ILPA briefing to amendments tabled for House of Lords Committee Stage of the Immigration Bill 3 February 2015: Part Five: dealing with amendments concerned with matters other than support, in particular with refugee family reunion

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.

Part five of the Bill is concerned with support but a number of amendments on various topics, including refugee family reunion, have been tabled to it. This briefing is concerned with those amendments. A separate briefing deals with support. ***For further information please get in touch with Alison Harvey, Legal Director on 0207 251 8383, Alison.Harvey@ilpa.org.uk***

After Clause 38

AMENDMENT 231 NEW CLAUSE *Review of the rules relating to refugees reuniting with family members* in the names of Lord Rosser, Lord Kennedy of Southwark, Baroness Lister of Burtersett and Lord Judd; AMENDMENT 234 NEW CLAUSE *Family reunion: persons with international protection needs* in the names of Lord Hylton, Baroness Hamwee and the Lord Bishop of Southwark

Purpose

Amendment 231
This requires a review of the rules on family reunion for refugees and persons granted humanitarian protection to be laid before parliament within six months of the passing of this Act. The review will encompass a review of the Dublin Regulation under which child, and certain adult refugees within the European Union can be moved to make their asylum claim in a country where they have close relatives. The review will also examine the question of British citizens sponsoring family members who are refugees and options for extending the criteria for refugee family reunion.

Amendment 234
The Immigration Rules are made under section 3 of the Immigration Act 1971. This amendment deals with two parts of those rules

i) The rules on refugee family reunion
ii) The rules on family reunion for British citizens and settled persons

The rules on refugee family reunion do not make provision for minor children to be reunited with their parents or grandparents, for adults to be reunited with their parents or with their siblings. The effect of the amendment is to require the Secretary of State, within six months of

the passage of the Act, to make provision within the immigration rules for these broader groups. The terms on which she does so are left to her.

The Immigration Rules make provision for British citizens and settled persons, and refugees where the relationship is outside the scope of the family reunion rules, to be reunited with family members in the UK. The rules include stringent eligibility requirements as to income and savings thresholds and other requirements such as that adult dependent relatives must stand in need of personal care which cannot be provided by the sponsor or by family members in the country of origin. The amendment would require the Secretary of State, within six months of the passage of the Act, to make provision for British citizens and those with indefinite leave to remain in the UK, whether they themselves had ever been refugees or not, to bring to the UK their family members with international protection needs. The terms would be no less favourable than those on which refugees can be reunited with family members save that a condition that the family member could not have recourse to "public funds" as defined in the immigration rules but would instead have to be supported by the family member in the UK, could be imposed.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 makes provision for legal aid to be further extended, or further withdrawn, by secondary legislation. These are separate provisions: an order under 9(2)(a) always makes provision for legal aid to be extended. Thus the amendment would require legal aid to be extended by order to cases of refugee family reunion within six months of the passing of the Act, although the exact terms on which this would be done are left to the Lord Chancellor.

Briefing

ILPA supports **Lord Hylton's amendment 234.** Given the long history and pedigree of the proposals in amendment 234, ILPA considers that any review under **amendment 231** is likely to give rise to recommendations in the terms of **amendment 234** (save in respect of legal aid which amendment 231 does not address). Given the urgency of the current situation and that the government is in a position to move to implementation of those recommendations, ILPA does not consider that a review is required or desirable. We concentrate in this briefing on **amendment 234**, but include at the end a note on the Dublin Regulation which is specifically addressed by **amendment 231**.

UK law makes provision for a person with leave to remain as a refugee to be reunited with spouse, partner and minor children. That entitlement ceases when the person becomes a British citizen; at that point they must fulfil the requirements of the immigration rules (minimum income thresholds and very high bars in respect of relatives other than spouses and minor children.

Rules on refugee family reunion are contained within the immigration rules in Part 11 and Appendix FM. Part 11 provides for reunion of recognized refugees with spouses and minor children on more favourable terms than family applications from other persons (for example there is no fee and no financial threshold to meet). Appendix FM provides for refugees to be reunited with a wider range of family members and for British citizens and settled persons (including but not limited to persons who were recognized as refugees) to be reunited with spouses, minor children and a wider range of family members, but subject to onerous eligibility conditions, such as financial thresholds. ILPA has put detailed proposals to the Home Affairs

Select Committee[1] on refugee family reunion[2].

Extending refugee family reunion

There are refugees who do not have spouses and children but want to be reunited with parents or siblings who are refugees. The current rules provide for refugees to be reunited with their minor children and spouses/partners. Bizarrely, anomalously and cruelly they do not provide for minor children who have been recognised as refugees or given humanitarian protection – yep, recognised as refugees not just given discretionary leave, recognised to face persecution on return – to be reunited with their parents? Why not? The family cannot be together in the country fled.

The current UK immigration rules do not give children the same entitlements to be reunited with their parents as adults have to be reunited with their minor children. Instead they must rely on discretionary provisions of the rules. This is often stated to be to ensure that children are not sent on ahead alone to secure leave for the family but this is based on a misunderstanding of the position of the children who could apply for refugee family reunion. They are not being given discretionary leave because they are unaccompanied; they are being recognized as refugees because they are at risk of persecution by reason of their race, religion, nationality, political opinion or membership of a social group in the country of origin. They have as much right to international protection and to respect for their rights as refugees as any adult. Many people will recognize the choice of parents, forced to pay smugglers because of a lack of safe and legal routes to safety and not having enough money to bring the whole family out, to get their child to safety first and put the child's needs before their own. We have seen the dangerous journeys parents make both with and without their children to try to get them to safety.

Those applying for refugee family reunion should be allowed to submit their applications in the countries in which they find themselves and not required to make hazardous journeys to reach designated posts. For example, family members in Turkey should be permitted to make applications in Istanbul, not to have to travel to Amman.

UNHCR states[3]:

> "*Family reunification plays a significant role in meeting the long-term needs of resettled refugees ...The family is often the strongest and most effective emotional, social and economic support network for a refugee making the difficult adjustment to a new culture and social framework.*"

Examples of cases for which no provision is made under the current rules

> A Syrian girl aged 18 years and four months was refused because she is over 18. At the time of the application she was in Damascus with her grandmother.

[1] http://www.ilpa.org.uk/resources.php/31480/ilpa-briefing-for-house-of-commons-home-affairs-select-committee-inquiry-into-the-european-migration

[2] See http://www.ilpa.org.uk/resources.php/31480/ilpa-briefing-for-house-of-commons-home-affairs-select-committee-inquiry-into-the-european-migration

[3] June 2010 *Background Note for the Agenda Item: Family Reunification in the Context of Resettlement And Integration: Protecting the Family: Challenges in Implementing Policy in the Resettlement Context,* for the Annual Tripartite Consultations on Resettlement, Geneva, 20-21 June 2001.

Two Afghan girls aged 19 and 21 whose father is a refugee in the UK following distinguished service for the UN for which he had been targeted by the Taliban, were refused family reunion and left separated from the rest of the family.

The Iranian male sponsor has been married for 34 years. He has his marriage certificate and numerous photographs. He left Iran in 2007 and was in Greece, unable to get out, working to subsist, unable to be in touch with his family for a period. He developed mental health problems. He has helped by the church to come to the UK where he applied for asylum. He was refused but succeeded on appeal. His application for family reunion with his wife and minor daughter was refused. Legal representatives tried again and the second application has just been refused on the basis that because there was a gap of contact around 2007 for some years, the marriage is not subsisting. They have been in regular touch since 2012. He says it is usual to be away from the family for periods, but when you marry you marry for life, there is no question that marriage is not subsisting and he has never stopped thinking about them. His lawyer writes "But you can't prove that."

Two orphan Afghan siblings are separated; one has been recognised as a refugee in the UK but as a child is not entitled to family reunion.

Delays can have a huge effect in these cases, exposing family members overseas to threats from violence or from disease. Representatives have had the experience of one or more family members on the original application, in particular children, dying before they can come to the UK.

Family reunion for British citizens and the settled with their relatives in need of international protection

At the same time as refugees in the UK seek family reunion, there are British citizens and settled persons who never were refugees, or who are no longer refugees, but who have close family members who are suffering or fleeing persecution, stuck in refugee camps.

The Home Secretary has expressed interest in community sponsorship schemes. Schemes that build on existing family relationships are likely to be more stable and raise fewer safeguarding concerns. Persons with British or settled relatives have a ready made support network in the UK and a real prospect of integrating and in their turn supporting the "most vulnerable" refugees, whom the government intends to resettle, to integrate. British citizens and persons with indefinite leave to remain in the UK are suffering because of their fear for the lives of family members and their knowledge of the distressing conditions in which they are living. Many, MPs' staff are describing the constituents who come to their surgeries because they can find no way to bring their family members to safety.

The current rules on bringing spouses, partners and children to the UK[4] require that the sponsor in the UK demonstrate that they have an income of at least £18,600 per year plus an extra £3,800 for one dependent child and extra £2,400 for each additional child. Only specified sources of income and evidence specified in the Immigration Rules can be taken into account.

[4] See House of Commons Briefing Paper no. 06724, 16 July 2015 *The financial (minimum income) requirement for partner visas.* See also the June 2013 report of the All Party Parliamentary Group on Migration, available at http://www.appgmigration.org.uk/family-inquiry

Thus the income of the UK sponsor can be taken into account, the spouse's income overseas, income they would derive from offers of employment in the UK, and offers of third party support cannot. A person looking to sponsor a spouse, partner or child cannot look to other members of the family, friends or concerned community members to put up the relevant sums.

Where a person does not earn the relevant amount then £16000 plus two and a half times the shortfall in savings must be demonstrated. Again there are rules as to what counts.

The amendment proposes amending the rules where the person to be sponsored is a person in need of international protection. Refugee relatives of British citizens and settled persons, whether inside or outside the EU, should not be expected to meet the requirements of the immigration rules as to earnings, etc. This would mean not having to pay a fee or meet requirements as to minimum income thresholds, language and other requirements of the rules.

