

Immigration Bill

COMMONS INSISTENCE, NON-INSISTENCE, AMENDMENT IN LIEU AND AMENDMENTS TO LORDS AMENDMENT

[The page and line references are to HL Bill 79, the bill as first printed for the Lords.]

LORDS AMENDMENT 84

After Clause 30

84 Insert the following new Clause –

“Immigration detention: time limit and judicial oversight

- (1) Subject to the provisions of this section, a person may not be detained under any of the relevant powers –
 - (a) for a period longer than 28 days; or
 - (b) for periods of longer than 28 days in aggregate.
- (2) The First-tier Tribunal may –
 - (a) extend a period of detention; or
 - (b) further extend a period of detention,
for such a period as is determined, on application made by the Secretary of State, on the basis that the exceptional circumstances of the case require extended detention.
- (3) The First-tier Tribunal has the power to review an extended period of detention without requiring the Secretary of State to make a new application.
- (4) This section does not apply to a person who –
 - (a) has been sentenced to a term of imprisonment for a term of 12 months or longer; or
 - (b) the Secretary of State has determined shall be deported.
- (5) Rules of procedure for the purposes of this section may be made by the Lord Chancellor.

- (6) In this section –
- “First-tier Tribunal” means –
- (a) in the case of an appeal against a decision on an asylum application which has not been determined, the chamber of the First-tier Tribunal dealing with the appeal; or
 - (b) in any other case, such chamber of the First-tier Tribunal as the Secretary of State considers appropriate;
- “relevant powers” means powers to detain pursuant to –
- (a) paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971,
 - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act,
 - (c) section 62 of the Nationality, Immigration and Asylum Act 2002, and
 - (d) section 36(1) of the UK Borders Act 2007.
- (7) In the case of a person to whom section 3(2) of the Special Immigration Appeals Commission Act 1997 applies (detention on grounds of national security), the Commission established under that Act shall be substituted for the First-tier Tribunal.”

COMMONS AMENDMENT IN LIEU

The Commons disagree to Lords Amendment 84, but do propose Amendment 84A in lieu –

84A Page 108, line 7, at end insert –

“Duty to arrange consideration of bail

- (1) Subject as follows, the Secretary of State must arrange a reference to the First-tier Tribunal for the Tribunal to decide whether to grant bail to a person if –
 - (a) the person is being detained under a provision mentioned in paragraph 1(1)(a) or (c), and
 - (b) the period of six months beginning with the relevant date has elapsed.
- (2) In sub-paragraph (1)(b) “the relevant date” means –
 - (a) the date on which the person’s detention began, or
 - (b) if a relevant event has occurred in relation to the person since that date, the last date on which such an event has occurred in relation to the person.
- (3) The following are relevant events in relation to a person for the purposes of sub-paragraph (2)(b) –
 - (a) consideration by the First-tier Tribunal of whether to grant immigration bail to the person;
 - (b) withdrawal by the person of an application for immigration bail treated as made by the person as the result of a reference under this paragraph;
 - (c) withdrawal by the person of a notice given under sub-paragraph (6)(b).

- (4) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person –
- (a) includes such consideration regardless of whether there is a hearing or the First-tier Tribunal makes a determination in the case in question;
 - (b) includes the dismissal of an application by virtue of provision made under paragraph 9(2).
- (5) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person does not include such consideration in a case where –
- (a) the person has made an application for bail, other than one treated as made by the person as the result of a reference under this paragraph, and
 - (b) the First-tier Tribunal is prevented from granting bail to the person by paragraph 3(4) (requirement for Secretary of State’s consent to bail).
- (6) The duty in sub-paragraph (1) to arrange a reference does not apply if –
- (a) section 3(2) of the Special Immigration Appeals Commission Act 1997 (persons detained in interests of national security etc) applies to the person, or
 - (b) the person has given to the Secretary of State, and has not withdrawn, written notice that the person does not wish the person’s case to be referred to the First-tier Tribunal under this paragraph.
- (7) A reference to the First-tier Tribunal under this paragraph in relation to a person is to be treated for all purposes as an application by that person for the grant of bail under paragraph 1(3).”

LORDS REASON

The Lords insist on their Amendment 84 for the following reason –

- 84B** *Because Commons Amendment 84A does not make adequate provision for time limiting and judicial oversight of immigration detention.*

COMMONS AMENDMENT IN LIEU

The Commons insist on their disagreement to Lords Amendment 84, do not insist on their Amendment 84A, but do propose Amendment 84C in lieu of the Lords Amendment 84 –

- 84C** Page 108, line 7, at end insert –

“Duty to arrange consideration of bail

- (1) Subject as follows, the Secretary of State must arrange a reference to the First-tier Tribunal for the Tribunal to decide whether to grant bail to a person if –
- (a) the person is being detained under a provision mentioned in paragraph 1(1)(a) or (c), and
 - (b) the period of four months beginning with the relevant date has elapsed.

