ILPA briefing to amendments tabled for House of Lords Committee Stage of the Immigration Bill: Part Three: Enforcement: supplementary briefing

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

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Part Three of the Immigration Bill deals with:

- Powers of immigration officers etc;
- Immigration bail (including detention matters); and
- Power to cancel leave.

ILPA's briefing to the amendments on Part 2 on the Second Marshalled List can be found at http://www.ilpa.org.uk/resources.php/31751/ilpa-briefing-to-amendments-tabled-for-house-of-lords-committee-stage-of-the-immigration-bill-part-t

Subsequent to that briefing, Stephen Shaw's report for the Home Office *Review into the welfare in detention of vulnerable persons* Cm 9186 has been published and amendments tabled as a consequence. This briefing deals with all amendments tabled to Part 3 supplementary to the second marshalled list.

Clause 30

Government amendment [Page 37, line 27]

Government amendment [Page 37 line 28]

Government amendment [Page 37 line 27]

Presumed purpose The first amendment appears to correct an oversight in the clause as drafted in the amendment of Scots law. A definition of a custody review officer is now inserted. The second amendment is consequential. The third appears to correct an error in the clause as originally drafted, in that the entirety of the definition of an "immigration enforcement offence" is considered obsolete.

Briefing

Yet again, evidence of legislation drafted in haste and yet again an example of this being to the detriment of careful law making for the devolved administrations, in particular in matters where the reserved matter of immigration purports to impinge upon reserved matters, in this case the criminal law.

After Clause 30

Government New Clause *Power to take fingerprints etc. from dependants*

Presumed purpose

To change the definition of a dependant and thus extend powers to take fingerprints from such persons.

Briefing

The effect of the amendment is to extend powers to take and retain fingerprints to dependants of persons made subject to automatic deportation orders and to extend it to partners other than spouses, to children living in the same household as the principle whom the principle has care of and to adult dependant relatives of the principle. Powers do not extend to persons with a right of abode in the UK (for the most part British citizens. Unlike the predecessor powers, however, they do extend to persons with indefinite leave to remain (settled) in the UK.

Powers to retain biometric data were extended under the Immigration Act 2014. There are powers to retain data of persons under immigration control for an indefinite period. The Government *Statement of intent* provided

> *5. We intend to retain biometric information provided by foreign nationals for up to ten years from the date on which they enrolled their biometric information. However, different rules will apply where:*
>
> *i. the person becomes a British citizen; or*
> *ii. the person has indefinite leave; or*
> *iii. the person is subject to a Deportation Order, an Exclusion Order or a re-entry ban.*
>
> *b.…*

> *7. The biometric information of foreign nationals who are granted indefinite leave will be retained while their leave continues. This is mainly to ensure that we can conduct anti-fraud checks should a person apply for immigration documentation or for citizenship. If their indefinite leave subsequently lapses or is revoked, the biometric information will be retained for up to ten years following the expiry of the leave or the date of the revocation.*

> *8. We will retain biometric information from those foreign nationals who are subject to Deportation Orders, Exclusion Orders and re-entry bans for the duration of the order or re-entry ban where they exceed ten years.*

Section 8(7) of the UK Borders Act 2007 provides

"8(7)…a requirement to destroy biometric information or data is not to apply if and so far as the information or data is retained in accordance with and for the purposes of another power"

Thus once taken the information may be retained under a whole range of powers and those who have once been persons under immigration control may find that their data is retained long after they are citizens.

In *S & Marper v UK* [2008] ECHR 1581 powers of police officers to retain fingerprints were found to be unlawful. The Home Office argued in the *Human Rights Memorandum* produced for the Immigration Act 2014 that these powers were "distinguishable" from those powers of police officers considered in *Marper (*paragraph 49 of the *Human Rights Memorandum).* The distinction was said to be that they apply to persons under (or asking to be under) immigration control, because at some stage the UK may wish to deport them. This explanation appears strained given its application to family members with indefinite leave to remain.

The reason given for removing the 10-year longstop on retention is stated in the *Human Rights Memorandum* to be because a fixed limit "…might be considered to be arbitrary." This does not, of course, explain the removal of a 10-year *long-stop*.

The changes are achieved as follows. The current definition of a dependant for the purposes of fingerprinting is

> 141 (14) For the purposes of subsection (7)(f), a person is a dependant of another person if—
>
> (a) he is that person's spouse or child under the age of eighteen; and
> (b) he does not have a right of abode in the United Kingdom or indefinite leave to enter or
> remain in the United Kingdom.

The section to be substituted currently reads

> "(f) any person ("F") who is a dependant of any of those persons , other than a dependant of a person who falls within paragraph (c)(ii)

> In its turn, paragraph (c) (ii) refers to
>
> (c) (ii) that section 32(5) of the UK Borders Act 2007 (automatic deportation of foreign criminals) applies; .

In its turn, s 32 of the 2007 Act states

> **32 Automatic deportation**
> (1) In this section "foreign criminal" means a person–
> (a) who is not a British citizen,
> (b) who is convicted in the United Kingdom of an offence, and
> (c) to whom Condition 1 or 2 applies.
> (2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.
> (3) Condition 2 is that–
> (a) the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and
> (b) the person is sentenced to a period of imprisonment.
> (4) For the purpose of section 3(5)(a) of the Immigration Act 1971 (c. 77), the deportation of a foreign criminal is conducive to the public good.

(5) The Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).
(6) The Secretary of State may not revoke a deportation order made in accordance with subsection
(5) unless–
(a) he thinks that an exception under section 33 applies,
(b) the application for revocation is made while the foreign criminal is outside the United
Kingdom, or
(c) section 34(4) applies.
(7) Subsection (5) does not create a private right of action in respect of consequences of non-compliance by the Secretary of State.

Schedule 7

Government amendments

Presumed purpose

To change references to "temporary admission" to references to "immigration bail." Amendment [6] extends powers in respect of electronic monitoring conditions and meeting travelling expenses necessitated by compliance with bail conditions on a person given "special immigration status" under s 132 of the Criminal Justice and Immigration Act 2008.

Briefing

These amendments are further evidence, were evidence needed, of a Bill drafted in haste. The amendments are all to replace references to temporary admission with references to immigration bail.

