ILPA briefing to amendments tabled for House of Lords Committee Stage of the Immigration Bill 9 February 2015: More on Refugee Children Amendment and Part Six onwards

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

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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
ILPA's briefing to Lord Dubs' amendment, prepared for the previous day of Committee, is at http://www.ilpa.org.uk/resources.php/31782/ilpa-briefing-to-amendments-tabled-for-house-of-lords-committee-stage-of-the-immigration-bill-3-febr We have appended to the briefing paper many extracts from the debates of 1938 and 1939 on the kindertransports.

We do, however, wish to use this briefing to take issue with some of the points made by the Government on 2 February 2016 in response to Lord Hylton's amendment 234 and Lord Rosser's amendment 231 on refugee family reunion, which are also relevant to the debate on this amendment and also to update on the situation in Calais.

> ***Lord Bates*** *"the minimum income threshold of at least £18,600 would don't apply where a refugee is sponsoring their pre flight spouse or partner to join them here"* (col 1881)

But the £18,600 threshold does apply

- if the refugee is sponsoring a "post flight" spouse or family member;

- if the person recognised as a refugee has gained indefinite leave to remain or British citizenship as opposed to still being in their those first five years of leave as a refugee or if the person wishing to sponsor the refugee is a British.

Lord Bates: *Our policy also requires consideration of exceptional or compassionate reasons outside the rules* (col 1881)

The Minister could be pressed on how many such applications from refugees for reunion with family members have been granted as in our experience this is extremely rare. Where such applications are successful they generally involve considerable work by lawyers. There is no legal aid for these applications.

> *"**Lord Bates** Our policy prevents children with refugee status in the UK sponsoring their parents to join them. This is a considered position designed to avoid perverse incentives for children to be encouraged or even forced to leave their country and make a hazardous journey to the UK. …Allowing children to sponsor their parents would play right into the hands of traffickers…"* (col 1881)

We disagree. As we said in our original briefing:

> 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.

The Joint Committee on Human rights, in its authoritative *Human rights of Unaccompanied Migrant Children and Young people in the UK*[1]

> *113. A number of witnesses also noted that unaccompanied migrant children who were granted the right to remain in the United Kingdom did not have a right to family reunion, despite such a right being afforded to adults in the same situation. The Office of the Children's Commissioner for England considered the failure to grant reunion rights contrary to the UNCRC. It was not persuaded that allowing reunion would lead to families sending their children to the UK in order that they could join them at a later date.*

The Committee recommended

[1] First report of session 2013-2014, HL Paper 9, HC 196, May 2013.

> *"18. Where a child is granted refugee status he or she should have the possibility of being reunited with family members, as is the case for adults in the same situation (Paragraph 119)"*
>
> ***"Lord Bates** We do not believe that widening the criteria too include so many additional categories of people is either practical or sustainable"* Col 1882

It is because we consider it to be both practical and sustainable that we advocate that British citizens, the settled and refugees who have family members who are in need of international protection, should be allowed to support them, including in circumstances where British citizens and the settled can support a family member without recourse to public funds. The demands on public services are thereby greatly reduced and there is a ready-made support and integration network

> ***Lord Bates** In relation to Calais…There is a day centre adjacent to that where migrants living in the area can receive legal advice, including on family reunion* Col 1882

The building in question is a wooden structure, built by Carpenters for Calais, with one interview room. It is cold. Noise penetrates from outside and you worry that you can be heard. Those who have used it consider it suitable for quick meet and greet meetings, but not for sustained interviews.

Since the previous day of Committee we have received reports that the situation in Calais is deteriorating. Lawyers who have set up the legal hub in the camp emailed on Friday night to say

> *"…we are extremely busy here and the day has only 24 hours. the team in the Legal center has grown up with Italian and 2 English lawyers. We are reporting and investigating on police and racists violences and the last two weeks they became endemic and of the highest concern. …Fascist demonstration and massive presence planned for the week end. Security rules like in war time"*

We have alerted the Council of Europe High Commissioner for Human Rights and the UN Special Rapporteurs on Racism and Intolerance and on the human rights of migrants to their concerns.

Parts 6, 7 and 8

Introduction: reviews

A number of amendments covered by this part propose reviews. The UK has recently seen the publication of two very significant reviews, one of James Ewins (now QC) on overseas domestic workers and of Stephen Shaw on detention. The Government's response to the former, which it has had since 9 November 2015, is

> *The government is carefully considering the report's recommendations and will announce its response in due course.*[2]

The contrast with the speed with which the Bill was amended to deal with the response to the consultation *Tackling Exploitation in the Labour Market* is striking. The consultation closed on 7

[2] See https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review

December 2015. Government amendments were originally to have been debated on 12 January, but the debate was moved to 18 January and in the event the amendments were tabled on 12 January.

The response to Stephen Shaw's review is

> *"…The Government is grateful to Mr Shaw for his review and welcomes this important contribution to the debate about effective detention. The government accepts the broad thrust of his recommendations. …*
>
> *Strategy Recommendations*
>
> *…., the government will follow up the written ministerial statement today with a more detailed strategy for detention in due course. Policy Recommendations Stephen Shaw makes a number of recommendations relating to the definitions of and policy for managing vulnerable individuals in detention. In response, the government is developing a new policy defining "adults at risk". This will recognise the breadth and dynamic nature of vulnerabilities and which will have a clear presumption against detention of vulnerable people, unless there is evidence that matters such as criminality, compliance history or imminent removal outweigh the vulnerability factors.*
>
> ***Casework Transformation Recommendations***
>
> *…the government will implement a new approach to the case management of those who are detained. It will implement the new "adult at risk" policy to ensure more rigorous assessment of those entering detention through a new gate-keeping function, maintaining this rigour through the adoption of individual removals plans for all detainees, which will maintain a strong focus on and momentum towards removal.*
>
> ***Health Recommendations***
>
> *The government will carry out a more detailed mental health needs assessment in Immigration Removal Centres, using the expertise of the Centre for Mental Health. This will report in March 2016, and NHS commissioners will use that assessment to consider and revisit current provision to ensure healthcare needs are being met appropriately. In the light of the review the government will also publish a joint Department of Health, NHS and Home Office mental health action plan in April 2016. 2*
>
> ***Operational Recommendations***
>
> *… These will be considered carefully on a case by case basis taking account of available resources. The Government expects these reforms, and broader changes in legislation, policy and operational procedures, to reduce the number of those detained, and the duration of detention before removal, in turn improving the welfare of those detained. More effective detention, complemented by increased voluntary returns without detention, will safeguard the most vulnerable while helping reduce immigration abuse and reduce costs.*

This sidesteps Stephen Shaw's headline recommendation

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

The response also suggests that despite the very stark evidence he presented of the treatment of the mentally ill and others with special needs in detention that it is still the intention that immigration detention will be used for such persons.

We understand why, when it is felt to be impossible to amend legislation, one reaction is to call for a review in the hope of challenging it at a later date. In the case of many of the amendments discussed in this briefing however, we do not understand why it is considered impossible to amend the legislation now.

