ILPA Proposed amendments for House of Commons' Consideration of Lords' Amendments Immigration Bill

The Immigration Law Practitioners' Association (ILPA) is a professional membership association, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established 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 many Government and other consultative and advisory groups.

ILPA Briefings on the Bill can be read at http://www.ilpa.org.uk/pages/immigration-bill-2015.html We are happy to provide further information on request. ***Please get in touch with Alison Harvey, Legal Director Alison.Harvey@ilpa.org.uk or Zoe Harper, Legal Officer, Zoe.Harper@ilpa.org.uk , phone 0207 2518383.***

This briefing provides an overview and then deals first with those matters on which the Government was defeated in the Lords and then with ILPA's proposed amendments. At the end we comment on devolution. We are happy to provide further briefing on request and briefing will be provided to amendments tabled.

OVERVIEW

There are 254 Lords' amendments. All but five are Government amendments. A substantial number of these are concerned with devolution, including a number of amendments we have referred to in briefings as "Oops we forget Scotland" amendments. Some 60 amendments are to Part 1, with a further 55 to the schedules to that Part, which has seen the most substantial change of any part of the Bill. Some Government amendments have changed the Bill to try to address concerns raised in the Commons.

We deal first with matters on which the government was defeated in the Commons and then with other proposed amendments.

Matters on which the Government was defeated in the Lords and proposals for Commons' consideration

- **Amendment 59** ***Asylum Seekers: permission to work after six months***
- **Amendment 60** ***Overseas domestic workers***
- **Amendment 84** ***Immigration Detention time limit and judicial oversight***
- **Amendment 85** ***Guidance on the Detention of Vulnerable Persons*** **subclause (1) [Ban on the detention of pregnant women]**
- **Amendment 87 New Clause after Clause 37** ***Unaccompanied refugee children: relocation and support***

We deal with these in turn.

AMENDMENT 59 ***Asylum Seekers: permission to work after six months***

Purpose
Provides for asylum seekers to be able to work if their claim is not determined within the Home Office target time of six months.

Briefing
ILPA recommends that the House of Commons **agree the Lords' Amendment**. We emphasise the importance of ensuring that a person seeking asylum is allowed to work in any job and not just a job on the shortage occupation list.

At the moment a person seeking asylum only gets permission to work if they wait for an initial decision from the Home Office for 12 months. But they may be kept out of working for very much longer: for example they get the initial decision within 10 months but it then takes a further year for their first appeal to be heard and then have to wait for onward appeals to be concluded.

For ILPA's briefing to this amendment and also links to the Lord's debate see: http://www.ilpa.org.uk/resources.php/31938/ilpa-briefing-for-lords-report-first-day-5-march-2016

Key points:

The Minister in Commons Committee defended the Government's decision not to opt in to the recast reception conditions directive requiring member states to grant automatic access to the labour market for asylum seekers after nine months, saying that it considered that the Commission's proposal could undermine the asylum system "by encouraging unfounded claims from those seeking to use the asylum system as a cover for economic migration.[1] He did not address that if the Home Office decided cases within its (already generous) six months target time no permission would arise[2]. The Home Affairs Committee in its report of the work of the Immigration Directorates published on 4 March comments on the lack of improvement in tackling immigration backlogs,

> *We are concerned that the department may not be able to maintain the service levels it has set itself on initial decisions for new asylum claims within 6 months. To do so may require further funding and resources. (Paragraph 15)*
>
> *Our predecessor Committee regularly expressed its concern about the immigration backlogs. The current backlog of cases reached 358,923 in Q3 2015, an increase of 7,000 from a year earlier. It is deeply concerning that there has been so little improvement and we have to return and restate the issue again. (Paragraph 97)*[3]

He suggested that persons could manufacture delays by not engaging with the process[4] but this is not the case, as persons can be refused for non-compliance[5].

---

[1] Public Bill Committee Col 461
[2] Col 462.
[3] http://www.publications.parliament.uk/pa/cm201516/cmselect/cmhaff/772/772.pdf.
[4] *Ibid.*

The Minister argued that if a person seeking asylum is given the right to work this denies a job to a person with permission to work in the UK, but this is an oversimplification. The person seeking asylum is allowed to compete for the job. They could be competing with, for example, an EU national for a job that British citizens and those settled in the UK do not wish to do. Such jobs are often not highly skilled and do not appear on the shortage occupation lists to which persons seeking asylum are currently limited.

It was observed in the Commons' debate that the Minister was unable to point to any evidence in support of his fears that this would be a pull factor.

ILPA welcomes debate not only on the time limit but on the restriction to the shortage occupation lists. Currently persons seeking asylum who wait more than 12 months get permission to work, but are restricted to jobs on the shortage occupation lists. These are jobs they are unlikely to get given that their period of stay in the UK is uncertain. They are more likely to get low-skilled jobs that British citizens and those settled in the UK do not wish to do. If they work in those jobs then as well as the benefits to them this reduces the support budget, something the Government is trying to do.

AMENDMENT 60 *Overseas domestic workers*

Purpose

To give effect to the recommendations of James Ewins QC as to the overseas domestic worker visa as set out below. In particular to ensure that all overseas domestic workers are able to change employer and to remain in the UK for up to 2 ½ years.

Briefing

ILPA recommends that the House of Commons **agree the Lords' Amendment**. James Ewins QC made clear that his recommendations were the minimum that could be done to protect overseas domestic workers.

For ILPA's briefing to this amendment and also links to the Lord's debate see: http://www.ilpa.org.uk/resources.php/31938/ilpa-briefing-for-lords-report-first-day-5-march-2016

Key points:

The Government has published James Ewins (now QC)'s' Independent Review of the Overseas Domestic Worker Visa. This is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report__6_11_15_.pdf

Mr Ewins takes as his fundamental question

> *…whether the current arrangements for the overseas domestic workers visa are sufficient to protect overseas domestic workers from abuse of their fundamental rights while they are working in the UK, which includes protecting them from abuse that amounts to modern slavery and human trafficking.*

---

[5] *Ibid.*

Thus his focus is on the minimum required to achieve this.