The Criminal Justice and Immigration Act makes provision for special immigration status. The status was introduced following the Home Office's losing, in 2006, a judicial review challenge brought by the Afghan men who had been prosecuted for hijacking a plane in order to flee the Taleban in 2000.

These men had been found to be excluded from the protection of the 1951 Refugee Convention but won their appeals against deportation on human rights grounds because they faced torture or other serious ill-treatment if returned to Afghanistan. The Home Office, however, failed to grant them leave to remain. The Court of Appeal ruled this failure was unlawful.

The then Government indicated that it would legislate to avoid having to grant leave to remain in similar cases in future. Special immigration avoids the need to grant leave to remain by creating a wholly new status, expressly stated not to be a form of leave to remain, and provides the Home Office a wide discretion to set severe restrictions upon any person given this new status. A person may be given special immigration status:

- if they cannot be removed from the UK because to do so would violate their human rights; and depending upon their behaviour, whether before or after their arrival in the UK.

Behaviour that may mean a person is given special immigration status includes:

- a crime against peace, war crime or crime against humanity
- a serious non-political crime outside the UK
- an act contrary to the principles or purposes of the United Nations
- a crime in the UK leading to a sentence of imprisonment of two years or more

The same status may also be given to the person's spouse or dependent children, even though there is no suggestion that their own behaviour is cause for concern.

AMENDMENT [page 101 line 22] in the name of Baroness Hamwee

Presumed purpose: This amendment would require the Secretary of State to release persons detained under Immigration Act powers after 28 days. If she wished to detain them for longer she would have to make an application to the First-tier Tribunal on the grounds that bail was not in the public interest.

Briefing

The UN High Commission on Human Rights Resolution 2004/39: *Arbitrary Detention* of 19 April 2004, E/CN.4/RES/2004/39 provides:

> *"3. Encourages the Governments concerned: (c) To respect and promote the right of anyone who is deprived of his/her liberty by arrest or detention to be entitled to bring proceedings before a court, in order that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful, in accordance with their international obligations".*

reading Lord Williams of Mostyn for the then Government said

> *Part III introduces important new safeguards for immigration detainees. It introduces a more extensive judicial element into the detention process by means of a system of routine bail hearings, but the Government have decided that we should go further. The Government intend to bring forward amendments during the proceedings in this House to provide for a statutory presumption of bail, with exceptions to ensure effective immigration control and enforcement.*[1]

He later explained:

> *Perhaps I may set out our intention in setting time-limits for routine bail hearings and their determination. One element that is lacking in the present system—I do not disagree with what has been said in part—is any degree of certainty or structure with regard to bail hearings. We*

[1] *HL Deb 29 June 1999 vol 603 cc176-257.*

intend that the first routine bail hearing—to use the word "routine" is not to play down its importance, but to underline the fact that it must be regular—should take place about seven days after the original detention. In practice, the reference will normally be made much earlier.[2]

What has changed since 1999 so that a sense the gravity of the shortcomings of the system of immigration detention, and the urgency of addressing them, has gone so entirely? In 2002 the then Government, decided to repeal that part of the Immigration and Asylum Act 1999 that would have introduced a new bail regime. Baroness Anelay of St Johns, with support from all around the house, tried to stop them. She said:

In another place the then Home Secretary, Mr Straw, said in a debate on 22nd February 1999 at col. 39 of the Official Report: Part III fulfils the commitment in the White Paper to introduce a more extensive judicial element in the detention process. That will be achieved by introducing routine bail hearings for those detained under immigration legislation." In this House the noble and learned Lord, Lord Williams of Mostyn, when moving the Second Reading of the same Bill on 29th June 1999, at col. 178, said, Part III introduces important new safeguards for immigration detainees. It introduces a more extensive judicial element into the detention process by means of a system of routine bail hearings, but the Government have decided that we should go further. The Government intend to bring forward amendments during the proceedings in this House to provide for a statutory presumption of bail, with exceptions to ensure effective immigration control and enforcement. Part VIII of the Bill provides a proper statutory framework for all aspects of the management and administration of detention centres and for the escort of detainees. Taken together, the provisions regarding bail and detention centres will provide significant additional safeguards for immigration detainees". I am sure Members of the Committee will recall that the noble and learned Lord moved the amendment of which he spoke at Second Reading on 19th July in Committee when he said, I hope that the amendment will meet with the universal acclamation of the Committee".—[Official Report, 19/7/99; col. 725.]

That amendment is now Section 46 of the 1999 Act and it is those very provisions in Part III of the Act, so eloquently spoken to by the noble and learned Lord, Lord Williams, three years ago, which today the Government propose to repeal under Clause 57(6) of this Bill. We acclaimed it; the Government now dispose of it.

There was an extensive debate on this matter in Standing Committee in another place. But the justification given at that time by Miss Angela Eagle was unconvincing. Members of the Committee will note that the provisions have never been brought into force. The Minister said that they were not brought into force because we have been trying since the 1999 Act to work out the frequency and logistical implications of automatic bail hearings for each detainee. We concluded that it would be a logistical nightmare that would divert scarce resources from processing asylum applications … Implementing the Part III bail provisions would significantly increase the burden on the Immigration Appellate Authority".—[Official Report, Commons, Standing Committee E, 14/5/02; co1.256.] I cannot believe that the provisions in the 1999 Act which were described as important and significant by the noble and learned Lord, now the Leader of the House, and the implications of which were doubtless considered in detail by the Home Office when the White Paper was drawn up, when the 1999 Bill was drafted and when the amendments were proposed, are now to be dismissed as a logistical nightmare. I cannot believe that the noble and learned Lord, Lord Williams, would have put his name to such a

[2] HL Deb 19 Jul 1999: Column 707.

measure and spoken in favour of it if he were not entirely certain that it was eminently workable and its implications had been fully thought through by the time the Act was passed by this House.

One final but important point on Amendment No. 173 is this. In another place my honourable friend Mr Malins moved an amendment which would have brought the provisions of Part III of the 1999 Act into effect. The Minister argued in response that to do so would be administratively unworkable and would cause chaos and catastrophe in the system. Amendment No. 173 meets the Government's point. It would not bring the provisions into effect but it would stop their repeal. The effect of that would be to allow the Government to bring them into force at a time when the administrative concerns which the Minister cited in another place had been allayed.

If the Minister were to resist the amendment, surely he would have to cast aside the mask of administrative unworkability that was taken up in another place and reveal the real policy reasons behind the Government's change of position. I invite him today to give us better justification on this matter than in another place. I beg to move[3].

