ILPA BRIEFING FOR IMMIGRATION BILL PING PONG

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 has published proposed amendments for ping pong. This, together with 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.***

We deal first with the amendments in the order in which they appear on the programme motion. We have provided a short note the Lord's amendments which were Government defeats and related Government amendments tabled for the Commons, as well as on Lords' amendments of particular interest, bearing in mind the time constraints.

The matters on which the Government was defeated in the Lords were:

- **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 first with the amendments in the order in which they appear on the programme motion for Commons Consideration Monday 25 April.

GROUP 1 AMENDMENTS 87 to 101

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**.

ILPA produced a briefing on this amendment which was circulated before the Commons' debate on unaccompanied refugee children on Tuesday 19 April. This is available at http://www.ilpa.org.uk/resource/32080/ilpa-briefing-on-unaccompanied-refugee-children-18-april-2016

For links to the debate at Lords; Report and ILPA's briefing at that stage, 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

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 House of Lords welcomed these 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.

The Minister issued a further written statement on 21 April 2016:
http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-04-21/HCWS687
This essentially describes steps toward the implementation of the 28 January 2016 commitments. It covers

- A 'Children at Risk' resettlement route from the Middle East and North Africa region for unaccompanied children and separated children (those separated from their parents and/or other family members) as well as other vulnerable children such as child carers and those facing the risk of child labour, child marriage or other forms of neglect, abuse or exploitation under which 3000 people, the majority children, will be resettled during the lifetime of this parliament where UNHCR deems resettlement is in the best interests of the child.
- refugees under the Syrian Resettlement Scheme. It will be open to all at risk groups and nationalities within the region, with the best interests of the child at the heart of the the UK will be offering 75 expert personnel to help with processing and administration of

migrants in reception centres, act as interpreters, provide medical support and bolster our existing team assisting the European Commission in Greece

- Contributions to the Turkish Refugee Facility

The statement also describes existing work: vessels assisting with search and rescue and the Anti-Slavery Commissioner visiting hotspots and resources seconded to the European Asylum Support Office to work on Dublin cases.

Thus the announcement, like the 28 January 2016 amendment, does not address the key calls in the Lords' amendment which is for the UK to take additional responsibilities toward unaccompanied children in Europe.

The work it describes in Europe raises far more concerns than it addresses. The proposed work in Greece and Turkey appears to be in the context of the EU Turkey agreement, widely regarded as an unlawful agreement violating European and international refugee law norms. UNHCR and charities such as Médicins sans Frontières have declined to work in the hotspots. UNHCR said

> "*UNHCR has till now been supporting the authorities in the so-called "hotspots" on the Greek islands, where refugees and migrants were received, assisted, and registered. Under the new provisions, these sites have now become detention facilities. Accordingly, and in line with our policy on opposing mandatory detention, we have suspended some of our activities at all closed centres on the islands. …UNHCR is concerned that the EU-Turkey deal is being implemented before the required safeguards are in place in Greece. At present, Greece does not have sufficient capacity on the islands for assessing asylum claims, nor the proper conditions to accommodate people decently and safely pending an examination of their cases.*
>
> *UNHCR is not a party to the EU-Turkey deal, nor will we be involved in returns or detention*"

MSF said

> "*…continuing to work inside would make us complicit in a system we consider to be "both unfair and inhumane..."We will not allow our assistance to be instrumentalised for a mass expulsion operation and we refuse to be part of a system that has no regard for the humanitarian or protection needs of asylum seekers and migrants*."

Many children are unaccompanied 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 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**

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.**

GROUP 2 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.

ILPA is a signatory with Anti Slavery International, the Anti-Trafficking Monitoring Group, the Anti Trafficking and Labour Exploitation Unit, Justice 4 Domestic Workers, Kalayaan, Liberty and Walk free to a joint briefing supporting the Lords' amendment which is available at http://www.ilpa.org.uk/resources.php/32088/joint-briefing-on-lords-amendment-60-on-overseas-domestic-workers-21-april-2016.

ILPA has also produced a detailed point by point refutation of the Lords' Minister, Lord Bates' arguments against this amendment at Lords' Report. See http://www.ilpa.org.uk/resources.php/32089/ilpa-refutation-of-ministers-arguments-opposing-lords-amendment-60-for-house-of-commons-consideratio ILPA, with the Anti-Trafficking and Labour Exploitation Unit and Kalayaan, met with the Anti-Slavery Commissioner to discuss the protection of domestic workers.

