ILPA list of proposed amendments for House of Commons Report and Third Reading

The Immigration Law Practitioners' Association (ILPA) is a professional membership association the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government committees, including Home Office, and other consultative and advisory groups.

This document contains ILPA's proposed amendments, with short notes about each one. ILPA will be preparing a briefing for Report and Third Reading.

This document is in **two parts**.

In the **first part, pages 1 to 17** we set out ILPA's priority amendments for House of Commons report. These are set out in the order in which they occur in the Bill. Top priorities are indicated. A short briefing is provided for each. Fuller briefings will be prepared for those amendments laid.

In the **second part, pages 18 to 23** we summarise possible amendments for each part of the Bill, including but not limited to those in part one. Many of these amendments we have already drafted and many can be seen in our briefings for the Public Bill Committee, available at http://www.ilpa.org.uk/pages/immigration-bill-2013.html.

The Bill went through its Public Bill Committee stage very rapidly. It received very little scrutiny. ILPA is keen to assist all MPs working to ensure that it is scrutinised at Commons' report and third reading.

FIRST PART

PART 1 REMOVAL AND OTHER POWERS

Removal Directions

Clause 1 Removal of persons unlawfully in the United Kingdom.

PROPOSED AMENDMENT

> Clause **1**, page **1**, line **10**, after 'it', insert 'and the Secretary of State has given the person written notice of his liability to removal'.

Purpose

To ensure that a person must be given notice of their removal.

Briefing
Laid at report as amendment 15, in names of Mr David Hanson, Helen Jones and Phil Wilson. Withdrawn.

The immigration Minister's reply was given in the 5th November 2013 am session at cols 133-134 (http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131105/am/131105s01.htm). He explained that it is a requirement of the Immigration Act 1971 to give written notice of a decision to refuse leave and that the clause is designed to ensure that there is no need for a separate removal decision or notice He said that the decision notice will inform a person of their destination for removal; advise them to seek early legal advice; place them under a duty to raise with the Home Office any asylum, human rights or European free movement reasons as to why they believe they are entitled to stay and warn them that they will receive no further notification of removal if they do not leave voluntarily. Mr Hanson said in reply (col 135):

> ***Mr Hanson:*** *…As I understand what the Minister has said, under clause 1, a notice will be given 72 hours in advance of removal and will contain information that will help an individual to plan their enforced removal. ..*

He withdrew the amendment. We fear however that he did so under a misapprehension. There will be one notice, at least 72 hours before departure, but it could be many more than 72 hours before removal. It could be years. We continue to think it is necessary that person be given notice of a proposed removal and urge that the amendment be laid again.

PROPOSED AMENDMENTS

Clause **1**, page **2**, line **30**, leave out 'whether' and insert 'where'.

Clause **1**, page **2**, line **30**, leave out 'to be'.

Clause **1**, page **2**, line **31**, leave out 'and, if so'.

Purpose
To remove the suggestion that if regulations are made about the removal of family members, they can provide that a person being removed as a family member should not be given notice of their removal. The second and third amendments are consequential.

Briefing
Amendment proposed by the Joint Committee on Human Rights in its legislative scrutiny report on the Bill HL Paper 102, HC 935. The Bill provides a power, not a duty, to make regulations about the removal of family members including "whether" they should be given notice of removal. Technically, it would still be possible for regulations to make no provision as to notice were the amendment to be accepted and for this reason ILPA would prefer to see provisions as to family members set out on the face of the legislation, but accepting the amendment would signal a clear intention to give family members notice of removal. The immigration Minister has already committed to such notice "always" being given in his letter of 12 November 2013 to the Joint Committee on Human Rights, ref BIILLs (13-14) 088.

Powers of immigration officers

CLAUSE 2 AND Schedule 1 Enforcement Powers

PROPOSED AMENDMENT

Schedule 1, page 54, line 13, leave out paragraph 5.

Purpose
To maintain the status quo whereby immigration officers can use reasonable force only when exercising powers under the Immigration Act 1971 and the Immigration and Asylum Act 1999, rather than, as per this paragraph in the exercise of all powers under any of the Immigration Acts.

Briefing
Whether the force the Agency uses is reasonable has frequently been a matter of dispute. On 10th April 2013, Lord Taylor of Holbeach told the House of Lords that:

> *The recommendation in the report by HM Inspectorate of Prisons on Cedars predeparture accommodation that force should never be used to effect the removal of pregnant women and children was rejected by the UK Border Agency*[1].

Instead the Agency offered a consultation. It was only in the face of a legal challenge that it backed down. A failing organisation inadequately resourced and managed should not be given additional powers to use force. Moreover, many of the functions of immigration officers do not properly involve the use of any force at all. Parliament should require the case to extend the use of force to be argued for
power by power.

On 18 November 2013 the immigration Minister wrote to members of the Public Bill Committee about the current use in-country use of force and complaints about it. The data does not cover removals, such as the Jimmy Mubenga case.

The Minister's letter identified that immigration officers had used force against persons in the course of enforcement visits 316 times in the financial year 2012-2013. That approaches daily use of force. It identifies that detention contractors used force 546 times during that period, escort contractors (in country) 414 times – i.e. more than daily. The letter said that during the period the Home Office Professional Standards Unit (PSU) examined five serious complaints relating to the use of force by Immigration and Compliance Enforcement (ICE) Team officers. None were upheld. Fifty-six of 73 serious complaints about detention and escorts powers were about the use of force. Two of these were found to be substantiated in whole or in part. These are not reassuring figures.

Bail

Clause 3 Bail (PRIORITY)

PROPOSED AMENDMENTS

Clause 3, page 3, line 1, leave out subsection (2).

[1] HL Deb, 10 April 2013, c313W.

And the following consequential amendment

Clause 3, page 3 line 10 leave out sub-sections (3), (4) and (5)

Purpose
To maintain the current position that the First-tier Tribunal (Immigration & Asylum Chamber) retains its powers to grant bail where a detainee has been served with directions for removal from the UK to take effect within 14 days of the date of application.

Briefing
The independent Tribunal Procedure Committee is best placed to make decisions as to the appropriate rules for the First-tier Tribunal when dealing with applications. Nothing in the Bill prevents the Secretary of State from repeatedly setting removal directions, thus ousting the possibility of applying for bail. The Minister, Norman Baker MP, challenged on this point in Committee, was unable to explain why the power should vest in the Secretary of State and not in the Tribunal (col 163f http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131105/am/131105s01.htm). Those who manage to find legal representation are likely to try to challenge the decision to withhold consent or the lawfulness of detention, substituting the judicial review in the High Court for a bail hearing. This does not appear to be an efficient way of proceeding.

