

IMMIGRATION BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These Explanatory Notes relate to the Lords amendments to the Immigration Bill, as brought from the House of Lords on 6 May 2014. The Notes have been prepared by the Home Office in order to assist the reader of the Bill, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These Notes, like the Lords amendments themselves, refer to HL Bill 84, the Bill as first printed for the Lords.
3. These Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords amendments.
4. Lords Amendments 1 to 15, 20 to 23, 25 to 34 and 36 were tabled in the name of the Minister. Lords Amendments 17, 19 and 35 were supported by the Government. Finally, Lords Amendments 16, 18, and 24 were opposed by the Government.
5. In the following Commentary, an asterisk appears in the heading of each of the paragraphs dealing with non-Government amendments.

COMMENTARY ON LORDS AMENDMENTS

Part 1: Removal and Other Powers

Lords Amendments 1, 2, 3 and 4: Removal of persons unlawfully in the United Kingdom

6. Clause 1 replaces separate powers to give removal decisions with a single power to remove individuals who require, but do not have, leave to enter or remain in the UK, and their family members. When the Bill left the House of Commons the clause provided for regulations to set out firstly, who counts as a family member for the purpose of removal and secondly, the arrangements for giving notice of removal. The power to make regulations is exercisable by statutory instrument following the negative procedure.

7. The Joint Committee on Human Rights raised concerns as to why the original clause gave discretion over whether to notify family members of their removal when the Government had clearly said that all family members will be notified. The Delegated Powers and Regulatory Reform Committee (DPRRC) accepted that the arrangements for giving notice to family members may be in regulations but believed they should be subject to the affirmative procedure. The DPRRC were also concerned that the definition of family members should be on the face of the Bill and that delegation was inappropriate.

8. Lords Amendments 1, 2, 3 and 4 are designed to address all of the concerns raised by the two committees. They would place the definition of family members on the face of the Bill and would also limit the delegated power to procedural matters so that they remain suitable for the negative procedure.

Lords Amendments 6 and 29: Restriction on removal of children and their parents etc

9. Lords Amendments 6 and 29 would give the force of primary legislation to key aspects of the Government's current policies on returning families and unaccompanied children to their country of origin. The new family returns process - established in response to the Government's 2010 commitment to end the detention of children for immigration purposes - has been in place for over three years. It has vastly reduced the need for the use of detention, limiting it to a small proportion of cases where enforced returns are considered necessary.

10. Lords Amendment 6 would prevent families with children from being removed for at least 28 days after exhausting any immigration appeal. This would give families time to consider their options, including voluntary return, and seek further advice before any enforcement action commences. It would also ensure that families will always have an opportunity to do this and avoid an enforced return.

11. Lords Amendment 29 is a consequential amendment to the Special Immigration Appeals Commission Act 1997 to extend the effect of Lords Amendment 6 to immigration appeals determined by that body.

Lords Amendment 7: Independent Family Returns Panel

12. Lords Amendment 7 would provide a statutory basis for the Independent Family Returns Panel, set up in March 2011, which advises the Secretary of State on the return of families who have refused to depart voluntarily. The Panel comprises child safeguarding and child health professionals. Its aim is to ensure that the best interests of the children concerned are fully considered and engaged in the planning of each and every family return. The amendment would place a duty on the Secretary of State to seek the Panel's advice and allows the Secretary of State to make provisions, by regulations, on the status and constitution of the Panel, the appointment of its members, and any other matters in connection with its establishment and operation.

Lords Amendments 8 and 5: Restrictions on detention of unaccompanied children

13. Lords Amendment 8 would have the effect of prohibiting the detention of unaccompanied children in Immigration Removal Centres and place a maximum limit of 24 hours on the length of time an unaccompanied child may be held in a short term holding facility at any one time in the course of facilitating their removal to another country. The amendment would also provide for a child to be held for a further period of 24 hours where a removal attempt failed for reasons beyond the control of Home Office officials, but only after a suitable interval. A child would not be held for consecutive 24 hour periods.

14. Lords Amendment 5 is a consequential amendment to the new removal power in Clause 1.

Lords Amendments 9, 30, 31, 32, 33 and 34: Pre-departure accommodation for families

15. Lords Amendment 9 would amend Part 8 of the Immigration and Asylum Act 1999 to add a new category of place for detaining people. The amendment defines what is meant by pre-departure accommodation - that it will be used solely for holding families with children - and the maximum period of time a family with children may be held there. The standard maximum is 72 hours, but with the possibility of an extension up to a total of seven days on Ministerial authority.

