HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Immigration Bill: Committee Stage Report

By Doug Pyper; Wendy Wilson; Melanie Gower

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Summary

This briefing summarises the main changes made to the Bill in Public Bill Committee. It refers to the clause and schedule numbers in the Bill as amended in Committee (Bill 96).

The provisions of the Bill (as introduced) are discussed in greater detail in Library briefing 7034, *Immigration Bill 2015-16,* which was prepared in advance of Second Reading.

The *Immigration Bill 2015 – 16* was first announced in the Queen's speech on 27 May 2015 and had Second Reading in the Commons on 13 October. The Bill is due to have Report and Third Reading in the Commons on 1 December.

The Bill was considered in Public Bill Committee over 15 sessions held between 20 October and 17 November. The first four sessions took evidence from external witnesses.

In addition to amendments made to the clauses and schedules as set out in the Bill as introduced, four new Government clauses and three new schedules were added to the Bill during Committee stage:

- **Clause 11 and Schedule 2** (on illegal working in relation to private hire vehicles)
- **Clause 29 and Schedule 6** (on supply of information to the Secretary of State)
- **Clause 30** (on detention by immigration officers in Scotland)
- **Clause 38 and Schedule 9** (on availability of local authority support)

The Bill as amended in Public Committee (Bill 96 of 2015-16) is available from the Bill's pages on the Parliament website, alongside the Bill as introduced, the accompanying Explanatory Notes, and details of its passage through Parliament.

1. Background to the Bill

The *Immigration Bill 2015 - 16*, Bill 74 of 2015 – 16, was first announced in the Queen's speech on 27 May 2015 and had Second Reading in the Commons on 13 October.

The Bill is due to have Report and Third Reading stages on 1 December.

The Bill as amended in Public Committee (Bill 96 of 2015-16) is available from the Bill's pages on the Parliament website, alongside the Bill as introduced, the accompanying Explanatory Notes, and details of its passage through Parliament.

This briefing summarises the main changes made to the Bill in the Public Bill Committee stage. The provisions of the Bill (as introduced) are discussed in greater detail in Library briefing 7034, *Immigration Bill 2015-16*, which was prepared in advance of Second Reading.

A collection of documents related to the Bill is available from the GOV.UK website page Immigration Bill 2015-16, including:

- An overarching impact assessment
- A delegated powers memorandum
- An ECHR memorandum
- Home Office factsheets

1.1 Second Reading debate

Theresa May set out the underlying purpose of the Bill:

> if we are to ensure that we can protect our public services from abuse and that the system works in the national interest, and if we are to tackle the illegal labour market where vulnerable people are often exploited by unscrupulous employers and subjected to appalling conditions, then further reform is needed. The new Immigration Bill will help us to do that in a number of ways.[1]

Andy Burnham, Shadow Home Secretary, identified various parts of the Bill which Labour supported, namely establishing a Director of Labour Market Enforcement; many of the proposals to improve enforcement, extend immigration officers' powers, and enhance border security processes; and the requirement for frontline public sector employees to speak fluent English. However, he said that whilst other measures remained part of the Bill, Labour could not support its progress. A reasoned amendment moved by Mr Burnham summarised Labour's reasons for declining to give the Bill a Second Reading:

> because the measures overall in the Bill will not decrease illegal immigration, will reduce social cohesion and will punish the children of illegal immigrants for their parents' illegal immigration, because the Government has failed to publish the report on the pilot Right to Rent scheme in the West Midlands which could cause widespread indirect discrimination and because the Bill enables the Home Secretary to remove from the UK migrants who are appealing against a refused asylum claim before the appeal

[1] HC Deb 13 October 2015 c197

> has been determined, notwithstanding the slow appeal process and the high error rate in Home Office decisions.[2]

The reasoned amendment was rejected by 322 votes to 282.[3]

Stuart McDonald highlighted similar areas of concern for the SNP. Linking the purpose of the Bill to the Government's net migration 'target', he said that the Bill should not be given a Second Reading because it "pursues the wrong goals by the wrong methods and at tremendous cost".[4]

The Bill was approved for Second Reading by 323 votes to 274.[5]

1.2 Committee stage

The Public Bill Committee held 15 sessions between 20 October and 17 November. The first four were evidence sessions with external witnesses. Transcripts of the sessions and the evidence submitted to the Committee are available from the Bill pages on the Parliament website.