- (2) In sub-paragraph (1)(b) “the relevant date” means—
- (a) the date on which the person’s detention began, or
 - (b) if a relevant event has occurred in relation to the person since that date, the last date on which such an event has occurred in relation to the person.
- (3) The following are relevant events in relation to a person for the purposes of sub-paragraph (2)(b)—
- (a) consideration by the First-tier Tribunal of whether to grant immigration bail to the person;
 - (b) withdrawal by the person of an application for immigration bail treated as made by the person as the result of a reference under this paragraph;
 - (c) withdrawal by the person of a notice given under sub-paragraph (6)(b).
- (4) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person—
- (a) includes such consideration regardless of whether there is a hearing or the First-tier Tribunal makes a determination in the case in question;
 - (b) includes the dismissal of an application by virtue of provision made under paragraph 9(2).
- (5) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person does not include such consideration in a case where—
- (a) the person has made an application for bail, other than one treated as made by the person as the result of a reference under this paragraph, and
 - (b) the First-tier Tribunal is prevented from granting bail to the person by paragraph 3(4) (requirement for Secretary of State’s consent to bail).
- (6) The duty in sub-paragraph (1) to arrange a reference does not apply if—
- (a) section 3(2) of the Special Immigration Appeals Commission Act 1997 (persons detained in interests of national security etc) applies to the person, or
 - (b) the person has given to the Secretary of State, and has not withdrawn, written notice that the person does not wish the person’s case to be referred to the First-tier Tribunal under this paragraph.
- (7) A reference to the First-tier Tribunal under this paragraph in relation to a person is to be treated for all purposes as an application by that person for the grant of bail under paragraph 1(3).”

LORDS AMENDMENT 85

After Clause 31

85 Insert the following new Clause—

“Detention and bail

Guidance on detention of vulnerable persons

- (1) No person whom the Secretary of State knows, or could reasonably be expected to know, is pregnant shall be detained.
- (2) The Secretary of State must issue guidance specifying matters to be taken into account by a person to whom the guidance is addressed in determining—
 - (a) whether a person (“P”) would be particularly vulnerable to harm if P were to be detained or to remain in detention, and
 - (b) if P is identified as being particularly vulnerable to harm in those circumstances, whether P should be detained or remain in detention.
- (3) In subsection (2) “detained” means detained under—
 - (a) the Immigration Act 1971,
 - (b) section 62 of the Nationality, Immigration and Asylum Act 2002, or
 - (c) section 36 of the UK Borders Act 2007,
 and “detention” is to be construed accordingly.
- (4) A person to whom guidance under this section is addressed must take the guidance into account.
- (5) Before issuing guidance under this section the Secretary of State must lay a draft of the guidance before Parliament.
- (6) Guidance under this section comes into force in accordance with regulations made by the Secretary of State.
- (7) The Secretary of State may from time to time review guidance under this section and may revise and re-issue it.
- (8) References in this section to guidance under this section include revised guidance.”

COMMONS AMENDMENTS IN LIEU

The Commons disagree to Lords Amendment 85, but do propose Amendments 85A and 85B in lieu –

85A Page 38, line 7, at end insert the following new Clause –

“Guidance on detention of vulnerable persons

- (1) The Secretary of State must issue guidance specifying matters to be taken into account by a person to whom the guidance is addressed in determining—
 - (a) whether a person (“P”) would be particularly vulnerable to harm if P were to be detained or to remain in detention, and
 - (b) if P is identified as being particularly vulnerable to harm in those circumstances, whether P should be detained or remain in detention.

- (2) In subsection (1) “detained” means detained under –
 - (a) the Immigration Act 1971,
 - (b) section 62 of the Nationality, Immigration and Asylum Act 2002, or
 - (c) section 36 of the UK Borders Act 2007,and “detention” is to be construed accordingly.
- (3) A person to whom guidance under this section is addressed must take the guidance into account.
- (4) Before issuing guidance under this section the Secretary of State must lay a draft of the guidance before Parliament.
- (5) Guidance under this section comes into force in accordance with regulations made by the Secretary of State.
- (6) The Secretary of State may from time to time review guidance under this section and may revise and re-issue it.
- (7) References in this section to guidance under this section include revised guidance.”

85B Page 38, line 7, at end insert the following new Clause –

“Limitation on detention of pregnant women

- (1) This section applies to a woman if the Secretary of State is satisfied that the woman is pregnant.
- (2) A woman to whom this section applies may not be detained under a relevant detention power for a period of –
 - (a) more than 72 hours from the relevant time, or
 - (b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).
- (3) In subsection (2) “the relevant time” means the later of –
 - (a) the time at which the Secretary of State is first satisfied that the woman is pregnant, and
 - (b) the time at which the detention begins.
- (4) A woman to whom this section applies who has been released following detention under a relevant detention power may be detained again under such a power in accordance with this section.
- (5) This section does not apply to the detention under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 of an unaccompanied child to whom paragraph 18B of that Schedule applies.
- (6) In this section –

“relevant detention power” means a power to detain under –

 - (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal),
 - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation),

- (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal), or
- (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation);

“woman” means a female of any age.