The debate at Committee stage focused on probing amendments laid Helen Jones MP concerning pregnant detainees (cols 159-165) http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131105/am/131105s01.htm and http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131105/pm/131105s01.htm.

PART 2 APPEALS ETC.

Clause 11 Right of Appeal to the First Tier Tribunal (PRIORITY)

AMENDMENT 1

Yvette Cooper Mr David Hanson Phil Wilson Helen Jones Sarah Teather

Purpose
To maintain the current position whereby decisions can be appealed as unlawful, rather than restrict appeals to appeals on the grounds of human rights and asylum only.

Briefing
The Bill removes rights of appeal on any grounds other than asylum and human rights. It denies any independent review to anyone else who makes an immigration application. Many of those arguing to be allowed to stay on the grounds of family life, rather than as persons in need of international protection, are likely, because of cuts to legal aid, to be tackling these cases unaided and the proposals are put forward against a backdrop of inequality of arms.

The Government says that those denied a right of appeal can purchase an "Administrative Review" instead. If a department has got a decision wrong then the decision should be looked at again, by someone capable of identifying the mistake. This is the case just as much to avoid a costly appeal as where there is no right of appeal. Administrative review is another name for the department doing its job. Table 8 in the Appeals Impact Assessment shows that 49% of "Managed Migration" (work and students) appeals are allowed, 50% of entry clearance appeals are allowed and 32% of appeals against deportation are allowed. At any stage before the decision on those appeals the former Agency could have reviewed, or did review, its own decision. The only conclusion to be drawn is that the former Agency continues to stand in need of independent oversight. The immigration Minister is his oral evidence focused on the Home Office's granting Home Office granted 87% of managed migration applications, thus refusing only 13% of applications. But this is immaterial to the question of whether appeal rights are required. Appeals exist for cases which the Home Office is refusing. What is of interest is how many decisions the Home Office gets wrong.

Among rights of appeal removed are rights to challenge a decision on the grounds that it is not in accordance with the law, to challenge a decision vitiated by discrimination on the grounds of race and for British citizens to challenge a refusal to give them a document (Certificate of entitlement to a right of abode) that would confirm their citizenship.

The Joint Committee on Human Rights, in its legislative scrutiny report on the Bill, HL Paper 102, HC 395, has stated "…limiting rights of appeal to the extent that they are restricted in the Bill constitutes a serious threat to the practical ability to access the legal system to challenge unlawful immigration and asylum decisions" citing the broader context, including the loss of legal aid (paragraph 38). It has expressed the view that the Tribunal, not the Secretary of State, should decide whether it is within its jurisdiction to consider a new power on appeal (paragraph 46).

CLAUSE 13 Review of certain deportation decisions by the Special Immigration Appeals Commission

PROPOSED AMENDMENT

Clause 13, page 11, line 32 leave out Clause 13.

Purpose

To retain the current position whereby challenges to deportation decisions certified as raising matters of national security are heard by way of judicial review in the High Court rather than by way of review by the Special Immigration Appeals Commission where, unlike judicial reviews, a closed material procedure could be used.

Briefing

Appeals in cases before the Special Immigration Appeals Commission are preserved but expressly limited to judicial review principles. The Explanatory Note makes clear that this is to avoid their being the subject of judicial review:

> *"It is more appropriate for judicial reviews in national security cases to be conducted by SIAC than in open court."*

Not so. There are no closed material procedures on judicial review. The starting point is to keep cases involving national security out of the High Court, where any judicial review would be heard in open court. Giving a person a right of appeal rather than an opportunity to challenge the decision by way of judicial review would normally give them a wider challenge. This is because judicial review is a procedural remedy, which looks at the way in which a decision is taken and not at the substantive outcome whereas an appeal on merits of the decision looks at facts and law and at the substantive outcome. By clause 13 that benefit of judicial review is removed, because the appeal before the tribunal is limited to principles that would be applied in judicial review proceedings. Before the Special Immigration Appeals Commission, the adoption of a closed material procedure is required (not allowed, but required) not only "in the interests of national security" but also, "in the interests of the relationship between the United Kingdom and another country." In addition the Secretary of State can certify that the information on which the decision was based should not be made public because this is "otherwise in the public interest." These additional reasons for using a closed material procedure are not reasons that can justify the interference with a fair trial that a closed material procedure represents.

CLAUSE 14 Article 8 of the ECHR: public interest considerations

AMENDMENT 2
Sarah Teather

Clause 14, page 12, line 22, at end insert -
(za)"first, to the best interests of any child affected by a decision as specified in section 117A(1)."

Purpose
To require the courts and tribunals considering the public interest first to establish the interests of any child affected by the decision subject to appeal before going on to consider any other public interest factors. ILPA supports this amendment.

AMENDMENT 3
Sarah Teather

Clause 14, page 13, line 11, leave out "qualifying"

Consequential amendment 5

Clause 14**,** page 13, line 44, leave out from beginning to end of line 3 on page 14.

Purpose
To remove the provision that precludes consideration of a relationship with a child who is not a British citizen or has not been in the UK for seven years. The definition of a qualifying child limits the term to British citizens or those who have been in the UK for seven years. These are the definition of a qualifying child. This does not allow the circumstances of the child to be taken into account. ILPA supports these amendments.

AMENDMENT 4

Sarah Teather

Clause 14, page 13, line 12, leave out "reasonable to expect" and insert "in the best interests of"

Purpose
To provide that when contemplating the removal of a parent/carer/relative the best interests of the child with whom they have a relationship, will be considered, rather than a lower test of whether it would be reasonable to expect the child to leave the UK being applied. Works best with the amendment above, otherwise it is limited to British citizen children or children who have been in the UK more than seven years. The consequential amendment omits the definition of a qualifying child. ILPA supports these amendments.

PROPOSED AMENDMENT

Clause 14, page 13, line 18 leave out subsections (3) to (7) and insert

"( ) The promotion of the best interests of children is in the public interest"

Purpose
The Bill already provides that the deportation of foreign criminals is in the public interest. The amendment would ensure that the bill recognised that the promotion of the best interests of the child is not simply a matter of the rights to be interfered with in the public interest, but is itself in the public interest.

Briefing
The UK has ratified the UN Convention on the Rights of the Child and its own Children Act 1989 makes the best interests of the child a primary consideration in decisions concerning children. The Home Office in carrying out its immigration functions is under a duty to safeguard and promote the welfare of children. All these are indications that the best interests of the child are a matter of public interest.

PART 3: ACCESS TO SERVICES ETC.