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.*

Thus his focus is on the minimum required to achieve this. The amendment works by modifying section 53 in line with Mr Ewins' proposals. 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. The Anti Slavery Commissioner has emphasised that he supports the right to change employer so that the worker is not tied to the employer. 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.

We have to move away from a paradigm of rescue to a paradigm of empowerment if we are to make progress in tackling the exploitation of domestic workers. The focus for the worker is likely to be on maintaining the flow of remittances home. Mr Ewins' recommendation as to mandatory information sessions can assist in empowering the worker, but only if the rights the worker learns of are clear, useful rights that s/he can exercise. The National Referral Mechanism already exists with the prospect of leave for some of those recognized as trafficked but we know that many workers do not engage with it and may prefer to continue in exploitative employment because sending money home is the primary concern.

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.

As to the suggestion that the ability to change employer could be used by those endeavouring to exploit, rather than to protect, the worker:

- Such abuse can happen now – at the end of lawful leave a person can trafficked, and traffickers have greater control over them because they do not have lawful leave.
- Some people are repeatedly trafficked on the short term visa, e.g. brought to the UK each summer to be exploited here. In the interim they may be in countries where there is no protection
- The additional risk created by allowing a longer period of lawful leave which, because of the first bullet point is a small additional risk, must be weighed against the additional protection the worker would have of knowing s/he could escape and turn to a good employer.

- It is not the case that workers who are exploited report the crime now. Some stay in their post. Some run from their employers but go underground. Until workers are empowered and safe levels of reporting will not increase.

Group 3 AMENDMENTS 84 to 86

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.

GOVERNMENT AMENDMENT PROPOSED IN LIEU

Page 11 line 7 *Duty to arrange consideration of Bail*

Purpose
Provides for the Secretary of State to arrange a bail hearing before the Tribunal when a person has been detained for six months from their first entry into detention or since their last bail hearing arranged either arranged under this section (i.e. there will be an automatic bail hearing every six months) or that they have instigated (save where the latter is a bail hearing with 14 days of a proposed removal as in such cases the Secretary of State would have to consent to bail for it to be granted). Does not apply to those detained pending deportation. Does not apply to cases before the Special Immigration Appeals Commission, a specialist court of record presided over by a High Court judge which is set up to hear national security cases. Does not apply where a person waives, in writing, their right to the hearing.

Briefing and PROPOSED AMENDMENT

ILPA recommends that the Commons **agree the Lords' Amendment**. The advantages of it over the Government's proposed amendment in lieu are that

- The Lords' amendment imposes a 28 day time limit. This is already a lengthy time to be detained by administrative fiat without being brought before a court but is shorter than the amendment in lieu
- The Lords' amendment places the onus on the Secretary of State to justify detention after 28 days.

We consider however that it would be helpful to debate at the same time the amendment

below **as amendments to the Lords' amendment or to the Government amendment in lieu of it** to focus the debate and to draw together the themes of judicial oversight and the Government amendment 85 *Guidance on the Detention of Vulnerable Persons,* and the proposed amendment in lieu, discussed below.

PROPOSED AMENDMENTS TO AMENDMENT 84 or to the GOVERNMENT AMENDMENT IN LIEU

FIRST AMENDMENT

As an amendment to **Amendment 84 or to the Government amendment in lieu**

Before subsection(1) insert

(1) No person whom the Secretary of State is satisfied is pregnant shall be detained.

SECOND AMENDMENT (to Amendment 84)

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

THIRD AMENDMENT (to Amendment 84)

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.

ALTERNATIVES TO SECOND AND THIRD AMENDMENT - amendments to the Government's proposed amendment in lieu

AMENDMENT

Before subparagraph (1) insert

(*) A person described in subparagraph (***) may not be detained

(a) for a period longer than 28 days
(b) for periods of longer than 28 days in aggregate

(**) The First-Tier Tribunal may
(a) extend a period or detention; or
(b) further extend a period of detention
of a person described in subparagraph (***) for such a period as determined on application made by the Secretary of State, on the basis that the exceptional circumstances of the case require extended detention

(***) Persons to whom subparagraphs (*) and (**) apply are 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.'

