that people do not get jobs, or risk losing their jobs. One member gives the example of a woman who applied in December for settlement after six years' discretionary leave as a wife and has no answer. She reports that every time sees see the administrative staff in the school where she works, those staff ask why she has not heard from the Home Office but they will not undertake the check themselves.

There can be very lengthy delays in updating the database, this is one of the causes of the problems with Capita PLC's phoning and texting people allegedly in the UK without lawful leave but all too often in practice British citizens or persons with leave. Capita is consulting a database that is both difficult to understand and not up to date.

Capita case December 2012

A client of mine received a text message on his phone from Capita Plc. and messages say they need to leave the UK and a phone number to call them on. He has also been getting phone calls from them - quite a few on a daily basis. Needless to say that our client is actually waiting for his application to be reviewed and we have a letter to confirm this, but obviously Capita have not been informed of this and he was extremely concerned.

I called them and asked if we could have a letter and I was told they only send it to the individual immigrants not to their legal representatives ... Interestingly enough they phoned my client again straight after my call.

Capita case December 2012

… one of my clients who informs me that she received the following message: " Message from UK Border Agency. You are required to leave the UK as you no longer have the right to remain. Please contact us on 08443751636 to discuss".
She received the message at 11:08AM yesterday and then, this morning at 09:32AM, received a missed call from the number 08452930035, which is possibly related.
Our client is currently on a Tier 1 (General) visa valid until 02 March 2013.

Capita case December 2013

I attach "statement of intention to depart"(!) sent to my client by Capita. …He's a new client so I don't know much about him but he does appear to have a SET (O) application outstanding and his wife's case is in the C[ase] A[udit] and A[ssurance] U[nit].

Capita case December 2012

The student has ...only been given until the 1 Jan 2013 to respond… (I'm assuming most institutions will not be operating an Independent Student Advisor service until term starts…).

…the student previously had a Tier 1 visa that was due to expire in 2011. … in 2010 the student obtained Tier 4 entry clearance to study a PhD. This leave is valid from 1 May 2010 until August 2014 and was stamped on entry on 10 May 2010. .. the Capita case ID has been logged on the UKBA system against this student but she could not see any record of the student's Tier 4 leave. It therefore looks like the UKBA (and Capita) think that the student has been an overstayer since his Tier 1 leave expired in 2011 – very alarming since as far as X knows the student doesn't in fact have any irregularities on his history to prompt this kind of confusion / action.

Capita January 2013

…some of my clients are still receiving letters directly from Capita despite the fact that they have outstanding applications and also the UKBA has our details on records as the legal representatives. One of the family's Human Rights application was lodged in November 2009, the UKBA acknowledge receipt of the application and my client has been reporting monthly since 2008.

It is very difficult for family members of EEA nationals to demonstrate they have the right to work in the UK without applying to the Home Office and potentially being without their passport for lengthy periods of time. The guidance on the documents that must be produced by the family members of EEA nationals is in ILPA's view in breach of EU law and should be changed. Paragraph 4 of List B in the Home Office guidance[20] specifies the documents that can provide a statutory excuse for a third country national family member of an EEA national whose application for an EEA residence card is outstanding. These are:

> *A certificate of application issued by the Home Office or the Border and Immigration Agency to or for [a person who has applied under regulation 18A(1) of the Immigration (European Economic Area) Regulations 2006, or to or for] a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old when produced in combination with evidence of verification by the Border and Immigration Agency Employer Checking Service.*

It is presumed that these, and other EEA residence documents, were included in List B as an attempt to provide appropriate protection to employers in relation to the employment of third country national family members. However, the current regime is significantly deficient both for prospective/current employees and employer.

List B should be supplemented with such documents as would adequately evidence to an employer:

(i) the relationship between the family member and their third country national family member; and

[20] *Op.cit.*

(ii) that the EEA national is a 'qualified person' (in the terminology of the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003)). This would apply only to family members listed at Article 2(2) of Directive 2004/38/EC.