What of relatives other than spouses, partners and children? The current rules for adult dependant relatives to come to the UK require that the applicant must, as a result of age, illness or disability, require long-term personal car, described in Home Office guidance[5] as requiring help performing everyday tasks. The applicant must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living because it is not available and there is no person in that country who can reasonably provide it, or because it is not affordable. The Entry Clearance Officer (must be satisfied that the applicant will be maintained adequately, accommodated and cared for in the UK by the sponsor without recourse to public funds.

The All Party Parliamentary Group on Migration recommended[6]:

> ***Adult dependent relatives***
>
> *7. Government should review the rules affecting adult dependents. Consideration should be given to amending the rules to ensure that:*
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> - *Where the UK sponsor can demonstrate their ability to provide full financial support to an adult dependent relative in the UK, or where the relative themselves has the means to financially support themselves, they are able to do so;*
> - *An adult dependent relative can be eligible for sponsorship where they are in need of support from the UK sponsor, but before they become fully physically dependent.*

The Secretary of State could make new rules now. She does not require an amendment to primary legislation to do so. The amendment is prompt, but the timetable it imposes ensures that change happens.

Legal Aid

In the case on legal aid provisions for exceptional funding of cases out of scope of the Legal Aid, Sentencing and Punishment of Offenders Act 2012[7], the judge in the High Court held that refugee family reunion had been within the scope of legal aid all the time, because it was a right "arising from" the Refugee Convention and thus fell within the definition of "asylum" in Schedule

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263241/section-FM-6.0.pdf
[6] http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf
[7]

1 to the 2012. Following this the Legal Aid Agency reinstated legal aid for refugee family reunion. The Court of Appeal disagreed with the judge in the High Court and legal aid for refugee family reunion was again withdrawn.

Without legal aid many refugees will struggle to be reunited with family members. Those most overwhelmed by their current situation and fears for family overseas will all too often struggle most.

The Government said in its response to the consultation on legal aid:

> "*Applications to join family members are treated as immigration cases, and are generally straightforward because they follow a grant of asylum. Respondents argued that these cases are akin to claims for asylum but if a person wishes to claim asylum it is open to that person to do so either as a dependant of a primary asylum claimant or to do so in his or her own right. Legal aid for any such asylum claim will be in scope.*"

This is incorrect. The family members are outside of the UK and hence cannot claim asylum. It would be unlawful[8] to assist them to do. To deny family reunion increases the risk that they make hazardous and clandestine journeys to the UK.

The Home Office record in dealing with these applications is especially poor, and belies the suggestion they are straightforward. Management information collected in 2008-2009 indicated that some 61% to 66% of refusals are overturned on appeal.[9]

Refugee family reunion cases frequently take a long time. Often family members must be traced. Communication may then be indirect and very slow. Even when they can be reached, they may be in a camp and unable under their own steam to travel to interviews at embassies or consular posts etc. Even submitting the application may be a matter of considerable difficulty. It is too often the case that not all family members survive long enough to be reunited in the UK.

A lawyer working in a small not for profit in the South West writes:

> *I have two clients with complex mental health needs (such that I am invited to the mental health team's risk management meetings) - such is the strain of separation, guilt, loss, pain when speak on phone to relatives abroad who are very distressed, have expectations that the sponsor can now sort things out since they have refugee status (so much so that it can become too painful to keep those conversations up)..."*

Work is complicated because refugee family reunion applications are treated in the Home Office as another type of immigration application. Insufficient attention is paid to the situation of applicants who often have protection needs.

For example, family members are expected to cross international borders if there is no Visa Application Centre in the country in which they are living. This can be impossible for those without documents, and dangerous for those who attempt the journey. Having got there they

[8] Immigration Act 1971, s25A

[9] Management information collected by the UK Border Agency for 2009 and 2008, and shared with ILPA and others in discussion on refugee family reunion applications and policy. More recent evidence is not to ILPA's knowledge available. For further statistics, see *Hansard,* HC Report, 22 June 2010 cols 143-144W

face the dilemma of whether to remain in that country while the application is processed, something which can take a considerable time.

There can be debates on whether a relationship is "subsisting". Home Office guidance provides for this to be proven by, for example, being in touch by telephone, but without acknowledging the challenges this may present both to the newly arrived refugee in the UK and the family member overseas. Delays in making the application or a separation of some years are too often used as a reason for refusal even where the person has managed, despite the lack of legal aid, to instruct a lawyer who has explained this.

The requirements of the immigration rules demand detailed evidence and, even where a legal representative is on record, there is often no request for further information where what has been provided is inadequate. Clients are telephoned by the Home Office, without an interpreter being provided, rather than the Home Office calling the legal representative on record.

Legal advice and representation and the ability to challenge cases on appeal on human rights grounds to the Asylum and Immigration Chamber of the Tribunal are thus necessary to win these cases.

An exceptional grant of legal aid is not the answer. One of the test cases in the exceptional funding litigation *Gudanaviciene et ors v SSHD* [2014] EWCA Civ 1622 was the case of B, an Iranian national who was recognised as a refugee for her political activities on behalf of Kurds. Following her departure from Iran, her husband and son, who was born on 2 June 1997, were arrested and interrogated. They were beaten and threatened and ordered on release to give the authorities information about the B. B spoke no English and was dependent on assistance from the Iranian and Kurdish Women's Rights Organisation (IKWRO). They advised her that she might be able to apply for family reunion so that her husband and son could join her in the UK. They were not authorised to assist with such applications. The Court of Appeal records

> *…In the ordinary course the applicants and sponsor would be expected to provide proof of marriage, proof of parentage, proof of a de facto pre-flight family relationship which was still subsisting, and proof of the sponsor's UK refugee status. … (a).. the family did not have access to all documentation required to satisfy the requirements of the rules, on account of their separation and dispersal, (b) the son was a 16 year old now living separately from his parents and it could be contended that he was living an independent life, so that assistance was required with preparing a witness statement to set out what had happened, and submissions were required on the point of continued dependency; and (c) evidence was needed on the psychological/psychiatric impact of separation on members of the family. In addition, the family would need legal advice and assistance in order to make a concurrent application to expedite the family reunion applications, on the basis of factors including the best interests of the son.*

B's son had no passport and there were no facilities available in Iran to enable a visa to allow entry to the UK to be obtained there. B feared that if he approached the Iranian authorities for a passport he would be arrest or ill-treated. The High Court records "The only way he could apply for the necessary documentation to enable him to achieve entry to the UK was to go unlawfully to Turkey and apply there.

This he did. He was staying in Turkey unlawfully, afraid to go out, very distressed and suffering from mental health problems. The husband was at that time hiding in Iran and it was not clear

when he would be able to go to Turkey. They had no financial resources. In the words of the Court of Appeal "B did not speak English, had no experience of UK immigration law and was herself in poor psychological health and without financial or practical resources. …"

Yet an application for exceptional case funding was refused. The refusal was the subject of a review decision, by the Head of the Exceptional Cases Team. He concluded B would not be incapable of submitting an application form without the assistance of a lawyer.

It took six months for the application, prepared without funding, to be decided. B's son was refused. The High Court comments "Apart from the inexcusable delay in dealing with the application having regard to the circumstances in which the applicants were living in Turkey, the decision was extraordinary." The reasons for refusal were:

> *"You have not fully completed your Annex 4 of your application form, but according to your claimed father's application form you last saw your sponsor in February 2013. … You have provided a birth certificate, however apart from this, you have not provided any evidence that you were or are in a relationship with your sponsor. You have provided no photographs of the two of you together or any evidence of any contact … I acknowledge that you have provided your sponsor's Screening interview, but this does not mention you by name. If you had been in a relationship since you were born I would expect there to be overwhelming evidence of this. I am therefore not satisfied that you have been part of a family unit of your father at the time he left his country of his habitual residence in order to seek asylum."*

The Court of Appeal concludes

> *Our conclusions in relation to B's case are as follows. We accept that family reunion is generally a matter of vital importance for refugees and that it was so for B herself. The particular circumstances of B, her husband and her son gave rise to issues of particular complexity. It is striking that even though the application on behalf of the son was prepared with legal advice and assistance, it was refused at first on the ground of failure to satisfy the entry clearance officer that the son was part of the family unit – one of the areas of potential difficulty identified in the application for ECF. The resulting appeal and request for reconsideration added to the overall procedural complexity of the exercise. In relation to all of this, B was wholly unable to represent herself or her other family members. It was not simply that she was unable to speak English but that "[s]he did not have the first clue", as it was graphically put by IKWRO. Without legal advice and assistance it was impossible for her to have any effective involvement in the decision-making process*"

It found the refusal of exceptional case funding to be unlawful.

AMENDMENT 232 NEW CLAUSE *Families of British citizens and other persons with leave to remain* in the names of Baroness Hamwee and Lord Paddick

Purpose Requires the Secretary of State, within six months of the passage of the Act to lower the financial thresholds in the immigration rules which apply to those joining or remaining with a British citizen, a person within indefinite leave to remain or a refugee and person with humanitarian protection (the latter is where the relationship does not fall under the rules for

Refugee Family Union, usually "post flight" families where the couple met after the refugee had fled persecution, for example in the UK)

Briefing

See our briefing to **amendments 234 and 231** above, which looks at these rules specifically in the context of protection cases.

As set out therein, the current rules on bringing spouses, partners and children to the UK[10] require that the sponsor in the UK demonstrate that they have an income of at least £18,600 per year plus an extra £3,800 for one dependent child and extra £2,400 for each additional child. Only specified sources of income and evidence specified in the Immigration Rules can be taken into account. Thus the income of the UK sponsor can be taken into account, the spouse's income overseas, income they would derive from offers of employment in the UK, and offers of third party support cannot. A person looking to sponsor a spouse, partner or child cannot look to other members of the family, friends or concerned community members to put up the relevant sums. Only savings above £16,000 count and these are subject to a multiplier so that an applicant relying solely on savings for an entry clearance application or an application for leave to remain needs to have £62,500 untouched in a bank account for six months.