Purpose
Provides automatic judicial oversight after 28 days for those categories of persons whom Stephen Shaw recommends be presumed unsuitable for detention (with the exception of pregnant women- see above for the hard ban on their detention). The burden is placed on the Secretary of State to justify detention. The procedure is adapted from **Amendment 84** Other persons are unaffected – they will have (or not have) such a hearing in the circumstances

described in the Government amendment in lieu.

AMENDMENT

In subparagraph (a) leave out "or (c) and replace with "(b)(c) or (d)

Purpose
Ensures that all those detained for more than six months get a bail hearing by removing the exclusion of deportation cases. This amendment could be tabled with or without the amendments in respect of "vulnerable groups" above.

Briefing
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

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.* [1]

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.

The government amendment will benefit only those held for more than six months. It excludes persons facing deportation, many of whom are held for six months. It will mean that even those whom Stephen Shaw recommended should not be detained save in very exceptional circumstances will only have an independent review of their detention once every six months.

It is difficult to understand why the specialist judges of the Special Immigration Appeals Commission, a specialist court of record provided over by a high court judge, should be denied a supervisory function over the Secretary of State's decision to detain save where the detained person instigates a bail hearing.

Our proposed amendments
- Given that persons in the categories listed in our proposed amendments are only to be

[1] Public Bill Committee 3 November 2015 col 363.

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.

AMENDMENT 85 *Guidance on the Detention of Vulnerable Persons* subsection (1) [including 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 considers that the Commons should **accept the Lords' amendment** insofar as it concerns the detention of pregnant women and should therefore reject the Government's proposed amendments in lieu.

Ministers have suggested that the argument against a hard ban is that a pregnancy test is "intrusive". In terms of procedure, a pregnancy test is not intrusive: a urine sample is taken and tested. To be forced to undergo a pregnancy test would be worse than intrusive; it would be an assault. But no woman is forced to have a pregnancy test. If a woman is in the advanced stages of pregnancy, or has documentation attesting to her pregnancy, then there will be no need for a test. If not, then she will have the option of undergoing a test, for example supervised by a nurse in the detention centre.

If the Government's concern is that it will be sued for unlawful detention by a woman whom the Secretary of State did not know to be pregnant, then we consider that to be unfounded. If a woman has no physical or documentary evidence of pregnancy and declines to take a pregnancy test, we cannot envisage that any court would aware damages for unlawful detention against the Secretary of State. Any suggestion to the contrary is scaremongering.

As to the government proposed amendment in lieu, to impose a 72-hour ban on the detention of a pregnant ignores all that happens during the first 72 hours. There may be a dawn raid, which may include the use of force. The woman may undertake a lengthy journey in the back of a van. Women have described vomiting over themselves in these vans because they were

nauseous as a result of their pregnancy. During the first 72 hours in detention adjustments will not have been made, or have finished being made, to accommodate the pregnant woman. She may not be able to eat the food, or sleep comfortably in the bed. She may need to urinate frequently but be far from a lavatory. The stress and fear, including fear of the effect of her treatment on her baby, may be very acutely felt during this period.

The amendment appears modelled on section 5 of the Immigration Act 2014 which places the same ban on the detention of unaccompanied children and provides that they can be held only in short term holding facilities.

If, contrary to our recommendation, the humane and civilised solution of an absolute ban on the detention of pregnant women is rejected, then we consider that the provisions of the Government amendment should be augmented by provisions that introduce the safeguards existing in cases of families with children set out in sections 2, 3 and 6 of the Immigration Act 2014, viz.

- 28 days' notice of removal/detention for those in country;
- Consideration of detention by the family returns panel, whose composition would include specialist maternity expertise in these cases;
- Limitations as to places where pregnant women can be detained to short-term holding facilities (as is the case with unaccompanied children) with suitable facilities for them, and pre-departure accommodation for families ("Cedars") but only where such accommodation can be reached by a journey of not more than one hour.