If all the requests for reviews and reports to parliament that have been tabled as amendments to this Bill were to be enacted, the Home Office would expend most of its resources on reviews and preparing reports and parliament would do little but consider such reports. This is ironic given that it is already the case that there is insufficient time for adequate scrutiny of the plethora of immigration legislation, especially secondary legislation.

Part 6 Enforcement

Clause 44

AMENDMENT 239BA in the names of **Baroness Hamwee and Lord Wallace of Saltaire**

Presumed purpose
The effect of the amendment is to require the Secretary of State to make regulations to provide for the application of penalties relating to airport control areas to those responsible for assuring that border controls are enforced at general aviation sites, private landing strips and airports.

Briefing
This recalls an exchange on 27 January 2010, at col 1406, a debate on a question on passports by Lord Marlesford linked to his **amendment 57C** in this debate

> ***Lord West of Spithead:*** *… It is absolutely right that we check people in and out, so we know exactly who is here. On those precise figures, I shall have to come back in writing, because I am not sure exactly where we have got to on that. We are still aiming for 100 per cent in time for the Olympics, and we will be a lot more safe and secure.*
> …
>
> ***Lord Naseby:*** *About 18 months ago, I asked a question of the noble Lord considering the smaller, private airports and the fact that there was no official passport control in those situations. Will they be covered by the 100 per cent target?*
>
> ***Lord West of Spithead:*** *My Lords, the intention is that they will be covered. Indeed, there are issues about boats going backwards and forwards across the Channel, and that sort of thing. There are some real complexities. Clearly, those will be the areas that are hit last; I have flown a number of times in a private jet and at Farnborough, in the private jet area, one is checked very admirably. The only difficulty is with making sure that the chaps are in uniform."*

SCHEDULE 11 GOVERNMENT AMENDMENT 239C

Presumed Purpose: Changes the definition of a Northern Ireland Constable to encompass a person appointed as a special constable by virtue of provision incorporating section 79 of the Harbours, Docks, and Piers Clauses Act 1847.

Briefing
More evidence, if more were needed, that this is legislation prepared in haste and that the particular victims of incomplete instructions being given to parliamentary counsel are the devolved administrations. Presumably the separate standing of the harbour police had been forgotten? For every error or admission spotted, how many more have gone undetected?

After Clause 46

AMENDMENT 240 NEW CLAUSE *Review of Border Security* in the names of Lords Rosser and Kennedy of Southwark

Presumed purpose Requires the Secretary of State to undertake a review of Border Security and the adequacy of resources currently available for border security at all points of entry to the United Kingdom and to publish this and present it to parliament within one year of the passage of the Act

Briefing
See the National Security Strategy and Strategic Defence and Security Review 2015 *A Secure and Prosperous United Kingdom*, Cm 9161 of November 2015[3]. This takes the approach of looking at border security not in isolation but as part of a wider security review.

If the concern is with the efficiency and efficacy of border controls, we suggest that the place to start scrutiny is with the eborders programme. We commend to you the report of the National Audit Office, the terse summary of which on the Office's website tells the reader most of what he or she needs to know:

> ***"e-borders and successor programmes***
> *The Home Office spent at least £830 million between 2003 and 2015 on the e-borders programme and its successors, but has failed, so far, to deliver the full vision. We cannot, therefore view e-borders as having delivered value for money."*

For those who can bear to read further, the office has produced a comprehensive report[4].
Already the legislative burden is such that scrutiny as to place enormous pressure on the quantity and quality of scrutiny that can take place.
See our comments above on amendments calling for reviews. The problems with the eborders programme have spanned more than a decade and have been the subject of reviews *** but such accountability as has resulted from those reviews has not had the effect of creating a

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/478933/52309_Cm_9161_NSS_SD_Review_web_only.pdf
[4] https://www.nao.org.uk/report/home-office-e-borders-and-successor-programmes/

successful programme to date. Rather, at intervals, the success of the programme has been lauded, only for it to fail again:

> *… the programme is already successful. …By the end of 2010, coverage will be 95 per cent and, by 2014, it will be 100 per cent. That is the answer to the noble Lord's question. However, we are not resting on our laurels—*
>
> ***Noble Lords:*** *Too long!*
>
> ***Lord Brett:*** *My Lords, it is clear that your Lordships want this information. By the end of 2008, 78,114,231 passengers were screened, 33,000 alerts were made and 2,700 people were arrested. That is the information that I thought your Lordships were looking for.*
>
> ***Lord Dholakia:*** *… How can we have adequate immigration statistics if someone uses one passport for entry and a different one for exit?*
>
> ***Lord Brett:*** *My Lords, the noble Lord raises an important question, which the whole e-borders project is an attempt—a successful one, I believe—to counter. …We do not have complete coverage, but we will have in due course.*[5]

AMENDMENT 241 NEW CLAUSE *Obligation to provide information on passports in* the name of Lord Marlesford

Purpose

To require a British citizen other than by birth or a British citizen by birth who was born outside the UK to supply details of their citizenship of other countries and of other passports held at the time of applying for a British passport. To require such persons to notify the passport office of any acquisition or loss of citizenship within one month of such acquisition or loss. The information can be used by immigration officers and could be taken into account in considering deprivation of citizenship resulting in statelessness.

Briefing

Lord Marlesford has being raising the question of passports for many years, most recently on the debates on the Immigration Act 2014[6]. On that occasion his amendment would have placed those applying for a passport or for renewal of a passport under an obligation to specify which other nationalities and passports they hold and that on acquisition or loss of another citizenship there would be an obligation to notify the passport office within one month. This information could be taken into account in considering deprivation of citizenship resulting in statelessness.

We suggest that the proposition that all British citizens should be made to declare their other nationalities or citizenship is a very different proposition from the proposition that only some should do so. A person who naturalizes as British must pass good character tests that would defeat some who are British by birth and must take an oath and pledge of allegiance. They are thus subject to screening not imposed on those born British. Some people are born outside the UK; some people are dual nationals from birth? Why should a person born on a British base in Germany because his/her parent was serving in the army at the time be required to notify other

[5] HL Report 19 Jan 2009 : Column 1443 – 1444.
[6] 6 April 2014 (Col 1199ff).

nationalities where someone born within the UK who holds, whether from birth or otherwise, another nationality or citizenship is not? It is far from obvious why those born overseas or naturalized should be considered a greater risk than those born British.