The June 2013 report of the All Party Parliamentary Group on Migration[11] examined the effect of these rules in detail. ILPA gave evidence to the enquiry[12]. The enquiry recommended

> ***Minimum income requirement***
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> …
>
> *2. The level of the income requirement should be reviewed with a view to minimizing any particular impacts on UK sponsors as a result of their region, gender, age or ethnicity.*
>
> *3. The family migration rules should ensure that children are supported to live with their parents in the UK where their best interests require this. …*
>
> *4. The list of permitted sources of funds should be reviewed to ensure that they fully reflect the resources available to families. In particular: …*
>
> - *Third party support, particularly that provided by a close family member such as a parent, should be considered for inclusion in the rules.*

ILPA's submission to the enquiry of the All Party Parliamentary Group can be read at http://www.ilpa.org.uk/resources.php/17087/13.02.04-ilpa-response-to-the-all-party-parliamentary-group-on-migration-inquiry-into-family-migrati

ILPA's first training course on the new rules was entitled "Don't fall in love," that being the best advice for those faced with the new rules. Rights of migrants and refugees not to be subject to torture or enslavement, the right to a fair trial, strike a chord with very many people, but interference with the right to private, and particularly family, life of a friend, family member or colleague touches many people more nearly.

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[10] See House of Commons Briefing Paper no. 06724, 16 July 2015 *The financial (minimum income) requirement for partner visas.*

[11] Available at http://www.appgmigration.org.uk/family-inquiry.

[12] Available at http://www.ilpa.org.uk/resources.php/17087/13.02.04-ilpa-response-to-the-all-party-parliamentary-group-on-migration-inquiry-into-family-migrati

We are not aware that there is any evidence or indeed suggestion that successful applicants, who are bound by an obligation not to have recourse to public funds, have been found to have claimed any public funds, or to be a burden upon the State and we understand from correspondence that at the time of the consultation on family migration in October 2011 the UK Border Agency had no evidence of this[13] Any financial requirement set higher than "no recourse to public funds" discriminates on the grounds of wealth, for cost to the State is the same whether one meets this threshold by a narrow margin or a large one.

In entry clearance cases, the exchange rate may determine whether the threshold can be met. The All-Party Parliamentary Group records a submission from South Africa: "As barristers, we are top earners here, but when converted into pounds we fall short." Exchange rates and levels of earning in different countries also affect whether savings requirements can be met. The Royal College of Nursing stated in evidence to the All Party Parliamentary Group that the majority of NHS health care support workers earn between £14,153 and £17,253 per annum. The Group records submissions from shop attendants, security guards, office administrators, those studying to be vets or teachers and persons in religious communities unable to meet the threshold. The All Party Group reports that the Migration Observatory estimated that 47% of British citizens in employment in 2012 would not qualify to sponsor a non-EEA partner on the basis of earnings.

The changes do not make a difference to the ability of the family to call on the public purse. Nor can it be assumed that the family will be poorer if reunited in the UK. Remittances may be being sent overseas, the presence of the non-EEA national family member may make it possible for their partner to go out to work, or to work more, and they may themselves work.

The separation of families where income is higher than this minimum results from the detail. Not only do the immigration rules set out a minimum income threshold, but they also define what income will be taken into account, how income will be calculated and time periods during which such income must have been received. The following types of income are not taken into account:

- Financial support from family members;
- The applicant's current and future income from employment or self-employment where an entry clearance application is being made (only that of the British spouse or partner is relevant)
- Savings, unless they have been held for a full six months.

The rules specify how "gross annual income" is to be calculated. For example, where an individual is in the United Kingdom and has worked for an employer for six months or more, gross annual income will be his/her gross annual salary at its lowest point in the last six months, rather than his/her actual annual salary.

A person who can meet the financial requirements but cannot or does not supply all of the required evidence (even where the evidence s/he relies upon does show that s/he or his/her partner has the required sum of money), will not meet the requirements of the rules. Third party support now cannot be counted towards meeting the income requirement whatever the means and willingness to assist.

[13] Wesley Gryk solicitors' letter to the Immigration and Border Policy Directorate of the Home Office of 7 September 2011 and reply from Ms Helen Sayeed of the Immigration and Border Policy Directorate of 3 October 2011.

Thus, the change is an example of outlawing the ability to use judgement in favour of prescriptive requirement the purpose of which appears to be ease of application rather than fulfilment of any policy intention.

Delay is a problem. Return to the UK may be triggered by finding that a British partner is pregnant, or because of illness or other difficulties of family members in Britain. In such cases, there is no time for waiting six months to be able to evidence having held savings for six months. We have seen very wealthy people, who do not keep their assets in cash, who have been unable to meet the rules.

The effect of the requirements is much greater where earnings are low relative to the UK and/or the currency weak. This is about earnings, not expenditure or how much one has to live on, and thus those outside London and the South-East are disadvantaged and the All Party Group also heard evidence that women and those of pensionable age would suffer particular disadvantage.

The rules give rise to discrimination. Since average earnings of women in the UK are lower than those of men[14], the rules indirectly discriminate on grounds of gender. More women than men work part-time[15]. The indirect discrimination against female sponsors and male applicants is exacerbated in entry clearance cases where only the earnings of the sponsor are taken into account.

Under section 55 of the Borders, Citizenship and Immigration Act 2009, the Home Office is supposed to have due regard to the need to safeguard and promote the welfare of children (who may be British or from overseas) in the discharge of its immigration and nationality functions. The All Party Parliamentary Group records breast-feeding mothers separated from their children and fathers who have never met their children and whose partners are struggling alone. The risks of breach of the legal duty are very high.

The following examples, which are adapted (simplified) from ILPA's training materials for MPs' staff, demonstrate just how complicated the rules are in practice and what additional barriers the evidential requirements create:

> *Question*
> *Heather is a British citizen. She is married to a Turkish citizen, Idris. The couple have no children. Heather has been working for the same company for the last three years. Until 30 June 2014 she was earning £1450 per month gross and then she had a pay rise and from the 1 July 2014 is earning £1650 per month gross. Heather has £12,500 in savings. Heather wants Idris to come to the UK as soon as possible.*
> *What gross annual income do they need to show?*
> *Can Heather's savings be used?*
>
> *Answer*
> *They need to show a gross annual income of £18,600.*

[14] European Commission, Gender Pay Gap statistics, United Kingdom, available at http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Gender_pay_gap_statistics (accessed 17 June 2013).
[15] *Op.cit.* The Gender Pay Gap statistics document looks at which gender is in part time work, and compares the number of women with children who work with the number of women with no children who work.

- *Paragraph 13(b) is relevant. They cannot use Heather's savings as they are too low (under £16,000) and cannot be combined*
- *Test 1: what is Heather's annual salary at the date of the application? £19,800.*
- *Test 2: how much (gross) income has Heather received in the past 12 months?*
    - *November 2013 to June 2014: £11,600 (8 x £1,450)*
    - *July to October 2014: £6600 (4 x £1,650)*
    - *Total: £18,200*
- *Heather and Idris only meet Test 1 at present. They should wait two more months as by then the total for Test 2 will be above £18,600.*

Clara is a British citizen. On the 1st February 2015 Clara married Stephen, a South African. Stephen works for an oil company in South Africa and earns in excess of £50,000 per annum. The company he works for has agreed to offer him a similar position in the UK if he decides to relocate there permanently. Clara had been in receipt of Job-Seekers Allowance, but in October 2015 succeeded in finding work. Her new job pays £1250 per month gross. Stephen's parents gave the couple £25,000 at Christmas, which is held in a joint savings account. Stephen wishes to apply to join Clara in the UK.
What sum do they need to show?
Are Jack's earnings taken into account?

Answer
Clara has worked in her job for less than six months; this affects your answer.
Test 1: what is Clara's gross annual income at the date of the application? £15,000.
As this is under £18,600, we look to their savings, which seem to have been held for just over six months.
For Test 1 they would need to show £25,000 (£16,000 + (2.5 x (£18,600 - £15,000))
They have £25,000, so meet test 1.
They cannot, however, meet Test 2, as Clara has not earned £18,600 in the past year. They also cannot combine savings with test 2. (See paragraph 15 of Appendix FM-SE.)
They should revisit their situation once Clara been in his job for six months. .

AMENDMENT 234AA NEW CLAUSE *Family visas* in the names of Baroness **Hamwee and Lord Paddick**

Presumed purpose
Requires the Secretary of State, within six months of the Act's coming into effect, to amend the immigration rules to make provision for the adult dependent relatives of British citizens, the settled and persons in the UK as refugees or with humanitarian protection to make provision for parents or grandparents to be allowed to come to the UK where they demonstrate that they will be adequately maintained, accommodated and cared for in the United Kingdom without recourse to public funds.

Briefing
ILPA has discussed the "adult dependent relatives rule" in the specific context of refugee family reunion in our briefing to **amendments 234 and 231** above. As discussed there, the current rules for adult dependant relatives to come to the UK require that the applicant must, as a result of age, illness or disability, require long-term personal care, described in Home Office

guidance[16] as requiring help performing everyday tasks. The applicant must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living because it is not available and there is no person in that country who can reasonably provide it, or because it is not affordable. The Entry Clearance Officer (must be satisfied that the applicant will be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds.

The All Party Parliamentary Group on Migration recommended[17]:

> ***Adult dependent relatives***
>
> *7. Government should review the rules affecting adult dependents. Consideration should be given to amending the rules to ensure that:*
> - *Where the UK sponsor can demonstrate their ability to provide full financial support to an adult dependent relative in the UK, or where the relative themselves has the means to financially support themselves, they are able to do so;*
> - *An adult dependent relative can be eligible for sponsorship where they are in need of support from the UK sponsor, but before they become fully physically dependent.*

The "Retired persons of independent means" category in the immigration rules[18] was closed in 2008[19] so that there is no route for elderly relatives to come to the UK under their own steam unless they have the two million pounds required under the investor route.