Residential tenancies

Clause 15 Residential Tenancy Agreement and Schedule 3

PROPOSED AMENDMENT

Clause 15, page 16 line 2, after "if" insert
"P is
(a) an asylum seeker or the dependant of an asylum-seeker as defined in section 94 of the Immigration and Asylum Act 1999 (c.33)
(b)a person provided with accommodation under section 17 of the Children Act 1989 or otherwise under that Act;
(c) a person accommodated in a refuge as a survivor of domestic violence
(d) (i) an applicant for a Tier 4 visa holding a certificate of acceptance of

studies issued by an authority-funded educational institution;
or
(ii) an applicant for a student visitor visa for a period longer than six months.'

(e)a person who is resident outside the UK and is studying English in the UK who is accommodated in Homestay accommodation
(f)"

Purpose
To provide that there will be no prohibition upon renting to persons in the categories specified. To highlight omissions from Clause 15 and Schedule 3.

Briefing
Clause 15 and Schedule 3 deal with persons who are (Clause 15) treated as having a right to rent or (Schedule 3) exempt from the requirement to have such a right. But there are significant gaps in the system of exemptions. The gaps above ILPA and others have highlighted, including to the Bill team although there are no doubt others and this highlights the difficulties with how the scheme would operate in practice. In brief:
Re (a) – while provision is made in Schedule 3 paragraph 7 for those accommodation by the Home Office no provision is made for asylum seekers who make their own arrangements for accommodation. Unless this is addressed, the State will be forced to provide for those who could otherwise provide for themselves
Re (b) while provision is made in paragraph 6 of Schedule 3 for accommodation from or involving local authorities it is drafted in terms of homeless legislation and will not cover other accommodation, e.g. that provided under the Children Act 1989.
Re (c) The government has promised to look at an amendment to address the position of refuges for survivors of domestic violence – see http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131107/pm/131107s01.htm col 251ff).
Re (d) Students not in halls of residence. See the amendment below.
Re (e) Young people accommodated in homestay accommodation while undertaking language courses.

PROPOSED AMENDMENT

Schedule 3, page 57, line 4, leave out from 'building' to the end of line 26 and insert 'between—
(a) a landlord, as defined in Clause 15(3); and
(b) one of the following—
(i) an applicant for a Tier 4 visa holding a certificate of acceptance of studies issued by an authority-funded educational institution;
or
(ii) an applicant for a student visitor visa for a period longer than six months.'

Purpose
To exempt students and student visitors from checks.

Briefing

ILPA supports this amendment which originates from Universities UK. It raises the question of whether accommodation arranged through a University, albeit not in halls of residence could be exempt from the checking given that universities already carry out checks on students. Laid as amendment 59 in the Public Bill committee by Mr Paul Blomfield MP and Ms Meg Hillier MP. See http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131107/pm/131107s01.htm col 256. Ms Hillier MP indicated her intention to return to the amendment on report:

> *The Bill proposes an exemption for halls of residence and buildings where an agreement is in place with the university that the majority of occupants are students, but there is no similar provision for accommodation arranged through the university but which is outside the halls of residence. The Minister Mr Norman Baker MP said (col 259) that a student should be treated like any other tenant. Ms Hillier MP indicated that she would return to the amendment on report.*

Clause 28 Discrimination

PROPOSED AMENDMENT

Clause 28 Discrimination (and Clause 65 Commencement)

PROPOSED AMENDMENTS

Clause 28, page 24, line 45, at end insert

> (7) The Secretary of State shall take all reasonable steps to bring the code of practice, and any subsequent revisions of the code of practice to the attention of all landlords and all persons likely to act as landlords' agents."

See also our ***proposed amendment to clause 65*** below which would ensure that the provisions on residential tenancies could not come into force until the Code had been published.

Purpose

First amendment: to place the Secretary of State under a duty to bring the Code to the attention of landlords and ladies and those acting on their behalf and thus to probe how they are to made aware of the Code of Practice, let alone forced to comply with its terms.

(Proposed amendment to clause 65 to require that before any of the provisions in the chapter on residential tenancies come into force, the Code of Practice on discrimination must have been issued.)

Briefing

Under clause 28, there must be two stages of consultation on the Code of Practice, one with the Equality and Human Rights Commission, with the Equality Commission for Northern Ireland and with representatives of landlords and landladies and of tenants and then a consultation on a published draft code. No pilot should take place without the Code

being in place.

On the face of the Bill there is absolutely no penalty for discrimination by a landlord, landlady or other person letting accommodation. Employees and would-be employees have routes of redress if they are treated badly, including if they are victims of discrimination. It is possible to challenge discrimination, victimisation and harassment by a private landlord or landlady under Part 4 of the Equality Act 2010. Under the Equality Act s.136, in the county court the burden of proof shifts from the claimant to the defendant once the claimant has established a *prima facie* case that discrimination has taken place. Giving the code publicity will assist tenants in establishing this prima facie case, although we still consider that they will struggle. The Government consultation paper stated:

> *34. Many landlords will meet a number of prospective tenants. There is no requirement to check the immigration status of all of them – only the people with whom the landlord actually proceeds. Checks should be performed on a non-discriminatory basis (i.e. without regard to race, religion or other protected characteristics as specified in the Equality Act 201020) on all adults who will be living at the property.*

This paragraph perfectly encapsulates the risk that racial profiling will take place before a tenancy is offered.

A fine of three thousand pounds for letting to a person with no right to rent is a considerable sum and will cover the cost of many properties standing empty for months. It will cover a considerable amount of repair.

In other words, a landlord or landlady would have an incentive not to accept a person who otherwise appears to be a model tenant if there is any risk of having to pay the fine. Any stereotype or prejudice might weigh with a person with multiple offers on the property, not because they feared having a particular individual as a
tenant, but because they feared a fine, making the assumption that that person was more likely to be a person under immigration control whose documents would be complicated to check. When will a landlord perceive a risk of a fine? When will a landlady start worrying that a person's passport is false or otherwise unsatisfactory?

All too often this is likely to depend on what people look like, what they sound like, what their names are and how those names are spelt, and what place of birth is identified in their passports. Ms Caroline Kenny of the UK Association of Letting Agents, giving oral evidence to Public Bill Committee (see http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131029/pm/131029s01.htm) made clear that the major concerns of her association about the provisions were concerns about the effect on ethnic minorities. She said (col 54):

> ***"Caroline Kenny:*** It is illegal and abhorrent, but we can envisage a stage where more landlords will ask their agents not to show their properties to people of ethnic minorities. That is what we are extremely worried about…"

In all these circumstances we are under no illusion whatsoever that a Code of Practice will resolve the problem of discrimination to which this clause will give rise. However, for the lucky few who are able to bring a challenge, a clear, accurate Code of Practice targeted specifically at landlords and landladies and their obligations under the Immigration Act might

encourage country court judges, who must sit with lay assessors who are knowledgeable about race discrimination, at least in some cases, to consider awarding aggravated damages as well as compensation for loss and injury to feelings.