Lord Taylor of Holbeach said in response to the amendment proposed to the Immigration Act 2014:

> "*Her Majesty's Passport Office directly contributes to the Home Secretary's key aims of securing borders, tackling terrorism and reducing crime. It does this through its public protection strategy and by sharing data and intelligence with other parts of the Home Office and other agencies. Access to personal data for the purposes set out in subsection (3) of the proposed new clause is already permissible.*
>
> *My noble friend has suggested that this passport information could be made available for deprivation decisions under the proposed power in Clause 64, on which we have just had a Division. This would not significantly improve the evidence base for these sorts of deprivation decisions. The Home Office retains information regarding an individual's previous recorded nationality or passport from their immigration records and will undertake research to determine these facts. … We would not necessarily rely on information provided by the individual, who may seek to benefit from renouncing or not declaring other passports or nationalities.*
>
> *My noble friend has also suggested that information collected could be made available to immigration officers for consideration when undertaking their duties. Immigration officers already have powers to require a person to furnish any information that is relevant to an examination, which may include details of dual nationality where necessary and appropriate.*
>
> *Her Majesty's Passport Office does not collect data on the number of passport holders who have a second nationality. …The passport application, however, requires all customers to submit any sort of passport, British or otherwise, at the point of application. That information is collected to help to confirm identity and is recorded on the person's UK passport record. HM Passport Office receives about 6 million passport applications a year from domestic applicants. It receives a further 380,000 applications from overseas. Because of the smaller quantity involved, HMPO has been able to estimate that about 50% of overseas applications may involve applicants who hold dual nationality.*
>
> *HM Passport Office is required to gather information that is relevant solely to the passport application. The issue of dual nationality is not directly relevant to the UK passport application process, because a person is not prevented from having another nationality under UK law. Collecting data for purposes other than the issue of the passport would require HM Passport Office to change its published data-sharing principles and to consider the possible impact on the exercise of the royal prerogative. Furthermore, HM Passport Office is not permitted to use the passport fee to subsidise the collecting of data for a purpose that is not relevant to the issue of the passport. The agency is required to charge applicants a fee that covers only the cost of the issuing of passports.*
>
> *In any event, I am not convinced that establishing and maintaining such a database would provide any significant benefit. We already require existing and previous passports to be submitted at the point of application. Information is also held on the nationality of persons who have registered or naturalised as British citizens. Gathering information on dual nationals simply because they are dual nationals would therefore be of very limited value. It would be*

disproportionate, as there would be no specific benefit either to support an application process or to assist in preventing and detecting crime.

However, possession of another passport is of interest to HM Passport Office for the identity reasons that I have given above. In considering the amendment, I have asked that we look at the benefits and consequences of placing a requirement on British passport holders to submit to HM Passport Office, during the lifetime of their British passport, any new, renewed or replacement passport issued to them by the country from which they hold dual nationality. I will write separately to my noble friend when we have considered this further.

….I am satisfied with the existing processes to record dual nationality and passports when required and that, importantly, mechanisms are in place to share those data with law enforcement agencies, including border staff. So, to some degree, we have met the objectives of his amendment. I hope that, with that clarification, my noble friend will withdraw his amendment. (HL Report 7 Apr 2014: Column 1202)

We should distinguish between information on a person's passport history and information on a person's other nationalities. Many persons do not know or are unclear whether they hold a particular nationality, or indeed have a mistaken belief that they do. ILPA members receive enquiries every week from persons wanting to know if they are British.

As to the relationship with deprivation of citizenship, there are perhaps two ways of looking at this.

The first is to assume that you could learn something about whether a person was a threat from their passport history. We think this is wrong.

It supposes that a passport will tell a reader something about a person's personal history. Mr Mohamed Sakr was born in the UK. Although entitled to Egyptian nationality as well as his British citizenship he never held an Egyptian passport. He travelled on his British passport. He was deprived of his British nationality while in Somalia. He was killed by a US drone strike in February 2012. The US military report on his death made reference to "an Egyptian commander". But what would Mr Sakr's passport history have told anyone about whether or not he was a threat to the UK? Or are all dual nationals to be regarded as suspect whether they hold two passports or not? Or does that depend upon which other passport they hold?

It supposes that a person with two or more passports is better placed to travel undetected. Here there are two questions: are they, in reality, undetected? This may underlie the thrust of many answers given to Lord Marlesford over the years which can be summarised as "e-borders will provide" (for which see the briefing to amendment 240 above). The second question is: are those with only one nationality in reality less able to travel undetected? International criminal activity is arguably better facilitated by the possession of identity documents to which one is not entitled and which are less likely to be traced.

For previous occasions when the Lord Marlesford has raised the holding of multiple passports see e.g.

HL Report 9 February 2009, col. WA 167 (memorable for Lord Wallace of Saltaire's comment "…we probably also need to talk about some of those at the top end of British life and

community who think that they live here non-domiciled and do not pay tax—the ultimate inactive citizenship."
HL Report 12 January 2009 col 117W
HL Report 11 Feb 2009, col 1158HL
HL European Union Committee 9th Report of Session 2007–08 FRONTEX: the EU external borders agency Report with Evidence 5 March 2008 17 October 2007 evidence of Tom Dodd and Tom Dowall Q155 ff;
HL Report 19 Jan 2009: Column 1442ff (cited in the briefing on amendment 240 above).
27 Jan 2010: Column 1406, notable for its aspiration of 100% exit checks by the time of the Olympics and Lord West's accounts of private jets and controls at Farnborough cited in the briefing to amendment 239A above.)
HL Report 11 Dec 2013: Column WA127-8

AMENDMENT 241A NEW CLAUSE *Survey on illegal migration* in the name of Lord Teveson

Presumed purpose: To require the Home Office to undertake an annual survey, to be reviewed by the Office of National Statistics on those residing within the UK without lawful leave. The survey would examine their number, geographical distribution, method of entry to the UK, occupation, reason for being in the UK and whether they have family members in the UK and would be laid before parliament.

Briefing

Good quality fiction is always to be desired, but that, we fear, is the best that such a survey could be. This is a very difficult area to research. Not for nothing was the pan European 2007-2009 project on this topic called *Counting the Uncountable: Data and Trends across Europe – Irregular Migration in the UK*[7]. There is little incentive to make oneself known the authorities when the prospects of being allowed to stay are very slim and when a person does not have faith in the decision-making that will determine their application. Not for nothing was another project, this one on undocumented migrant children, called *No way in; no way out*[8]. The aim of driving people out through the "hostile environment" simply drives them further underground. ILPA said in its evidence to the evaluation of the "Go Home" vans

> *"We suggest that people are in general less likely to get in touch with those who intimidate or threaten them than with those who do not. Any suggestion that immigration enforcement has to parade posters around the streets to find persons without lawful leave who might consider voluntary departure is simply inaccurate. There are significant numbers of persons, at known addresses, who maintain contact with the* [Home Office]

In members' experience, a realistic assessment of a case by a lawyer trusted and perceived as independent is a relevant factor in causing persons to think seriously about voluntary departure. The removal of legal aid from immigration since 1 April 2013 under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 thus militates against voluntary departure. Other independent persons with whom to discuss returns are also important as is access to the

[7] Clandestino, Compas University of Oxford, see http://www.compas.ox.ac.uk/project/clandestino/ . See also No way out no way in: undocumented migrant children in the UK and the USA Compas 2009 http://www.compas.ox.ac.uk/2012/no-way-out-no-way-in/ See also the research listed in the bibliography therein.
[8] Compas, University of Oxford. http://www.compas.ox.ac.uk/media/PR-2012-Undocumented_Migrant_Children.pdf

internet and other information to get in touch with people in the country or to find out about conditions there.