He concludes that that minimum is

> *10. On the balance of the evidence currently available, this review finds that the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK (see paragraphs 65 - 87).*
> *In particular:*

Section 53 of the Modern Slavery Act 2015 was the Government's response to its defeat in a vote on overseas domestic workers during the passage of that Act. It made provision for overseas domestic workers who had been found to have been trafficked or enslaved to be able to change employer and to have leave to remain for up to 12 months. The amendment works by modifying section 53 in line with Mr Ewins' proposals. Thus:

It broadens the section to cover all overseas domestic workers. Mr Ewins said

> *12. Since this review finds that, in granting that right, it is both impractical and invidious to discriminate between seriously abused, mildly abused and non-abused workers, the consequence is that it must be granted to all overseas domestic workers.*

It increases the period for which an overseas domestic worker can extend his/her leave from six months to a total of two and a half years.

> *…the underlying rationale of a right to change employer is to give the overseas domestic worker a safe way out of an abusive situation, of which safe re-employment is an essential part. .. to make the right to change employer effective in practice, the duration of any extensions must be of sufficient length to give the overseas domestic worker both sufficient incentive and reasonable prospects of finding such alternative employment.*

The ability to extend leave for up to a total of two and a half years is necessary to make the right to change employer effective, a real and not an illusory right. Mr Ewins says

> *…the commercial reality of an employer paying an agency fee for securing the services of such a person requires, in the evidence of some agencies, that a longer period of prospective employment is offered. It has been emphasised that this is particularly the case in circumstances where the employer is necessarily taking a risk by employing an overseas domestic worker who has escaped from a previously abusive employer and therefore comes without any references. Placing such employees is not as easy as placing others, it is said, and placing them for short periods is impossible. If this is correct, failure to make overseas domestic workers available for a longer period of time would substantially undermine the effect of a right to change employer.*

It is important to understand that the extension is an adjunct to the right to change employer, rather than an end in itself.

During the passage of the Modern Slavery Act, the Government's only argument was that if workers could change employer without reporting to the authorities, then the abuse would not be identified. Mr Ewins has addressed this by making provision for the worker to be obliged to

report that they have changed employer to the Secretary of State, who can then chose to investigate further.

This also addresses the concern as to the use of the ability to change employer by those endeavouring to exploit, rather than to protect the worker. It is strengthened by Mr Ewins' recommendation as to mandatory information sessions. The worker knows, from the off, that they have a right to change employer, not, or not merely, to have their exploiter changed for them.

All changes of employer could be investigated, or this could be done on an intelligence led basis. Whether investigated or not, information on changes could be collated, permitting of the identification of patterns of abuse.
It could be correlated with other information on which data is to be collected.

AMENDMENT 84 *Immigration Detention time limit and judicial oversight*

Purpose

Requires that the Secretary of State make an application to the Tribunal where she wishes to detain a person, other than a person who has been sentenced to a term of imprisonment for 12 months or longer or whom she has determined shall be deported, for more than 28 days – at a stretch or in aggregate.

On such an application the Secretary of State must persuade the Tribunal that the "exceptional circumstances" of the case require detention beyond 28 days. The Tribunal can then extend detention for a further period, not limited to 28 days and can do so more than once, with no maximum. It can review that extended detention of its own motion.

Rules as to the procedure are to be made by the Lord Chancellor.

Briefing and PROPOSED AMENDMENT

ILPA recommends that the Commons **agree the Lords' Amendment**. We consider however that it would be helpful to debate at the same time the amendment below **as amendments to the Lords' amendment,** to focus the debate and to draw together the themes of judicial oversight and the Government amendment *** *Guidance on the Detention of Vulnerable Persons,* discussed below

PROPOSED AMENDMENTS TO AMENDMENT 84

FIRST AMENDMENT

As an amendment to the Lords' amendment

Before subsection(1) insert

(1) No person whom the Secretary of State knows, or could reasonably be expected to know, is pregnant shall be detained.

SECOND AMENDMENT

In subsection (1), leave out "a person" and replace with "the persons described in subsection (*)"

THIRD AMENDMENT

Replace subsections (4) and (5) with

(4) This section applies to persons
(a) under the age of 18;
(b) over the age of 65;
(c) suffering from a serious medical condition;
(d) suffering from serious mental illness;
(e) suffering from a significant disability;
(f) with learning difficulties;
(g) who the victims of rape or other sexual or gender-based violence including female genital mutilation;
(h) suffering from post-traumatic stress disorder;
(i) reasonably considered to have been trafficked;
(j) reasonably considered to have been tortured;
(k) transsexual; or
(l) otherwise identified as being sufficiently vulnerable that their continued detention would be injurious to their welfare.'

(5) Rules of procedure shall be made by the Tribunal Procedure Committee and approved by the Lord Chancellor.

Purpose
Amends the Lords' amendment to reflect the prohibition on detention of pregnant women introduced in the Lords into amendment 85 and so that judicial oversight of detention, instead of being provided for all save those who have committed criminal offences or face deportation as in the Lords' amendment, is provided for only those categories of persons whom Stephen Shaw recommends be presumed unsuitable for detention. It is, however, provided for all of those persons without exception.

The substitution of section (5) is because the rules of procedure for the Tribunal are made by the Tribunal Procedure Committee. They are subject to the approval of the Lord Chancellor but are proposed by the Committee.

Key points:

For ILPA's briefing to what is now amendment 84 and also links to the Lord's debate see: http://www.ilpa.org.uk/resources.php/31938/ilpa-briefing-for-lords-report-first-day-5-march-2016

The proposed amendment to the Lords' amendment would assist in focusing debate on the following:

- Given that persons in the categories listed are only to be detained in the most exceptional circumstances then something abnormal is happening when they are detained for more than 28 days. Stephen Shaw concludes "I have identified shortcomings in both the identification of vulnerability and in the policies designed to maintain

wellbeing." Only with independent scrutiny can policies designed to protect persons from detention be given effect.

- Given that persons in the categories listed are only to be detained in the most exceptional circumstances and that judicial oversight is to take place only after 28 days, there can be no argument whatsoever, if policy is working as the Government intends, that there will be larger number of bail hearings.

Detention under Immigration Act powers is by administrative fiat, without limit of time and a detained person is not brought before a tribunal judge or a court unless s/he instigates this. The lack of any time limit adds greatly to the stress of the detention. It may render the detention arbitrary. This is contrary to the rule of law. It is also dangerous.