Health

Clause 34

PROPOSED AMENDMENT (PRIORITY)

Clause 34, page 28, line 13, at end insert—

> '(1A) NHS charging provisions may make reference to the need to safeguard public health with particular reference to the prevention of infectious diseases, maternal death and infant mortality for those persons who require leave to enter or remain in the United Kingdom.'.

Presumed purpose
Creates a power, not a duty, for NHS charging provisions to make provision to have regard to the matters specified.

Briefing
Provides an opportunity to discuss the effect on these matters. There is evidence, including from the report *Treatment of Asylum Seekers* by the Joint Committee on Human Rights, that charges deter pregnant women from getting medical help or lead to their being denied help[2]. There is evidence that starting antenatal care after 20 weeks gestation is a risk factor for maternal death, as is not attending antenatal appointments, and screening[3]. There are also risks to the health of the child, and of increased infant mortality[4]. Amendment laid by Meg Hillier MP as amendment 97 in Public Bill Committee but too late to have been called. We recall the words of Aneurin Bevan:

> *One of the consequences of universality of the British National Health Service is the free treatment of foreign visitors. This has given rise to a great deal of criticism, most of it ill-informed and some of it deliberately mischievous. Why should people come to Britain and enjoy the benefits of the free Health Service when they do not subscribe to the national revenues? So the argument goes. No doubt a little of this objection is still based on confusion about contributions … The fact is, of course, that visitors in Britain subscribe to the national revenues as soon as they start consuming certain commodities…*[5]

PART 3 (*Work)* or PART 6 MISCELLANEOUS

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[2] *The Treatment of Asylum-Seekers,* Tenth report of session 2006-07, HC 60-I and II, HL 81-I and II. Joint Committee on Human Rights, 2007, London, The Stationery Office Maternity Action and Medact (2009); *First do no harm: denying healthcare to people whose asylum claims have failed*, Kelly, N. & J. Stevenson, 2006, London, Oxfam and Refugee Council; *Money and Maternity: charging vulnerable pregnant women for NHS care* UK Public Health Association Conference, Brighton

[3] Lewis, G., J. Drife Why mothers die 2000-2003, Sixth *report of the Confidential Enquiries into Maternal Deaths in the UK London*: Royal College of Obstetricians and Gynaecologists, 2003. See also Centre for Maternal and Child Enquiries, 2011, *Perinatal Mortality 2009: United Kingdom*, London.

[4] Health Inequalities Unit (2007) Department of Health *Review of Health Inequalities Infant Mortality* PSA Target

[5] *In Place of Fear*, Bevan, A (1952), chapter 5.

PROPOSED NEW CLAUSE (suggested by Still Human Still Here. The text is taken from the Lord Roberts private members' Bill in the House of Lords).

Permission to work

(1) After section 3(9) of the Immigration Act 1971 insert the following –

"(10) In making rules, under subsection (2), the Secretary of State must have regard to the following.

(11) Rules must provide for persons seeking asylum, within the meaning of the rules, to apply to the Secretary of State for permission to take up employment and that permission must be granted if—

(a) a decision has not been taken on the applicant's asylum application within six months of the date on which it was recorded, or

(b) an individual makes further submissions which raise asylum grounds and a decision to refuse to treat such further submissions as a fresh claim or on that fresh claim has not been taken within six months of the date on which they were recorded.

(12) Permission for a person seeking asylum to take up employment shall be on terms no less favourable than those upon which permission is granted to a person recognised as a refugee to take up employment."

Purpose

To give permission to work to persons seeking international protection who do not receive a decision on their asylum application within six months.

Briefing

The text of this amendment currently forms a private members Bill that is before the House of Lords sponsored by Lord Roberts of Llandudno. Currently those seeking asylum are only allowed to work after 12 months without an initial decision and then only if they can qualify for a limited list of skilled jobs. The integration of those recognised as refugees is made more difficult by their inability to work during the, often all too-lengthy, asylum determination procedure, while those whose claims for asylum do not succeed return to their country without having maintained or improved skills that could benefit that country. The State bears the cost of supporting persons who would be happy to support themselves.

PART 4 MARRIAGE AND CIVIL PARTNERSHIPS

PROPOSED NEW CLAUSE (Amendment proposed by Rights of Women. Tabled by Mr Hanson MP in Committee)

(1) A person (P) shall be entitled to a residence permit for one year for rest and reflection where:-

a) P is married, in a civil partnership, or in a durable relationship with someone who
is lawfully in the UK; and

b) P is in the UK as a dependant of that other person; and

c) The relationship breaks down as a result of domestic violence

The residence permit shall be available to P and any dependants already in the UK with entitlement to work and access public funds.

Purpose
To provide survivors of domestic violence with a period of access to services and benefits. The amendment does not alter the right to apply for Indefinite Leave to Remain (ILR) for spouses or civil partners of British citizens or those settled here, but extends support available to survivors of domestic violence for a period in which to consider any applications they may make, or allow them to leave the UK legally having made appropriate arrangements.

Briefing
First amendment debated on 19 November. Mr Hanson MP, introducing the amendment at col 372 (See http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131119/am/131119s01.htm), identified its being in response to the *Government's action plan, "A Call to End Violence against Women and Girls.* He characterised the current situation, whereby those on a spouse or partnership visa can apply for leave under a specific domestic violence rule whereas survivors of domestic violence in other immigration categories cannot, a "piecemeal" (col 372). The Minister, Mr Mark Harper MP (at col 373) distinguished those who expected to settle permanently in the UK from other survivors of domestic violence. He suggested that this distinction was to be drawn between those with leave as spouses and civil partners and other survivors. However, this is incorrect. Spouses and partners of workers, refugees and others are on a route to settlement. Mr Hanson, withdrawing the amendment at col 376, indicated that he continued to have concerns.

PART 6 MISCELLANEOUS

PROPOSED AMENDMENT (Proposed by Still Human Still Here)

Support for prescribed groups

'(1)Section 4 of the Immigration and Asylum Act 1999 (Accommodation) is amended as follows.
(2) In subsection (1), for "facilities for the accommodation"substitute"support".
(3) In subsection (2), for "facilities for the accommodation"substitute"support".
(4) In subsection (3), for "facilities for the accommodation of a dependant of a person for whom facilities" and insert"support of a dependant of a person for whom support".
(5) In subsection (5)—
(a) in paragraph (a), for "accommodation" substitute"support" in both occurrences; and
(b) in paragraph (b), for"accommodation" substitute "support" in both occurrences.
(6) In subsection (6)—
(a) in paragraph (a), for"accommodation" substitute"support";
(b) in paragraph (b), for "accommodation" substitute"support";and
(c) in paragraph (c), for"accommodation" substitute "support" in both occurrences.