In 1999 Lord Hylton[4] put forward an amendment that would have meant regular reviews throughout the period of detention. All speakers, with the exception of the Minister, supported him.[5] Contrast this with the current Home Office guidance on review, not by a court or tribunal, but by the officials detaining the person[6]:

There is a statutory requirement above, detention should also be reviewed during the initial stages, that is, the first 28 days. This does not apply in criminal casework cases where detainees come from prison, or remain there on completion of custodial sentence, and their personal circumstances have already been taken into account by the Home Office when the original decision to detain was made. However, criminal casework cases involving the detention of children must be reviewed at days 7, 10, 14 and every seven days thereafter…in practice, this will apply only to those exceptional cases where an FNO under 18 is being detained pending deportation or removal.

As was described in the debates in the Public bill Committee[7], the All Party Parliamentary Groups on Refugees and Migration in their study on immigration detention

> **"…**recommended, and the House of Commons agreed, "that the Government should introduce a robust system for reviewing the decision to detain early in the period of detention. This system might take, for example, the form of automatic bail hearings, a statutory presumption that detention is to be used exceptionally and for the shortest possible time, or judicial oversight."

The Minister, James Brokenshire MP, said in reply

> *"I underline the importance that I attach to appropriate procedure and to issues of vulnerability being taken into account within the system. …Depriving someone of their*

[3] HL Deb 17 July 2002 vol 637 cc1257-305
[4] HL Deb 19 July 1999 vol 604 cc693-724
[5] *Ibid.* col 704
[6] Enforcement Instructions and Guidance 55.8.
[7] 3 November 2015, col 356.

liberty is a serious thing and needs to be allied to the issue of removal. Indeed, there should be the presumption of liberty…"[8]

He went on to resist an amendment that would have set up automatic bail hearings saying

"…we do not consider that there is a need for mandatory judicial oversight of detention … There is already well-established judicial oversight available. Individuals detained under immigration powers have unrestricted opportunity to apply to the tribunal for bail at any time. They can also apply for a judicial review of their detention, or for a writ of habeas corpus to the High Court, again at any time.

The current system was designed to be flexible in the interests of justice, and allows the detainee ready access to the tribunal. Legal advice and legal aid remain available for challenges to immigration detention. All detainees are made aware of the ability to apply for bail, but there is obviously a need to strike a balance. Introducing automatic bail hearings in all cases would be a further significant burden on the tribunal, with potential financial loss to the taxpayer, and would utilise time that could be spent on other matters. That could prolong the time spent in detention, and could deny other appellants timely access to justice.[9]"

That must be called into question by the Shaw review. Stephen Shaw writes in his review that "further consideration should be given to ways of strengthening the legal safeguards against excessive length of detention." He writes

10.22 Bail applications are restricted by statute to one every 28 days where there has not been a material change in circumstances since a previous, unsuccessful bail application (applications may still be made in such circumstances but must be decided by the Tribunal on the papers), and this does not strike me as unreasonable. However, I am also conscious that some detainees may not be able to exercise that right. In an oral hearing on July 17 2014, the director of Detention Action, Mr Jerome Phelps, told Ms Teather and her colleagues on the Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration: "… for most vulnerable people, it's not a right that's accessible, if you're lying on your bed in full psychological collapse you're not in a position to even instruct a solicitor, let alone make a bail application [or] argue why you should be released.

10.26 .., bail hearings could be automatic at the 28 day stage, or after three or four months. I am less concerned about the means and more about the outcome: that those who are most vulnerable should not languish in detention because they lack the capacity to make a bail application.

As to the public interest exception proposed in the amendment, ILPA considers that detention should have to be justified before a court or tribunal in all cases. Persons in the UK are detained by administrative fiat, without limit of time. Detention is authorised and reviewed by relatively junior officials who work remotely. Their decisions are in turn reviewed by more senior officials but they latter rely on the written submissions of the junior officials, which in our experience are often unbalanced and of poor quality. In criminal casework cases, release has to be authorised at strategic director level, and as Stephen Shaw identifies, by the time the

[8] 3 November 2015, cols 361 to 362.
[9] 3 November 2015, col, 363 to 364.

submission gets to the senior official to consider release the information provided may not reflect the actual position with the consequent risk of a legally unsound decision being made.

As to what the exception might mean, the Enforcement Instructions and Guidance at 55.10 provide

> *"In criminal casework cases, the risk of further offending or harm to the public must be carefully weighed against the reason why the individual may be unsuitable for detention. There may be cases where the risk of harm to the public is such that it outweighs factors that would otherwise Enforcement Instructions and Guidance normally indicate that a person was unsuitable for detention*."

The amendment as drafted suggests a single application after 28 days. An improved version of this amendment, perhaps for a later stage of the Bill, would require repeat applications every 28 days for as long as detention lasted.

AMENDMENT [page 101 line 22] in the name of Baroness Hamwee

Presumed purpose This amendment is in similar terms to the one above. It would require the Secretary of State to release persons detained under Immigration Act powers after 28 days. If she wished to detain them for longer she would have to make an application to the First-tier Tribunal on the grounds that bail was not in the public interest. It would not, however, apply in cases in where a person is convicted of a particular offence. The list of offences is that to which modern slavery defence does not apply in Modern Slavery Bill

Briefing
Generally, see above.

ILPA does not support this version of the amendment. At the time of the passage of the Modern Slavery Act 2015, we expressed concern at the contents of the list of offences because we considered that it ranged widely and excluded too many persons from the Modern Slavery Defence. Here it excludes too many persons from the possibility of bail.

After Clause 32

NEW CLAUSE after clause 32 *Immigration Detention: revision of policy* in the name of Baroness Hamwee

Presumed purpose To require the Secretary of State to review the policy underlying the imposition of immigration detention and the grant of immigration bail and publish a strategic plan for immigration detention before the end of December 2016. The Secretary of State is required to consult on the plan and the review must include prisons and short-term holding facilities used for immigration detention.

Briefing

The amendment provides an opportunity to discuss some of the overarching recommendations of the Shaw Review, in particular the length of detention, the effectiveness of detention reviews, and the use of alternatives to detention.