Committee membership

Chairs: Peter Bone, Albert Owen

Paul Blomfield *(Sheffield Central)* (Lab)

James Brokenshire *(Minister for Immigration)*

Robert Buckland *(Solicitor General)*

Sarah Champion *(Rotherham)* (Lab)

Byron Davies *(Gower)* (Con)

Mims Davies *(Eastleigh)* (Con)

Charlie Elphicke *(Lord Commissioner of Her Majesty's Treasury)*

Rebecca Harris *(Castle Point)* (Con)

Sue Hayman *(Workington)* (Lab)

Simon Hoare *(North Dorset)* (Con)

Kate Hollern *(Blackburn)* (Lab)

Emma Lewell-Buck *(South Shields)* (Lab)

Anne McLaughlin *(Glasgow North East)* (SNP)

Gavin Newlands *(Paisley and Renfrewshire North)* (SNP)

Chloe Smith *(Norwich North)* (Con)

Keir Starmerr *(Holborn and St Pancras)* (Lab, Shadow Minister for Immigration)

Kelly Tolhurst *(Rochester and Strood)* (Con)

Craig Whittaker *(Calder Valley)* (Con)

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2 HC Deb 13 October 2015 c203
3 HC Deb 13 October 2015 c277
4 HC Deb 13 October 2015 c219
5 HC Deb 13 October 2015 c281

2. Part 1: Labour market and illegal working

Part 1 of the Bill would establish a Director of Labour Market Enforcement, who would be required to produce a Labour Market Enforcement Strategy and report annually to the Home Secretary and Business Secretary. It would also create a new offence of illegal working and strengthen the sanctions applied to employers of illegal workers. It was debated during the fifth to seventh sittings of the Public Bill Committee.

2.1 Director of Labour Market Enforcement - clauses 1-7

Clause 1 would create the Director of Labour Market Enforcement. The Shadow Home Office Minister, Keir Starmer MP, said that

> Labour supports a director of labour market enforcement, provided that the purpose of the director is effective enforcement of labour standards and that the relevant agencies are properly resourced to that end.[6]

Mr Starmer spoke to an Opposition amendment that sought to clarify the director's purpose. Given that the role is proposed within an immigration Bill, Opposition Members were concerned it may be used as a means of regulating immigration, arguing that the merging of labour market enforcement and immigration functions has in other countries been shown to be counterproductive.[7]

The Minister for Immigration, James Brokenshire, argued that the amendment was unnecessary, as the Bill was clear that the director would be responsible only for labour market offences:

> We intend the director's remit to cover labour market breaches, not immigration offences. The director and the enforcement bodies will work closely with Home Office immigration enforcement wherever labour market breaches are linked to illegal immigrants or people working in breach of their visa conditions, but that is an adjunct and not the purpose of the director.[8]

The amendment was pressed to a division, and defeated by 10 votes to 8. Clause 1 was then agreed to without division.

Clause 2 of the Bill would make provision for the director to prepare annual labour market enforcement strategies. The Opposition moved a group of amendments which would have, among other things, enlarged the scope of the director role and obliged the director to set out the resources required to support labour market enforcement functions. The amendments also sought to clarify the definition of 'worker' used in clause 3 of the Bill for the purposes of identifying matters falling within the director's remit. There was some debate about whether the

6 PBC Deb 27 October 2015 c155
7 PBC Deb 27 October 2015 c162
8 PBC Deb 27 October 2015 c163

definition would cover modern slavery offences relating to illegal workers; the Minister clarified that the term 'worker' concerned only legal workers, and therefore the director's strategic oversight would not include such offences.[9] The amendments were withdrawn and clause 2 was agreed to without division.[10] Clauses 3-7 were then agreed to without substantial debate nor division.

2.2 Illegal working – clauses 8-10

Clause 8 would create a new offence of illegal working. Currently, a person with limited leave to remain may commit an offence if he breaches a condition of that leave that prevents employment. There is however no distinct offence of illegal working for those who require but do not have leave to remain, yet engage in paid work.

Mr Starmer moved an amendment which would have created a defence to the new offence if a worker has "reasonable excuse" to engage in the work. The Opposition had "considerable difficulty with the notion of creating an offence that can be committed by employees, which is strict and without any defences."[11] The Opposition were opposed in principle to the creation of the new offence on the basis that illegal workers are often vulnerable and exploited, and that the offence would penalise them and therefore drive them underground.

As regards the absence of a defence, Mr Starmer said this could criminalise those who were working illegally unintentionally or without realising it:

> this is an offence without any mental element in the Bill. It is strict in the sense that absent the right status, the offence is made out, and then it is an offence without a defence, which is an unusual combination in criminal law. For example, some people will be here working in the belief that they have the right status because they are sponsored by the employer or somebody else. However, unbeknown to them, they may not have status because their employer has not correctly completed all the necessary arrangements for sponsorship. They fall into a category of individuals who are here without the required status, but without any knowledge of that or any intention to be in that position. Given the inflexibility of the offence, they would be immediately criminalised without even the opportunity of raising a defence of reasonable excuse. Their defence would be, "I am working. I had understood that my employer or somebody else had completed all the necessary forms and legalities. It now transpires they haven't, but I had absolutely no reason to think that to be the case." At the very least, if the clause is to stand, such an offence—there could be many other examples—ought to have a reasonable excuse defence, and that argument lies behind the amendment.[12]