(7) For subsections (10) and (11) substitute—

"(10)"support"means—

(a) accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants;

(b) food or other essential items;

(c) the means to enable the supported person to meet what appear to the Secretary of State to be expenses (other than legal expenses or other expenses of a prescribed description) incurred in connection with his claim for asylum or leave to remain in the UK;

(d) the means for the supported person and his dependants to attend bail proceedings in connection with his detention under any provision of the Immigration Acts; or

(e) the means to enable the supported person and his dependants to attend bail proceedings in connection with the detention of a dependant of his under any such provision.

(11) If the Secretary of State considers that the circumstances of a particular case are exceptional, such other resources as he considers necessary to enable the supported person and his dependants to be supported

Purpose

To enable support under section 4 of the Immigration and Asylum Act 1999 (used for support at the end of the process) to be run in the same way as support under section 95 of that Act (support for persons seeking asylum), which is already available, while also allowing the Secretary of State the flexibility to make distinct regulations where there are differences.

Briefing

Laid by Dr Huppert MP in the public Bill Committee and debated 19 November 2013 (See http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131119/am/131119s01.htm) cols 404 to the end of the session. Moving the amendment, Dr Huppert explained

> ***Dr Huppert.*** *…Analysis from Still Human Still Here, which campaigns on a number of issues, estimates that if we got rid of section 4 support and provided the same people with section 95 support, not only would those individuals be better off, but it would save the Exchequer some £2 million to £4 million. The Select Committee on Home Affairs considered this matter in much more detail than I will have time to explain and concluded:*
>
> > *"We are not convinced that a separate support system for failed asylum seekers, whom the Government recognise as being unable to return to their country of origin, is necessary…*

The immigration Minister in reply (col 406) agreed to look at the Still Human Still Here report, saying that the Government had considered the idea of a single system before but was happy to look at it, at the report and at the financial analysis again.

PART 7 FINAL PROVISIONS

Clause 63 and Schedule 8 Transitional and Consequential Provisions

Schedule 8 Appeals

PROPOSED AMENDMENTS

Schedule 8, paragraph 14, page 99, leave out line 11

Schedule 8, paragraph 23, page 99 line 40 leave out "87" and replace with "88"

Purpose
First amendment: Retains s 40(1)(a) of the British Nationality Act 1981. This is an important provision that can be used by an immigration judge hearing an appeal against deprivation of nationality to direct following a successful appeal that an order depriving a person of his/her British nationality is to be treated as having had no effect.

Second amendment: retains section 87 of the Nationality Immigration and Asylum Act 2002 which gives a Tribunal judge power to make directions following a successful appeal.

Briefing
First amendment: It is unclear what this provision is doing in Schedule 9. This repeal does not appear to be consequential on any part of the Appeals section of the Bill. Indeed, the appeal against deprivation of British citizenship is preserved by the Bill.

There are important consequences to this power. For example, if a person has a child during the period when s/he is deprived of his/her British citizenship the child will not be born British through him/her (in some circumstances the child will be British through the other parent). Other rights and entitlements may be affected by the interruption of the British citizenship. The current law allows a tribunal judge or judge to preserve the position

Second amendment: insofar as this relates to s 40A, see above. More generally, see the briefing to this amendment, which has merit in its own right, below.

PROPOSED AMENDMENT (PRIORITY)

Schedule 8, page 99, line 39, leave out (3) and insert (4)

Purpose
Protects from repeal s 86(3) of the Nationality, Immigration and Asylum Act 2002 which states that the Tribunal must allow an appeal insofar as it thinks that

"(a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules)
(b) a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently"

Briefing
Preserves the all-important "not in accordance with the law" jurisdiction which means that an appeal can be allowed not because it breaches someone's rights, but because it is wrong. The decision-maker may have applied the rules wrongly, or misunderstood the evidence. We know from the Government's own appeals impact statement that the Home Office loses some 50% of managed migration appeals. These are appeals brought by workers, students or family members with lawful leave, applying under the immigration rules. It is Government policy that their applications should succeed when they fit within those rules,

but they do not, because of poor decision-making. There must for the reasons discussed in our briefings to Part II, be redress beyond the department against such errors.

PROPOSED AMENDMENT

Schedule 8, paragraph 23, page 99 line 40 leave out "87" and replace with "88"

Purpose
Retains section 87 of the Nationality, Immigration and Asylum Act 2002 which deals with the power of tribunal judge to give directions following a successful appeal.

Briefing
It is unclear why this repeal is found within the Schedule as there is nothing consequential about it. There will still (we trust) be successful appeals. A direction might demand that the Home Office do something within a particular timescale or take particular steps, for example to assist in bringing a person back to the jurisdiction. See above re its special place when it comes to appeals against deprivation of nationality (which will continue to exist) under the British Nationality Act 1981.

PROPOSED AMENDMENT (PRIORITY)

Schedule 8, paragraph 41 page 103, line 45 leave out line 45 to page 104, line 11.

Purpose
Removes the requirement that if P's circumstances have changed since the Secretary of State or an immigration officer was last made aware of them then P must serve a statement of additional reasons for remaining in the UK as soon as reasonably practical.

Briefing
How on earth is P, who is likely to be unrepresented given the removal of legal aid for immigration cases in April 2013, to know that s/he is supposed to provide such a statement. If s/he does know, for example because it was mentioned at the time of the first notice having been given and P understood that notice, how is P, unassisted, going to identify and articulate those grounds? The expectation in the subsection is not a reasonable one If there is no properly resourced system of advice and representation .

PROPOSED AMENDMENT

Schedule 8, page 100, line 15, leave out from "in subsection (2)(a)" to the end of line 21 and replace with "is repealed."

Purpose
Repeals section 55 of the Immigration Asylum and Nationality Act 2006 which provides for a certificate on national security grounds to be considered before deliberations on a substantive asylum appeal.

Briefing

It is often very difficult to consider national security questions before the substance of the appeal has been heard and this is one reason for removing this section. But there are others. The section is flawed in that confuses Article 1F of the Refugee Convention which is about exclusion from protection in the first place with Article 33(2) which is supposed to be about the treatment of recognised refugees.

It is unclear why this repeal is found within the Schedule as there is nothing consequential about it. There will still (we trust) be successful appeals. A direction might demand that the Home Office do something within a particular timescale or take particular steps, for example to assist in bringing a person back to the jurisdiction. See above re its special place when it comes to appeals against deprivation of nationality (which will continue to exist) under the British Nationality Act 1981.