Stephen Shaw begins his review:

> *About half-way through my work on this review I came across an essay published nearly thirty years ago concerning the rights of refugees. I may usefully quote these lines: "Over recent years the detention of asylum seekers in Britain has increased alarmingly. In early 1987 as many as 200 asylum seekers were detained … This number has decreased in 1988 to under 50 …"1 In contrast, the total number in detention today (whether asylum seekers, ex-offenders, or those otherwise deemed without a legal right to stay in the United Kingdom) is now over 3,000, and the number of people detained at one time or another during the year exceeds 30,000.*

He concludes his review

> *11.8 In my view, a smaller, more focused, strategically planned immigration detention estate, subject to the many reforms I have outlined in this report, would both be more protective of the welfare of vulnerable people and deliver better value for the taxpayer. Immigration detention has increased, is increasing, and – whether by better screening, more effective reviews, or formal time limit – it ought to be reduced.*

He records

> *Lord Bates told the House of Lords on 26 March 2015: "I can also say as a statement of intent that we do not, as a direction of travel, want to see growth in the numbers of people in the immigration detention centres.*

The Shaw review makes chilling reading. It describes a system fundamentally broken. The failings of the system are already known and extremely well-documented, having repeatedly been brought to the attention of successive UK Governments' attention by inspectorates appointed for the purpose, through legal challenges and by the work of parliamentarians. Yet the UK detention system continues to fail by its own standards and by the standards of international law, which have been collected in the Bingham Centre's *Immigration and the Rule of Law: safeguarding principles.*[10]

The UK detention system has been so successful at containing, resisting and defeating improvement. The policy in the UK is that there is a presumption of release, with all alternatives considered before detention is authorised, and that detention is for the shortest possible time.[11] Practice in the UK is that increasing numbers of persons are detained, some for years on end, [12]

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[10] Michael Fordham QC, Justine N Stefanelli, Sophie Eser, British Institute of International and Comparative Law, June 2013. Available at (accessed 29 May 2015): http://www.biicl.org/binghamcentre/activities/immigrationdetention/final_documents/ (accessed 7 October 2014).

[11] Enforcement Instructions and Guidance, 55.1.3., 55.3.

[12] See, for example, *R (Sino) v SSHD* [2011] EWHC 2249 (Admin) (four years and 11 months) and *R (Mhlanga) v SSHD* [2012] EWHC 1587 (Admin) (five years two months). See *The effectiveness and impact of immigration detention casework: A joint thematic review,* Her Majesty's Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, December 2012, available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/thematic-reports-and-research-publications/immigration-detention-casework-2012.pdf (accessed 7 October 2014).

including in circumstances where eventual release is to liberty calling into question the necessity for detention at all.

Human dignity is inviolable. It must be respected and protected.[13] But the UK has repeatedly been found to have breached detainees' rights under Article 3 of the European Convention on Human Rights, the prohibition on torture, inhuman and degrading treatment and punishment.[14] Women in detention have been subjected to severe abuse by the staff of centres.[15] It was suggested in those cases that an attempt was made to remove the victims from the jurisdiction before they could bring a case. Such allegations are not new. We recall for example the comments of Mr Justice Munby in *R (Karas and Miladinovic) v Secretary of State for the Home Department* [2006] EWHC 747 (Admin):

> *I am driven to conclude that the claimants' detention was deliberately planned with a view to what in my judgment was a collateral and improper purpose – the spiriting away of the claimants from the jurisdiction before there was likely to be time for them to obtain and act upon legal advice or apply to the court. That purpose was improper. It was unlawful.*

HM Chief Inspector of Prisons has reported on an 84 years' old frail Canadian man suffering from dementia who died in detention in handcuffs having been kept handcuffed for five hours.[16] Deaths, including suicides, and incidents of what is called "self-harm" but includes suicide attempts, are recorded.

If a review is the means to action, let there be a review. But in ILPA's opinion the Shaw review, coming as it does on top of other reviews such as that of the All Party Parliamentary Groups on Refugees and Migration, makes the case for action now.

NEW CLAUSE after clause 32 *Immigration Detention: treatment of detainees* in the name of Baroness Hamwee

Presumed purpose Requires the Secretary of State to publish, by the end of June 2016, revised rules and guidance for the treatment of detainees, in particular on staff training and qualification, health care, interpretation, access to legal advice, conduct of searches and other matters.

Briefing

Action needs to be taken in all the areas described in the amendment.

Stephen Shaw writes that a "more modern" rule on the purpose of detention centres

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[13] Charter of Fundamental Rights of the European Union, 2000/C 364/01, Article 1.

[14] For example *R (BA) v Secretary of State for Home Department* [2011] EWHC 2748 (Admin) ;*R (S) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (5 August 2011, *R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin) (17 April 2012), *R (D) v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin) (20 August 2012); R(MD) V SSHD [2014] EWHC 2249 (Admin).

[15] Yarls' Wood affair is a symptom, not the disease, Nick Cohen, The Observer, 14 September 2013.

[16] *Report of unannounced inspection of Harmondsworth Immigration Removal Centre*, 2014, section 1, paragraph 1.3 available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2014.pdf

2.41 …would properly include a more positive assertion of the need to maintain and enhance detainees' welfare, and their rights, for example, to legal advice. In addition, the rule should emphasise the importance of community and family ties, and activities designed to prepare detainees for life in the countries to which they will return.

Legal advice

Stephen Shaw records

1.36 It was reported that detainees held in the prison estate found access to legal advice more difficult, reducing their ability to progress their immigration case, and to seek independent scrutiny and release from detention, as well as affecting their physical and mental wellbeing.

Of concerns raised about legal advice he writes

6.122 Many of the issues raised by the NGOs are not within my purview. I recognise, however, that there is potentially a strong correlation between the welfare of detainees and the progress of their immigration case/the perception that they are receiving good advice on that case.

Sir Jeffrey Jowell QC, in his review, annexed to the Shaw review and prepared for it, of cases in which the Government has been found to have breached the prohibition on torture, inhuman and degrading treatment in its treatment of detainees, writes

15. Of course, only those cases which are litigated to a substantive hearing can result in a positive finding (one way or the other) in respect of a breach of Article 3. It is possible that there are other cases in which claims alleging breaches of Article 3 have been settled (and the stronger cases are probably more likely to be settled). It is also possible that there are other cases in which possible breaches of Article 3 have not been litigated, whether because the individual has been removed from the United Kingdom and has not sought to bring a claim from abroad, or has not been able to secure access to legal advice, or else, for whatever reason12 has not sought to bring a claim.