There are a significant number of persons who will not make a voluntary departure. They may not consider that they have had a fair hearing from the UK immigration and asylum authorities. They may fear persecution on return, whether it is accepted that that fear has an objective basis or not. They may fear for the health and education of their children and future generations.

The opportunity to work and acquire skills and funds when in the UK are in our experience relevant to whether a person will be willing to make a voluntary departure. The question of re-entry bans in particular, but opportunities for circular migration in general, are in our experience highly relevant to whether persons make voluntary departures. Much has been written on how the trend since the Commonwealth Immigrants Acts of the 1960s has been of persons fearing to leave because they consider that they will never be able to return.

A final anxiety: if all the requests for reviews and reports to parliament that have been tabled as amendments to the Bill were to be enacted, parliament would do little but consider such reports. Already the legislative burden is such that scrutiny as to place enormous pressure on the quantity and quality of scrutiny that can take place. Reports and reviews are not a substitute for considered and well-planned legislation.

Clause 47

GOVERNMENT AMENDMENTS 241B, 241C, 241D, 241E, 242D, 242E, 242F and 245B in the name of Lord Bates

Presumed purpose The effect of **AMENDMENT 245B** is that the English language requirements scheme will extend to Northern Ireland. The other amendments make separate provision for agency workers in Northern Ireland in respect of language requirements for public sector workers.

Briefing

More evidence, if more were needed, that this is legislation prepared in haste and that the particular victims of this are the devolved administrations for whom legislation is being prepared in haste.

Amendment 242 in the names of Baroness Lister of Burtersett, Lord Swinfen, Lord Shipley and the Lord Bishop of Salisbury

Purpose: Provides an exemption need to speak fluent English for a person whose first language is British Sign Language.

Briefing

There is concern that the requirement to operate a complaints procedure where persons do not speak "fluent" English could lead to discrimination against workers who speak "fluent" English as defined in the clause but who speak English with an accent, or do not have the fluency of a native speaker. This amendment evidences another concern, that it could lead to discrimination against those with a disability, for example those who cannot hear.

One would expect that in its recruitment a public authority would determine that a worker had the necessary skills for the job, including language skills, making reasonable adjustments for persons with a disability as required by law. One would expect that failure to recruit those able to do the job or to support workers with a disability by making reasonable adjustments, would lead to complaints and that normal complaints procedures would deal with this along with any other complaint about competence. But Part 7 imposes a specific duty upon public authorities in this regard, to issue Codes of practice and monitor compliance with them. It is hard to see this as anything other than unnecessary bureaucracy imposed for show. If the public sector cannot find sufficient English speakers, and the language is spoken widely throughout the globe, this would appear more likely to be because of skills shortages than sloppy recruitment practices. We are concerned that workers may face bullying, harassment or discrimination at work in the context of complaints about their ability to speak what the provisions describe as "fluent" English, although the Bill defines thus as "a command of spoken English which is sufficient to enable the effective performance of the person's role."

Clause 48

GOVERNMENT AMENDMENTS 242A, 242B, 242H and 242K in the name of Lord Bates

Presumed purpose Restrict provisions on language requirements for public sector workers to those exercising "non-devolved" functions.

In addition **GOVERNMENT AMENDMENT 242H m**eans that the provisions on language requirements for public sector workers could apply to a public authority which is based outside Wales but operates also in Wales.

GOVERNMENT AMENDMENT 242J provides a definition of Wales.

Briefings

Is this division workable? The text of this Bill itself gives some idea of how unclear this divide is. Criminal law is a devolved matter in Scotland, as are housing and social welfare but immigration, which increasingly impinges upon all of these, is reserved. If an employee of a public authority advises a refuge for survivors of domestic violence on the circumstances in which it can take in a survivor of domestic violence without having to carry out right to rent checks, is this a reserved matter, or an exempt one? If a social worker in Scotland is advising a care leaver on how his/her immigration status will affect the services provided to him/her and on whether s/he will have to pay home fees if s/he goes to university, is this a reserved matter or a devolved one? The amendment illustrates how the expansion of the sphere of immigration control compromises the devolution agenda, a matter raised in debates in the Commons by the Scottish National Party. For example, on the right to rent provisions:

> ***Anne McLaughlin:*** *… that housing is a devolved responsibility. Lengthy provisions in the Bill affecting housing for those already in the country are in effect housing legislation under an immigration banner. The Law Society of Scotland believes that the residential tenancy provisions will require a legislative consent motion to be placed before the Scottish Parliament. My understanding is that the Minister disagrees with that. It is clear that the Bill affects all landlords*

and tenants in Scotland and thus fundamentally alters a sector for which legislation is devolved. Moreover, it is clear that the changes are not merely incidental. Calling it the Immigration Bill does nothing to change the fact that it substantially alters housing law in Scotland.

The Bill allows for the measures on residential tenancies to be brought into effect in Scotland simply through a regulation-making power. That power specifically prevents functions being conferred on Scottish Ministers and means that the regulations can revoke, amend or repeal any Act or order made by the Scottish Parliament. That would enable the Minister and the UK Government to use secondary legislation powers simply to overturn primary legislation on matters devolved to the Scottish Parliament without its consent and often against its will.

What has happened to the respect agenda? Where is the constitutional principle that the UK Government will not legislate on devolved matters in Scotland without the consent of the Scottish Parliament, which clearly represents the Scottish people? The Bill also runs counter to clause 2 of the Scotland Bill, which is being considered here in Westminster and is intended to recognise that principle in statute.

If the Scotland Bill is passed next week and the Immigration Bill is not amended, would I be right to tell the people of Scotland that this British Government have no regard for Scotland's right to legislate on devolved matters? …

The Law Society of Scotland highlighted some other concerns. When issues such as asylum support, taken together with the housing law measures, are also taken into account, the changes to devolved functions such as local authorities, health, child protection and social work can no longer be described as incidental to a reserved matter, in this case immigration. …

***Gavin Newlands** (Paisley and Renfrewshire North) (SNP): I previously discussed briefly how the Bill affects areas of devolved legislation in Scotland …the Law Society of Scotland has deep concerns. It is worth reflecting on its contribution:*

"In relation to the proposal to empower the Secretary of State to amend or repeal provisions of Acts of the Scottish Parliament, we are concerned that the potential for unlawful discrimination and for human rights breaches have not been fully considered. We consider that consultation with a view to seeking the legislative consent of the Scottish Parliament should be initiated".

… that housing is already devolved, combined with the content of the Smith commission, the views and evidence provided by a range of housing bodies, and the general election results in Scotland, create a strong and justifiable argument that …the right to rent roll-out should not take place in Scotland.