Under the rules in force before July 2013, parents or grandparents aged 65 or over could apply to come to the UK as adult dependent relatives if they were wholly or mainly financially dependent on the UK-based family member, did not have other close relatives in their country who could support them, and could be adequately maintained in the UK without recourse to public funds and housed in accommodation owned or occupied by the UK-based sponsor. Other adult relatives (parents and grandparents under 65, and children, siblings and uncles and aunts) could apply but in addition to meeting the criteria applying to parents they had to demonstrate "exceptional compassionate circumstances'.

The current application of the rules requires such a state of dependency that many elderly relatives will be unable to travel by the time they meet them. There must be no reliance on public funds in providing adequate support for the relative in the UK for at least five years. It will be recognised that it is very likely that those who meet the requirements of the rule will be dead within that period. In the Home Office guidance[20], the following example is given, which highlights how restrictive these rules are:

> *(e) A person (aged 85) lives alone in Afghanistan. With the onset of age he has developed very poor eyesight, which means that he has had a series of falls, one of which resulted in a hip replacement. His only son lives in the UK and sends money to enable his father to pay for a carer to visit each day to help him wash and dress, and to cook meals for him. This would not*

[16] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263241/section-FM-6.0.pdf
[17] http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf
[18] 4 Previously Immigration Rules HC 395 paragraph 317. 5.
[19] Statement of Changes in Immigration Rules HC 1113.
[20] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263241/section-FM-6.0.pdf

meet the criteria because the sponsor is able to arrange the required level of care in Afghanistan.

The rule implies that paying a person who may be a stranger to look after a dying relative far away can be equated with caring for that relative oneself. It means that the better able someone is to pay for such care, the less able they are to satisfy the rule. Government has to date failed to explain the policy intention behind this.

The rules are acting as a bar. The Lord Taylor of Holbeach responded to a parliamentary question by the Lord Avebury[21] by a letter of 18 December 2012 stating that in the period from 9 July to 31 October 2012 only one visa was issued to an adult dependent relative. It is not recorded whether that person was well enough to travel.

The justification is stated to be saving public funds through ensuring that elderly relatives do not use the National Health Service. Given the numbers involved, the costs of any access to the National Health Service are tiny and it is not a proportionate response to deny British citizens and those settled in the United Kingdom the right to care for their elderly relatives. According to the UK Border Agency's 2011 Family Migration: a consultation, 2,700 adult dependent relatives were granted entry clearance in 2010. The overall family migration statistics[22]showed a decrease in family migration in 2011 and 2012.

In its evidence to the All Party Parliamentary Group on Migration the British Medical Association provided first-hand accounts from skilled British citizens who are medical professionals who had taken the decision to leave the UK because they wanted to care for their elderly dependent relatives. For example:

> ***BMA member British citizen, now living in Singapore***
> *I am a British citizen, and work as consultant forensic psychiatrist (on an employment pass/work permit) in Singapore I am 44 years old, and at the peak of my career… I also have one younger sister living in UK, who is also a British citizen. She is a consultant psychiatrist in learning disabilities, and also an associate medical director in an NHS Trust … Her husband, also a British citizen, is an eminent trauma and orthopaedic surgeon… I relocated to Singapore because it allowed my parents to stay with me, uninterrupted, as long as my employment pass was valid. Now my sister and her family are also considering relocating here so that the family could be together. However, we do not wish to make Singapore our home; our home is the UK. At the same time we cannot neglect our parents who left no stone unturned to provide us with the best of education and support…*

The adult dependent relative rule is having a particularly pernicious effect where British citizens and others try to bring relatives in need of international protection to the UK but its effects reach much wider and strike more deeply than that.

[21] HL Report 23 Oct 2012 : Column 189.

[22] See Immigration Statistics, April to June 2012 at http://www.homeoffice.gov.uk/publications/science-researchstatistics/research-statistics/immigration-asylum-research/immigration-q2-2012/family-q2-2012 (accessed 16 June 2013).

AMENDMENT 233 NEW CLAUSE *Failed asylum seekers: support for voluntary return* in the names of Baroness Hamwee and Lord Paddick

Purpose
To make provision for an independent review of assisted voluntary return procedures and for those at the end of the asylum process who have not yet left the United Kingdom to have access to a caseworker, a named point of contact representing the Secretary of State and legal advice.

Briefing
When a person wishes to make a voluntary return and has no grounds for further challenges, or does not wish to pursue those s/he has, legal representatives will have no further involvement in the case. While a lawyer's involvement may extend to aspects of departure, such as whether anti-malarial medication has been provided, we are not involved in a voluntary return.
But voluntariness implies informed consent, freely given and access to independent legal advice is an essential element of voluntary return including 'assisted voluntary return,' a process whereby financial or other support is given to an individual returning Individuals who hold a subjective fear of threats to their life or freedom will be unwilling to return to their country of origin. The provision of legal advice provides the opportunity to identify protection needs in a context where the standard of Home Office decision-making on asylum claims continues to be poor and can also provide reassurance to applicants that their claim has been considered fully.

A named point of contact with the Home Office is also important as we are very familiar with the situation where a person wants to return but nothing happens.

The amendment makes provision for an independent review of assisted voluntary return procedures. The Home Office has recently ended its programme for assisted voluntary return that ran with the involvement of an independent voluntary sector advice service, from Refugee Action, which provided advice and support to people considering voluntary return. An independent review would permit external scrutiny of assisted returns processes that will now exclusively be managed from within the Home Office. The Home Office has ended assisted voluntary return for person in detention and a review would provide an opportunity to consider the effect this has had.

Supporting unsuccessful asylum applicants to make a voluntary return at the end of the asylum process may allow the significant expense involved in enforcing removals to be avoided whilst promoting the protection of the dignity of the person returning.

The amendment provides an opportunity to consider Stephen Shaw's recommendations as to voluntary return. He writes

> *10.34 Ideally, voluntary returns options should be exhausted, and a community based approach attempted, before detention is considered.*

He identifies internet access as providing important support for voluntary return

> *Recommendation 30: The internet access policy should be reviewed with a view to increasing access to sites that enable detainees to pursue and support their immigration claim, to prepare for their return home, and which enable them to maximise contact with their families. This should include access to Skype and to social media sites like Facebook.*

What a person can show for their time in the UK may also be a factor disposing them toward voluntary return. Stephen Shaw recommends

> *Recommendation 32: I recommend that all IRCs should review the range of activities offered to detainees; in particular, those that could provide skills to detainees that would be useful on their return to their home country.*

AMENDMENT 234A NEW CLAUSE *Conditions for grant of asylum: cases of genocide* in the names of Lord Alton of Liverpool, Baroness Nicholson of Winterbourne and Baroness Cox

Purpose Provides for a presumption that a person is refugee where a judge of the Supreme Court has determined that a group to which that person belongs is, in the place from which that person originates, subject to genocide. The presumption will operate in the UK but in addition applicants would be able to apply at British consular posts overseas.

Briefing
Genocide is defined in Article 2 of the Convention on the Prevention and Punishment of Genocide as follows:

> 2. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in
> part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group.

The non-Governmental organization genocide watch divides States into those where genocide is taking place, those where genocide is considered imminent and those where early warning signs indicate a danger of genocide. At the moment it identifies genocide as taking place in South Kordofan, Blue Nile and Darfur in the Republic of Sudan; Iraq; Somalia; the Central African Republic; Rakhine in Myanmar, against the Rohingya but also in Kachin; in Borno State in Nigeria where Boko Haram is killing Christians and others. It identifies a danger of genocide in Burundi.

In the year ending September 2015, the UK received 2,842 applications for asylum from persons from Sudan. In the third quarter of that year 262 applications were received from Iraqis.

Of 795 Sudanese who received a decision in the third quarter of 2015, 662 were recognised as refugees. Of 273 Iraqis, 34 were recognised as refugees by the Home Office during that quarter. Of 203 Nigerians, 21 were recognised as refugees. Thirty-eight per cent of all appeals were allowed.

The idea of a humanitarian visa is not new. "Nansen passports" were used during after the first world war as identification and travel papers for refugees, starting with Russian refugees fleeing the civil war there. Nor is the idea old, Brazil launched a humanitarian visa programme in

September 2013, and Argentina has created its own programme. There are different models. The Brazilian model allows people to come to Brazil to claim asylum. Others provide a temporary status, with an opportunity to apply for longer term protection if it is needed.

The amendment is a reminder that while Syria may be producing the largest number of refugees, there are conflicts as deadly in other parts of the world. The letter of the 1951 Refugee Convention is concerned a State taking responsibility for refugees who seek asylum within its territory, but the spirit of the Convention does not imply permission to make it impossible for them to reach the territory. Keeping borders open is an essential element of refugee protection and it is no answer that one is at a distance from the conflict. Some refugees escape by air and the UK may be a single flight away. Others can find no safety in the intermediate countries through which they travel, or those countries are at full capacity. Turkey is hosting over two million refugees. One in three persons in Lebanon is a refugee. Adequate shelter and food has not been provided in Lesvos and local people, assisted by volunteers, struggle to make good the shortfall. Other refugees have family or other links to the UK, such as having been to school or university in the UK, and see getting to the UK as the best chance to rebuild their lives. If the UK is to advocate to other countries that they keep their borders open to refugees, it must be seen to do so also.

After Clause 43

AMENDMENT 239 NEW CLAUSE *Unaccompanied refugee children* in the names of Lord Dubs, Lord Roberts of Llandudno, Baroness Jones of Moulsecomb and Lord Judd

Purpose Requires the Secretary of State to relocate 3000 unaccompanied refugee children in European Union countries to the United Kingdom. These 3000 children are in addition to the 20,000 the Government has promised to relocate in three years under the vulnerable persons' relocation scheme.