The Minister replied that, in such cases, the Director of Public Prosecutions (DPP) could provide guidance on when a prosecution would not be in the public interest, which could prevent a prosecution

9 PBC Deb 27 October 2015 c191
10 PBC Deb 27 October 2015 c197
11 PBC Deb 27 October 2015 c202
12 PBC Deb 27 October 2015 c204

on facts such as those explained by the Mr Starmer. Mr Starmer, a former DPP, said

> should not the DPP's discretion be exercised according to the known offence and known defences? If there is a case for a defence, that ought to be in the Bill, rather than left to the discretion of the DPP. That is not to suggest that discretion does not operate in many cases, but if there is a proper case for having a defence, it ought to be for Parliament to write that into the Bill and then for the DPP to exercise discretion as to how it operates in individual cases. The alternative is the DPP effectively introducing a back-door defence, which has not been thought to be an appropriate use of guidelines.[13]

The Opposition pressed the amendment, which was defeated on division by 9 votes to 7.[14] The Committee then divided on the clause, which was agreed to by 9 votes to 7.[15]

Clause 9, which would strengthen the existing offence of employing an illegal worker, was agreed to without division.[16]

Clause 10 would give effect to Schedule 1, which would make detailed illegal working-related changes to the licensing framework in the *Licensing Act 2003*, e.g. making the employment of illegal workers a factor in deciding whether or not to issue a licence for the sale of alcohol. The 2003 Act extends to England and Wales, however clause 10(2) would empower the Secretary of State to implement by regulations similar changes in Scotland or Northern Ireland. For the SNP, Gavin Newlands said:

> That is completely unacceptable and goes against the spirit of devolution and the Sewel convention. I am sure that the Minister will argue that it pertains to immigration, which is reserved, but it obviously has a big impact on a devolved matter.[17]

Mr Newlands stated that, if the clause was agreed to in Committee, the SNP would seek to amend it to remove the potential application to Scotland. The Committee divided on the clause, which was agreed to by 9 votes to 2 (Labour Members abstained).[18]

A group of technical government amendments to **Schedule 1** were then agreed to without division.[19]

Clause 11 would give effect to Schedule 2, which would enable an immigration officer, of at least the rank of chief immigration officer, to issue an "illegal working closure notice" to close an employer's premises for up to 48 hours, or more at the direction of the court, if the immigration officer is satisfied "on reasonable grounds" that the employer is employing an illegal worker and has previously been given a civil penalty or has been prosecuted for employing illegal workers. The

13 PBC Deb 27 October 2015 cc217-218
14 PBC Deb 27 October 2015 c220
15 PBC Deb 27 October 2015 c220
16 PBC Deb 27 October 2015 c224
17 PBC Deb 27 October 2015 c225
18 PBC Deb 27 October 2015 c226
19 PBC Deb 27 October 2015 c227

SNP opposed the clause on the basis that it would give "immigration officers too much power without the relevant training or proper judicial oversight".[20] The clause was agreed to on division, by 9 votes to 2.

2.3 Taxis and private hire vehicles – clause 11 & Schedule 2

Clause 11 and Schedule 2 (introduced as Government New Clause 14 and New Schedule 1) were added to the Bill in Committee. Taken together, they amend the licensing regimes for taxis and private hire vehicles in England and Wales and contain a regulation-making power to amend the legislation in Scotland and Northern Ireland to equivalent effect as that Schedule.[21] The Government described the provisions as follows:

> The proposals mean licensing authorities must conduct checks on applicants to ensure they are in the UK lawfully, and that they have permission to work before granting a licence.
>
> Under the plans, driver and operator licences can't be issued for a period any longer than the length of a person's permission to live and work in the UK. Immigration offences and penalties will also be grounds for a licensing authority to revoke a licence.
>
> It will also be an offence for someone disqualified from continuing to hold a driver or operator licence for immigration reasons not to return their licence to the licensing authority.[22]

In Committee, James Brokenshire, said:

> The new clause seeks to prevent illegal migrants and migrants whose status does not permit them to work from holding taxi and private hire driver and operator licences. It is important to note that, because the majority of drivers are self-employed, they are not subject to existing right to work checks. In our judgment, that leaves scope for the sector to be exploited by illegal workers.
>
> Licensing authorities already conduct checks to determine whether someone is a fit and proper person to hold a driver or operator licence. However, a licensing authority has discretion as to many of the checks that it undertakes to satisfy itself that someone passes the fit and proper person test. Many licensing authorities make immigration checks, but they are advisory at present. The new clause will make immigration checks mandatory and embed immigration safeguards in the existing licensing regime.[23]

The new clause and Schedule were agreed and added to the Bill.