We highlight a need for better guidance in transfer of undertakings (TUPE) cases about a transferee's position. Normally under TUPE, all terms and conditions affecting the employee are considered as if prior to the transfer, for example, health and safety checks are deemed valid post transfer, even if done by the Transferor prior to the transfer date. It would be helpful if the Home Office followed this approach and respected checks undertaken by Transferor, instead of requiring Transferee to carry out fresh checks. The Home Office's 28 day grace period post transfer is inadequate and needs to be lengthened to at least six months to allow Transferee adequate opportunity to do right to work checks. Many large scale employers bring across thousands of employees under one transfer, and it is impractical and onerous to expect them to undertake comprehensive right to work checks within 28 days of the transfer date.

See ILPA's response to the consultation about these proposals[21].

CLAUSE 40 STAND PART

Page 31 line 15, leave out Clause 40

Purpose
To maintain the status quo whereby the Secretary of State must first make an application to a court for a substantive order for payment before enforcing a debt.

Briefing
ILPA opposes the proposal to change the rules on enforcement of a penalty to allow enforcement as though the penalty were a debt due under a court order. In other cases where debts accrue under a statutory scheme, such as child support or council tax debts, there is a prior stage where a liability order is made. Here, efforts are being made to avoid such a stage (at which it is possible to contest the making of the order), or the equivalent stage of seeking a civil judgment that a debt is owing, and move directly to the equivalent of the post-making-of the-liability-order stage, where all that remains is for the debt to be enforced as if under court order.

The change is likely to make the system easier for the Secretary of State but more difficult for employers including those on whom a penalty has been wrongly imposed.

Driving licences

PROPOSED AMENDMENT

[21] ILPA's response can be found at http://www.ilpa.org.uk/resources.php/19317/ilpa-response-to-the-home-office-consultation-strengthening-and-simplifying-the-civil-penalty-regime.

Clause 41, page 32, line 23, at end insert "unless that person has made a claim for asylum which has not yet been determined by the Secretary of State or has been refused and an appeal against that refusal is pending

( ) claim for asylum has the same meaning as in section 94 of the Immigration and Asylum Act 1999;
( ) an appeal is pending for the purposes of this section when it is pending under the Nationality, Immigration and Asylum Act 2002, s 104"

Purpose
To allow persons seeking asylum whose claim has yet to be determined to drive.

Briefing
While debating driving licences parliament should consider the position of persons seeking asylum, who may have a lengthy wait for a decision and in the meantime lose skills that will help them integrate as refugees, or help them on return.

As to an inspiring story of how driving can promote integration, see the 2013 winner of the Big Society award, UR4Driving at The Upper Room. UR4Driving is not a project for refugees or migrants but for ex-offenders, although in its more general work the charity works with British citizens and migrants together. See http://www.theupperroom.org.uk/ur4-driving/background/

CLAUSE 41 STAND PART

Clause 41 and 42 are among the measures by which the Government seeks make the UK "*a more hostile place for illegal migrants.*"[22] Clause 41 amends section 97 of the Road Traffic Act 1988 so as to add to the circumstances, in which a British driving licence must be provided, the new requirements of new section 97A (to be added by clause 41). The new requirements essential require lawful residence on the part of the applicant, who must not be a person requiring but not have leave to enter or remain (new section 97(A)(2)). However, as the shadow Home Secretary alluded to at Second Reading, the current position is that, save for nationals of a European Economic Area country, six months' leave is required to obtain a British driving licence.[23] The clause makes provision for Northern Ireland.

Placing the scheme on a statutory footing risks adding to the workload of the already much overstretched former UK Border Agency.