Her Majesty's Chief Inspector of Prisons has frequently reported on persons in detention's lack of access to legal advice and representation by detainees in his recent inspections of immigration removal centres, commenting in the report of the unannounced inspection of Haslar Immigration Removal Centre in 2014 as follows:

As at many of our recent inspections, increasing numbers of detainees did not have a lawyer to assist them with their immigration cases or to apply for bail. Some detainees were held for unreasonably long periods. One man, who we first met at our previous inspection in 2011, was released into the UK during this inspection after three-and-half years in detention[17].

At Haslar Immigration Removal Centre, the Chief Inspector found:

[17] Her Majesty's Chief Inspector of Prisons, Unannounced inspection of Haslar Immigration Removal Centre (10-11 and 17-21 February 2014) at: http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/Haslar-2014-Web.pdf

In our survey, 22% of detainees said they required an immigration lawyer but did not have one. Since our last inspection most immigration advice had been removed from the scope of legal aid funding. Fewer detainees than at our last inspection (32% against 50%) said that they received free legal advice. Free representation in relation to bail for detainees who could not pay for it was still available, but centre staff and detainees were unaware of this.

There was a similar picture at Campsfield Immigration Removal Centre:

> *... Too many detainees were without an immigration lawyer. Detainees sometimes had to wait for over two weeks to access legal advice surgeries, which was too long*[18]
>
> ,,, In our survey 22% of detainees said they did not have a lawyer[19].
>
> ... All detainees should have received ongoing representation during bail proceedings but we were not assured this was happening[20].

And at Dover Immigration Removal Centre:

> *...Too many detainees who required an immigration lawyer did not have one. Detainees could wait two weeks for a legal surgery appointment, which was too long, given the rapid turnaround of cases*[21].
>
> *...In our survey, 37% of detainees said they did not have an immigration lawyer, but only 8% of those surveyed said they did not require one, suggesting 29% were in need of legal representation*[22].

Interpretation is a pressing concern. Stephen Shaw records

> *7.32 The observations that my team and I made ourselves, and the evidence of others, have convinced me that professional interpreters (whether in person or by telephone) are not used widely enough.*

He records observing detainees being used to interpret for their peers.

Health care is a focus of much of the Shaw review. A particular concern is the operation of Rule 35 of the Detention Centre Rules which is designed to ensure that these identified by doctors as possible survivors of torture or persons with mental health problems. In 2013 the UN Committee Against Torture called for

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[18] Her Majesty's Chief Inspector of Prisons, Report on an unannounced inspection of Campsfield House Immigration Removal Centre (11 – 21 August 2014), at: https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/campsfield-house-immigration-removal-centre/#.VWcS3UYsAj8, p.14

[19] Ibid, p.26

[20] *Ibid*, p.26

[21] Her Majesty's Chief Inspector of Prisons, Unannounced inspection of Dover Immigration Removal Centre (3 –14 March 2014) at: https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/Dover-2014-Web.pdf , p.14

[22] Ibid, p.29

…an immediate independent review of the application of Rule 35 of the Detention Centre Rules in immigration detention, in line with the Home Affairs Committee's recommendation and ensure that similar rules apply to short term holding facilities;:[23]

Stephen Shaw said of Rule 35

"…I conclude that rule 35 does not do what it is intended to do – to protect vulnerable people who find themselves in detention – and that the fundamental problem is a lack of trust placed in GPs to provide independent advice. I recommend that the Home Office immediately consider an alternative to the current rule."

1.77 The rule 35 process was not fit for purpose and there were cases in which there was physical evidence or accepted mental health reports linked with torture, but decisions were made to continue to detain. 1.78 Medical staff either did not make a judgement as to the consistency of the account by the detainees or, where this judgement was made, it was often rejected by the caseworker.

He records of Dover Immigration Removal Centre

3.55 The team reported that all the doctors who worked at the centre had been trained in the completion of rule 35 reports, and that they submitted an average of twelve such reports each month. It was their impression that very few detainees were released as a result.

And of Yarls' Wood "… it was said that 24 out of 25 detainees upon whom rule 35 reports had been submitted had not been released"

It is possible to detect frustration in this part of the Shaw review and the language is stern

4.118 Notwithstanding what appears to be a recent increase in the number of rule 35 reports resulting in release, the vast majority are still rejected by caseworkers. It is abundantly clear to me, therefore, that rule 35 does not do what it was intended to do – that is, to protect vulnerable people who find themselves in detention. The Home Office's approach to has been to focus on whether forms can be made clearer or more user--friendly, and on better training for medical staff. Both of these might help, but they will not fundamentally change the issue at hand, which is – and I put this bluntly – that the Home Office does not trust the mechanisms it has created to support its own policy.

4.1191 do not believe that a further audit of current reports will produce the shift that is necessary to protect those who have been detained, but who are vulnerable and should be released. Nor will improved training for doctors and for the lay caseworkers who make the decisions, desirable though both may be.

4.120 Fundamental to the issue at hand is the lack of trust placed in GPs to provide independent advice. Home Office guidance (DSO 17/2012) requires a "person who is vocationally trained as a general practitioner and fully registered within the meaning of the Medical Act 1983" to complete a report under rule 35. It is wholly unacceptable for the Home

[23] *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session* (6-31 May 2013), CAT/C/GBR/CO/5, 24 June 2013.

Office then to dismiss that report on the grounds that it is insufficiently informed or insufficiently independent. The Home Office cannot have it both ways.

Mr Shaw highlights that there is no attempt at an equivalent of Rule 35 for those held in the prison estate. He writes

Recommendation 22: I further recommend that rule 35 (or its replacement) should apply to those detainees held in prisons as well as those in IRCs.

Other parts of the review attest to problems with health care. Of Yarls Wood, Mr Shaw says

A high proportion of detainees arrive at night and are disoriented, frightened and confused and are therefore unable to take on or impart the information given or required during the lengthy 'Reception' process. Many will have had a long journey. Healthcare screening as part of this process is all too often conducted by male nurses, so the female detainees may be reluctant to disclose sensitive information which might be highly relevant to their vulnerability and/or suitability for detention. Some detainees have little or no English so the induction briefing must be confusing, carried out as it is when the detainee is already feeling disoriented. The use of a telephone translation service can hardly encourage detainees to reveal sensitive information

Of The Verne he says

3.125 I had a most useful meeting with the healthcare team. They told me there had been more elderly detainees than predicted, more mental health problems than predicted, and longer periods of detention than anticipated. They argued very strongly against IRCs having inpatient beds, on the grounds they would be used for detainees on open ACDTs or to prevent transfers to secure mental hospital.