16. Lords Amendments 30, 31, 32, 33 and 34 are consequential amendments to other legislation that arise because of the creation of a new category of place for the purpose of detention.

Part 2: Appeals Etc

Lords Amendment 10: Right of appeal to First-tier Tribunal

17. Clause 11 of the Bill restructures rights of appeal to the Tribunal, only providing a right of appeal against a refusal of a human rights claim, a protection claim (humanitarian protection and asylum) and revocation of refugee or humanitarian protection status. Clause 11(5) ensures that the Secretary of State is the primary decision maker and limits the ability of the Tribunal to consider “new matters” which have not been already considered by the Secretary of State. Lords Amendment 10 would narrow the definition of “new matters” to those that are within the Tribunal’s jurisdiction.

Lords Amendment 11: Report by Chief Inspector on administrative review

18. An administrative review process will be established in the Immigration Rules (laid by the Secretary of State pursuant to section 3(2) of the Immigration Act 1971) to correct case working errors in refusal decisions where no appeal right is available following the changes made by this Bill.

19. Lords Amendment 11 would require the Secretary of State to commission a report from the Chief Inspector of Borders and Immigration within 12 months of Clause 11 coming into force that addresses the effectiveness of administrative review in identifying and correcting case working errors and the independence, in terms of their separation from the original decision-maker, of the persons conducting administrative review. The completed report must be laid before Parliament. “Administrative review” and “case working error” are defined with reference to the Immigration Rules.

Part 3: Access to Services Etc

Lords Amendments 12, 13, 14 and 15: Codes of practice

20. The Bill enables civil penalties to be imposed on private landlords or their agents who rent out premises to illegal migrants without making appropriate checks. The civil penalty scheme is similar to existing obligations on employers to check immigration status in the Nationality, Immigration and Asylum Act 2006.

21. Lords Amendments 12, 13, 14 and 15 respond to concerns raised by the DPRRC. The DPRRC recommended that the code of practice regarding the prevention of discrimination by landlords should be laid before Parliament and then brought into force by negative resolution order. The Government accepted this recommendation and these amendments would amend the Bill accordingly.

22. The DPRRC also recommended that the statutory code of practice regarding the operation of the landlords scheme should be subject to no less a degree of Parliamentary scrutiny than that which applies to the equivalent code relating to the employers civil penalty scheme. The equivalent code of practice relating to illegal working is brought into force by the negative procedure. The code will provide technical guidance on matters of interpretation and practical operation, such as factors to be taken into account in establishing whether a residential tenancy agreement grants a right of occupation as a main and only place of residence and the factors to be taken into account in calculating the amount of a penalty that a landlord or agent should be liable to pay. The Government accepted the committee recommendation and these amendments would amend the Bill accordingly.

Part 6: Miscellaneous

Lords Amendments 16* and 24*: Child trafficking guardians for all potential child victims of trafficking in human beings

23. Lords Amendment 16 would require the appointment of a Child Trafficking Guardian to represent the interests of any child where there are reasonable grounds to believe that they are a victim of cross border trafficking. The amendment would require the Government to make an order setting out arrangements for: the appointment, training and supervision of guardians; provision of support services to guardians; designation of recognised charitable organisations that could employ guardians on a paid or voluntary basis. Lords Amendment 24 limits the extent of the requirement to England and Wales. The Government does not support these amendments.

Lords Amendments 17*, 35* and 36: Persons unable to acquire citizenship from unmarried father

24. Lords Amendments 17, 35 and 36 would correct an anomaly in British nationality law concerning illegitimate children. Currently, illegitimate children born before 1 July 2006 do not acquire their father's British nationality in circumstances where a legitimate child would have done so. While there is discretion to register minors in these circumstances, there is no discretion to register adults. The amendments would provide all children with the same rights irrespective of whether their parents were married. The Government supports these amendments.