Briefing

Those who wish to read the debates on the Kindertransports of the 1930s can do so at on the Millbank systems pages. An extract appears below, and **more are annexed to this briefing (see end)**. They are a tough read with hindsight, and an even tougher read as the fugue of history plays out its repetitions. They range widely: it is suggested that the Jewish children come to Britain, that 10,000 of them go to Palestine, whose fate was being debated at the time, that they go to Tanganyika. Nor is concern limited to Jewish children, concern about Spanish refugee children is also repeatedly voiced.

> *"**Mr M Macdonald** I understand that, if it is desirable that these children should leave Germany in the meantime, they can be received in this country under the various schemes which are now being operated for the care of Jewish child refugees, if the refugee organisations can guarantee their maintenance. I should add that considerable numbers of young refugees from Germany are at present being admitted into Palestine under the existing arrangements, both as dependants and as students proceeding to recognised educational institutions, including agricultural training centres.*

Mr. Adams *As this is a matter of extreme urgency, will my right hon. Friend see that one or other of the means suggested is used to get these children out of their present environment with the greatest possible speed?*

Mr. MacDonald *That is a matter, in the first place, for the organisations which are doing this work in the country to-day.*

Mr. Noel-Baker *Is the right hon. Gentleman aware that these children in Germany in many cases are in really terrible conditions, without adult protection and without the means of finding food, and is he aware that the machinery of the Home Office for granting visas is so inadequate that the visas cannot be obtained in sufficient quantities to save their lives?*

Mr. MacDonald *All these factors have been borne in mind in reaching this decision. So far as the children coming to camps or other accommodation in this country are concerned, the authorities are doing everything possible to expedite the bringing of the children into this country."*[23]

The last kindertransport took place on 1 September1939, two days before Britain entered the second world war. The war in Syria has raged for years; the fate of the children is a matter of record much more detailed than that to which parliamentarians in the 1930s had access.

The call for the UK to relocate 3000 unaccompanied children was first made by the Save the Children and has been taken up by, for example, the International Development Committee. The matter was debated in the House of Commons on 25 January 2016.

The Government responded to the calls on 28 January. It said that

- The UK will work with UNHCR on a new initiative to resettle unaccompanied refugee children from conflict regions such as Syria to the UK;
- The Department for International Development will create a new fund of up to £10 million to support the needs of vulnerable refugee and migrant children in Europe.

Both of the above will complement existing aid and resettlement programmes. The Minister made explicit that it would not be limited to children fleeing Syria.

The proposals are a step change from the UK's previous insistence on targeting its aid outside the European Union and the first indication that the UK should show solidarity with other European States to whom refugees are turning for protection.

The Government also announced that it would provide further resource in the European Asylum Support Office to help Greece and Italy identify persons, including children, who could be reunited with direct family members elsewhere in Europe under the Dublin Regulation in the UK. This is linked to the UK Government's responsibility under the Dublin III Regulation which has recently been tested in the courts in the case of *R (ZAT, IAJ, KAM, AAM, MAT, MAJ and LAM v SSHD* UKUT JR/15401-1405/2015, discussed below.

Ministers have talked about "strengthening the Dublin Regulation" insofar as this is concerned with pushing back to countries such as Italy, struggling to cope, persons seeking asylum who

[23] HC Deb 14 December 1938 vol 342 cc1975-6.

have turned up in the UK but entered the European Economic Area visa Italy. The Government has said much less about those aspects of the Dublin Regulation which involve the UK in accepting responsibility for persons, including children, who have family members here. The Dublin III regulation provides:

Article 8 Minors

1. Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

2. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.

3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

4. In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).

6. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 9 Family members who are beneficiaries of international protection

Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 10 Family members who are applicants for international protection

If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing

Article 11 Family procedure

Where several family members and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined on the basis of the following provisions:

(a) responsibility for examining the applications for international protection of all the family members and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

(b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

The case of *ZAT et ors* involved three separated children, plus the sibling of one of them who was dependant upon him and had special needs. It was recently heard by the Upper Tribunal as a judicial review. Although there was not disagreement that the children's links in the UK, where they had family members ready and willing to care for them, meant that under the Dublin III Regulation the UK would ultimately be responsible for them, the Government argued, and continues to argue, for it is appealing the case, that such responsibility only arose when the French authorities made a formal "take charge" request to it to take the cases of the children. The evidence in the case was that such a request would take a year to materialize, during which period the children would be in danger in the camp in Calais. The Tribunal held that the children's rights to family life meant that the UK could not sit and wait for the request.

In the Commons debate on 25 January 2016, the Minister argued that

"The vast majority are better off staying in the region so they can be reunited with surviving family members. So we have asked the UNHCR to identify the exceptional cases where a child's best interests are served by resettlement to the UK and help us to bring them here."

He cited UNICEF

UNICEF itself has emphasised

"the importance of first and foremost assessing the individual situation of unaccompanied children, and their best interests, before any actions are taken; noting that in these situations children who may appear unaccompanied are in fact being supported by family members, or others, and decisions on how they are cared for should take this into account."

ILPA shares UNICEF's concerns about the effect on the likelihood of eventual family reunion. In cases where children have family members in the UK, there is a response to the4se concerns. The child is not going into public care in the UK, but in the family unit. Parents are likely to get in touch with the family. Moreover, some 26,000 unaccompanied children have come to the European Economic Area. Any advantage to their prospects of family reunion that derive from

remaining in the region of origin have already been lost, as Sir Eric Pickles MP reminded the Minister

> *I am pleased that the Prime Minister is looking at this matter again. He is quite right to try to keep children in the region, but to use one of those phrases, we are where we are. There are children at risk, and I urge the Government to look carefully at that.*

Tim Loughton MP echoed him:

> *Notwithstanding the considerable aid that we have given to displaced Syrians in the area, which is the right thing to do, there is a humanitarian case for helping the children who are in limbo and very vulnerable to traffickers, the elements and so on.*

UNHCR is charged with the identification of the children outside European Economic Area and the UNHCR Best Interests determination and assessment procedures take very seriously the question of whether relocating the child will enhance or reduce their changes of family reunion and whether current risks make it imperative to move the children. The Minister said in the 25 January debate

> *We know that the people traffickers exploit anything that we say and twist it in a perverse manner to encourage more people to travel and put more lives at risk. That is why we are looking at this issue very closely to determine what is in the best interests of the child, to ensure that more lives are not put at risk and to see how we can support this activity.*

The people traffickers are not short of things to exploit. They have the situation in Syria; they have the dire situation in many countries through which refugees travel and where they end up. The idea that the UK's sharing responsibility within Europe will fundamentally alter the calculations of refugees seeking safety or those who exploit them is a proposition for which no evidence has been advanced and for which, we suggest, evidence is unlikely to exist to be advanced. ILPA has made this point to the House of Lords Committee on the European Union in its evidence to the Committee's enquiry into The United Kingdom opt-in to the proposed Council Decision on the relocation of migrants within the EU3 and on the EU Action Plan on Migrant Smuggling[24].

The Committee described itself as "not convinced" by the Government's reasoning. It

> *31. … we heard arguments that the Government's concern that the proposal could act as a "pull factor", which would encourage further migration to the EU, was not supported by evidence. The migrants affected by the present proposal are those belonging to nationalities for which international protection is on average granted in at least 75% of cases—at present, those from Syria, Eritrea and Iraq. The situation in each of these countries is dire: it is clear that the vast majority of those leaving these countries are fleeing civil war or the imminent threat of persecution. This is underlined, for instance, by the presence of millions of Syrian refugees in camps in Jordan and Lebanon. The Government's argument that the relocation of 40,000 migrants who have reached Greece or Italy will somehow encourage more to leave their countries of origin is therefore unconvincing.*
>
> *32. The Government's approach will do little to help the response to a humanitarian crisis within the EU's borders.*

[24] HL Paper 46, 4th Report of Session 2015-2016 , 27 October 2015
http://www.publications.parliament.uk/pa/ld201516/ldselect/ldeucom/46/46.pdf

> *33…we are concerned that, by failing to opt in, the Government would fail to live up to its duty of solidarity and burden-sharing between the Member States during an "emergency situation".*
>
> *34. Finally, we recognise the international and domestic political implications of failing to opt in. The EU's delayed response to the crisis has significantly weakened its credibility as an international actor and has attracted global criticism.*

ILPA concurs with the Committee. To describe the situation in terms of "pull factors" is to ignore that the push factors, persecution, war, torture, extra-judicial execution and overburdened countries of first asylum provide more than enough motive for persons to flee to the European Union. Conditions of insecurity in countries of first asylum, and basic needs not being met, are further push factors. These points are developed in ILPA's responses to House of Lords European Union Select Committee for its enquiry into migrant smuggling, and to the Home Affairs Committee. ILPA's evidence to the Committee is available at http://www.ilpa.org.uk/resources.php/31315/ilpa-submission-to-house-of-lords-select-committee-on-the-euroepan-union-home-affairs-sub-committee-

The United Nations and its implementing partners are having to contemplate shifting resources, already insufficient, from Turkey which is hosting 2.3 million refugees, Lebanon where one in three of the population is a refugee and Jordan, to one of the richest continents in the world, because the States of Europe have failed to get refugees to places where they can be provided with food and shelter[25] .

People are walking. Across Lesvos in the dark if they are not lucky enough to benefit from a lift from the volunteers on the island or unlucky enough to fall prey to gangs who take their money then dump them far from their destination. People are walking from Greece, through Macedonia, fearing to stop, fearing that borders will be closed again. A recent account described a child with a broken arm, continuing the long march with her mother who feared to stop to go a hospital until Austria, the final destination, was reached.

Winter is coming. Lesvos, Lampedusa, Sicily, Hungary, all are close enough to go and see what is happening and many have been. At the Society of Black Lawyers and Society of Asian Lawyers conference at Westminster Central Hall on 12 December 2015 one lady, a dentist, who had volunteered on Lesvos, described how difficult it is to take wet clothes off a shivering baby. She described volunteers coming from all over the European Union, and indeed further afield, to Lesvos, because of the limits on what they could do for refugees closer to home and the feeling that in a situation such as the present, to be a bystander was not an option.