Clause 42 Revocation of driving licences on the grounds of immigration status

PROPOSED AMENDMENTS

[22] Home Secretary, Second Reading, Hansard, 22 Oct 2013 : Column 163
[23] Hansard, 22 Oct 2013 : Column 171

Clause 42, line 15 after "it" insert unless that person has made a claim for asylum which has not yet been determined by the Secretary of State or has been refused and an appeal against that refusal is pending

( ) claim for asylum has the same meaning as in section 94 of the Immigration and Asylum Act 1999;
( ) an appeal is pending for the purposes of this section when it is pending under the Nationality, Immigration and Asylum Act 2002, s 104"

Clause 42, line 45 after "it" insert unless that person has made a claim for asylum which has not yet been determined by the Secretary of State or has been refused and an appeal against that refusal is pending

( ) claim for asylum has the same meaning as in section 94 of the Immigration and Asylum Act 1999;
( ) an appeal is pending for the purposes of this section when it is pending under the Nationality, Immigration and Asylum Act 2002, s 104"

Purpose
To ensure that the licences of persons seeking asylum whose claim has yet to be determined are not revoked. The first amendment addresses the Road Traffic Act 1988, the second the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154).

Briefing

See briefing to a similar amendment for Clause 41.

PROPOSED AMENDMENTS

Clause 42, page 33, line 24, leave out lines 24 to 33

Clause 42, page 34line 3, leave out lines 3 to 12.

Purpose
Removes the prohibition on a judge of the County Court or sheriff, to whom a person can appeal the revocation of their licence, considering the merits or otherwise of the refusal of leave or the person's having been granted leave.

The first amendment addresses the Road Traffic Act 1988, the second the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154).

Briefing
We consider that the limitations imposed on the appeal are not adequate to ensure a fair trial. The Home Office could make a wholly erroneous decision and revoke a person's driving licence on the basis of this. They might have reconsidered that

decision the very next day (although admittedly this is unlikely), still the revocation would stand.

CLAUSE 42 STAND PART

Clause 42 amends section 99 of the Road Traffic Act 1988 to empower the revocation of a British driving licence where "*it appears to the Secretary of State*" a person is not lawfully in the UK. The clause makes provision for Northern Ireland.

At Second Reading, the shadow Immigration Minister cautioned: "*I still think that someone who is here illegally is not going to worry too much about not having a driving licence, but we can test that idea in Committee.*"[24] It may be that those who intentionally and knowingly evade immigration controls will be equally willing to drive without licence. It is, however, far from clear how the Committee can test this idea. It has received no evidence on the matter, and there may be no direct evidence available by which to test this. Nonetheless, there is evidence that a significantly disproportionate number of driving accidents involve those who are without a licence. In 2007, the Department of Transport presented evidence that:

> "*Young male drivers (17-29, by no means all novices) are about three times more likely to be involved in a crash than all drivers, but unlicensed young male drivers are between 3.25 and 11.6 times more likely to be involved in a crash than all drivers. For all unlicensed drivers the increased risk is between 2.7% and 8.9%.*"[25]

Others are permitted to drive on a valid (i.e. genuine and not expired) driving licence from within the European Economic Area, or on a valid driving licence from any other country. While in the latter case, the additional stipulation that the person is within the period of 12 months of his or her arrival in the UK, for all practical purposes it is clear that many of those without leave to enter or remain in the UK nonetheless may hold or be in a position to obtain a driving licence validating or on its face validating his or her driving in the UK.

Some will continue to drive on their overseas licence for as long as possible. Others may drive without a licence. This invalidates their insurance. The Government factsheet states "We will also send a message to uninsured drivers that it is not worth the risk. The net is closing in on uninsured drivers, be they UK residents or illegal immigrants..." But is it? The "dire consequences" the factsheet describes are dire consequences for all of us, not just for those who drive without a licence. The potentially adverse consequences resulting from someone driving without valid insurance by virtue of these provisions are obvious and serious. As with other measures, the Government will surely succeed by clauses 41 and 42 in creating a more hostile environment, but those who may suffer from this hostility may turn out to be British citizens or lawful migrants. By contrast, it is far from clear what impact, if any, these clauses will have in deterring or reducing illegal entry or overstaying.

[24] Hansard, 22 Oct 2013 : Column 253
[25] Memorandum submitted by the Department of Transport to the Transport Select Committee, paragraph 3.17, reproduced with the Select Committee's Seventh Report of Session 2006/07

If a person is wrongly refused leave, and has no right of appeal, they lose their licence while they pursue any judicial review.

The Home Office's human rights memorandum (para 141) states that this measure is 'partially intended to have a deterrent effect on those who are unlawfully in the UK.' It would be worth asking the Minister what are the other intentions?