Clause 65 Commencement

PROPOSED AMENDMENT (this pertains to Part II although it comes later in the Bill)

Clause 65, page 50, line 27, at end insert

"( ) Section 1 and Part II of this Act shall to come into force on a day to be appointed, that day being no earlier than the day on which an order made by the Lord Chancellor under section 9(2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2013 in respect of civil legal services in connection with removal under Section 1 and appeals under Part II comes into effect.

Purpose

Provides that Part II (Appeals) cannot come into force until an order has been made dealing with legal aid for removal under Part I and appeals covered in Part II. The nature of the Order is not addressed in this amendment save that it will be in connection with the provisions of clause 1 and Part II and that legal aid will be extended, not reduced.

Briefing

Under Part 1 of Schedule 1 to the Legal Aid Sentencing and Punishment of Offenders Act 2012, legal aid remains available for applications and appeals under the Refugee Convention and based on Articles 2 (right to life) and 3 (prohibition of torture, inhuman or degrading treatment or punishment) of the European Convention on Human Rights and related provisions. It is no longer available for other human rights appeals, including appeals on the grounds of a breach of Article 8, private and family life.

Under the residence test proposed in the Ministry of Justice consultation *Transforming Legal Aid*, legal aid will not be available for judicial review, other than for persons seeking asylum, for persons who are not lawfully present in the UK and have clocked up 12 months lawful residence in the UK at some time in the past. An exception is proposed in the Ministry of Justice document *Transforming Legal Aid: next steps* for persons seeking asylum and limited exceptions for some, but not all, refugees, some but not all trafficked persons and some but not all survivors of domestic violence.

Under this Bill, all appeals must be brought as asylum or human rights appeals. A person who has a wrong decision and on but who does not have a right of appeal on protection or human rights grounds will have no option other than not to challenge the decision before

any independent decision-maker and suffer the injustice of a wrong decision or to bring a judicial review. Those who have grappled with these clauses, will understand the complexity of the cases involved. The issues at stake are whether a person can join or remain with a spouse, partner or child or Legal aid should be available for such appeals. Section 9 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provides a power to widen or narrow the range of cases for which legal aid is available. An Order under section 9(2)(a) could only add to the number of cases for which legal aid is available not reduce it.

PROPOSED AMENDMENT (pertains to residential tenancies)

Clause 65, page 50, line 30, at end insert

> ( ) Sections 15 to 27 shall not come into force until a Code of Practice has been issued under Section 28, in accordance with the provisions of that Section

Renumber accordingly.

Purpose
To require that before any of the provisions in the chapter on residential tenancies come into force, the Code of Practice on discrimination must have been issued.)

Briefing

See briefing on proposed amendments to Clause 28.

ILPA BRIEFING SECOND PART: LIST OF PROPOSED AMENDMENTS

Amendments set out in full in part 1 are listed **in bold.**

Clause 1

- **To ensure that a person must be given notice of their removal**
- Dr Julian Huppert MP got some encouragement from the Minister, Mr Mark Harper MP, on the notion of an amendment re the detention of children. ILPA is supportive of placing restrictions on the detention of children on the face of the Bill.
- To remove the power of the Secretary of State to make provision by regulation for the removal of family members under this section.
- To remove the suggestion that a person being removed as a family member need not be given notice of their removal.

Clause 2 and Schedule 1 Enforcement Powers

- To omit paragraph 5 of Schedule 1 to maintain the status quo whereby immigration officers can use reasonable force only when exercising powers under the Immigration Act 1971 and the Immigration and Asylum Act 1999, rather than, as per this paragraph in the exercise of all powers under any of the Immigration Acts**.**

Clause 3 Bail

- **To omit subsections (2) to (5) to maintain the current position that the First-tier Tribunal (Immigration & Asylum Chamber) retains its powers to grant bail where a detainee has been served with directions for removal from the UK to take effect within 14 days of the date of application. (PRIORITY)**
- Leave out sub-clause 3(2)(b). To retain the current position whereby statute (paragraph 25 of Schedule 2 to the Immigration Act 1971) provides that the Tribunal Procedure Rules "may" rather than "must" make provision as to particular matters.
- Leave out subclause 3(6). To maintain the status quo rather than introduce the new provision proposed whereby tribunal procedure rules must make provision for the dismissal without a hearing of bail applications made within 28 days of a previous decision to dismiss a bail application unless the appellant can demonstrate a material change of circumstances.
- Schedule 8 part II (Bail), paragraph 6, leave out Part II, to ensure that the proposed new bail provisions do not apply to proceedings before the Special Immigration Appeals Commission
- New clause to make provision for a presumption of liberty
- New clause to make provision for regular, automatic bail hearings;
- New clause to make provision for a time limit on detention.
- New clause to remove paragraphs 30(2)(c) and (d) of Schedule 2 to the Immigration Act 1971 which allow the Tribunal to refuse release on bail in circumstances where "30(2)(c)… *the appellant is suffering from mental disorder and continued detention is needed in his interests or for the protection of others*" and 30(2)(d) *the appellant is under the age of seventeen…arrangements ought to be made for his care in the event of his release and ….no satisfactory arrangements for that purpose have been made".* The risks of using immigration detention rather than act to make appropriate provision have been illustrated by the repeated cases in which the Home Office has been found to be in breach of Article 3 of the European Convention on Human rights (the prohibition on torture and ill-treatment) for its treatment of the mentally ill held under immigration act powers and the case in which only when a judicial review was brought did it desist from using force on children despite not having any policies in place governing its use.

Clause 5 Identifying persons liable to detention

- To oppose Clause 5, which would allow biometric information to be taken not only from persons detained, but anyone liable to be detained, standing part of the Bill.

Clause 6 Provision of biometric information with citizenship applications

- Leave out subsection (3), to require the destruction of all biometric information upon a person's becoming a British citizen rather than allowing photographs to be retained until a person acquires a passport, or indefinitely if they do not.

- To oppose Clause 6, which requires biometric information with applications for citizenship and naturalisation, standing part of the Bill. Information is to be destroyed when the person is granted citizenship but otherwise can be retained. Even if citizenship is granted, photographs may be retained until a person gets a passport, and indefinitely if they never do so.

Clause 8 Meaning of "biometric information"

- To oppose Clause 8, which would allow any information about a person's physical characteristic to be specified in an order as being information that must be provided with an application, as long as information about a person's DNA was not specified, standing part of the Bill.