As an (inferior) alternative to an absolute ban on the detention of pregnant women we therefore propose the following amendments to the Government's proposed amendment in lieu:

As amendments to the **Government amendment inserting the new clause *Limitation on the detention of pregnant women***

FIRST AMENDMENT

( ) Restrictions on detention of pregnant women [this is taken from the unaccompanied children section, section 5 of the 2014 Act]

After subclause (4) insert

(*) , the only place***s*** where the pregnant woman may be are a short-term holding facility or pre-departure accommodation within the meaning of s 147 of the Immigration and Asylum Act 1999 detained ***where her n***eeds can be met and provision made for her care including medical care, except where—

(a)the woman is being transferred to or from a short-term holding facility or pre-departure accommodation in a manner which makes provision for her care and the journey does not exceed one hour**.**

(**)In this section—

"short-term holding facility" has the same meaning as in Part 8 of the Immigration and Asylum Act 1999;

Purpose

Limits the places in which a pregnant woman can be detained and the transfers to which she can be made subject. Section 5 of the Immigration Act 2014 limits the facilities in which unaccompanied children may be detained.

SECOND AMENDMENT

After subclause (10) insert

(*) After section 78A of the Nationality, Immigration and Asylum Act 2002, insert—

78B ***Restriction on removal of pregnant women etc***

(1)This section applies in a case where a woman who is pregnant is to be removed from or required to leave the United Kingdom other than in cases where a woman has arrived in the United Kingdom but has not yet entered the United Kingdom within the meaning of s 11(1) of the Immigration Act 1971.

(2)During the period of 28 days beginning with the day on which the relevant appeal rights are exhausted the pregnant woman may not be removed from or required to leave the United Kingdom

(3)The relevant appeal rights are exhausted at the time when the pregnant woman could not bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission),

(4)Nothing in this section prevents any of the following during the period of 28 days mentioned in subsection (2)—

(a)the giving of a direction for the removal of a person from the United Kingdom,

(b)the making of a deportation order in respect of a person, or

(c)the taking of any other interim or preparatory action other than detention under Immigration Act powers.

(5)In this section—

references to a person being removed from or required to leave the United Kingdom are to the person being removed or required to leave in accordance with a provision of the Immigration Acts."

Purpose

Modelled on section 2 of the Immigration Act 2014, requires that those pregnant women already in the country must have 28 days notice of removal and detention. This is to ensure that they are not subject to dawn raids and long journeys in vans. Does not apply in port cases, where the woman arrives in the UK airside (or equivalent) and remains airside until she leaves. Such women are likely to be in the country for very short periods.

THIRD AMENDMENT

( ) After section 54A of the Borders, Citizenship and Immigration Act 2009, insert—

"54B ***Cases of pregnant women***

(1)The Secretary of State must consult the Independent Family Returns Panel—

(a)in each case where a woman who is pregnant is to be removed on how best to safeguard and promote the welfare of the pregnant woman, and

(b)in each case where the Secretary of State proposes to detain a pregnant woman in pre-departure accommodation or in a short-term holding facility, on the suitability of so doing, having particular regard to the need to safeguard and promote her welfare;

(3)The Secretary of State may by regulations make provision about the constitution of the Independent Family Returns Panel in cases involving pregnant women. Such regulations must provide for the panel considering such cases to include persons with expertise in the care of pregnant women and in maternity care.

(4) Regulations under this section must be made by statutory instrument.

(5)An instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(7)In this section—

"pre-departure accommodation" has the same meaning as in Part 8 of the Immigration and Asylum Act 1999;

"short-term holding facility" has the same meaning as in Part 8 of the Immigration and Asylum Act 1999;

References to a person **"**being removed from or required to leave the United Kingdom**"** are to the person being removed or required to leave in accordance with a provision of the Immigration Acts."

( )Part 8 of the Immigration and Asylum Act 1999 (removal centres and detained persons) is amended as follows.

( ) In section 147 (interpretation)—

(a) in the definition of ""pre-departure accommodation" before "detained children" insert "pregnant women, "

Purpose

Modelled sections 3 and 6 of the Immigration Act 2014, makes provision for the Independent Family Returns Panel, duly constituted with maternity experts, to be involved in cases where pregnant women are to be detained.