The situations from which the refugees currently in the European Union have fled are worsening. These refugees are not about to leave. Large numbers of persons will remain displaced for many years, even if the situations which have produced refugees are rapidly resolved, which currently does not appear likely. This is what UNHCR defines as a protracted refugee situation. It is no good huddling in a corner and waiting for it to stop.

At the Society of Black Lawyers and Society of Asian Lawyers refugee conference on 15 December 2015, Dr Yasmeen Hasnain, an NHS consultant in emergency medicine at Milton Keynes NHS Foundation Trust and tutor of the School of Emergency Medicine at Oxford

[25] http://data.unhcr.org/mediterranean/regional.php

Deanary and Dr Tanveer Hussain a senior General Practitioner with considerable humanitarian assistance, described the results of a fact-finding mission to Sicily, and Lampedusa in June 2015 supported by the Pakistani Medical Association and a visit to Calais in September 2015. They described the considerable physical and mental health problems of the refugees. They also described meeting, by chance, refugees they had met in Catania who had made it to the Calais jungle, and the striking deterioration in their mental health during their time in Europe.

When this matter was debated in the House of Commons on 25 January 2016, the Minister, James Brokenshire MP, said

> *"The Government are clear that any action to help and assist unaccompanied minors must be in the best interests of the child, and it is right that that is our primary concern."*

It would be unacceptable to bring an unaccompanied child to the UK, make him/her feel safe here and then, if their parents were relocated, refuse to allow the child to be reunited in the UK with his/her parents. The UK's discriminatory attitude toward refugee children is discussed above in our comments on **Lord Hylton's amendment 234**. Such discrimination is contrary to the best interests of children. Sir Edward Leigh MP, albeit speaking against Save the Children's proposal that the Government bring 3,000 separated children to the UK, did not doubt that relocating a child entailed obligations toward them in respect of family reunion:

> *For every child refugee we take from a camp in Dover or Calais, we will simply have to take many other people who will come as part of the family.*

Conservative MP Andrew Bridgen said

> *"Many Members of this House are suggesting that we rescue unaccompanied minors from other European Union countries and bring them to Britain. Does the Minister agree that one of the dangers of that is that their relatives will appear, and human rights lawyers in this country will insist that they have a right to join those minors in the UK because they have a right to a family life?*[26]*"*

Yes, as human rights lawyers, we shall insist that these children have rights to family reunion, as refugees who have suffered persecution and now seek to rebuild their lives.

It would be unacceptable to bring an unaccompanied child to the UK but hold over his/her head the prospect of not being allowed to stay past the age of 18. What teenager, and most of the children in question will be teenagers as in most cases younger children either find their way into some form of family unit or fail to survive[27], could feel safe with the prospect of removal hanging over them. This fails to have regard to the best interests of children.

The current UK immigration rules do not give children the same entitlements to be reunited with their parents as adults have to be reunited with their minor children. Instead they must rely on discretionary provisions of the rules. This is often stated to be to ensure that children are not sent on ahead alone to secure leave for the family but this is based on a misunderstanding of the position of the children who could apply for refugee family reunion.

[26] Col 46.

[27] Yvette Cooper MP described seeing children of 11 and 12 in Calais, being cared for by a British volunteer, HC Deb, 25 January 2016, col40.

Children asking for refugee family reunion are not given discretionary leave because they are unaccompanied; they are being recognized as refugees because they are at risk of persecution by reason of their race, religion, nationality, political opinion or membership of a social group in the country of origin. They have as much right to international protection and to respect for their rights as refugees as any adult. Many people will recognize the choice of parents, forced to pay smugglers because of a lack of safe and legal routes to safety and not having enough money to bring the whole family out, to get their child to safety first and put the child's needs before their own. We have seen the dangerous journeys parents make both with and without their children to try to get them to safety.

The position could be changed without primary legislation.

The 28 January 2015 announcement stated

> *The Government is also doing more to provide support for unaccompanied asylum seeking children who are already in the UK and have been subject to trafficking and/or exploitation".*

Peers should ask the Government what is being done. The evaluation of the pilot of advocates for trafficked children has concluded that they should not be provided[28], despite the independent evaluation of the trial, conducted by the University of Bedfordshire[29], finding that the service was important in "ensuring clarity, coherence and continuity" for children and the services around them. It stated the advocates' trial was "successful" and noted a number of beneficial outcomes for children. Most importantly, children themselves found the role of the advocate was positive.

As to support for separated children, as the provisions of this Bill will mean that they lose leaving care support as discussed in ILPA's briefing to the Part 5 Support Amendments[30]. Student support is also cut, as explained in ILPA's briefing to **AMENDMENT 239b** in the name of **Baroness Kennedy of the Shaws**, which forms part of the same document.

After Clause 43

AMENDMENT 239A NEW CLAUSE *Marriage: immigration status* in the name of Lord Teveson

Purpose To prohibit immigration laws from placing constrains on the rights of a citizen of the United Kingdom to marry or enter into a civil partnership and to live with their spouse and partner in the United Kingdom.

Briefing

The right to marry is protected by Article 12 of the European Convention on Human Rights:

> *Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.*

[28] See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486693/53019_Unnum_Report_PRINT.pdf

[29] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486138/icta-horr86.pdf

[30] Available at http://www.ilpa.org.uk/resources.php/31781/ilpa-briefing-to-amendments-tabled-for-house-of-lords-committee-stage-of-the-immigration-bill-part-f

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The right does not entail a person's being given a particular immigration status and in this respect Lord Teveson's amendment goes further as it provides that a British citizen shall not be prevented from living with his or her spouse or partner in the United Kingdom.

Prior to changes to the immigration rules in 2014, a person who wished to be joined by their spouse or partner in the UK, or to have their spouse or partner remain with them, had to demonstrate that they could live together without recourse to public funds and that there was adequate accommodation for them. The couple had to be parties to a lawful marriage or civil partnership and to have met. The character, conduct and associations of the incoming spouse was also in point.

In July 2012 the rules were changed. Henceforth it was not sufficient that the couple could maintain and accommodate themselves and any dependent children without recourse to public funds. Instead they had to demonstrate an income of £18,600 and often demonstrate greater funds, as described in our briefing to amendment 232 in the names of Baroness Hamwee and Lord Paddick above.

These rules are not the end of the story. The couple who cannot fulfil all the requirements may seek to rely on Article 8 of the European Convention on human Rights which provides:

ARTICLE 8 Right to respect for private and family life

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In the Immigration Act 2014 an attempt was made to codify Article 8. Section 117B which it inserted into the Nationality, Immigration and Asylum Act 2002, *inter alia*, provided that

> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
>
> (a) are less of a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (3)It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
>
> (a) are not a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (4)Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5)Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

Home Office guidance defines "precarious" as the person's having limited leave to remain, even where the person has a route to settlement. As predicted, the codification has given rise to considerable litigation. The upshot can broadly be summarised as being that whether a person can join or remain with their spouse or partner in the UK is a matter of Article 8 of the European Convention on Human Rights, as it was before the 2014 Act was passed, but the Secretary of State can determine who gets a more favourable form of leave, by reference to the provisions of the Act. Litigation is ongoing and seems likely to be so for some time.

When a relationship qualifies on the basis of Article 8 alone, the route to settlement can be as long as 10 years.

The amendment takes us back to first principles. The Immigration Rules prevent persons from being with their spouse or partner in the UK. To very many people in the UK, that comes as a considerable shock when it affects them or someone close to them. The proposition that the result of your choice of partner is that you are banished from your country, in some cases for life, does not seem reasonable or humane. Let alone the prospect that, because your spouse or partner's company applies similar rules, there is nowhere that you can be together.

Immigration law favours those with money and in some cases does not accommodate those without money at all. Family immigration is an example of this. It is easy to get lost in debates about whether the £18,600 earnings threshold or other requirements should be modified and cease to look at this interference with people's ability to live peaceful lives in their country with the partner of their choice.

ANNEX – DEBATES FROM THE 1940S

REFUGEES HC Deb 23 November 1938 vol 341 cc1734-517

Colonel Wedgwood asked the Prime Minister whether he is aware that delays of three months and over occur in the issue of visas to Jewish children from Germany after all guarantees have been given; will he state the reasons for the delay; and can the business be expedited, in view of the increasing danger to the children?

The Under-Secretary of State for the Home Department (Mr. Geoffrey Lloyd) … a scheme has been agreed with the Inter-Aid Committee for Children to eliminate all delay so far as His Majesty's Government are concerned in the grant of facilities to children who are to be brought to this country for educational purposes under the care of the committee.

Colonel Wedgwood Is the hon. Gentleman aware that only last week I gave him the names of three children whom we have been trying to get out of Germany since August, and can he do nothing to hasten cases of that sort?

Mr. Lloyd There have been some delays in the past particularly in regard to private persons who wished to take children and whose cases were referred to the Inter-Aid Committee. I would point out that the situation has now been transformed by the new arrangements …and that we had a meeting with the Inter-Aid Committee at the Home Office yesterday at which detailed arrangements were agreed.

Colonel Wedgwood Does that mean that we must apply all over again in the case of these children? Why should there be any reference to the Inter-Aid Committee when there are people ready to take the children and give the necessary guarantees?

Mr. Lloyd It will not be necessary to make another application for them, but I have replied to the question on the Paper, and indicated that large-scale arrangements have now been made to deal with this problem.

Sir P. Harris Has the Department considered expanding this section of the Home Office owing to the increased amount of work, so that the work may be expedited? Some of these cases occupy three months. Undoubtedly that is not entirely the fault of the Department. Can there be some indication that the staff of the Department will be increased?