Clause 10 Use and retention of biometric information

- To provide that biometric information may not be used in connection with the prevention, prosecution or investigation of offences for which the maximum term of imprisonment is eight weeks or less. Amendment laid by Mr David Hanson in committee.
- To confine the power to use information retained to purposes listed on the face of the statute (Amendment laid by Mr David Hanson MP in Committee) and to restrict the purposes set out in the face of the statute.
- To oppose Clause 10's standing part of the Bill

Clause 11 Right of Appeal to the First Tier Tribunal

- **Amendment 1 To oppose Clause 11, which removes rights of appeal other than on human rights or protection grounds, standing part of the Bill. (PRIORITY)**

Clause 12 Place from which appeal may be brought or continued

- To leave out subsection (3) remove the provision whereby a person facing deportation could be removed before their appeal was finally determined (either by a certificate's being issued before the appeal started or to stop an appeal in progress), including on the grounds that removal would not cause "serious irreversible harm". See the Joint Committee on Human Rights legislative Scrutiny Report HL Paper 102, HC 935 at paragraphs 48 to 53.

Clause 13 Review of certain deportation decisions by the Special Immigration Appeals Commission

- **To oppose Clause 13's standing part of the bill and thus retain the current position whereby challenges to deportation decisions certified as raising matters of national security are heard by way of judicial review in the High Court rather than by way of review by the Special Immigration Appeals Commission where, unlike judicial reviews, a closed material procedure could be used.**
- A new clause to amend section 94 of the Nationality, Immigration and Asylum Act 2002 so that the Secretary of State cannot deem a country to be safe, regardless of the evidence to the contrary.

Clause 14 Article 8 of the ECHR: public interest considerations

- **Amendment 2 To require the courts and tribunals considering the public interest first to establish the interests of any child affected by the decision subject to appeal before going on to consider any other public interest factors.**
- **Amendment 3 To remove reference to a "qualifying" child and the definition of such a child, which serve to preclude consideration of a relationship with a child who is not a British citizen or has not been in the UK for seven years.**
- **Amendment 4 To provide that when contemplating the removal of a parent/carer/relative the best interests of the child with whom they have a relationship, will be considered, rather than a lower test of whether it would be reasonable to expect the child to leave the UK being applied.**
- **To set out on the face of the Bill that the promotion of the best interests of children is in the public interest**
- To omit the definition of the "public interest question" in section 117A (3). This seems to be about weighing the private right against the public interest which is properly the task of the judiciary. There are a range of amendments that could be made to confine clause 14 to defining the public interest rather than private rights and the weight that should be attached to them.
- To confine the statement that it is in the public interest that persons can speak

English to cases where the person seeks leave to remain in the UK rather than to enter.

- To substitute for providing that it is in the public interest that persons are financially independent providing that it is in the public interest that persons can maintain and support themselves without recourse to public funds, as defined in the immigration rules. A chance to debate the current family immigration rules.
- To omit subsections (4) and (5) of new 117B (Article 8: public interest considerations application in all cases) which prescribe the weight to be given to private life with a partner

Clause 16 Residential Tenancy Agreement

- To include within the definition of those treated as having a right to rent persons: seeking asylum and their dependants; provided with accommodation under the Children Act 1989; accommodated in a refuge as a survivor of domestic violence; students or language students in homestays. To highlight through these examples omissions from Clause 15 and Schedule 3.
- **To exempt students and student visitors from checks.**
- To limit the powers of the Secretary of State so that she will no longer be able to include in the scheme tenancy etc. agreements formerly excluded, but only exclude those formerly included or amend a description of an exclusion.

Clause 17 Persons disqualified by immigration status not to be leased premises

- To provide that there would be no contravention of the section in cases where, subsequent to the tenancy agreement having been entered into, the tenant becomes a person who is disqualified because of their immigration status thus obviating the need for repeat checks.

Clause 20 Penalty notices: agents

- To provide that a landlord can only pass on liability to an agent who is regulated by the Office of the Immigration Services Commissioner. An opportunity to probe how this scheme fits with the requirements that those who give immigration advice in the course of a business, whether or not for profit, must be regulated by the Office of the Immigration Services Commissioner.

Clause 23 Penalty notices general

- Leave out subsection (1). To remove the power of the Secretary of State to issue a penalty notice without having established that the landlord or landlady has a statutory excuse.

Clause 28 Discrimination

- **To make it a criminal offence to discriminate against a person in refusing to rent to them or in renting to them under a residential tenancy agreement in this part.**
- A legal aid amendment attached to the provisions on residential tenancies so that those at risk of homelessness as a result of its provisions will get legal aid

Clause 34 Related Provision: charges for health services (PRIORITY)

- **To create a power to have regard to the need to safeguard public health with particular reference to the prevention of infectious diseases, maternal death and infant mortality for those persons who require leave to enter or remain in the United Kingdom. An opportunity to discuss the effect on these matters.**
- To provide that no charges can be levied for primary care or emergency services.

Clause 35 Prohibition on opening an account for disqualified persons

- To remove from the ambit of the definition of a person disqualified from holding a bank account person a person whose claim for asylum has not yet finally been determined. The clause as drafted appears to exclude persons on temporary admission from its ambit. Those likely to be on temporary admission for very lengthy periods are persons seeking asylum.
- To require the Secretary of State's belief that a current account should not be opened for a person, thus making them a disqualified person, to be reasonable.

Clause 36 Regulation by Financial Conduct Authority

- To ensure 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. The current drafting of such a broad power suggests that how this scheme will work has not been thought through.

- To remove 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, to probe how these powers might be used.

Clause 38 Power to amend

- That clause 38 should not stand part of the Bill. The clause, a Henry VIII power, could be used to deny persons without leave, including persons seeking asylum, anywhere where they could safely deposit their money.

Part 3 *Work* or Part 6 Miscellaneous

New clause to give permission to work to persons seeking international protection who do not receive a decision on their asylum application within six months.

Clause 39 Appeals Against Penalty Notices

- That Clause 39 should not stand part of the Bill. This would 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.

Clause 40 Recovery of sums payable under penalty notices

- That Clause 40 should not stand part of the Bill. 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.

Clause 41 Grant of Driving licences: residence requirements

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

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

- To ensure that the licences of persons seeking asylum whose claims have yet to be determined are not revoked.
- To remove 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.

New Clause in Part 4 to provide survivors of domestic violence with a period of access to services and benefits. The amendment does not alter the right to apply for Indefinite Leave to Remain (ILR) for spouses or civil partners of British citizens or those settled here, but extend support available to survivors of domestic violence for a period in which to consider any applications they may make, or allow them to leave the UK legally having made appropriate arrangements.

Proposed amendment to Clause 45 Conduct of investigation 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. A probing amendment to highlight the latitude the clause leaves to the Secretary of State.