***James Brokenshire:** At their essence, I suppose that the arguments advanced by the hon. Members for Glasgow North East and for Paisley and Renfrewshire, as well as by the hon. and learned Member for Holborn and St Pancras, are—on the basis of what I have heard—that the provisions contained not only within this Bill but within the preceding Immigration Act about the right to rent are not reserved matters, and are actually devolved matters; …*

At its fundamental essence, immigration control is a reserved matter. These amendments would lead to different immigration controls being in place across the United Kingdom. …I recognise the political difference between us—they object to the policy and do not like it. That is their view

and, as always, I respect the views of all right hon. and hon. Members. However, that is distinct from an issue of whether a matter is reserved or devolved.

… The point was made that housing is a devolved matter, which I absolutely acknowledge. However, the measures in this Bill and in the preceding Immigration Act are part of a reform to the immigration system and immigration control. These are immigration measures for an immigration purpose, and so are within the powers reserved to the UK Government. …

Anne McLaughlin: …*As my hon. Friend the Member for Paisley and Renfrewshire North said, the Minister refused a meeting with the Scottish Government Minister for Housing and Welfare, who has significant concerns not just at a policy level but at an implementation level.*

She requested a meeting and was refused with a "My people will talk to your people; I don't have to talk to you" sort of response, although maybe—definitely—not in those words. If there is respect between the two Governments, why would the Minister not just sit down with the Scottish Government Minister to go through things if he is so convinced that he is right? [9]

Again, the amendments attest to haste. A definition of Wales is not a minor matter to have overlooked.

AMENDMENT 242C in the names of Baroness Hamwee and Lord Paddick

Presumed purpose Provides that the power to extend section 47, on English language requirements for public sector workers, to contractors must, if exercised, be exercised before that section comes into force The amendment does not require the power to be exercised at all.

Briefing

Clause 49 provides a power to amend clause 47 to extend it to cover contractors delivering public services. This could be done at any time before or after the coming into force of section 47 by those employed directly in the public sector.

When clause 47 is read with clause 62(6) become clear that it could be used to extend the requirements to contractors in certain areas and not to others. Does the power in clause 62 (6) to make regulations for certain purposes and not others mean that the power could be extended to certain contractors and not to others?

AMENDMENT 242G in the names of Baroness Hamwee and Lord Paddick

Presumed Purpose To allow the Code of Practice to make different provision for different roles or types of role.

Briefing

Given that the definition of fluency is set out in Clause 47(8) as being that "a person has a command of spoken English which is sufficient to enable the effective performance of the person's role" we do not see how the Code could do other than be sensitive to different roles

[9] Public Bill Committee cols 297- 302.

if it is to give proper effect to the statute. But the amendment draws attention to the variety of different contexts in which language is used.

See briefing to amendment 242 above.

After Clause 52

AMENDMENT 242J NEW CLAUSE Review of language requirements for public sector workers in the names of **Baroness Hamwee and Lord Paddick**

Presumed purpose Requires the Secretary of State, within five years of the provision on language requirements for public sector workers coming into effect, to lay before parliament a report on the operation of the part, which will include an examine of complaints, discrimination and the resources required to comply with the requirement.

Briefing

The Race Equality Foundation has said that the

> *"draft statutory code states fluency is unrelated to accent, race, and ethnicity; however, the draft code is poorly drafted, poorly structured and in practice there is nothing to prevent users of public services making complaints on the basis of accent and appearance. These provisions may encourage, and semi-legitimise, racially-motivated harassment under the guise of challenging someone's ability to speak 'fluent' English. There is already evidence on the greater likelihood for black and minority ethnic people to be subject to the disciplinary process in public services. NHS Employers found black and minority ethnic staff were almost twice more likely to be disciplined than white staff. Similarly, the Royal College of Midwives found a similar pattern of disproportionate disciplinary action against black and minority ethnic midwives. The NHS Staff Survey consistently shows a higher proportion of black and minority ethnic staff experience harassment, bullying or abuse at work. … the Cabinet Office Impact Assessment states 'current figures show that the likely number of people working in public sector, customer-facing roles who do not have fluent English is likely to be small'.*

Foundation also comments on the lack of "any substantive financial analysis of the costs associated with implementing these language requirements". and that no equality analysis, equality impact assessment or Policy Equality Statement has been produced by the Government on these language provisions to assist parliamentarians. In these circumstances, see comments on reviews in this briefing, *passim*. Five years is too long for workers to suffer discrimination and prejudice, and costs to accrue, before someone identifies that this was not such a good idea after all.

Clause 55

AMENDMENTS 242L, 242M 242N and 242P, 242Q, 242R in the names of Baroness Hamwee and Lord Wallace of Saltaire

Presumed purpose:

242L To require that regulations made about the skills charge provide for exemption from the charge for applications made to fill skills gaps directly concerned with the provision of education or health services or made by institutions whose primary function is the provision of education or skills training or the provision of health services

242M To require that regulations made about the skills charge much provide for exemption from the charge for public sector institutions

242N To require that regulations made about the skills charge set a maximum charge, which will be set following consultation with "the employment sector in question" and may not be imposed in more than two "concurrent years" in respect of any individual

242P Requires the Secretary of State to consult representatives of those upon whom the charges are imposed before making regulations setting the level of the skills charge

242Q Rephrases the provisions as to exemption from the charge so that they refer to the sponsor not the worker as the person paying the charge. Whether or not the sponsor will be exempt still depends upon characteristics of the worker.

Briefing

The Prime Minister in his speech on immigration on 21 May 2015[10] stated:

> *For too long we've had a shortage of workers in certain roles. Engineers, nurses, teachers, chefs – we haven't had enough Brits trained in these areas and companies have had to fill the gaps with people from overseas. With Sajid Javid as the new business secretary we're going to get far better at training our own people.*
>
> *This involves creating 3 million more apprenticeships – and we will consult on getting the businesses that use foreign labour to help fund them through a new visa levy.*

The Chancellor in the Budget set out the following[11]:

> *1.5 …introducing a levy on large employers to fund 3 million new, high quality apprenticeships this Parliament supporting sustainable investment in universities by turning maintenance grants into loans, saving £2.5 billion by 2020-21*
>
> *(…)*
>
> *This goal will require funding from employers. In recognition of this, the government will introduce a levy on large UK employers to fund the new apprenticeships. This approach will reverse the long-term trend of employer underinvestment in training, which has seen the number of employees who attend a training course away from the workplace fall from 141,000 in 1995 to 18,000 in 2014.*
>
> *(…)*
>
> *There will be formal engagement with business on the implementation of the levy, which will also consider the interaction with existing sector levy boards, and further details will be set out at the Spending Review.*

[10] https://www.gov.uk/government/speeches/pm-speech-on-immigration (accessed 25 August 2014)
[11] https://www.gov.uk/government/publications/summer-budget-2015/summer-budget-2015 (accessed 25 August 2014)

The shortage occupation list contains professions from engineers, to digital IT specialists and nurses. Members of all of these professions undergo several years of training to qualify in their particular industry.