NEW CLAUSE after clause 32 *Immigration Detention: presumptions against detention* in the name of Baroness Hamwee

Purpose To prohibit the detention of pregnant women and to create a presumption against detention for the categories of person listed. To detain such persons, the Secretary of State would have to apply to the first tier Tribunal for an order for detention on the grounds of public interest.

Briefing

See briefing above to amendments **[page 101 line 22]** for comments on the general approach outlined in these amendments. This one focuses on particular groups, those highlighted by the Shaw Review

Stephen Shaw said

"4.17 It is very difficult to create a checklist of all personal factors that may make an individual vulnerable. Indeed, I have some sympathy with a view expressed by those submitting evidence that checklists of vulnerability are not conducive to proper consideration of individual cases."

And

> *…vulnerability is intrinsic to the very fact of detention, and an individual's degree of vulnerability is not constant but changes as circumstances change*

Of the particular groups listed in paragraph 55.10 of the enforcement guidance and instructions on persons considered unsuitable for detention he says

> *I believe that a further clause should be added to the list in paragraph 55.10 to reflect the dynamic nature of vulnerability and thus encompass 'persons otherwise identified as being sufficiently vulnerable that their continued detention would be injurious to their welfare'. Such a clause would also be helpful in respect of those people with a disability.* ***Recommendation 16: I recommend that a further clause should be added to the list in paragraph 55.10 of the EIG to reflect the dynamic nature of vulnerability and thus encompass 'persons otherwise identified as being sufficiently vulnerable that their continued detention would be injurious to their welfare***

ILPA's evidence to the Shaw review was that

> *All those detained under Immigration Act powers are vulnerable: to lack of respect for their rights, to abuse, to mental health problems, by the fact of their detention. The notion of being "vulnerable" is perhaps more helpfully considered through the term "powerlessness". Persons detained under Immigration Act powers are relatively powerless and there are structural reasons for that. These have tangible effects not only on a person's ability to vindicate their rights and ensure that they are treated in accordance with law and policy properly applied, but on the distress arising from the powerlessness that detained persons feel.*

The details of the treatment of the particular groups highlighted in the amendment in the Shaw review serves to underscore the problems with immigration detention more generally and as reminders that other characteristics become subsumed under that of "detainee" with the result that people's needs are not recognised and met. The evidence of the Shaw review is stark but comes as no surprise to those who have talked to detainees about how they and their peers are treated. These parts of the review lead to the question "why are these people being detained at all?" When Stephen Shaw writes

> *3.15 G4S had developed its own, very impressive, Supported Living Plan for those with vulnerabilities including reduced mobility, visual impairment, speech impairment, Learning Disabilities, palliative care and mental illness (an indication of the range of vulnerabilities for which IRCs must provide care…*

The picture of immigration detention that is conjured up is frightening one. It leads back to Stephen Shaw's recommendation:

> *11.8 In my view, a smaller, more focused, strategically planned immigration detention estate, subject to the many reforms I have outlined in this report, would both be more protective of the welfare of vulnerable people and deliver better value for the taxpayer. Immigration detention has increased, is increasing, and – whether by better screening, more effective reviews, or formal time limit – it ought to be reduced.*

The Minister should be pressed on the particular groups Stephen Shaw identifies and asked to agree his recommendations as follows:

> *"…to be 'managed appropriately' those with Learning Difficulties should not be subject to the inevitable rigours of immigration detention. Recommendation* ***13: I recommend that people with Learning Difficulties should be presumed unsuitable for detention.***
>
> *4.44 Second, I am sympathetic to the argument that transsexual people are unsuited to detention given what I have seen for myself is the inability of IRCs to provide an appropriate, safe and supportive environment.* ***Recommendation 14: I recommend that transsexual people should be presumed unsuitable for detention.***

He describes the use of segregation as means of 'protecting' them from other detainees and agrees that this is "entirely unacceptable."

He recommends an upper age limit on detention[24].

> *4.45 I also think that a more exact definition of 'the elderly' would be beneficial both to caseworkers and to detainees themselves, while recognising that the intention in the current wording is to acknowledge a degree of infirmity. In reality, many people are fit and active at very advanced ages, but this insight does not assist when considering how policy should best be drafted. A useful starting point for the Home Office might be the state pension age – i.e. the point at which Government recognises that an individual is no longer expected to work. Be that as it may, the important point is that there should be a specific upper age limit.* ***Recommendation 15: I recommend that the wording in paragraph 55.10 of the EIG in respect of elderly people be tightened to include a specific upper age limit.***

This will remind many readers of his review of Her Majesty's Chief Inspector of Prisons has report on an 84 years' old frail Canadian man suffering from dementia who died in detention in handcuffs having been kept handcuffed for five hours.[25]

Stephen Shaw writes

> "*..pregnant women, elderly people, victims of torture, among them – have special needs (however inapt that term in the context of torture and other abuse), and should only be detained in exceptional circumstances, and there are international protocols to this effect. I have proposed that victims of rape and other sexual violence, those with Learning Difficulties, and some others, should be added to the list. However, consider the list of those considered unsuited to detention that the Home Office has issued as instructions and guidance for its caseworkers, arguing that the presumption against detention should be extended to victims of rape and sexual violence, to those with a diagnosis of Post Traumatic Stress Disorder, to transsexual people, and to those with Learning Difficulties. I argue that the presumptive exclusion of pregnant women should be replaced by an absolute exclusion, and that the clause "which cannot be satisfactorily managed in detention" should be removed from the section of the guidance covering those suffering from serious mental illness*

[24] Recommendation 15.
[25] *Report of unannounced inspection of Harmondsworth Immigration Removal Centre*, 2014, section 1, paragraph 1.3 available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2014.pdf