Briefing

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[2]. 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."*

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* Louise Silverton of the Royal College of Midwives 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. 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

[2] https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf

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.[3]

We also seek the following assurances:

- **A commitment that the Secretary of State will collate and publish the statistics on the number of pregnant women detained under immigration powers;**
- **A commitment that the Secretary of State will carry out an Equality Impact Assessment (under section 149 of the Equality Act 2010) on the proposed policy (and before it is finalised) in respect of the arrest and detention, treatment and conditions of pregnant women (as agreed in the *PA* case for which Ms Silverton gave evidence)**
- **In respect of the matters the Equality Impact Assessment raises, a commitment to gather proper medical information and take properly into account the particular ante natal needs / care pregnant women at all stages of process ;**
- **A commitment that the Home Office will carry out a targeted consultation on new policy and any associated Detention Service Orders (again as agreed in the *PA* case)**
- **A commitment that the Home Office will draft a new Detention Service Order on the detention of pregnant women (as agreed in the *PA* case)**
- **In respect of the issues the EIA raises, a commitment to gather proper medical information and take properly into account the particular ante natal needs / care pregnant women at all stages of process (in case our amendment on the independent scrutiny does not hold)**

Subclauses (2) to (8) other "vulnerable persons"

As to subclauses (2) to (8) of the Lords' amendment, these risk 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. ILPA considers that subclauses (2) to (8) risk 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 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;

[3] *Chen and Others v SSHD* CO/1119/2013.

(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 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

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[4] .

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

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470593/2015-10-23_Ch55_v19.pdf

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".

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."

Mr Shaw's recommendation for an upper age limit on detention[5] will remind many readers of Her Majesty's Chief Inspector of Prisons's 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.[6]

> ***"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."*

[5] Recommendation 15.

[6] *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."***

GROUP 4 AMENDMENTS 183 to 215

Schedule 7 *Immigration Bail*

Amendments 183 to 209

These amendments deal with electronic monitoring. It is regrettable that no amendments have been tabled to these amendments for Commons consideration for, while changes in the Lords remove some problems with the Bill as it left the Commons, they introduce new ones

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 (Amendment 191***). This followed protest that 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. The Judge or immigration judge is prohibited from amending an electronic monitoring condition imposed by the Secretary of State. The Secretary of State can amend a bail condition imposed by the Tribunal without a direction from the Tribunal. 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.

Without the amendment she could do so in the case of electronic monitoring or residence conditions

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.

Lords Amendments 204 and 205

Purpose
These provisions are consequential on the changes to the powers in respect of electronic monitoring. The effect of the amendments is to remove reference to the 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 Secretary of State will be able to require the Commission to impose, or to refrain from imposing, an electronic monitoring condition

Briefing

ILPA proposes that the Commons disagree Amendments 204 and 205

To disagree these amendments would leave reference to the electronic monitoring regime which has now been abolished on the face of the Bill and would thus require to be tidied up in the Lords. The overall effect, however, would be that the Special Immigration Appeals Commission, a Court of record presided over by a ***igh Court judge and specialist in matters of national security would have power to determine for itself whether the imposition of an electronic tag was impracticable or a breach of a person's human rights, rather than being dictated to by the representative of the Secretary of State before it.

GROUP 5 AMENDMENTS 1 TO 59

Clause 8 Offence of Employing Illegal Worker

Lords' amendments 52 to 55

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. These amendments deal with that defence.

The defence improves on the clause as it left the Commons but the case for the offence has not been made. See ILPA's briefings for the debate in the Lords and links to the debate at http://www.ilpa.org.uk/resources.php/31938/ilpa-briefing-for-lords-report-first-day-5-march-2016

Lords Amendment 57

AMENDMENT to Lords amendment 57 in the name of Stuart Macdonald

Leave out subsection (b)

Purpose

This amendment limits the power proposed for the Secretary of State to make regulations relating to illegal working and licensing extend to Scotland. Its effect is that any such regulations cannot amend, repeal or revoke Acts of the Scottish Parliament, or instruments made under them.