Teachers and nurses are not recruited through apprenticeship schemes and it is difficult to see how diverting new funds to such schemes will alleviate recruitment pressures in those sectors. Introducing a skills levy for organisations such as NHS trusts and schools put extra pressure on already stretched budgets. The Skills Development Levies in South Africa exempt public services and charities, for example[12]: and ILPA supports the exemption in **amendment 242M** for public sector workers and that in **amendment 242L** for education and health workers. Yes, we are aware that certain workers in these sectors are very well paid. But the sectors are underfunded and the institutions should be able to apply their funds to education and to health care and not have both the direct costs and indirect costs of a skills levy. for exempt sponsors who provide services in the public sector or meet other specified criteria.

In sectors which can properly utilise an apprenticeship scheme, training may take several years. Introducing the skills levy will put pressure on sponsors who find it especially difficult to recruit, potentially disproportionately penalising those who seek to recruit for roles on the shortage occupations and preventing expansion of those businesses which are already operating in difficult circumstances.[13]

Apprenticeship generally lead to NVQ Level 4 and above, or a foundation degree at the highest level[14]; this is well below the starting skill level for Tier 2 sponsorship, indicating that an expanded apprenticeship scheme will fail to address the needs of employers looking for skilled workers. Similarly, the wage levels paid to apprentices are well below those required for Tier 2, with wages as low as £2.73 per hour for the youngest and least experienced apprentices. It was reported in a Daily Telegraph[15] article *Apprentice levies will not solve skills crisis warns CBI* that only 2% of apprenticeships in 2013-14 were at an advanced level, suggesting that apprenticeship schemes will have limited impact on the demand for workers currently falling within the scope of Tier 2.

The Skills Levy report of December 2003 by the World Bank[16]: on page six identifies that evidence suggests a skills levy is inequitable - benefitting larger companies over small and medium-sized enterprises. The proportion of sponsored staff within a smaller organisation could lead to these paying a high price per head of staff. ILPA therefore supports consideration should be given to a lower rate or exemption for small and medium-sized enterprises.

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[12] See http://www.labour.gov.za/DOL/legislation/acts/basic-guides/basic-guide-to-skills-development-levies, (accessed 25 August 2014)

[13] A number of the roles on the shortage occupation list are highly skilled, such as engineers and IT developers and programmers. A member firm has assisted multiple sponsors relying on SOC code *2136 Programmers and software development professionals*, these businesses have been small start-ups looking to grow in a rapidly expanding market. A Skills Levy would not have been affordable for those small, young businesses, but they require skilled workers now in a highly technical area. An apprenticeship scheme would be of limited value, and could have no immediate impact.

[14] https://www.gov.uk/apprenticeships-guide (accessed 25 August 2014)

[15] See (accessed 25 August 2015) http://www.telegraph.co.uk/finance/jobs/11735221/Apprentice-levy-will-not-solve-skills-crisis-warns-CBI.html

[16] Available at (accessed 25 August 2015) http://documents.worldbank.org/curated/en/2003/12/8913510/training-levies-evidence-evaluations

Start-ups and/or small and medium-sized enterprises in developing sectors could be inhibited by a skills levy, stunting economic recovery and ultimately acting contrary to the stated aim of the levy. A skills levy that is too expensive for a small employer could prevent the business from succeeding in a competitive market and/or otherwise slow expansion. The Skills Development Levies administered in South Africa[17] exempts companies based on their current tax obligations and there total annual wages expenditure.

Where possible, levies should vary across sector and industry, to reflect different skill composition and training needs. The range of training services and courses should reflect the range of employers' needs, properly to address the current skills shortage.

In 1964 the UK introduced a levy grant scheme,[18] however it was effectively disbanded in the 1980s.[19] Extensive consultation with employers across the broad range of industries will be essential to the success of any new scheme and ILPA therefore supports **amendment 242P**. This highlighted in the Chancellor's budget.[20] See the World Bank report[21].

ILPA has concerns about amendment 242N. Employers are likely to find it easier to budget to make a smaller payment each year rather than a large lump sum.

If the employee leaves employment early, this can be factored into annual payments rather than then having to claim a refund which, as we have seen from the immigration health surcharge, can take some time to be repaid.[22]

This said, annual payments require an effective and efficient system of administration and monitoring. The level of funds generated by the levy may be absorbed by the maintenance of the levy scheme itself.

The levy should be adjusted in the case of regional sponsors. Given the pay gap between London and other areas of the UK,[23] a standard levy would absorb a far larger proportion of the employment budget of a regional sponsor compared to its London counterpart. This could have the effect of stunting industry and growth in the different regions, further limiting ability to expand into new markets or emerging sectors, or to respond quickly to the needs of clients.

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[17] *Op.cit.*

[18] http://www.legislation.gov.uk/ukpga/1964/16/enacted (accessed 25 August 2014)

[19] *In November 1981 the Secretary of State for Employment announced changes concerning the boards. Responsibility for training would henceforth shift from the boards to the industry concerned. As a result sixteen boards were wound up*: http://discovery.nationalarchives.gov.uk/details/r/C10166 (accessed 25 August 2014) also https://www.aoc.co.uk/sites/default/files/aoc%20paper%20on%20levies%2026%20june%202015.pdf (accessed 25 August 2014)

[20] *Op.cit.*

[21] *Op.cit.,* page 8. See also http://webarchive.nationalarchives.gov.uk/20140108090250/http://www.ukces.org.uk/publications/er47-understanding-training-levies http://webarchive.nationalarchives.gov.uk/20140108090250/http://www.ukces.org.uk/assets/ukces/docs/publications/evidence-report-47-understanding-levies.pdf pages 8, 52 and 53

[22] The Immigration Health Surcharge is repaid once the time for making an administrative review application has elapsed or, if an application is made, once the administrative review has finally been determined.

[23] http://www.cityam.com/206242/where-can-you-earn-most-uk-pay-london-much-higher-any-other-part-uk also http://www.londonlovesbusiness.com/business-news/economic/london-pay-gap-falls-for-first-time-since-crash/9873.article (accessed 25 August 2014)

After Clause 55

AMENDMENT 242S in the names of Baroness Hamwee and Lord Wallace of Saltaire

Presumed purpose

To abolish the Tier 1 (Investor) and to provide that applications to extend leave under the Tier 1 investor route can only be made by persons in the UK prior to 1 January 2017. An express savings provision means that leave to enter or remain as a Tier 1 investor granted before 1 January 2017 is not affected. Those whose initial grant of leave as a Tier 1 investor expired after 1 January 2017 would not be able to apply to extend their leave.

Briefing

ILPA does not support this amendment. There are very few routes by which a person can come to the UK other than to fill a specific vacancy. It is almost impossible to bring a dependant relative to the UK, for example. It is not possible for a person without a spouse or partner to make the UK their home. The investor visa provides relief only for a few, wealthy individuals, but when the concern is matters such as caring for an elderly or dying relative, rather the few than no one. Until guidance was changed to prohibit this, we saw cases in which it was used to cope with the changes to the overseas domestic worker visa.

In one case the "domestic worker" was a medically qualified family member who had cared for the severely disabled child since birth. Her relative/employer gave her a million (then the sum, now two million is required, such sum under her sole care and control) so that she could qualify as an investor.