Lords Amendment 18*: Deprivation of citizenship if conduct seriously prejudicial to vital interests of the UK

25. Clause 60 provides for the Secretary of State to deprive a person of their citizenship, in certain circumstances where such action may leave them stateless. The effect of this would be that naturalised citizens who conduct themselves in a way that is seriously prejudicial to the vital interests of the UK can be deprived of their citizenship, even if it leaves them stateless. This is in accordance with the declaration the UK made at the time of ratifying the 1961 UN Convention on the Reduction of Statelessness.

26. Lords Amendment 18 would result in the deletion of the current Clause 60 and its replacement with a measure providing for a Parliamentary committee to be established to consider whether or not the

British Nationality Act 1981 should be amended as the Government had originally proposed. The Government does not support this amendment.

Lords Amendment 19*: Duty regarding the welfare of children

27. Lords Amendment 19 would confirm that the Immigration Bill does not limit any duty imposed on the Secretary of State or any other person by section 55 of the Borders, Citizenship and Immigration Act 2009. Under section 55 of the 2009 Act (duty regarding the welfare of children), the Secretary of State must make arrangements for ensuring that her functions in relation to immigration, asylum and nationality are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK. The Government supports this amendment.

Part 7: Final Provisions

Lords Amendment 20: Bank Accounts

28. The Bill contains measures to ensure that those known to be unlawfully in the UK can be prevented from opening a current account. Clause 38 gives the Treasury the power to amend any of clauses 35, 36 and 37 by order. This power has been taken to bring in anti-avoidance measures, should they be required in future, and allow the Treasury to make provisions which further specify the types of account the restriction should apply to. The policy intention is for any orders to be subject to the affirmative procedure. However, if an order was made under Clause 38 conferring a power on the Treasury to make another order, any subsequent order would be made under the negative procedure. This amendment would confirm that the affirmative procedure should apply to any such order.

Lords Amendments 21, 22 and 23: Sham marriage and civil partnership

29. The Bill contains measures that will change the procedures for giving notice of marriage and civil partnership in England and Wales, as well as order making powers to extend the provisions to Scotland and Northern Ireland. These measures are designed to tackle sham marriages and civil partnerships – where the marriage or civil partnership is contracted for immigration advantage by a couple who are not in a genuine relationship.

30. Clauses 45 and 46 provide powers for regulations to be made relating to the conduct of and compliance with an investigation of a suspected sham marriage or civil partnership. Paragraph 2 of Schedule 6 provides for the disclosure of information by registration officials to the Secretary of State and other registration officials for immigration purposes, e.g. to prevent immigration offences. The definition of “immigration purposes” can be extended by an order under paragraph 2(3)(e), and there is an equivalent power under Clause 49(6) where the referral and investigation scheme and those information-sharing provisions have been extended to Scotland and Northern Ireland by an order under Clause 48. Lords Amendments 21, 22 and 23 respond to the DPRRC recommendation that the affirmative procedure would be more appropriate for these powers.

Schedule 3: Excluded residential tenancy agreements

Lords Amendments 25, 26, 27 and 28

31. Educational institutions who are sponsoring non-EEA students to study in the UK already have a duty to ensure that their students are lawfully in the UK. The Bill introduces a requirement that landlords

must check the immigration status of their tenants, subject to certain exemptions detailed in Schedule 3. Halls of residence are exempt from the landlords scheme, to ensure that educational institutions are not subject to double regulation.

32. Lords Amendments 25, 26, 27 and 28 would broaden the exemption for student accommodation, extending the scope of the exclusion relating to halls of residence so that it covers all halls, regardless of whether the provider has entered into an agreement with an educational institution regarding the nomination of the students who will live there. The amendments would extend the exemption from halls to other forms of accommodation, such as individual flats and houses, where it is provided by the educational institution directly by adding an exclusion which provides that a residential tenancy agreement in the private rented sector is exempt if the student has been nominated for the tenancy by the educational institution.

FINANCIAL EFFECTS OF THE LORDS AMENDMENTS

33. Lords Amendments 16 and 24 on child trafficking would have significant financial effect. The role of the new guardians is extensive and it is not clear on whom the costs would fall. The other Lords amendments would not be expected to have significant financial effects.

EUROPEAN CONVENTION ON HUMAN RIGHTS

34. The Lords amendments have not required a supplementary memorandum on the compatibility of the Bill with the European Convention on Human Rights.

LORDS AMENDMENTS TO THE IMMIGRATION BILL

EXPLANATORY NOTES

*These notes refer to the Immigration Bill as first printed for the Lords
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