Proposed amendments to Clause 46 Investigations supplementary to restrict the requirements as to the investigation that the Secretary of State can impose on the parties to those listed on the face of the Statue and to omit a requirement to provide "evidence" coming at the end of the a long list of requirements to provide…evidence.

Proposed amendment to Clause 54 Regulations about evidence to confine the contents of regulations about evidence to matters set out on the face of primary legislation

Part V OVERSIGHT

Office of the Immigration Services Commissioner

Proposed amendments to Clause 57 Immigration advisors and immigration service providers

- to set out on the face of the statute ensure that those not for profit organisations currently exempted from paying a registration fee to the Office of the Immigration Services Commissioner should not be charged fees to register
- to ensure that when regulated immigration advice organisations close down, or are closed, their clients can retrieve their case papers

Part VI MISCELLANEOUS

- **New Clause Support for Prescribed Groups** to enable support under section 4 of the Immigration and Asylum Act 1999 (used for support at the end of the process) to be run in the same way as support under section 95 of that Act (support for persons seeking asylum),

which is already available, while also allowing while also allowing the Secretary of State the flexibility to make distinct regulations where there are differences.

- **New clause** to provide for asylum support to be uprated in line with benefits uprating;
- **New clause** to repeal Schedule 3 to the Nationality, Immigration and Asylum Act 2002 which restricts support local authorities can provide to persons under immigration control.

Embarkation checks

Clause 58 and Schedule 7 Embarkation checks

- To Schedule 7 to paragraph 4 is concerned with the duty of the person examined to furnish the person examining him/her with such information as s required by that person for the exercise of his/her functions. An amendment is needed to retain the current paragraph 4 rather than substituting the amendment proposed by the clause which would impose a duty in respect of the examiner or any other person's functions.
- To Schedule 7 to removes subparagraph 6 which would permit a person who is not an immigration officer to take and retain a passport.
- To Schedule 7 to probe the lack of safeguards around who can carry out embarkation checks including as concerns data protection.
- To Omit Part 2 of Schedule 7 which makes it a criminal offence for an owner of a ship or aircraft or a person connected with the management of a port to fall to comply with a direction to furnish information to the Secretary of State designated persons exercising functions under this schedule.

Fees

Clause 59 Fees

- To remove the power of the Secretary of State to make provision by order for a minimum fee in respect of a specified function. A probing amendment to identify why this power is considered necessary.
- To remove the power of the Secretary of State to have regard to the costs of exercising immigration or nationality functions other than the one for which is the fee is paid, in determining the amount of a fee.
- To include in the exhaustive list of matters to which the Secretary of State can have regard in setting fees the quality of decision-making and whether decisions are made within performance targets.
- To change the power to prove for exceptions, reductions, waivers and refunds of all or part of a fee by exercise of a discretion or otherwise from a power to a duty.
- To make explicit that the Secretary of State should consider human rights, the best interests of the child and the effect persons concerned when deciding whether to waive reduce or refund a fee.
- To provide for the refund of appeal fees when the decisions appealed against are withdrawn and the cases do not have to go to a Tribunal.

PART 7 FINAL PROVISIONS

Proposed amendments to Clause 63 and Schedule 8: Transitional and Consequential Provision

- To Clause 63 to remove powers to amend, repeal or revoke enactments of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. Probes the extent to which consent will be sought from the devolved administrations before amending, repealing or revoking enactments they have made.
- To paragraph 2(3) to maintain the status quo whereby indefinite leave obtained by deception can be revoked only if the person would be liable to removal as a result of the deception but cannot be removed. The line omitted would otherwise provide a power to revoke any indefinite leave obtained by deception.
- To omit paragraph 7 to ensure that the proposed new provisions on bail do not apply to proceedings before the Special Immigration Appeals Commission

- To maintain the current position whereby the Special Immigration Appeals Commission can hear and grant an application for bail even if it has heard an application for bail with 28 days and no material change has been identified.
- To leave out paragraph 8 and thus to retain s 143 of the Immigration and Asylum Act 1999 which provides for the destruction of fingerprints of Commonwealth citizens as soon as reasonably practicable and provides that they shall be retained for no longer than ten years.
- To extend leave in variation cases on the same terms and conditions during the period when an appeal under the proposed s 82(1)(a) and (b) could be brought or is pending.
- To preserve leave in revocation cases on the same terms and conditions during the period when an appeal (on human rights or protection grounds) under the proposed s 82(1)(c) could be brought or is pending.
- To leave out paragraph 11 and thus retain s 126 of the Nationality, Immigration and Asylum Act 2002 which provides, inter alia, that regulations must make provision for information to be destroyed at the end of 10 years beginning on the day on which it is obtained.
- **To amend paragraphs 14 and 23 to retain section 87 of the Nationality Immigration and Asylum Act 2002 which gives a Tribunal judge power to make directions following a successful appeal and in particular to retain its application to appeals under s 40 of the British Nationality Act 1981 where it is used by an immigration judge hearing an appeal against deprivation of nationality to direct following a successful appeal that an order depriving a person of his/her British nationality is to be treated as having had no effect.**
- To omit paragraph 15 and thus retain the requirement that there be a monitor of entry clearance cases with no right of appeal other than human rights grounds (currently human rights and race discrimination grounds).
- **To paragraph 22 to retain s 86(3) of the Nationality, Immigration and Asylum Act 2002 which states that the Tribunal must allow an appeal insofar as it thinks that a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules) and that a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently (PRIORITY)**
- To amend e.g. paragraph 24 to remove the amendments effected by section 54 of the Crime and Courts Act 2013, the precursor to s 12 of this Act, which allows a person to be removed before or in the course of their appeal where the Secretary of State certifies that this would not breach their human rights. The effect of the amendment would be that where a decision to make a deportation order was certified as having been made on national security grounds, the person may appeal to the Special Immigration Appeals Commission
- **To amend paragraph 41(5) to remove the requirement that if P's circumstances have changed since the Secretary of State or an immigration officer was last made aware of them then P must serve a statement of additional reasons for remaining in the UK as soon as reasonably practical as this is not a reasonable burden to impose on a person likely to be unrepresented. (PRIORITY)**
- **To paragraph 42 to repeal section 55 of the Immigration Asylum and Nationality Act 2006 which provides for a certificate on national security grounds to be considered before deliberations on a substantive asylum appeal.**

Provisions relating to employment

- To amend paragraph 46 provide that a penalty given to an employer must explain how to object to a penalty and how to appeal against it, rather than one or the other.

Clause 65 Commencement

- **To provide that Part II (Appeals) cannot come into force until an order has been made dealing with legal aid for removal under Part I and appeals covered in Part II.**