When the matter was debated in the Public Bill Committee the Minister said

> **"…***we do not consider that there is a need for mandatory judicial oversight of detention … There is already well-established judicial oversight available. Individuals detained under immigration powers have unrestricted opportunity to apply to the tribunal for bail at any time. They can also apply for a judicial review of their detention, or for a writ of habeas corpus to the High Court, again at any time.*
>
> *… All detainees are made aware of the ability to apply for bail, but there is obviously a need to strike a balance.* [6]

This is far too sanguine. For those held in the prisons, there are no legal surgeries and the difficulties of obtaining any legal representation at all are increased. People with a mental illness are among the least likely to be able to take the necessary steps to instigate a bail hearing.

AMENDMENT 85 *Guidance on the Detention of Vulnerable Persons* subsection (1) [Ban on the detention of pregnant women]

Purpose

Subclause (1) To prohibit the detention of women whom the Secretary of State knows, or could reasonably be expected to know, are pregnant.

Subclauses (2) to (8) These result from a government amendment following its receipt of Stephen Shaw's review of Immigration Detention. Require the Secretary of State to issue guidance to be taken into account by those assessing whether an individual is "vulnerable" and if it is determined that they are, whether to detain them. The guidance must be laid before parliament in draft and will be brought into force by regulations. The guidance must be taken into account by those to whom it is issued.

Briefing and PROPOSED AMENDMENT

ILPA supports subsection (1) but considers that the rest of the amendment risks giving the impression that the level of protection for the "vulnerable persons" is to be lowered following the Shaw review rather than raised as Stephen Shaw recommends. We therefore recommend

[6] Public Bill Committee 3 November 2015 col 363

the following as an **amendment to the Lords' amendment:**

As an amendment to the Lords Amendment 85

After subsection (1) insert

(*) Persons shall be detained only in very exceptional circumstances

(a) under the age of 18;
(b) over the age of 65;
(c) suffering from a serious medical condition;
(d) suffering from serious mental illness;
(e) suffering from a significant disability;
(f) with learning difficulties;
(g) who the victims of rape or other sexual or gender-based violence including female genital mutilation;
(h) suffering from post-traumatic stress disorder;
(i) reasonably considered to have been trafficked;
(j) reasonably considered to have been tortured;
(k) transsexual; or
(l) otherwise identified as being sufficiently vulnerable that their continued detention would be injurious to their welfare.'

Purpose

Leaves in place the prohibition on the detention of pregnant women and the text of the original Government amendment which guidance pertaining to persons determined to be particularly vulnerable to harm if they are detained or if they remain in detention.

Provides that persons in the categories listed shall be detained only in very exceptional circumstances. This is the test used in the Home Office's Enforcement Guidance and Instructions at Chapter 55.10. The list of persons is taken from 55.10, modified in accordance with Stephen Shaw's recommendations.

Mr Shaw suggested that there be an upper age limit on detention; the amendment uses the age of 65 which is the age used in other Home Office immigration policies making special provision on the basis of age (knowledge of life in the UK tests.

Briefing

For ILPA's briefing to ending the detention of pregnant women, and also links to the Lord's debate on this (at Lords' Third Reading) see: http://www.ilpa.org.uk/resources.php/32045/ilpa-supplementary-briefing-for-the-immigration-bill-house-of-lords-third-reading-12-april-2016-dete

For ILPA's briefing to the Government amendment and links to the debate on this see http://www.ilpa.org.uk/resources.php/31940/ilpa-briefing-to-amendments-tabled-for-immigration-bill-part-3-powers-of-immigration-officers-etc.-a

Key points:

When Lord Bates wrote on 1 March 2016 to present the amendment which became Clause 62 he produced an Annex, *Annex B: Detaining Individuals for the Purposes of Immigration Control – Consideration of Risk Issues* setting out the Government's thinking on detention (reproduced below). Lawyers and experts who have studied Annex B are concerned that far from initiating the extra protections recommended by the Shaw Review, it would reduce the protection to be

afforded to persons at particular risk, because it would dilute the current longstanding test that they can be detained only in very exceptional circumstances as set out in the Home Office Enforcement Guidance and Instructions, Chapter 55.10[7] .
Concerns arise because the Adults at Risk policy appears to envisage a balancing act. The 'Draft principles of the policy' section states

- *Detention will not be appropriate if an individual is considered to be at risk **unless and until** there are overriding immigration considerations.*
- *In each case, the evidence of risk to the individual should be considered against any immigration and criminality factors to establish whether these factors outweigh the risk.*

It goes on to say: "*Individuals at the highest level of risk would be detained only in cases in which there is a highly compelling justification on immigration control grounds.*"

This suggests that the test in Chapter 55.10 of detention in "exceptional circumstances" is become a test of a 'highly compelling justification' and that it be codified as acceptable to prioritize the risk of a person's absconding over the well-being of the detainee. This appears to be the position taken in Lord Keen of Elie's letter of 21 March 2016 to Baroness Lister of Burtersett and Baroness Hamwee where he says "decisions on the detention of vulnerable people will be based on an assessment of whether immigration control factors outweigh vulnerability factors". Lord Keen said that pregnant women will be regarded as at the highest level of risk. But what does that mean?

Stephen Shaw wrote

> "*4.34 On the substantive issue of detaining pregnant women, therefore, and independently of my proposals in respect of single point routing, I believe that the Home Office should acknowledge the fact that, in the vast majority of cases, the detention of pregnant women does not result in their removal. In practice, pregnant women are very rarely removed from the country, except voluntarily. In these circumstances, I am strongly of the view that the presumptive exclusion from detention should be replaced with an absolute exclusion.* ***Recommendation 10: I recommend that the Home Office amend its guidance so that the presumptive exclusion from detention for pregnant women is replaced with an absolute exclusion."***

This recommendation can, and should be implemented. It echoes the recommendation of the All Party Parliamentary Groups on Refugees and on Migration, in the report of their enquiry into Immigration Detention[8]. The report of the enquiry cited Hindpal Singh Bhui of her Majesty's Inspectorate of Prisons

> *"…pregnant women are only meant to be detained in the most exceptional circumstances. And again, we look for evidence of this. And on the last couple of occasions that we've looked, we haven't found those exceptional circumstances in the paperwork to justify their detention in the first place."*

[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470593/2015-10-23_Ch55_v19.pdf
[8] https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf

The Home Office currently has a policy that pregnant women should be detained only in the most exceptional circumstances. But it fails to follow that policy. It has policies as to the care and treatment pregnant women, and indeed all women, and indeed all detainees, should receive. But it fails to follow those policies as the All Party Parliamentary Groups documented. Pregnant women suffer from the failure to implement policies specific to them, but also the failure to implement more general policies. The risks are too great, even if pregnant women are classified as being "at the highest level of risk" that what is supposed to happen to them will not happen, and that they and their babies will suffer as a result.