Another case where the domestic worker was given a million also involved a severely disabled child.

In both these cases it was explained to the parties that the application could only be made if the money was placed under the worker's sole control. The latest Tier 1 guidance on investors recognises that the route had been used in that way. It now provides:

> *There are a number of different scenarios which may raise reasonable doubts as* [t o whether the applicant is not in control and at liberty to freely invest the money specified in the application] *explained above. The following examples are not an exhaustive list:*
> …
> • *The applicant is currently a domestic worker for a third party, the third party is intending to base themselves in the UK and the applicant will remain in the third party's employment if they are approved under the Tier 1 (Investor) category.*[24]38 .

The amendment would also mean that certain persons currently on a route to settlement as an investor would find the rug pulled from under them and that they were unable to continue to live in the UK. We do not consider that that is a proper way to legislate on immigration. Rule changes should be the subject of consultation, not with the select few as too frequently happens at the moment but with those who can represent the range of interests affected.

[24] See the UK Visas and immigration Tier 1 Investor Guidance.

We do not defend one immigration rule for the very rich and another for everyone else. But the uses to which the investor visa has been put serve to highlight the restrictive nature of immigration legislation.

There have been complaints about the investor visa. Professor Sir David Metcalf CBE, giving evidence before the Home Affairs Select Committee in the UK parliament on 20 October 2015[25] said

> ***Professor Sir David Metcalf***: *… The 1 million to the 2 million, they buy gilts. We are paying the Russians and the Chinese to come here. We are paying them interest on the gilts. Then, when they get the citizenship, they get the money back. The British residents do not gain anything from this, and that was the motive for us suggesting—it did not necessarily have to be auctions—you could charge a certain amount for some settlement. Right now my own view, indeed, re-endorsing our report, which I am sure we would again—if you would like us to look at it and the Home Secretary commissioned us, we would be happy to do so—is the system is absolutely not fit for purpose because there is no gain to British residents whatsoever from this system. It is the migrant who gets all the gains.*

comments on the investor visa were made on the same day that Transparency International UK, the UK chapter of the global anti-corruption network published Gold Rush: Investment visas and corrupt capital flows into the UK which identifies that the Tier 1 (Investor) visa has been used for corrupt capital flows into the UK, particularly from China and Russia. The report, citing the National Crime Agency and the Financial Times, identified that

> *"…suspicious activity reporting of money laundering is low to negligible. This is particularly concerning for professional gatekeeper sectors, such as accountancy and law that have been rated by the Home Office and HM Treasury as 'high risk' in term of vulnerability to money laundering. The National Crime Agency have repeatedly highlighted a concern with poor quality reporting of money laundering suspicions from across the private sector, particularly from the legal sector.* [footnotes omitted]

The opening paragraph of the report cites the Home Secretary's 29 April 2015 speech at the Ukraine Forum on Asset Recovery in explaining why money-laundering matters:

> *"Corruption has a deplorable effect on our societies – corroding justice, good governance and prosperity. The UK is a global financial centre, open for business with the world. It is one of our country's great strengths, but it brings with it responsibilities: to ensure that we take the appropriate steps to prevent money laundering; and that we act to stop the proceeds of overseas corruption from being hidden here"*

These matters are studied by Professor John Urry in his book Offshoring[26]. Professor Urry's field of study is "mobility," movement rather than migration, but this proves an extremely fertile prism through which to examine the movement of high net worth individuals around the world.

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[25] Oral evidence: Immigration: skill shortages, HC 429 Tuesday 20 October 2015, available at http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/immigration-skill-shortages/oral/23370.html

[26] Polity Press; 1st edition (4 April 2014). For a summary of the arguments online see Professor Urry's February 2002 paper The Migration of the Rich for Compas at the University of Oxford: http://compasanthology.co.uk/wp-content/uploads/2014/02/Urry_COMPASMigrationAnthology.pdf

London is to host a global anti-corruption summit in 2016 and we anticipate that there will be scrutiny of whether the Home Office is administering the Tier 1 Investor correctly in connection with that. Many investors would welcome the opportunity for the Home Office to clean up the reputation of this visa.

Clause 56 and Schedule 12

AMENDMENTS 242T, 242U AND 242V in the names of Baroness Hamwee and Lord Paddick

Presumed purpose

AMENDMENT 242T To restrict the circumstances where a fee could be charged for a passport or elated services that exceed the costs of providing the service to cases of fast track processing and to provide that revenue so generated should be applied to "reducing the cost of the normal exercise of the function" which we take to mean reducing the cost of the fee for other applicants.

AMENDMENT 242U Omits provisions that would enable regulations to made to charge fees under the Marriage Act 1949 and the Births and Deaths Registration Act 1953.

AMENDMENT 242V does the same but for applications under the Civil Partnership Act 2004 and the Marriage (Same Sex Couples) Act 2013.

Briefing
This part of the Bill is not concerned with immigration control at all but with fees for British passports and charges that can be levied for additional services provided by registrars of births, marriages and deaths. They primarily affect British citizens. Services provided in connection with the registration of births, marriages and deaths are moved to regulations by this Bill. It will be possible to charge for services previously provided for free. These changes are unlikely to have come to the attention of persons who might be disturbed by them because they are in an immigration bill. Because they are in such a Bill, the focus of interest is elsewhere.

Clause 62

GOVERNMENT AMENDMENTS 243 and 244 in the name of Lord Bates

Presumed Purpose

AMENDMENT 243 provides that any statutory instrument made under clause 3 which amends or repeals any provision of primary legislation shall be subject to affirmative procedure, rather than the instruments so subject being restricted to those amending particular clauses and thus gives effect to the recommendation of the Select Committee on Delegated Powers and Regulatory Reform.

AMENDMENT 244 makes regulations under the clause *Functions in relation to labour market which amend primary legislation and under the new sections about labour market regulations inserted by it,* earlier in Committee, on 18 January 2015, subject to the affirmative procedure and thus gives effect to the recommendation of the Select Committee on Delegated Powers and Regulatory Reform.

