

## 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 briefings on the Bill can be read at <http://www.ilpa.org.uk/pages/immigration-bill-2015.html> The briefing for ping pong which has full details on the Commons' amendments is at <http://www.ilpa.org.uk/resource/32095/ilpa-briefing-for-ping-pong-immigration-bill-23-april-2016> We are happy to provide further information on request. **Please get in touch with Alison Harvey, Legal Director [Alison.Harvey@ilpa.org.uk](mailto:Alison.Harvey@ilpa.org.uk) or Zoe Harper, Legal Officer, [Zoe.Harper@ilpa.org.uk](mailto:Zoe.Harper@ilpa.org.uk), phone 0207 2518383.**

We deal first with the amendments in the order in which they appear on the marshalled list but we have also anticipated amendments not on the marshalled list as published last night.

In summary the Commons rejected the following amendments outright

- **Amendment 59 Asylum Seekers: permission to work after six months**
- **Amendment 60 Overseas domestic workers**
- **Amendment 87 New Clause after Clause 37 Unaccompanied refugee children: relocation and support** (pleading financial privilege)

The Commons proposed amendments in lieu of

- **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]

The following have been proposed for the Bill's return to the Lords (some subsequent to the marshalled list)

### MOTION A

**Earl Howe for the Government** to propose that the Lords **do not insist on Amendment 59 Asylum Seekers: permission to work after six months**

See ILPA's briefing at <http://www.ilpa.org.uk/resource/32095/ilpa-briefing-for-ping-pong-immigration-bill-23-april-2016>

### MOTION B

**Earl Howe for the Government** to propose that the Lords **do not insist on Amendment 60 Overseas domestic workers**. We do not yet know whether the House of Lords will be

invited to insist on the amendment by its supporters or whether an amendment in lieu will be proposed.

See the updated version of the joint briefing to which ILPA is a signatory at

<http://www.ilpa.org.uk/resources.php/32088/joint-briefing-on-lords-amendment-60-on-overseas-domestic-workers-21-april-2016>

and ILPA's briefings at

<http://www.ilpa.org.uk/resource/32095/ilpa-briefing-for-ping-pong-immigration-bill-23-april-2016>

and at

<http://www.ilpa.org.uk/resources.php/32089/ilpa-refutation-of-ministers-arguments-opposing-lords-amendment-60-for-house-of-commons-consideratio>

## MOTION C

**C Earl Howe for the Government** to propose that the Lords accept **AMENDMENT 84A new clause *Duty to arrange consideration of bail in lieu of Amendment 84 Immigration Detention time limit and judicial oversight***

### 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.

**CI Lord Ramsbotham** to propose that the Lords reject **AMENDMENT 84A new clause *Duty to arrange consideration of bail and insist on Amendment 84 Immigration Detention time limit and judicial oversight***

**C2 Baroness Hamwee** to propose that the Lords reject **AMENDMENT 84A new clause *Duty to arrange consideration of bail and propose in lieu Amendment 84B of the same title.***

### Purpose

<http://www.ilpa.org.uk/resource/32095/ilpa-briefing-for-ping-pong-immigration-bill-23-april-2016>

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

### Briefing

See ILPA's briefing at <http://www.ilpa.org.uk/resource/32095/ilpa-briefing-for-ping-pong-immigration-bill-23-april-2016>

We prefer Lord Ramsbotham's approach but 56 days is an improvement on six months and amendment 84B is to be preferred to amendment 84A.

## MOTION D

**D Earl Howe for the Government** to propose that the Lords accept **AMENDMENTS 85A *Guidance on the detention of vulnerable persons* and AMENDMENT 85B *Limitation on the detention of pregnant women***

### **Purpose**

**Amendment 85A** removes the ban on the detention of pregnant women from the clause and restores it to its pre-Lords Third Reading state, as originally tabled by the Government.

**Amendment 85B** is new. It places a time limit on the detention of pregnant women; they can be held for a maximum of one week at any given time (72 hours if there is no Ministerial authorisation of a longer period) starting from the time at which the Secretary of State is satisfied that the woman is pregnant. A pregnant woman release can be redetained.

**D2 Baroness Lister of Burtersett** to propose as an amendment in lieu of **AMENDMENT 85B *Limitation on the detention of pregnant women* AMENDMENT 85C** of the same title

The amendments on the marshalled list will be augmented by something akin to the following, tabled subsequent to its publication.

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

### **78B *Restriction on detention of pregnant women etc***

(1) This section applies in a case where a woman who is pregnant is to be detained 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 detained

(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) In this section—

“woman” means a female of any age.

### **Purpose**

The amendments are modelled on the ban on the detention of children in families set out in sections 2, 3 and 6 of the Immigration Act 2014.

They introduce an overriding principle that no pregnant woman shall be detained save in the most exceptional circumstances. They provide that a pregnant woman may be held only in a short-term holding facility or “pre-departure accommodation” (Cedars, used for families) where her needs can be met and provision can be made for her medical care save where she is being transferred, but the transfer journey must not exceed one hour.

Provision is made (new section 54B of the Borders, Citizenship and Immigration Act 2009) for the independent family returns panel, appropriately constituted with persons with the relevant expertise, to oversee the detention of pregnant women.

The new text presented above is modelled on section 2 of the Immigration Act 2014. It requires that those pregnant women already in the country must have 28 days notice of detention. This is to ensure that they are not subject to dawn raids and long journeys in vans to reach detention. 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.

**D3 Baroness Hamwee** to propose as an amendment in lieu of **AMENDMENT 85B** *Limitation on the detention of pregnant women* **AMENDMENT 85D** of the same title.

#### **Purpose**

Identical in all respects to amendment 85B save that it removes the provision permitting the redetention of a pregnant woman.

#### **Briefing**

As we understand it, the **motions D2** and **D3** are competing with each other, which is a pity as both improve the Bill. Forced to choose between them we prefer motion D2 in the name of Baroness Lister, as we consider that a limit of a week leaves intact the problem of no notice detention which is the cause of much of the danger and suffering to pregnant women.

See ILPA's briefing at <http://www.ilpa.org.uk/resource/32095/ilpa-briefing-for-ping-pong-immigration-bill-23-april-2016>

## **MOTION E**

**E Earl Howe for the Government** to propose that the Lords **do not insist on their AMENDMENT 87 Unaccompanied refugee children: relocation and support**

**EI Lords Dubs** to propose amendment **in lieu of AMENDMENT 87 Unaccompanied refugee children: relocation and support AMENDMENT 87B** of the same title.,

#### **Purpose**

Provided for the Government to resettle to the UK a number of children to be determined in consultation with local authorities.

#### **Briefing**

The Commons purports to reject the Lords' amendment on the grounds that it would involve a charge on public funds, although this is not the way in which the case against the amendment has been argued heretofore.

Given the sums being expended, as set out for example in the Government's 28 January 2016 statement and in last week's Ministerial statement providing further detail on that, it is very difficult to accept that financial privilege is a good reason for rejecting the amendment.

Lord Dubs' amendment 87B elegantly deals with the question of financial privilege by leaving the question of the number of children to be determined in consultation with local authorities. We support it wholeheartedly.

See ILPA's briefing at <http://www.ilpa.org.uk/resource/32095/ilpa-briefing-for-ping-pong-immigration-bill-23-april-2016>