Mr. Lloyd Yes, Sir, the reply of my right hon. Friend to which I referred in the first part of my answer indicated that an expansion was taking place at the Home Office….I should not like to allocate to any particular body responsibility for the delay in the last few months. It was admitted by my right hon. Friend, and it was due to the great pressure of the work. Now there is to be an expansion at the Home Office and the Inter-Aid Committee are also greatly expanding their staff.

HC Deb 24 November 1938 [31]

Captain W. T. Shaw asked the Home Secretary whether, in view of the widespread interest taken in the question of Jewish refugees, he will arrange for the weekly publication of figures showing the number of adults and children admitted to this country?

Mr. Lloyd As my right hon. Friend previously explained, there are difficulties in the way of giving figures showing the number of refugees who arrive in a given week, because amongst those who come here as visitors or students there are some who apply later to be allowed to stay as refugees, but my right hon. Friend will consider whether figures can be compiled of those who are identifiable on arrival as refugees.
Captain Shaw asked the Home Secretary the duration of time that Jewish refugee children are to be allowed to remain in this country; and whether he will see that steps are taken to keep trace of the children and arrange for their leaving the country at a fixed age?

Mr. Lloyd It is proposed that refugee children admitted to this country under the care of the Inter-Aid Committee for Children may be permitted to remain in this country for purely educational or training purposes until they have completed their education or training, on condition that they are not placed in ordinary employment. A record will be kept of each individual child.

Captain Shaw Will the Government consider issuing a White Paper with regard to aliens coming into this country, giving the exact conditions and guarantees under which they will be admitted?

Mr. Wedgwood Benn In the interests of the good name of this country, will the hon. Gentleman do his best to discourage questions such as this?

[31] http://hansard.millbanksystems.com/commons/1938/nov/24/refugees.

…

Mr. Riley asked the Home Secretary whether His Majesty's Government have under consideration the provision of any financial assistance for the accommodation and training of German or other refugee children who may be brought to this country?

Mr. Lloyd The question whether financial assistance should be given by Governments was one of the matters considered at the Evian Meeting, and the view taken by the countries represented at that meeting was that the Governments of the countries of refuge and settlement should not assume any obligations for the financing of involuntary emigration.

Mr. Riley Has the Minister received any representations from the Inter-Aid Committee or other refugee organisations with regard to financial assistance; and does he consider that it will be possible to deal with the urgency of these refugee children?

Mr. Lloyd I am not aware of any representations of that nature.

Mr. Lipson Will not my hon. Friend reconsider that decision, in view of the increase in the nature of the problem? Would not the Government be prepared to contribute, to responsible private agencies, at least £1 for £1?

Lieut.-Colonel Acland-Troyte Will my hon. Friend consider the interests of the British taxpayer?

Mr. Noel-Baker Will any representations that are made be considered?
Mr. Lloyd My right hon. Friend is always prepared to consider all representations, but in saying that I must not be taken to imply any particular undertaking.
…
Mr. Edmund Harvey asked the Home Secretary whether, in order to avoid prolonged delays, he is prepared to grant a bloc visa for groups of Jewish refugee children from Austria and Germany in cases in which provision for maintenance is guaranteed?

Mr. Lloyd Yes, Sir. It has been decided to waive the requirement of a visa for refugee children brought to this country for education purposes under the care of the Inter-Aid Committee for Children. I would refer to the reply which I gave yesterday to the right hon and gallant Member for Newcastle-under-Lyme (Colonel Wedgwood).

HC Deb 5 December 1938[32]
Miss Wilkinson Is it proposed to move the Consulate in Berlin since it is now in an area which is prohibited to Jews?

HC Deb 4 December 1938 [33]

Mr. Butler I am informed that a police decree became effective on 6th December which prohibits German and stateless Jews from entering certain thoroughfares, including that part of the Wilhelmstrasse in which the British Embassy is situated. Visas are, however, granted at the Passport Control Office which, with the Consulate-General, is situated in the Tiergartenstrasse, in respect of which there is no such prohibition

HC Deb 31 January 1939[34]

[32] http://hansard.millbanksystems.com/commons/1938/dec/05/british-consulate-vienna-visas#S5CV0342P0_19381205_HOC_170
[33] http://hansard.millbanksystems.com/commons/1938/dec/14/jews#S5CV0342P0_19381214_HOC_130

Ms Rathbone: Since the beginning of July only between 6,000 and 7,000 German refugees have been allowed to enter this country, of whom nearly one-half were children. We know that the regulations under which they are permitted to enter are such that it is mainly only the relatively well-to-do refugees who are able to get in because only these can obtain the financial guarantees demanded. We, unfortunately, accepted the fatal principle adopted at the Evian Conference that not a penny was to be spent from public funds and that everything done to assist refugees must be done by voluntary enterprise. There is not an expert on the refugee question who does not recognise that that is equivalent to saying, "We are very sorry for all the people who are in danger of being drowned by this flood, and we will do our best to rescue them, but, mind, we must use nothing but teacups to bale out the flood….

…there are several thousands who are in deadly danger. We are apparently willing to abandon them to the danger of being handed over to their deadly enemies rather than risk a few thousand pounds in bringing them over. I know that the Under-Secretary has sympathy in this matter, and I appeal to him to do something to speed up the mechanism and to relax these regulations which are making it impossible for voluntary organisations to bring over more than this dribble of refugees because they make it necessary in every case, not merely to provide the cost of transport and maintenance, but the cost of eventual migration and settlement overseas. Cannot we risk a few thousand pounds rather than abandon these people to the terrible fate that may possibly await them? I feel that in this small matter we may appeal with some hope of success for the Government to adopt a more farsighted and generous policy than heretofore."

HC Deb 1 February 1939

Mr. Mander Will not the right hon. Gentleman take the earliest opportunity of bringing before the Conference, on humanitarian grounds, the possibility of allowing these 10,000 children to go in now?

Mr. Malcom MacDonald I have already given an assurance that the Government will keep that possibility in mind. I cannot go beyond that.

Mr. Leach Has the right hon. Gentleman any idea of how many subjects he has now promised to keep in mind, and does he feel sure that his mind will stand the strain?[35]

HC Deb 09 February 1939 vol 343 c1128W
Colonel Wedgwood asked the Home Secretary whether there is any public control over and any public audit of the funds collected in this country for the relief of refugees from Germany; on what is the money being spent; and how is it that, in spite of the collection of these large funds, no Jew can come to Great Britain unless some private person will guarantee that he or she will personally be responsible for seeing that they are housed and fed without becoming a charge either upon the country or upon the funds collected?

Sir S. Hoare I know of no justification for the suggestion in the last part of the question. On the contrary, my information is that numbers of refugees arc being supported from the funds of the voluntary organisations, but the calls on those funds are great and it would be most unfortunate if the impression were created that the raising of collective funds lessens the need for help from individual guarantors. Funds collected for the relief of refugees are on the same footing as other charitable funds; and are not subject to Government control.

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[34] 31 January 1939 http://hansard.millbanksystems.com/commons/1939/jan/31/foreign-affairs#S5CV0343P0_19390131_HOC_441

[35] HC Report 1 February 1949

HC Deb 16 February 1939 vol 343 cc1905-7

REFUGEES.

…Brigadier-General Spears asked the Home Secretary whether his attention has been drawn to a recent case in which a German Jew escaped to this country without a landing permit, and that the magistrate refused to make the order for deportation asked for by the police; and on whose instructions the police ask that German Jews should be sent back to Germany?

Sir S. Hoare As the case to which the hon. and gallant Member refers is the subject of judicial proceedings which have not yet been concluded, I must defer any comment on the facts of this case. There is, of course, no instruction to the police to ask that German Jews should be sent back to Germany, but if the policy of admitting to this country a number of selected refugees is to be maintained, it is essential that no countenance should be given to irregular and illegal methods of entry.

Brigadier-General Spears Is it not the fact that in this particular case the police asked that this man should be sent back?

Sir S. Hoare I have just said that I cannot comment on a case which is sub judice.

Mr. Messer Is it not true that the magistrates cannot make an order, but can only recommend?

Sir S. Hoare Yes, Sir, that is the case. The Secretary of State makes the order.

HC Deb 6 April 1939

Colonel Wedgwood Tanganyika?

Earl Winterton The difficulties about Tanganyika are of a character about which I should not like to talk too much. In more than one quarter it is not thought advisable for the Jews to go there.

Mr. Mander The Prime Minister suggested it.

Earl Winterton He did. The hindrance is not on the part of His Majesty's Government. An offer has been made of settlement in that country, but there is unwillingness on the part of certain Jewish organisations to consider settlement there, for very obvious reasons. It is, however, a small matter compared with the aggregate of the whole numbers. I should particularly like to mention the case of San Domingo, which has made an offer to take 100,000 settlers. I do not know why the right hon. and gallant Gentleman smiles.

Colonel Wedgwood If the Noble Lord asks me why I smile, he must be very ignorant of the recent history of Dominica, where there has been a massacre of 100,000 Dominicans by Haitians.

Earl Winterton …I can only deplore the calamitous statement that we were inviting these people to go to malaria-ridden countries. At one time there was as much malaria in Palestine, as I know from personal experience, having had it there, as in any country of its size in the world. But that malaria is gradually being extirpated. In no case would the Committee of which I am Chairman encourage a single Jew to go to any country where he ran an undue risk from malaria.[36]"

[36] http://hansard.millbanksystems.com/commons/1939/apr/06/refugees-1#S5CV0345P0_19390406_HOC_350

HL Deb 05 July 1939 vol 113 cc1011-6810[37]

REFUGEE PROBLEM

THE EARL OF LYTTON…It must not be assumed that all these people, whose condition at the moment is so piteous and whose future is so hopeless, are in themselves helpless or inefficient, and that their transfer into other countries must necessarily mean a burden upon the country which receives them. … Many of these people are of high technical skill and great educational attainments. They are well able, if allowed, to render real service to the countries in which they settle in return for any help which they may receive. Even those who have the least to give can do something, because, after all, they have to be housed, fed, clothed and warmed, and the provision of housing and food and clothing and fuel will bring employment to the persons who supply these things.