Pregnancy can be verified; no questions of "credibility" or of a person's claiming to be pregnant when she is not arise. Pregnancy is a condition that lasts for a finite period. The risks to the Home Office of not being able to detain pregnant women are minimal and should be contrasted with the situation of pregnant women in detention which is wholly unacceptable. . The consequences have been documented in detail, as described below. Pregnant women should not be detained.

Lord Keen of Elie claimed in his 21 March letter that a blanket ban is not possible. He cited the hypothetical example of a pregnant woman with no right of entry who is fit to fly and whom the Government wants to return within a short period. The very example exposes that matters are not as cut and dried as is suggested in the letter. Persons are given temporary admission, or asked to remain of their own volition, when there turns out to be something untoward about their leave to enter. Very often, a removal will be made swiftly. There can be no presumption that there will not be compliance without detention. If a person is unwilling to return, this may be because of a fear of persecution. Any person who claims asylum cannot be removed until their claim has been determined; whether pregnant or not, they cannot be removed swiftly if such a claim is made. How in the circumstances of the example, would the Home Office be able to carry out the balancing act envisaged by Lord Keen? How will it know about the women's state of health, the history of her pregnancy and any risks to her? If the notion of pregnant women being at the "highest level of risk" is to mean anything, surely it would mean that a newly arrived pregnant woman should not be detained just because she does not have her entry papers in order? Yet this is the hypothetical example used.

In her witness statement for the case of *PA*, appended hereto, Louise Silverton of the Royal College of Midwives identifies increased morbidity and mortality rates among pregnant asylum seekers because they often have complicated pregnancies, may be poor health and may not make good use of health services. Other women under immigration control, particularly those without leave, may be in a similar position.

Ms Silverton expresses concern at the midwifery services provided in detention, particularly the lack of information available to those providing those services, making it impossible to carry out adequate foetal and maternal risk assessment. She identifies the risks of stress and tiredness. At the meeting hosted in parliament on 22 March 2016 by Caroline Spelman MP, a woman who had been pregnant in detention described how nausea left her unable to eat at mealtimes in the dining room, but she was not allowed to have food separately or at different times. She was denied extra helpings the things she felt able to eat and as a consequence of being unable to swallow other things, or to keep them down, went hungry. Ms Silverton says of the pregnant woman in detention

> *"She cannot purchase the food she needs; she cannot sleep in her own bed and make it more comfortable. Even if a pregnancy is completely healthy and uncomplicated; the dignity and care that should be afforded all pregnant women is compromised by detention."*

Ms Silverton also raises the question of the use of force against pregnant women. This is a matter ILPA has raised many times. A case revealed that the Home Office and its contractors had been operating an unlawful policy on the use of force on pregnant women and children in immigration detention.[9]

Stephen Shaw recommended:

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

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

He recommends an upper age limit on detention[10]. This will remind many readers of his review of Her Majesty's Chief Inspector of Prisons has report on an 84 years' old frail Canadian man suffering from dementia who died in detention in handcuffs having been kept handcuffed for five hours.[11]

> ***"Serious mental illness***
> *4.35 The evidence I received criticised the introduction of the clause 'which cannot be satisfactorily managed in detention' into that section of paragraph 10 of chapter 55 that deals with those suffering from serious mental illness. AVID told me this was introduced in 2010. They said that what is meant by 'satisfactorily managed': "has never been defined, and guidance has never been issued on what this management may consist of or look like. The result is that the guidance is often treated arbitrarily." They said it had resulted in a 'watch and wait' approach, "where detention is maintained until the individual deteriorates to the point where she/he can no longer be satisfactorily managed".*
>
> *4.36 It was further suggested that the term has no clinical meaning – indeed, that its meaning is inexact and obscure. I cannot compare the situation today with that obtaining before 2010 when the clause was introduced. But it is perfectly clear to me that people with serious mental illness continue to be held in detention and that their treatment and care does not and cannot equate to good psychiatric practice (whether or not it is 'satisfactorily managed'). Such a situation is an affront to civilised values."*

---

[9] *Chen and Others v SSHD* CO/1119/2013.
[10] Recommendation 15.
[11] *Report of unannounced inspection of Harmondsworth Immigration Removal Centre*, 2014, section 1, paragraph 1.3 available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2014.pdf

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

> *"4.40 I am particularly concerned by the evidence that detention, as a painful reminder of past traumatic experience, can trigger re--traumatisation. The effects of such re--traumatisation can include self--injury and worsening psychiatric morbidity.* ***Recommendation 12: I recommend that those with a diagnosis of Post Traumatic Stress Disorder should be presumed unsuitable for detention."***

AMENDMENT 87 New Clause after Clause 37 ***Unaccompanied refugee children: relocation and support***

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 recommends that the Commons **agree the Lords' Amendment**.

For ILPA's briefing to this amendment and also links to the Lord's debate see: http://www.ilpa.org.uk/resources.php/31990/immigration-bill-ilpa-briefing-on-part-5-support-for-day-3-of-lords-report-21-march-2016

Key points:

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 first 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 initiative will not be limited to children fleeing Syria.
- 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.

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 House of Lords welcomed them but considered that they do not go far enough given the dangerous and desperate situation of unaccompanied children in Europe. At a meeting in

parliament on 13 April, Save the Children's representative explained that 50% of unaccompanied children checked at a health centre in Milan had presented with sexually transmitted infections. She recalled the photographs of a new born baby being washed in a puddle in Idomeni and the dreadful conditions in which children are living throughout Europe, including in Calais. Some 10,000 children have gone missing in Europe.