Briefing

This matter is discussed by Sarah Craig and Tom Mullen of the University of Glasgow in their article[7] *The Immigration Bill: reserved matters and the Sewell Convention*:

> *The UK government's current approach to the Sewel convention is constitutionally unsound. Until recently, the operation of the convention had been relatively uncontroversial. As a result the details of the convention were not examined too closely. The Immigration Bill demonstrates that important questions had been left unresolved, notably whether the convention applies when a Bill clearly has a reserved purpose but also has substantial effects upon devolved matters. It also demonstrates that the UK government has too much freedom to determine the scope of application of the convention when there ought to be a shared understanding between the UK and the devolved parliaments and executives.*

More generally see also the Rt Hon Lord Judge's lecture *Ceding Power to the Executive: the resurrection of Henry VIII* of 12 April 2016[8]

> "*Unless strictly incidental to primary legislation, every Henry VIII clause, every vague skeleton bill, is a blow to the sovereignty of Parliament. And each one is a self-inflicted blow, each one boosting the power of the executive. Is that what we want? Is that how our constitutional arrangements must continue to develop? Should we allow the powers of the executive to increase and the sovereignty of Parliament to be diminished? I believe that our Parliament should give the same answer that the 1539 Commons gave to Thomas Cromwell and Henry*

[7] http://www.scottishconstitutionalfutures.org/OpinionandAnalysis/ViewBlogPost/tabid/1767/articleType/ArticleView/articleId/6959/Tom-Mullen-and-Sarah-Craig-The-Immigration-Bill-Reserved-Matters-and-the-Sewel-Convention.aspx

[8] https://www.kcl.ac.uk/law/newsevents/newsrecords/2015-16/Ceding-Power-to-the-Executive---Lord-Judge---130416.pdf

VIII. Not the one they are thought to have given but the one they actually gave. Save in a national emergency, only statute can repeal, suspend, amend or dispense with statute"

Devolution featured heavily in the report on the Bill by the House of Lords Select Committee on the Constitution [9] 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 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.

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

The then Minister, Lord Bates[10], 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.*
>
> *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.

Time and again the Bill was amended in the Lords to deal with aspects of devolution forgotten, overlooked, or considered a low priority. It was repeatedly assumed that a system could be designed for England (and in some cases Wales) and the rest of
The UK bolted on subsequently. These provisions thus receive less parliamentary scrutiny and very often defer matters to secondary legislation in the manner deprecated by Lord Judge. The ramifications of laws across the UK are not taken into account when those laws are made.

Amendments concerned with devolution include Lords' amendments 27, 36, 39, 40, 43, 45, 46, 57, 80, 81, 102 to 112, 124, 147, 155, 169, 171, 176, 180, 182.

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
For ILPA's briefing to this amendment at Lord's Report and also links to the Lord's debate see:

[10] 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

http://www.ilpa.org.uk/resources.php/31938/ilpa-briefing-for-lords-report-first-day-5-march-2016

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. The shortage occupation list is confined to skilled jobs and given the difficulties of refugees evidencing their qualifications and getting those qualifications recognized in the UK it means that the opportunity to work in a job on the skilled occupation list is theoretical rather than real. These are also jobs that persons seeking asylum are unlikely to get because they cannot say for how long they will be in the UK. Persons seeking asylum are more likely to get low-skilled jobs that British citizens and those settled in the UK do not wish to do.

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. By the time they are recognized as refugees, they may have been out of the Labour market for years.

If persons seeking asylum can work then they work in those jobs then as well as the benefits to them this reduces the asylum support budget.

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.[11] He did not address that if the Home Office decided cases within its (already generous) six months target time no permission would arise[12]. 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)*[13]

The Minister suggested that persons could manufacture delays by not engaging with the process[14] but this is not the case, as persons can be refused for non-compliance[15].

[11] Public Bill Committee Col 461
[12] Col 462.
[13] http://www.publications.parliament.uk/pa/cm201516/cmselect/cmhaff/772/772.pdf.
[14] *Ibid*.
[15] *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

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.

GROUP 6 AMENDMENTS 61 to 83

PART 2 ACCESS TO SERVICES

Residential tenancies

Clause 13 *Offence of leasing premises*

Lords' amendments 61 and 62

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 but the case for the offence has not been made. See ILPA's briefings for the debate in the Lords and links to the debate at http://www.ilpa.org.uk/resources.php/31938/ilpa-briefing-for-lords-report-first-day-5-march-2016

Evicton

Lords amendment 64

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.

GROUP 7 AMENDMENTS 102 to 182

Lords amendment 113

Briefing

Lord Keen of Elie's argued[16] at Lords Committee that 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 and that further amendments to this effect were unnecessary. At Lords' report the Government tabled this amendment 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)."

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.

[16] 3 February 2016, col 1808.