It is a complete fallacy to suppose that every foreigner who obtains employment in this country necessarily deprives a British workman of employment. All the economists who have written on this subject—I believe without a single exception—have agreed that that is not the case. The whole of our past history confirms the views of these writers….

THE LORD ARCHBISHOP OF CANTERBURY…I am thinking rather, first of all, of the children. I have every reason to believe that numbers of these children, particularly of the Czechs, are children of quite extraordinary intelligence and promise. I do not see at present that they have any future in their own country, but it would seem to be a thousand pities if these extremely clever and promising children, already most grateful for their temporary education in this country, should not be encouraged to stay to complete their education and training, and, finally, to take their positions in this country. I think that nothing but benefit could accrue from the absorption of a good many of these intelligent children.

Then, again, as the noble Earl pointed out, there are those, somewhat older, who are being trained in one way or another in agriculture and other industries, but who at present are under the necessity, when their training has advanced to some extent, and after they have reached the age of eighteen, to be repatriated elsewhere. Having regard to the need of work upon the land, for which many of them are now being trained, again I suggest that it is a short-sighted policy to insist upon their repatriation, and that there are multitudes of them who could very well be absorbed in this country…

THE EARL OF LISTOWEL … There is a common assumption underlying this debate, which is shared by all those except perhaps the inhabitants of the countries from which refugees come, and that is that these refugees are a common responsibility of every civilised nation, and that each country has to play its part, according to its economic resources and according to its opportunities for offering temporary asylum or permanent refuge, in providing the means of life for these helpless and persecuted people.
The question surely that is before our minds first and foremost this afternoon, and is naturally one that confronts every member of the British Legislature is: Is this country really making its rightful contribution? Are we doing our share in the common effort to provide these victims of intolerance with a fresh start?

… this is an opportunity and not a question of simple charity. At a time such as this, when exclusive nationalism and fanatical intolerance flourish in so many parts of the world, it is surely a privilege to show that we at least are not suffering from any relapse into tribal mentality and that we remain to-day, as we have always been in the past, tolerant of opinions that differ from our own and sensitive to sufferings and injustice outside the boundaries of this country and outside the boundaries of the British Commonwealth. We can show this most plainly by opening wider our own doors. It has often been said

[37]HL Deb 05 July 1939 vol 113 cc1011-6810, http://hansard.millbanksystems.com/lords/1939/jul/05/refugee-problem#S5LV0113P0_19390705_HOL_20

that the degree of real civilisation attained by a country—and this has not been said by merely one sex—can be measured by its attitude to women. Now that the struggle for women's rights is a thing of the past, and in most though by no means in all respects there is equality of status and opportunity as between the sexes, a more appropriate criterion at the present day would be the attitude of a country towards the homeless and unprotected refugee.

Besides—…—the average refugee is definitely not merely an economic but a spiritual or, to use the modern terminology, an ideological asset to his adopted country. He has been driven into exile just because he believes in democracy, in freedom of thought, of assembly, of speech, in following his own private conscience instead of obeying blindly the commands of an all-powerful State. If these ideas are, at bottom, what distinguish our social institutions from those of totalitarian dictatorships, then surely the men and women who cherish them in these days are worth protecting. It is a little curious to my mind that Governments seem always more concerned with refugees as producers and consumers of material goods than as gratuitous retailers of inexhaustible spiritual wealth. ..

I hope that these considerations, added to the more weighty considerations put forward by the noble Earl and by the most reverend Primate, may help to persuade the Government to adopt a more liberal policy towards refugees; for dissatisfaction with Government policy to-day towards refugees is by no means confined to Party politicians or even to eager humanitarians with warm hearts but woolly heads. I should like to quote, with your Lordships' permission, two passages from a book by Sir John Hope Simpson, to whom the noble Earl has already referred, and who is, of course, acknowledged as one of the greatest living experts on the refugee problem. He says, referring to the contribution made by our own country: Great Britain's record in the admission of refugees is not distinguished if it were compared with that of France, Czecho-Slovakia or the United States of America. The strictly enforced, restrictive and selective policy of immigration which she has pursued since the War—particularly the emphasis placed on the admission of aliens only with economic resources adequate to their re-establishment—has kept the number of admissions to figures that have little significance in the total numbers of post-War refugees. Again he goes on to say, after referring to financial contributions given by the British Government towards the relief of refugees outside this country: It is doubtful, however, if this international work"— to which he rightly pays tribute— largely personal and periodic, is a sufficient contribution when measured by the standard of those made by other countries. Owing to the excessively cautious post-War immigration policy, Great Britain had ceased to be a country of asylum on a large scale. Her initiative and role in international work would be greatly strengthened if she could show a braver record as a country of sanctuary. The number of the refugees whom we have allowed to come to this country—the figures have already been given by the noble Earl, but I venture to repeat them because I think they are more eloquent than any words—has been estimated at not more than 25,000 which is approximately the figure for the refugee population in Holland. It has also been calculated—and I do not think the noble Earl mentioned this—that with our much larger population, if we had been as hospitable as our little neighbour across the Channel, we should have given shelter to approximately 138,000, or more than five times the number of those who have actually found their way to our shores. To me it is deeply disappointing, and I think this disappointment will be shared by other speakers, that a magnificent tradition of hospitality to exiled aliens, which made this country the principal haven for fugitives from autocratic Governments in the nineteenth century, should be abandoned at a time when the refugee problem is more acute and more difficult of solution than it has ever been before.

I submit, and in this submission I think I shall have the support of both the previous speakers, that this problem is too immense and too complex to be capable of solution by the generosity of philanthropic individuals and organisations. The number of refugees and potential refugees in Europe is so vast that nothing but a scheme organised and administered and financed by Governments, with the whole weight of official backing behind it, can possibly provide permanent homes and permanent work for a substantial proportion of these people. …we are bound to realise that private resources are rapidly drying up, and that nothing in the least effective can be done until the Governments concerned have accepted financial and administrative responsibility for the bulk of this floating refugee population…. I will conclude with one or two references to the situation of Spanish children...I should also like to take this opportunity of

acknowledging the generosity of the British public which has made it possible to maintain and support 4,000 Basque refugee children in this country for more than two years. There are still further ways in which the Government could help us in dealing with these children from the Basque Provinces …

The next question relates to the members of the International Brigade who are now mostly in camp in the South of France. I am thinking particularly of Germans, Austrians, Czechs, Italians and Poles, who cannot be repatriated whence they came. … I should be very much obliged if His Majesty's Government can suggest any solution. If they feel that their generosity is being called upon in excess, I would merely like to point out that there is a precedent on which they have acted before, that is, the contribution they have made to the work of the International Red Cross. I understand that the International Red Cross in the South of France is engaged, at the moment, particularly, in bringing families together, in enabling husbands to trace their wives, wives to trace their husbands, parents to trace their children, and children to trace their parents. I understand they are in dire financial straits. The noble Marquess will remember that about a year ago His Majesty's Government presented the handsome gift of £5,000 to the International Red Cross for the relief work they were doing in the South of France….

LORD GORELL …"I think, from what has already fallen from the noble Earl and other noble Lords, that it is obvious that this fear of the refugee is vastly exaggerated and there really is a very strong case now for the Government widening their requirements and treating this matter less in a legalistic and a little more in a humane and human spirit." …

HC Report 26 July 1939, cc 1454-1455[38]

Miss Rathbone asked the Secretary of State for the Colonies whether, in the matter of immigration into Palestine, he will consider making a concession on behalf of the elderly dependants of already established Jewish immigrants from the countries of persecution, and will allow such dependants to be brought in as an addition both to the proposed ordinary quota and to the proposed special category for refugees, in view of the fact that these elderly dependants can neither add to the future Jewish population nor compete in the economic field, and will be in no way a burden on the financial resources of the State nor a military menace to the Arab population?

Mr. Edmund Harvey basked the Secretary of State for the Colonies whether he will consider a modification of the impending suspension of immigration of Jews into Palestine in the case of aged parents or near relatives of persons already settled there, who will undertake full responsibility for them?

Mr. Malcom MacDonald I cannot contemplate any modification of the policy regarding immigration set forth in the White Paper and in my recent statement concerning the next six-monthly period.

Miss Rathbone Is the right hon. Member aware that, at present Jewish colonists are often faced with the cruel choice of whether to bring in aged parents, faced with destitution and misery, or young adults, who would be of some economic value to the colony; and would not my suggestion do something to conciliate world opinion?

Mr. MacDonald All those considerations, and many others, were taken carefully into account before we decided on this policy."

HC Report 4 August 1939, cols 2905-2906 [39]

[38]. http://hansard.millbanksystems.com/commons/1939/jul/26/immigration#S5CV0350P0_19390726_HOC_229
[39] http://hansard.millbanksystems.com/commons/1939/aug/04/217-pm#S5CV0350P0_19390804_HOC_276

Colonel Wedgwood Are we to understand that nothing is to be done for these Czechs, for whom we are responsible, who have managed to escape to Rhodes and Beyrout, and the Colonial Office do not allow them into Cyprus or Palestine?

Earl Winterton I cannot accept the view that we have some particular and sole responsibility. …. Certain deplorable circumstances have arisen and, in those circumstances, the Government have done the best they can for these unfortunate refugees."

HL Deb 4 August 1939[40]

THE WAR: RUSSIA'S INTERVENTION

THE LORD PRESIDENT OF THE COUNCIL (EARL STANHOPE)…Herr Hitler says much in his speech about the humane methods by which he has waged war. I can only say that methods are not made humane by calling them so, and that the accounts of German bombing of open towns and machine-gunning of refugees have shocked the whole world.

[40] HL Deb 20 September 1939 vol 114 c1080http://hansard.millbanksystems.com/lords/1939/sep/20/the-war-russias-intervention#S5LV0114P0_19390920_HOL_5