Many children who are in Europe but would be accompanied in the UK because they would be joining family: be it family members who are seeking asylum, under the provisions of the Dublin Regulation; family members who are refugees, under the provisions on refugee family reunion, or family members who are British citizens or settled under the general rules on family reunion.

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. 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 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 rules on refugee family reunion rules only permit parents to be joined by minor children and adults by spouses /partners. To make a real difference to unaccompanied children in Europe we need rules that allow them to join siblings, uncles and aunts and grandparents; all subject to child protection and best interests' assessments being carried out. Legal aid for refugee family reunion would make family reunion possible for these children.
As to the rules under which children can join British citizens or settled persons, what would assist here would be waiving the application fee, allowing the unaccompanied children to apply from any country, regardless of whether they have lawful residence there, confirming (which should not be difficult) that these cases meet the that these cases meet the requirements in guidance that there be serious and compelling family or other considerations which make exclusion of the child undesirable and allowing third party sponsorship so that someone other than the relative been joined guarantees that the child will not have recourse to public funds.

Other proposed amendments for Common's Consideration

Part 1 Labour Market and Illegal Working

Lords' amendment 3

As an amendment to **Lords' amendment 3**, at end insert

(*) how, in the exercise of all labour market functions, workers are to be protected from exploitation"

Purpose
To provide that the annual labour market enforcement strategy prepared by the Director must set out how workers are to be protected from exploitation in the exercise of all Labour market functions.

Briefing
Picks up on the debates during the passage of the Bill through the Lords as to the primary purpose of the Director of Labour Market enforcement. Revisits the question of the primary function of the Director, which was debated in the Commons, in the light of the multitude of changes made to Part 1 by the Government in the House of Lords

Clause 8 Offence of Employing Illegal Worker – Lords' amendments 52 to 55

In substitution for Lord's amendments 52 to 55

Leave out Clause 8

Purpose
Instead of the proposed defence to the offence of illegal working, proposes that the offence does not form part of the Bill

Briefing
During the passage of the Bill through the Commons the government was pressed on the consequences of creating an offence of illegal working, particularly for the trafficked and exploited but also for those who did not realise that they had permission to work. The government response has been to create a defence for the latter group. But this fails to address all the concerns raised in the Commons and Lords. Efforts to amend the clause having failed, it should not be allowed to stand part of the Bill.

The Bill is made better by Clauses 52 to 55 and if the Clause is to remain in the Bill, they should be accepted. But Clause 8 should not remain in the Bill

PART 2 ACCESS TO SERVICES

Residential tenancies

Clause 13 *Offence of leasing premises*

In substitution for Lords' amendments 61 and 62

Leave out Clause 13

Purpose
Instead of the proposed defence for a landlord or landlady to the offence of illegal working, proposes that the offence does not form part of the Bill

Briefing
During the passage of the Bill through the Commons the government was pressed on the consequences of creating an offence of renting to a person without lawful leave and on the consequences both for tenants and their children and for landlords and landladies.
The government response has been to create a defence for the landlords and landladies who have taken reasonable steps to terminate a residential tenancy during a reasonable period

beginning with the time when the landlord or landlady knew or had reasonable cause to believe that the premises were occupied by an adult without the right to rent.
The amendments remove the ludicrous risk created by the original drafting of the Bill that a landlord or landlady could be prosecuted for renting to a person without the right to rent during the period for which s/he is barred by statute from evicting that person. This, it is suggested, does no more than correct an error and does not address the substantive mischief of the Clause all the concerns raised in the Commons and Lords.
The Bill is made better by Amendments 61 and 62 and if the Clause is to remain in the Bill, they should be accepted. But Clause13 should not remain in the Bill

Clause 14 *Eviction* Lords amendment 64

As an amendment to Lords amendment 64

At end insert: -

(*) The notice shall provide for a tenant to object to it within 14 days of the notice's being given on the grounds that

(i) An occupier has a right to rent; or

(ii) An occupier is pregnant; or

(iii) An occupier has a child living with them in the premises

(*) Copies of the objection shall be sent to the landlord and to the Secretary of State

(*) Where such notice is given, the landlord shall not proceed with the eviction until the Secretary of State notifies him that the objection is unfounded.

(*) A copy of such notification shall be sent to the tenant.

Purpose
Provides protection from summary eviction on the basis that the tenant has no right to rent where there is a pregnant women in the household, a child living in the household, or where the Secretary of State has made a mistake in concluding that a person does not have a right to rent.

Briefing
Amendment 64 improves the Bill because it requires a formal notification of a tenant that they are to be evicted if they do not leave the property within 28 days because they do not have a right to rent. But such a notification is of little use if the tenant must simply sit there waiting for the axe to fall, or bring a costly judicial review to challenge the legality of the decision.
UK landlord and tenant law has for decades refused to countenance putting people out on to the street, which is what this Bill does. There are many categories of person for whom one could argue for special protection. The category of children is difficult to resist given that the government has amended the Bill by the insertion of Amendment 113 which provides that the Act does not limit any duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2006

PART 3 ENFORCEMENT

See discussions above on the detention of pregnant women, on vulnerable groups and on judicial oversight.

Schedule 7 *Immigration Bail*

Amendments 183 to 209

PROPOSED AMENDMENTS

As amendments to **Lords' Amendment 186**

In subparagraph (2C) leave out "if the Secretary of State informs the Tribunal that the Secretary of State considers" and replace with "the Tribunal"

In subparagraph (2E) after "the Secretary of State" insert "or the Tribunal".

Purpose
Changes the Bill so that where the tribunal is considering whether to remove or to impose an electronic monitoring condition it will be for the Tribunal not, as in the current version of the Bill, for the Secretary of State, to determine whether it would be impracticable for the person to be made subject to an electronic monitoring condition or contrary to a person's human rights to make them so subject.

PROPOSED AMENDMENT

It is proposed that the Commons disagree **Lords Amendment 188**

Purpose
The effect of disagreeing the amendment would be to remove the prohibition on the First-Tier Tribunal's amending an electronic monitoring condition imposed by the Secretary of State.