Briefing

The opening paragraph of the Committee's 18th report of this session states

> *1. We reported on this Bill in our 17th Report of the current Session. On 12 January the Government tabled a substantial number of amendments 4 pages' worth! Many of these are likely to be taken on 18 January, the first day of Committee Stage. We therefore met urgently to consider the amendments, so that we might report before then.*

Lord Bates said on 18 January 2015

> …
> *I add to the previous debate on the minimum wage regulations my appreciation and that of the whole House to the Delegated Powers and Regulatory Reform Committee for its incredibly speedy work, even if it did introduce a bit of a riposte by stating that,*
> *"the Government tabled a substantial number of amendments—54 pages' worth!".*
>
> *I think that is the first time I have seen an exclamation mark in one of its reports. The point was made eloquently by symbol on the committee's feelings on that. I offer my apologies, and hope that this is by some way of explanation. I also express our appreciation to the Select Committee on the Constitution for its very helpful report, which I know we will be coming to in later stages.*[27]

The Committee said

> *8. The GLAA , by virtue of these amendments, is acquiring significant new functions, about which it is wholly untested. It does not have the experience of the other bodies and officers to whom powers under PACE may be applied under sections 113, 114 and 114A. We consider that, in those circumstances, the House might expect the PACE powers to be applied only for purposes specified on the face of the Bill, and that a higher level of scrutiny ought to apply to any subsequent addition of further purposes by statutory instrument.*
>
> *9. While we are prepared to accept the case for flexibility made in paragraph 15 of the supplementary memorandum in support of the power conferred by new section 114B(4)(e), we are not persuaded by what is said in paragraph 16 in favour of the negative procedure.* ***We accordingly recommend that regulations made under new section 114B(4)(e) should require the affirmative procedure on any exercise of that power.***

AMENDMENT 245 in the names of Lord Rosser and Lord Kennedy of Southwark

Presumed purpose Lord Rosser and Lord Kennedy had proposed a review of the remit of the Gangmasters' Licensing Authority. This amendment would ensure that regulations made

[27] HL Report 18 Jan 2016 col 531.

under the new clause they wished to insert into the Bill would have been subject to the affirmative procedure.

Clause 63

AMENDMENT 245A in the names of Baroness Hamwee and Lord Paddick

Purpose Extends the time from the passage of the Bill to when Clause 55, which makes provision for the Immigration Skills Charge, comes into effect. From two months to six months.

Briefing

Festina lente. We have seen in the case of the Immigration Health Charge that the technology started off very cumbersome and difficult to use and there was great confusion. Very many improvements have been made, including integrating it into the visa payment process, albeit that a number of problems remain. One in the case of the health surcharge is that even persons entitled to an exemption have to pay up front and then wait for a refund, which is not made until the application for a visa has been processed. There are people who cannot afford this. The scheme depends very heavily on refunds to work: a lawyer recently found herself in difficulty because, having paid the charge, her client decided not to make the application after all. Forms for applying for a refund required her to state the date of the application, which she could not, as there had never been an application. The skills charge is not in effect, even if it is in substance, just a hike in the visa fee, for which employers should be given time to prepare. It is also a whole new bureaucracy and it should be tested prior to implementation.

In the Title

AMENDMENT 246 in the name of Lord Bates

Presumed purpose: Broadens the short title of the Bill to substitute reference to its making provision about "enforcement of certain legislation relating to the labour market" for making provision about the "Director of Labour Market Enforcement"

Briefing

The Companion to the Standing Orders says

> *Admissibility of amendments*
>
> *8.55 The House observes the following general rules regarding the admissibility of amendments:*
> …
> *• amendments to the long title are not in order unless they are to rectify a mistake in the original title, to restate the title more clearly or to reflect amendments to the bill which are relevant to the bill but not covered by the former long title;*

The change is an indicator of the extent to which the Bill has been amended by Government during its passage through parliament and brings the Committee back to the question, debated at an earlier stage, of whether the amendments should be in the Bill at all.

The changes to Part one are presumably felt to mean that the short title of the Bill no longer reflects its contents. One may question why the consultation on tackling enforcement in the labour market was not concluded and allowed to report before the Bill, which bears every sign of having been prepared in haste as discussed in these briefings passim, was presented to parliament.

The scope of these amendments, which, it has been argued, are not appropriate for inclusion in an immigration bill, the volume of these amendments, the late stage of their introduction and the time available to debate them were the subject of criticism during the debates in Committee on Part 1. :

> *Baroness Hamwee …this is no way to legislate…. these new clauses dealing with the role and remit of the GLA affect the structural arrangements and the relationships of actors in the sector. They also introduce new measures and more, and I cannot see that anyone could describe this as best practice.*
>
> *Part 1 of the Bill, on the labour market, has no place in immigration legislation. The issues do not apply universally to immigrants and, conversely, are very relevant to many people who are not immigrants. Even without the new version, as I will call it, the Bill would be difficult enough. The Constitution Committee of your Lordships' House has commented scathingly that immigration law stands out as a particularly byzantine field, saying that the Bill's complexity is exacerbated by much of it amending existing, already highly complex pieces of immigration legislation which are subject to frequent changes. It comes in the wake—although the wake has not subsided, of course, but we will come to that later—of the 2014 Bill, which itself is substantial and complicated. The Constitution Committee expresses its, "real concern from a rule of law perspective", describing immigration law as inaccessible and not fit for purpose…*
>
> ***Lord Alton of Liverpool (CB):*** *We simply cannot do our job properly when we are stampeded into having to make decisions on major questions of this kind with so many amendments being placed before us at once. …*
>
> ….
>
> ***Lord Ramsbotham (CB):*** *My Lords, I endorse what the noble Lord, Lord Alton, has just said. This is not the first time during the passage of this Bill that a vast number of government amendments has been inserted. The same thing happened in the other place immediately before Report, and the same complaints were made that none of the amendments had been scrutinised properly. Indeed, there was no time to do so before the other place had to vote on amendments in Committee that they had not had time to scrutinise. …*
>
> ***Lord Kennedy of Southwark (Lab):*** *My Lords, I shall start my remarks by associating myself with the introductory remarks of the noble Baroness, Lady Hamwee, who talked about the unsatisfactory way the Government have handled the Bill so far. I also agree that the first part of the Bill, which concerns the Director of Labour Market Enforcement, has no place in this legislation and is a separate matter. The lack of pre-legislative scrutiny was referred to by the noble Lord, Lord Alton—whose remarks, again, I very much agreed with. This is no way to legislate. It reflects poorly on the process and risks undermining other legislation such as the Modern Slavery Act 2015.*

…Let us be clear. The Government are in charge of the Bill and of the timetable, and their legislation should be dealt with much better than this.

…

The Minister of State, Home Office (Lord Bates) (Con): *I begin, as I have been to, by apologising to the Committee for the late tabling of these amendments, but let me try to explain that a little further. We were faced with a particular challenge. Noble Lords will recall that we had the Second Reading on 22 December, and one issue raised at that point was that the scheduled date for the first day in Committee was 13 January. In the light of the likely publication of our response to the consultation, we agreed to see whether the start date could be put back—which it was until today, 18 January.*

We were then faced with a challenge regarding the publication of the report, referred to by the noble Baroness, Lady Hamwee, in response to the consultation document on tackling exploitation in the labour market. We said that we would have a period of consultation, which ran from September through to December, and that we would legislate on the back of that consultation, which seems to me to be general good practice. The question was then: at what stage should the amendments be introduced? … My noble friends Lord Ashton, Lord Keen and I took the view that if they were introduced for the Committee stage, at least they could receive a thorough airing, which could be reflected on before Report."

None of the Minister's comments explain why the Bill had to be introduced when it did, when the work to inform it was manifestly not complete. For a consultation which closes in December to give rise to amendments ready to go into a bill on 13 January does not suggest careful scrutiny of the nuances of responses.