Marriage and civil partnership

Chapter 1

Referral and investigation of proposed marriages and civil partnerships

PROPOSED AMENDMENT

Clause 45 Conduct of investigation

Clause 35 page 36 line 12, leave out "may" and insert "must"

Purpose
To require regulations to make provision about the circumstances in which a party to the proposed marriage or civil partnership is be taken not to have complied with the Secretary of State's investigation into the relationship.

Briefing

The drafting of clause 45 is astonishing in the latitude it leaves to the Secretary of State. We know very little more about the scheme when we have finished reading it than when we started. The amendment can be used to highlight the extent to which parliament is being asked to write the Secretary of State a blank check. It is moreover wholly reasonable that a requirement that could lead to the denial of the right to marry and found a family, the absolute right protected by Article 12 of the European Convention on Human Rights, be set out at the very least on the face of secondary legislation.

CLAUSE 45 STAND PART

The Home Office already has power to deny a person an immigration benefit as a result of their marriage or civil partnership where finds that the marriage or civil partnership is one of convenience. The Bill does not increase those powers. Interviews and checks can all be carried out in the context of the immigration application interfering with the generality of couples' absolute right to marry and found a family under Article 12 of the European Convention on Human Rights. Whether a person gains an immigration advantage by marrying is a matter for Government; we suggest that the marriage itself is not.

The Bill extends the period for giving notice of all marriages and civil partnerships, not just those involving a non-EEA national, from 15 to 28 days. For the first time all

marriages involving a non-EEA national, including those in the Church of England the Church in Wales, will be subject to civil preliminaries. The registrar must refer all marriages involving a non-EEA national to the Secretary of State. The Secretary of State must decide within the 28 day notice period whether to extend the notice period for the couple to 70 days to check the marriage. Non-compliance with the requirements she imposes during the 70 days will lead to refusal to allow the marriage to take place. Otherwise, whether or not the Secretary of State thinks the marriage one of convenience, she will allow it to take place but can if she chooses to do so, move to enforcement action. We have seen cases where a person has been apprehended on the steps of the registry office and is then unable to go through with the ceremony because s/he has been detained.

The Government lost the case of *R (Baiai et ors) v SSHD* first in the High Court, then in the Court of Appeal then in the Supreme Court[26] and the case of *O'Donoghue et ors v UK* (Appl. no. 34848/07) in the European Court of Justice. It lost because it was held that in its efforts to crack down on an unquantified number of marriages of convenience, it was interfering disproportionately in all marriages to a non-EEA national. It was found to have acted in a discriminatory fashion, by treating marriages solemnised in the Church of England differently from marriage rites of other faiths. It lost the case of *R (Quila) v SSHD* [2011] UKSC 45, where it tried to ban entry for settlement of foreign spouses or civil partners unless both parties were aged 21 or over. In that case, Lord Wilson described the way in which it had interfered with all marriages to catch an unquantified number of suspected forced marriages as "On any view it is a sledge-hammer but she has not attempted to identify the size of the nut."

The risk of interference with the generality of couples whose getting married or forming a civil partnership is increased if the former UK Border Agency is unable to detect which relationships are marriages of convenience. We have concerns about this.

In its 2011 consultation on family immigration the UK Border agency set out possible factors/criteria which could highlight cases which require further scrutiny of applications on the basis of marriage or partnership. The initial suggestions included: the relationship was entered into voluntarily; the relationship was not entered into solely for the purpose of obtaining an immigration advantage; the couple are able to provide accurate personal details about each other; the couple are able to communicate with each other in a language understood by them both; and the couple (or their families) have had a discussion or made definite plans concerning the practicalities of the couple living together in the United Kingdom.

These factors are uncontroversial. Entry clearance officers across the world can, and do, refuse applications if they have concerns about the relationship on the basis of these factors.