PROPOSED AMENDMENT

It is proposed that the Commons **disagree Lords Amendment 189**

Purpose
The effect of disagreeing the amendment would be that the Secretary of State could not amend bail condition imposed by the Tribunal without a direction from the Tribunal. Without the amendment she could do so in the case of electronic monitoring or residence conditions

PROPOSED AMENDMENT

It is proposed that the Commons **agree Lords Amendment 191**.

Purpose
Amendment 191 removes the provisions which previously allowed the Secretary of State to turn around and impose an electronic monitoring condition, the Tribunal having declined to do so.

PROPOSED AMENDMENTS

To **Lords' amendment 192**

The first amendment

In paragraph 6B, after "First-tier Tribunal in sub-paragraph (2) – "leave out from "-"to the second "Secretary of State" in subparagraph 6B(3) and replace with

"if sub-paragraph (3) applies, must exercise the power in that sub-paragraph to remove the condition.

(3) This subparagraph applies if the First-tier Tribunal"

The second amendment

In paragraph 6B, after "First-tier Tribunal in paragraph 4 " leave out from "-"to the second "Secretary of State" in subparagraph 6B(3) and replace with

"if sub-paragraph (5) applies, must exercise the power in that sub-paragraph to remove the condition.

(5)This subparagraph applies if the First-tier Tribunal"

Purpose

The first amendment removes the prohibition on the First-Tier Tribunal's removing an electronic monitoring condition. Provides that the duty to remove the condition applies where the Tribunal not, as in the amendment on the Order paper, the Secretary of State, considers that it would be impracticable or a breach of a person's human rights not to do so.

The second amendment removes the obligation on the First-tier Tribunal to impose such a condition. Thus where the tribunal determines that it would not be impracticable or contrary to a person's human rights for it to remove or impose such a condition, as the case may be, it will have the power, rather than a duty, so to do.

It then provides that the duty not to impose such a condition applies where the Tribunal not, as in the amendment on the Order paper, the Secretary of State, considers that it would be impracticable or a breach of a person's human rights not to do so.

Amendment 195

ILPA recommends that the Commons **agree Lords' amendment 195**

Purpose

The effect of the amendment is to broaden the circumstances in which the Secretary of State has a power (not a duty) to provide accommodation to a person released on bail to all cases where the persons would not be able to support themselves at the bail address without that support. The effect of the change is that it does not matter where the Secretary of State is providing the accommodation or not.

PROPOSED AMENDMENTS

As an amendment to **Lords Amendment 204**

Leave out "and insert (2C) and (2D)"

As an amendment to **Lords Amendment 205**

Leave out "and insert (2C)"

Purpose
This provision is consequential on the changes to the powers in respect of electronic monitoring. The effect of the amendment is to remove reference to regime in earlier versions of Bill, but also to substitute reference to the new regime so that it will apply to cases before the Special Immigration Appeals Commission, a specialist court of record. The effect of the amendment to Lords Amendment 205 is that grants of bail by the Commission will be a matter for the Commission; the Secretary of State will not be able to require the Commission to impose, or to refrain from imposing, an electronic monitoring condition. The amendment to Lords Amendment 204 is consequential on this.

Briefing
All these amendments deal with electronic monitoring. It is much easier to look at a tracked changes version of the Bill than at the Lords' amendments when considering these amendments as the amendments interact.

The Government amended the Bill at Lords' report to remove the power for the Secretary of State to turn around and impose an electronic monitoring condition when the Tribunal had declined to do so. This followed protest hat the provisions failed to respect the independence of the judiciary.

The Bill now provides for the Secretary of State to tell the Tribunal, but not only the Tribunal, whether an electronic monitoring condition is impracticable or a breach of a person's human rights. If she says it is, the Tribunal cannot impose the condition. If she says it is not, the Tribunal must impose the condition. This does not respect the independence of the judiciary.

The Bill extends the Secretary of State's power to dictate the imposition of an electronic monitoring condition beyond the First-Tier Tribunal to the Special Immigration Appeals Commission, which is a court of record presided over by a High Court judge and also to judges in a criminal court, including the Court of Appeal or Inner House of the Court of Session, granting bail at the same time as making a recommendation for deportation.

ILPA does not consider that the amendments made address the concerns that have been raised, including by the higher judiciary.

A Judge or Tribunal judge has a duty under section 6 of the Human Rights Act to act in accordance with human rights. What if the Judge or immigration judge considers it to be contrary to a person's human rights to impose the condition, but the Secretary of State says it is not contrary so to do? The Judge or immigration judge will subject to two conflicting duties. What if the Judge or immigration judge wants to impose an electronic monitoring condition and considers that it would be practicable so to do, but the Secretary of State says it is not practicable? Then the Judge or immigration judge will be unable to impose the condition s/he wished to impose. If this meant that s/he did not grant bail to a person who would otherwise have been bailed, then this could constitute an unwarranted and unlawful interference with a person's right to liberty.

LORDS' AMENDMENT 113

PROPOSED AMENDMENT

For L**ords Amendment 113** substitute

Page 39, line 16, at end insert—

"( ) After subsection (3) insert—

"(4) Before a decision is taken to certify a human rights claim, the Secretary of State must obtain an individual best interests assessment in relation to any child whose human rights may be breached by the decision to certify, and the assessment shall cover—

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his or her age and understanding);

(b) his or her physical, emotional and educational needs;

(c) the likely effects, including psychological effects, on him or her of the certification;

(d) his or her age, sex, background and any characteristics of his or her the assessor considers relevant;

(e) any harm which he or she is at risk of suffering; and

(f) how capable the parent not facing removal, and any other person in relation to whom the assessor considers the question to be relevant, is of meeting his or her needs.

(5) The assessment shall be carried out by a suitably qualified and independent professional.

(6) Psychological or psychiatric assessments shall be obtained in appropriate cases.

(7) The results of the assessment shall be recorded in a written plan for the child.

Purpose

Requires a best interests assessment to be carried out in relation to any child whose human rights may be breached by the decision to certify an appeal so that it must be brought from outside the UK

Briefing

Lord Keen of Elie's argument[12] against a version of this amendment tabled at Lords Committee was that it was unnecessary because the Borders, Citizenship and Immigration Act 2009 already places the Home Office under a duty in immigration cases to have regard to the need to safeguard and promote the welfare of the child. It is thus reasonable to conclude that **amendment 113**, which he then which provides

> "For the avoidance of doubt, this Act does not limit any duty imposed on the Secretary of State or any person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding welfare of children)."

is also unnecessary ILPA does not consider that amendment 113, any more than section 71 in the Immigration Act 2014 which is in identical terms, adds anything to the Bill. We have never seen s 71 of the 2014 relied upon in a case.