- (7) The Immigration Act 1971 is amended in accordance with subsections (8) and (9).
- (8) In paragraph 16 of Schedule 2 (detention of persons liable to examination or removal) after sub-paragraph (2A) insert—
 - “(2B) The detention under sub-paragraph (2) of a person to whom section (*Limitation on detention of pregnant women*) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”
- (9) In paragraph 2 of Schedule 3 (detention or control pending deportation) after sub-paragraph (4) insert—
 - “(4ZA) The detention under sub-paragraph (1), (2) or (3) of a person to whom section (*Limitation on detention of pregnant women*) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”
- (10) In section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) after subsection (7) insert—
 - “(7A) The detention under this section of a person to whom section (*Limitation on detention of pregnant women*) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”
- (11) In section 36 of the UK Borders Act 2007 (detention) after subsection (2) insert—
 - “(2A) The detention under subsection (1) of a person to whom section (*Limitation on detention of pregnant women*) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.””

LORDS AMENDMENT IN LIEU

The Lords do not insist on their Amendment 85, do agree with the Commons in their Amendment 85A, do disagree with the Commons in their Amendment 85B, and do propose Amendment 85C in lieu of Commons Amendment 85B –

85C Page 38, line 7, at end insert the following new Clause –

“Limitation on detention of pregnant women

- 3 (1) This section applies subject to the over-riding principle that no pregnant woman shall be detained under a relevant detention power save in the most exceptional circumstances.

- 7 (2) This section applies to a woman if the Secretary of State is satisfied that the woman is pregnant.
- (3) A woman to whom this section applies may not be detained under a relevant detention power for a period of –
- (a) more than 72 hours from the relevant time, or
 - (b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).
- 15 (4) In subsection (3) “the relevant time” means the earlier of –
- (a) the time at which the Secretary of State is first satisfied that the woman is pregnant, and
 - (b) the time at which the detention begins.
- (5) A woman to whom this section applies who has been released following detention under a relevant detention power may be detained again under such a power in accordance with this section.
- 22 (6) A pregnant woman may only be held under a relevant detention power in a short-term holding facility within the meaning of Part 8 of the Immigration and Asylum Act 1999, or pre-departure accommodation within the meaning of section 147 of that Act, where her needs can be met and provision made for her medical care, except where 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 where the journey does not exceed one hour.
- (7) This section does not apply to the detention under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 of an unaccompanied child to whom paragraph 18B of that Schedule applies.
- (8) In this section –
- “relevant detention power” means a power to detain under –
 - (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal),
 - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation),
 - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal), or
 - (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation);
 - “woman” means a female of any age.
- (9) The Immigration Act 1971 is amended in accordance with subsections (10) and (11).
- (10) In paragraph 16 of Schedule 2 (detention of persons liable to examination or removal) after sub-paragraph (2A) insert –
- “(2B) The detention under sub-paragraph (2) of a person to whom section (*Limitation on detention of pregnant women*) (limitation on

detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”

- (11) In paragraph 2 of Schedule 3 (detention or control pending deportation) after sub-paragraph (4) insert—
- “(4ZA) The detention under sub-paragraph (1), (2) or (3) of a person to whom section (*Limitation on detention of pregnant women*) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”
- (12) In section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) after subsection (7) insert—
- “(7A) The detention under this section of a person to whom section (*Limitation on detention of pregnant women*) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”
- 65 (13) 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 section 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.”
- (14) In section 36 of the UK Borders Act 2007 (detention) after subsection (2) insert—
- “(2A) The detention under subsection (1) of a person to whom section (*Limitation on detention of pregnant women*) (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.””

- 96 (15) 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 in each case where—
- (a) a woman who is pregnant is to be removed on how best to safeguard and promote the welfare of the pregnant woman, and
 - (b) the Secretary of State proposes to detain a pregnant woman in pre-departure accommodation or in a short-term holding facility about the suitability of doing so, having particular regard to the need to safeguard and promote her welfare.
- (2) The Secretary of State may by regulations make provision about the constitution of the Independent Family Returns Panel in cases involving pregnant women, and 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.
- (3) Regulations under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section—
- (a) “pre-departure accommodation” and “short-term holding facility” have the same meaning as in Part 8 of the Immigration and Asylum Act 1999; and
 - (b) 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.”

COMMONS AMENDMENTS TO LORDS AMENDMENT

The Commons do not insist on their Amendment 85B in lieu of Lords Amendment 85, do agree with Lords Amendment 85C, but do propose Amendments 85D, 85E, 85F, 85G, 85H and 85I as amendments thereto—

85D Line 3, leave out subsection (1)

85E Line 7, at end insert—

- “() A woman to whom this section applies may not be detained under a relevant detention power unless the Secretary of State is satisfied that—
- (a) the woman will shortly be removed from the United Kingdom, or
 - (b) there are exceptional circumstances which justify the detention.
- () In determining whether to authorise the detention under a relevant detention power of a woman to whom this section applies, a person who, apart from this section, has power to authorise the detention must have regard to the woman’s welfare.”

85F Line 15, leave out “earlier” and insert “later”

- 85G** Line 22, leave out subsection (6)
- 85H** Line 65, leave out subsection (13)
- 85I** Line 96, leave out subsection (15)

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