ILPA did object however to the further suggested indicators of marriages of convenience listed including the age of the sponsor and the applicant at the time of the wedding; the nature of the wedding ceremony or reception (for example, if there were very few or no guests, and whether the couple eloped); whether the sponsor has previously been sponsored for a marriage visa or sponsored a marriage

[26] **[**2009] EWHC Admin 3189; [2010] EWCA Civ 1482; **[**2008] UKHL 53.

application; and whether the applicant has a compliant history of visiting or living in the United Kingdom.

It is already open to decision makers to look at such matters, and they do. However, the UK Border Agency also suggested that indicators included the age of the sponsor and the applicant at the time of the wedding; the nature of the wedding ceremony; whether the sponsor has previously been sponsored for a marriage or civil partnership visa or sponsored a marriage or civil partnership application and whether the applicant had a history of compliance with immigration law, none of which, we suggest, are reliable indices of a marriage of convenience. ILPA's responded to the consultation and set out its concerns in detail[27].

Clause 46 Investigations supplementary

PROPOSED AMENDMENT

Clause 46, page 36, line 45 leave out "may also include such other information as the Secretary of State considers appropriate" and replace with

> "must also include a statement of the reasons for the investigation and the email and telephone number of a named official who can supply further information"

Purpose
The main purpose of the amendments is to highlight a subclause that is quite simply a waste of paper since it imposes no meaningful requirement whatsoever. However it also provides an opportunity to highlight the distress and anxiety that so many couples and their families will feel as a result of an investigation.

Briefing
The period of preparation for a wedding or civil partnership ceremony may be stressful but it is supposed to be stressful in a happy way, not to entail a couple living for 70 days under the shadow that one of them may be detained and even removed and that the ceremony they want to plan may never take place. Rather than concentrate on the immigration consequences of a marriage or partnership of convenience the provisions of Part IV of the Bill interfere with the marriage itself thus causing strain and unhappiness for couples whose marriage or partnership is in no way a sham.

The drafting of clause 46 is astonishing in the latitude it leaves to the Secretary of State. We know very little more about the scheme when we have finished reading it than when we started. The amendment can be used to highlight the extent to which parliament is being asked to write the Secretary of State a blank check. It is moreover wholly reasonable that a requirement that could lead to the denial of the right to marry and found a family, the absolute right protected by Article 12 of the European Convention on Human Rights, be set out at the very least on the face of secondary legislation.

[27] See http://www.ilpa.org.uk/data/resources/13813/11.10.13-Family-Migration-response.pdf

PROPOSED AMENDMENT

Clause 46 page 37 line 13, leave out "in particular"

Purpose
To restrict the requirements as to the investigation to those listed on the face of the Statue.

Briefing
Clause 46 (4) says "The Secretary of State may, by regulations, impose on relevant parties requirements relating to the conduct of investigations." This is meaningless. Such content as it might have been given by subclause 46(5) is reduced to nought by the words "in particular" which mean that subclause 46(5) does nothing to confine the ambit of the requirements imposed.

PROPOSED AMENDMENT

Clause 46 page 37 line 20, leave out line 20.

Purpose
To omit a requirement to provide "evidence" coming at the end of the a long list of requirements to provide…evidence.

Briefing
As set out above, clause 46(5) does nothing to confine the ambit of the requirements imposed by subclause 46(4). Which simply adds to the irritation that is produced when at the end of a long list of types of evidence: that provided by interview, photographs, that gleaned as a result of a home visit, "information" including "written information", we find a requirement to provide "evidence", the word being undefined. The provisions of this Bill are long and complex; many are also devoid of content.

Information

Miscellaneous

Clause 54 Regulations about evidence

Clause 54, page 42, line 31 leave out "in particular"

Purpose
To confine the contents of regulations about evidence to matters set out on the face of primary legislation

Briefing
The words in particular mean that the list of what may (not will) be in the regulations is meaningless as anything else could be there too. A chance to press to see whether there is any clear idea of how this scheme will function that would allow the impact with lawful relationships to be assessed.

The right to marry under Article 12 of the European Convention on Human Rights is an absolute right. Meanwhile Article 8 of the Convention, the right to private and family life, is a qualified right – it is permitted in certain circumstances to interfere with that right, but only if the interference is proportionate. This scheme is not.