[12] 3 February 2016, col 1808.

We consider that this amendment, tabled as amendment 114 in the name of the Lord Bishop of Norwich at Lords Report would help to provide a mechanism by which compliance with the section 55 duty could be ensured.

Lord Keen of Elie said

> *I suggest that it would be disproportionate to require extensive inquiries in every case by means of a multiagency assessment even where there was no indication that these were relevant. I am concerned that such unnecessary inquiries could be potentially intrusive and, in some instances, unwelcome to the families themselves*[13].

This has been addressed and the current amendment does not require a multi-agency assessment, but simply an assessment by an independent professional, backed by specialist psychological or psychiatric assessment where appropriate. We suggest that a family resisting the removal of the principle will want the effect on the children to be considered and to be taken into account and will place a premium on avoiding harm to them.

Lord Keen of Elie said

> *The right reverend Prelate alluded to a case in which a young child might face the dangers of genital mutilation or other risk of sexual violence. In such a case, there would be no grounds for certification; therefore, there would be no basis for saying that the appeal should proceed out of country. Therefore these safeguards are already in place.*

But the appeal of the principal might have nothing to do with such matters. How will the Home Office even know that it is intended that the child, who may be British or settled, go with the principal, rather than stay behind, unless they investigate this?
How does the Home Office intend to assess the impact of the clause on a child, whether that child stays or goes, when the length of separation is unknown? Lord Keen of Elie said

> "*In general, it is hoped that appeal processes in simple cases will not exceed six months and even in complex cases will not exceed 12 months, so that there will not be the degree of separation that has been alluded to, even in cases where one child perhaps goes out of the United Kingdom and another remains in the United Kingdom*[14]

But he is expressing a hope, an aspiration that is very far indeed from current reality when initial appeals are taking a year to be listed and when the Home Office loses it appeals, seemingly as a matter of routine, thus extending the period of separation.

An out of country appeal

Lord Keen of Elie said

> *"…there is of course scope for video evidence to be given, and by other means. Indeed, the specialist tribunal reserves the right to call for evidence in various forms if it considers that necessary to dispose of a particular appeal*[15]."

But the appellant must arrange and pay for video evidence him/herself, the tribunal will not do this nor meet the costs. In many countries video conferencing is less common, and more expensive, than in the UK.

---

[13] Ibid. col 1809.
[14] Col 1813.
[15] 3 February 2016, col 1809.

Lord Keen of Elie said

> *"…it does not appear that there is any material distinction to be made between the prospects of appeal for a foreign national offender and other migrants who have no right to be within the United Kingdom*."

Lord Keen of Elie defended his reading of the ratio of the *Kiare* case in the Court of Appeal, which challenged the "deport first: appeal later" provisions of the 2014 Act. He suggested that there was no material difference between those cases, where the appellant had a history of criminality and the cases being covered by this Ac where there is absolutely no allegation of criminal conduct and where it appears, contrary to some of the statements made by Lord Keen[16], that the appellant may, but for the certification, have lawful leave under section 3C of the Immigration Act 1971. We disagree. The *Kiare* case, which is being appealed to the Supreme Court, turned on questions of proportionality and the question of the proportionality of removing a person whose criminal conduct means that their presence is alleged to be undesirable and that of removing a person who has done nothing wrong, but simply not been granted further leave on application, are two very different things.

PROPOSED AMENDMENT

As an amendment to **Lords Amendment 113**

> after "children)" insert "or any duty or section 58(1) of the Children and Young People (Scotland) Act 2014 and section 1(1) of the Children's Services Cooperation act (Northern Ireland Order 2015 and does not inhibit the exercise of any power under section 7(4)(of the Children and Young Persons and Act 2008."

Purpose

Any under 26 who has been looked after by a local authority. For England and Wales
Supported by local authorities

Briefing

Amendment 113 is about ensuring the Act cannot be read as limit the existing duty to have regard to the need to safeguard and promote the welfare of children. We want similar protection for care leavers, to ensure that the Bill, be it the remove first appeal later provisions or the p[ovisions on support, do not undermine existing duties and powers to assist them.

Section 58(1) of the Children and Young People (Scotland) Act 2014 provides

> **58 Corporate parenting responsibilities**
>
> (1)It is the duty of every corporate parent, in so far as consistent with the proper exercise of its other functions—
>
> (a) to be alert to matters which, or which might, adversely affect the wellbeing of children and young people to whom this Part applies,
>
> (b) to assess the needs of those children and young people for services and support it provides,
>
> (c) to promote the interests of those children and young people,

[16] 3 February 2016, col 1808.

(d) to seek to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing,
(e) to take such action as it considers appropriate to help those children and young people—
(i)to access opportunities it provides in pursuance of paragraph (d), and
(ii) to make use of services, and access support, which it provides, and
(f) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to those children and young people.

Section 7(4) of the Children and Young Persons and Act 2008, which applies to England and Wales, provides

7 **Well-being of children and young persons**
…

(4)The Secretary of State may take such action as the Secretary of State considers appropriate to promote the well-being of—
(a) persons who are receiving services under sections 23C to 24D of the 1989 Act; and
(b) persons under the age of 25 of a prescribed description.
(5)The Secretary of State, in discharging functions under this section, must have regard to the aspects of well-being mentioned in section 10(2) (a) to (e) of the Children Act 2004 (c. 31).
(6) In this section—
"children" means persons under the age of 18; and
"prescribed" means prescribed in regulations made by the Secretary of State.

Sections 23C to 24D of the Act refer to care leavers looked after by local authorities.

The amendment is not perfect; it provides less protection for care leavers in England and Wales than in Scotland and Northern Ireland, as in England and Wales the statute is concerned with a power, and with those receiving particular services from local authorities. But it provides an opportunity to obtain further assurances pertaining to care leavers.