He goes on to say

> *"4.24 Having considered the views presented to me, and the evidence on removals, I believe there is a strong case for saying that – in common with individuals who have been trafficked or tortured – those who have been the victims of sexual violence, or (in the case of women) gender--‐based violence, should not be held in immigration detention. I appreciate that there may be rare cases in which the detention may be appropriate – for example, in criminal cases, or when removal is very imminent. I also appreciate that the Home Office might have some difficulty in establishing the veracity of individuals' claims to have been such victims. However, the presumption should be that victims of sexual violence should not be detained, and I would like the Home Office to put in place workable arrangements for excluding them from detention at the earliest opportunity.*
>
> *Recommendation 9: I recommend that there should be a presumption against detention for victims of rape and other sexual or gender-‐based violence. (For the avoidance of doubt, I include victims of FGM as coming within this definition.)"*
>
> "*4.34 On the substantive issue of detaining pregnant women, therefore, and independently of my proposals in respect of single point routing, I believe that the Home Office should acknowledge the fact that, in the vast majority of cases, the detention of pregnant women does not result in their removal. In practice, pregnant women are very rarely removed from the country, except voluntarily. In these circumstances, I am strongly of the view that the presumptive exclusion from detention should be replaced with an absolute exclusion.* ***Recommendation 10: I recommend that the Home Office amend its guidance so that the presumptive exclusion from detention for pregnant women is replaced with an absolute exclusion."***
>
> ***"Serious mental illness***
>
> *4.35 The evidence I received criticised the introduction of the clause 'which cannot be satisfactorily managed in detention' into that section of paragraph 10 of chapter 55 that deals with those suffering from serious mental illness. AVID told me this was introduced in 2010. They said that what is meant by 'satisfactorily managed': "has never been defined, and guidance has never been issued on what this management may consist of or look like. The result is that the guidance is often treated arbitrarily." They said it had resulted in a 'watch and wait' approach, "where detention is maintained until the individual deteriorates to the point where she/he can no longer be satisfactorily managed".*
>
> *4.36 It was further suggested that the term has no clinical meaning – indeed, that its meaning is inexact and obscure. I cannot compare the situation today with that obtaining before 2010 when the clause was introduced. But it is perfectly clear to me that people with serious mental illness continue to be held in detention and that their treatment and care does not and cannot equate to good psychiatric practice (whether or not it is 'satisfactorily managed'). Such a situation is an affront to civilised values."*

The Minister should be asked to confirm that the clause "which cannot be satisfactorily managed in detention" will be removed from paragraph 55.10 forthwith.

> *"4.40 I am particularly concerned by the evidence that detention, as a painful reminder of past traumatic experience, can trigger re--traumatisation. The effects of such re--‐traumatisation can include self--injury and worsening psychiatric morbidity.*

Recommendation 12: I recommend that those with a diagnosis of Post Traumatic Stress Disorder should be presumed unsuitable for detention."

PROPOSED NEW CLAUSE after Clause 32 Short-term holding facilities

Insert the following new Clause—

"Short-term holding facilities rules

(1) Within six months of the passing of this Act, the Secretary of State must make rules for the regulation and management of facilities maintained for the purpose of the detention of a detainee for a period up to 7 days ("short-term holding facilities").

(2) Short-term holding facilities rules may, among other things, make provision with respect to the safety, care, health, activities, discipline and control of detained persons."

Purpose To press the Government on when it will publish rules governing detention in short term holding facilities, promised since 2002.

Briefing

These facilities are defined in s 47 of the Immigration and Asylum Act 1999 (c. 33)[26] (*Removal centres and detained persons: interpretation*) as places for detention for a period of "not more than seven days or for such other period as may be prescribed" and persons other than detained persons for any period." Section 5 of the Immigration Act 2014 provides for unaccompanied children to be held in short-term holding facilities in specific circumstances for periods of up to 24 hours.[27]

ILPA has been providing comments on drafts of these rules since February 2006[28].

While rules governing the regulation and management of short-term holding facilities were made in 2002[29] it took until 2006 for draft rules to appear, covering similar ground for short-term holding facilities as do the Detention Centre Rules for Immigration Removal Centres. In 2006 the Home Office consulted on draft rules[30]. ILPA responded[31]. In 2009 the Home Office

[26] As amended by the Borders, Citizenship and Immigration Act 2009.
[27] S.5 Immigration Act 2014, at: http://www.legislation.gov.uk/ukpga/2014/22/section/5/enacted
[28] See http://www.ilpa.org.uk/resource/14493/response-to-home-office-consultation-on-draft-short-term-holdingfacilities-rules. ILPA holds a copy of those draft rules, see http://www.ilpa.org.uk/resource/14494/home-officedraft-short-term-holding-facilities-rules-2006 For Lord Avebury's earlier efforts at chasing see e.g. HL Deb, 30 October 2013, c261W [HL2369].

[29] The Immigration (Short-term Holding Facilities) Regulations 2002 (SI 2002/2538).
[30] See www.ilpa.org.uk/resources.php/14494/home-office-draft-short-term-holding-facilities-rules-2006.
[31] See also www.ilpa.org.uk/resources.php/1889/home-office-to-ilpa-of-7-august-2006-re-draft-short-term-holding-facility-sthf-rules.

consulted on another draft of the rules[32]. ILPA responded[33]. No rules have been published despite a number of freedom of information requests[34] and parliamentary questions since.

On 30 April 2012 at HC col 1086W, Dr Julian Huppert MP asked:

> *(2) for what reason the Short Term Holding Facility Rules that would apply to the Cedars secure pre-departure accommodation have not yet been published; which rules apply to the operation of the Cedars secure pre-departure accommodation; and whether the Cedars secure pre-departure accommodation may operate without published rules.*

The then Minister, Damian Green MP, replied:

> *The Short-term Holding Facility Rules remain under development at present[35].*

In October 2013, Lord Ramsbotham asked the Parliamentary Under-Secretary of State for the Home Office, Lord Taylor of Holbeach, when the rules governing short-term holding facilities would be published. Lord Taylor of Holbeach replied:

> *The draft Short-Term Holding Facility Rules have yet to be finalised and, as such, there is at present no fixed date for when they will be made."[36]*

Neither an apology nor an explanation was offered. On 03 March 2014, during the passage of the Immigration Bill, Lord Taylor of Holbeach gave a commitment that rules governing the management and operation of short-term holding facilities and the Cedars pre-departure accommodation would be introduced before the summer recess:

> *I am aware that there has also been a lack of legislative framework governing the operation of the short-term holding facilities. As has been pointed out by noble Lords, this has been a matter of concern for years to a number of interested parties, including Her Majesty's Chief Inspector of Prisons, who has responsibility for inspecting the UK's detention facilities. The delay in introducing these rules is regretted, but it has been a case of unavoidable delay being caused by a number of different reasons, including, most recently, the discussions surrounding the legislative framework that should apply to Cedars, which we have just discussed, which initially had been classified as a short-term holding facility and, as such, would have been covered by these rules. We have just debated those amendments. Accordingly, today, I give my noble friend a commitment that*

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[32] See www.ilpa.org.uk/resources.php/20183/uk-border-agency-ukba-to-ilpa-re-further-consultation-on-the-draft-short-term-holding-facility-sthf-

[33] See www.ilpa.org.uk/resources.php/13062/uk-border-agency-further-consultation-of-the-draft-short-term-;yxcvbholding-facility-sthf-rules-ilpas-furt . See also The Lord Brett, Parliamentary Under Secretary of State to The Lord Avebury of 11 August 2009 re time limits for detention in Short-term Holding Facilities at www.ilpa.org.uk/resources.php/2919/the-lord-brett-parliamentary-under-secretary-of-state-to-the-lord-avebury-of-11-august-2009-re-time- ; Refugee Council to Kristian Armstrong, Children's Champion, UK Border Agency of 5 August 2009 re short-term holding facilities and child protection www.ilpa.org.uk/resources.php/2940/refugee-council-to-kristian-armstrong-childrens-champion-uk-border-agency-of-5-august-2009-re-short-

[34] See e.g. https://www.whatdotheyknow.com/request/short_term_holding_facilities_2 , https://www.whatdotheyknow.com/request/short_term_holding_facilities_3

[35] Hansard, Written Answers, 30 April 2012, column 1086W at: http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120430/text/120430w0001.htm#120430180000026

[36] http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/131030w0001.htm

separate sets of rules governing the management and operation of short-term holding facilities and the Cedars pre-departure accommodation will be introduced before the Summer Recess. With that, I hope that my noble friend will feel able to withdraw his amendment[37].

Lord Avebury's perseverance finally paid off. Lord Taylor of Holbeach said:

> *" I give my noble friend a commitment that separate sets of rules governing the management and operation of short-term holding facilities and the Cedars pre-departure accommodation will be introduced before the Summer Recess."* Lord Taylor of Holbeach, HL Deb, 3 March 2014, col 1140

On 23 July 2014 the Home Office informed ILPA that Lord Taylor of Holbeach had written to Lord Avebury to say that the rules would not be introduced until after the summer recess. They have yet to appear.

In a written answer of 24 October 2014 to a question by Lord Avebury on conditions in the short term holding facilities at Heathrow, Lord Bates indicated that rules on short-term holding facilities remained pending:

> *We are currently exploring a range of measures as part of the rules governing Short Term Holding Facilities to balance the welfare of those people being held, with effective management of the facilities and immigration control. I welcome the noble Lord's continued interest in this area and his views on the final content of these Rules.*[38]

At the time of writing, over six months later, it remains the case that no rules have been published. The situation is unsafe. Home Office statistics on "self-harm," a term which encompasses suicide and attempted suicide, record one death in the period July to September 2013, of a 43-year old man from Pakistan, at Pennine House Short Term Holding Facility in 2013.

In his review of immigration detention, Stephen Shaw paid special attention to the problems of short-term holding facilities and to the dreadful conditions in some of them. His concerns lead him to recommend that a discussion draft of the short term holding facility rules should be published as a matter of urgency[39], something which would do less than fulfil the promise made to Lord Avebury in 2014. He records at paragraph 1.39

> "It was noted that formal rules and regulations had not been published despite a series of consultations and promises/commitments from the Home Office."

His comments on centres include the following

> Dover dock
>
> 3.164 Evaluation of the detention log for May 2015 revealed that a third of those detained that month had been in the facility for more than 24 hours, with 28 of those

[37] Hansard, HL Deb, Column 1140, 03 March 2014 at: http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140303-0001.htm

[38] Hansard, Written Answer HL2190 at: http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2014-10-20/HL2190

[39]

detained for more than 36 hours. Given the very limited arrangements, I do not believe a stay of more than 24 hours is acceptable.

3.183 One room housed a mother and her 14 year--old daughter. The mother was clearly distressed and was having difficulty contacting her husband using the phone she had been given. When this was pointed out to holding room staff they were able to help, but there had clearly been little attention paid hitherto to the needs of the woman or her child.

At Terminal two he records

3.170 During my visit, two male detainees were seen to get progressively more direct in their attentions to a female detainee. The female detainee was only moved to the quieter area at my team's suggestion.

And at Terminal three

3.175 A female detainee was searched in front of several people. Interviews with detainees took place in full hearing of everyone present. A detainee … was advised to keep money on her for security reasons.

NEW CLAUSE after clause 32 *Registration with police: requirement for review* in the names of Baroness Hamwee and Lord Paddick

Presumed purpose: To require the Secretary of State to undertake a review of the requirement that certain persons under immigration control register with the police and within one year of the passing of this Act lay before parliament a report of that review. The review will provide a cost benefit analysis of the requirement and may make recommendations for change.

Briefing

We have James Ewins QC's review of the overseas domestic workers visa. We have Stephen Shaw's review of immigration detention. We await the Chief Inspector's review of administrative review of immigration decisions by the Home Office. There is a fine line between a review as a means of shining a light on a particular area and a review as a means of kicking an issue into the long grass.

Certain categories of person under immigration control are required to register with the police. Certain nationalities are required so to do. A simple overview of requirements is provided at https://www.gov.uk/register-with-the-police . Those required to register must do so within seven days of arriving in the UK or getting a biometric residence permit. Failure to register can lead to curtailment of leave and affect future grants of leave. Registration is at the Overseas Visitors Records Office in London, save for the city of London where, as in the rest of the country, it is necessary to get in touch with the local police station about registering.

The requirements can create a bottleneck, particularly where students are concerned at the beginning of university terms and there are media reports of students having to queue through the night http://www.bbc.co.uk/news/education-19786520 . The amendments provide an

opportunity to probe the resources devoted to police registration and whether these are adequate to safeguard international students and the UK's reputation.