Section 1 of the Children's Services Cooperation Act (Northern Ireland) 2015 provides

Well-being of children and young persons

1—(1) The functions conferred by this Act are to be exercised for the purpose of improving the well-being of children and young persons.
(2) For this purpose the "well-being" of children and young persons includes—
(a) physical and mental health;
(b) the enjoyment of play and leisure;
(c) learning and achievement;
(d) living in safety and with stability;

(e) economic and environmental well-being;
(f) the making by them of a positive contribution to society;
(g) living in a society which respects their rights;
(h)living in a society in which equality of opportunity and good relations are promoted between persons who share a relevant characteristic and persons who do not share that characteristic.

(3) In this section "relevant characteristic" means a characteristic mentioned in any of paragraphs (a) to (d) of section 75(1) of the Northern Ireland Act 1998.
(4) In determining the meaning of well-being for the purposes of this Act, regard is to be had to any relevant provision of the United Nations Convention on the Rights of the Child (which is to say, the Convention of that name adopted by General Assembly resolution 44/25 of 20 November 1989).
(5) The Office of the First Minister and deputy First Minister may by regulations make such amendments to subsection (2) as it thinks appropriate.
(6) Regulations must not be made under subsection (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

A "young person" is defined to include care leavers

(2) A person falls within this subsection if services are provided to or in respect of the person by, or on behalf of, or under arrangements made with, the Regional Health and Social Care Board or a Health and Social Care trust by virtue of—
(a) Article 21(5), 34D, 35, 35A or 35B of the Children (Northern Ireland) Order 1995 (which provide for the continuing duties of those bodies towards young persons), or
(b) regulations made under Article 34E of that Order (which may provide for the appointment of personal advisers for certain young persons).
(3) A person falls within this subsection if the person—
(a) is under the age of 21 years, and
(b) is a disabled person within the meaning of the Disability Discrimination Act 1995.

DEVOLUTION

Devolution featured heavily in the report on the Bill by the House of Lords Select Committee on the Constitution [17] and was extensively debated in the Lords, in particular see the debate *at* 15 Mar 2016: Column 1754ff where Lord Hope of Craighead proposed amendments to provisions of the Bill dealing with illegal working in licensed premises, residential tenancies and support under Part 5 , saying

"It is a feature of the Bill that the provisions which apply to England and Wales are set out in full and we are debating them, line by line, as we ordinarily do; but although the Bill applies to Scotland, Wales and Northern Ireland, it does not set out the measures which deal with certain devolved matters relating to those Administrations. That has three consequences. First, this House—or, indeed, this Parliament—is not able to debate the detail of the legislation. …

Secondly, as I understand the purpose of these provisions, it is not intended that the devolved legislatures should legislate on these matters either. I have checked the website so far as Scotland is concerned and I cannot see any legislation before the Scottish Parliament seeking to

[17] http://www.publications.parliament.uk/pa/ld201516/ldselect/ldconst/75/7502.htm

reproduce what we have in this Bill. Thirdly, the measures which seek to apply these provisions in relation to Wales, Scotland and Northern Ireland are to be contained in a statutory instrument. As we all know, we cannot amend a statutory instrument in any respect. We have to take simply what is on the face of the instrument and say either yes or no to it. …

Those of your Lordships who have been following the Scotland Bill will be aware that in Clause 2 there is a provision dealing with the Sewel convention, which has attracted a good deal of discussion. As it stands in the Scotland Bill as amended on Report, the clause states that,

> *"it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament".*

The word "normally" has attracted some criticism and in a way it gives me a very good justification for asking questions about the legislation we see in this Bill. Is this a normal situation, where the consent of the Scottish Parliament will be sought, or is it not? There has been very little clarification in the debates on the Scotland Bill as to what exactly is intended by the clause.

So far, rather to my dismay, the Government show no sign of introducing any kind of amendment to Clause 2 to deal with another matter, which the noble and learned Lord, Lord McCluskey, who I am glad to see in his place, raised about the possible justiciability of a failure to observe the Sewel convention. I hope the noble and learned Lord, Lord McCluskey, can hear what I am saying because exactly that problem arises in regard to what we see in this legislation. Here the Minister is proposing to take measures in relation to Scotland with regard to devolved matters. If he was not to seek the consent of the Scottish Parliament, there may be really considerable consequences.

The then Minister, Lord Bates[18], said in reply

I concur with the view that these are very important issues: they are not trivial issues but are very substantial. They were raised and commented on by the Delegated Powers and Regulatory Reform Committee in its 17th report, and were also raised by the Constitution Committee in its report. … In respect of illegal working in licensed premises, to which the noble and learned Lord referred, we have not had time to amend the Bill but have published draft regulations so that our method and intent are clear.

… As with the right-to-rent scheme in the 2014 Act, we believe that the extension of these provisions to the whole of the UK has only consequential impact on devolved legislation and remains for an immigration purpose.

We have not sought to put the residential tenancies provisions for Scotland or Wales in the Bill or to publish draft regulations. This is because both the Scottish Parliament and the Welsh Assembly have been legislating in this space. … With the law in flux in Wales and Scotland, we had to decide whether it was worth amending the law only to need to re-amend it a few months later, and we thought that once was better.

---

[18] **Lord Bates resigned to walk across Latin America to raise funds for UNICEF. Donations can be made on his justgiving page at https://www.justgiving.com/Michael-Bates88**

> *Amendments 140 and 140A relate to the provision in Part 5 which will make it easier to transfer unaccompanied migrant and asylum-seeking children from one local authority to another…the dispersal of migrant children is not an area in which Wales, Scotland or Northern Ireland have competence to legislate, and their consent is therefore, in our opinion, not required for the UK Government to legislate in this area"*

It cannot be satisfactory that because a matter appears in an immigration bill, including one as wide-ranging as this one, it is treated as pertaining to the reserved matter of immigration.

Amendments providing an opportunity to raise these matters include:

Lords' amendment 45
Lords' amendment 57
Lords' amendments 102 to 112
Lords' amendment 124

Other amendments touching on devolution are 27, 36, 39, 40, 43, 45, 46, 80, 81, 147, 155, 169, 171, 176, 180, 182.

ILPA, which includes practitioners in Scotland, Wasles and Northern Ireland, and has a specific working group in Scotland, is happy to assist with drafting amendments on this point.