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20 PBC Deb 29 October 2015 c240
21 PBC Deb 10 November 2015, c493
22 Home Office press notice, "Measures to introduce mandatory right to work checks on taxi and private hire drivers", 11 November 2015
23 PBC Deb 10 November 2015, c493

3. Part 2: Access to Services

Part 2 of the Bill would build on existing measures to restrict irregular migrants' access to residential tenancies, driving and bank accounts.

3.1 Residential tenancies – clauses 13-16

Clauses 13 to 16 of the Bill as amended were debated during the seventh, eighth and ninth sittings of the Public Bill Committee.

Keir Starmer opened the debate on **clause 13** (Offence of leasing premises) by arguing that the Right to Rent scheme (provided for in the *Immigration Act 2014*) should not be rolled out.[24] This prompted a debate on the merits of two research studies into the pilot Right to Rent scheme, conducted in the West Midlands over a six month period from December 2014, by the Joint Council for the Welfare of Immigrants (JCWI)[25] and also the Home Office.[26] Mr Starmer questioned whether the potential for the Right to Rent policy to lead landlords/agents to discriminate when letting their properties had been fully evaluated.

Mr Starmer moved amendment 71 which would have provided landlords with a defence to prosecution under clause 13 if they could show they had started eviction procedures within 2 months of becoming aware that the tenant did not have a Right to Rent.[27] Landlords are concerned that they will be committing an offence as soon as they are aware that a tenant is illegal. The following Labour amendments were considered alongside amendment 71:

- amendment 72 to ensure agents who are also tenants of the property are not criminally liable for illegal tenants. The concern here was that in house-share arrangements, where a tenant moves out and a new occupier is found by the remaining tenants, they would be acting as agents and could be required to carry out Right to Rent checks;
- amendment 85 to prevent the criminal offences introduced by the Bill (relating to residential tenancies) from having retrospective effect;
- amendment 87 to provide that a landlord would not be committing an offence during the period in which they are prohibited from evicting a tenant without a Right to Rent;
- amendment 88 to clause 14 to ensure that there could be no implied term in a tenancy agreement to provide for automatic termination on grounds of the tenant's immigration status; and
- amendment 89 to clause 15 to give the court discretion when deciding whether individuals should be evicted.

The Minister for Immigration, James Brokenshire, said he would reflect on the points raised in relation to amendment 71:

> I will reflect carefully on the contributions that they have made, because the intent is not to try to catch out and to act in a

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24 PBC Deb 29 October 2015 c245
25 JCWI, "No passport equals no home," September 2015
26 Home Office Research Report 84, October 2015
27 PBC Deb 29 October 2015 c244

> deliberate way to seek effectively to say, as a consequence of the issuance of the notice, that someone is committing a criminal offence. In fairness to the hon. and learned Gentleman and the hon. Lady, and to the Committee, I will reflect on what they have said because of the intent that we have in respect of the measure, on which I have just responded. I could say that, as he knows, it is for the CPS to make those sorts of decision, but, in fairness to both Members, I will reflect further on what they have said and my intention and that of the Government as regards whom the measure is aimed at and the manner in which we seek the offence to be advanced.[28]

On amendment 72, the Minister clarified that a tenant would be responsible for Right to Rent checks "only if they sublet unless they agree otherwise with the landlord." A tenant who sought to replace a co-tenant who had moved out "would not be acting as an agent in the course of their business, so the provisions would not apply."[29]

In relation to amendment 85, the Minister said that the offences introduced by the Bill "do not apply retrospectively" and went on:

> The criminal behaviour for which a landlord may be liable to prosecution would be their behaviour in renting to someone disqualified from renting or their failure to notify the Home Office that someone is disqualified from renting after the point when the offence came into force. A landlord can be prosecuted, however, for renting to someone disqualified from renting when the tenancy agreement was entered into before the offence came into force. The burden would be on the prosecution to prove that a landlord knew or had reasonable cause to believe that they were renting to a disqualified person. The amendment would serve to put any rogue landlord who could establish that a tenancy started before the offence came into force beyond the reach of prosecution.[30]

He said amendment 87 was not necessary as any decision to prosecute a landlord would involve careful consideration of all the circumstances, including what action they had taken on receipt of a notice from the Home Office.[31] Amendment 88 (to clause 14) would, the Minister said, create difficulty and uncertainty for landlords as the new section's aim is to enable a landlord to evict a common-law tenant by including an implied term in the tenancy.[32] On amendment 89 (to clause 15) the Minister stressed that action to evict could only be taken after the service of a notice by the Home Office and that "the Home Office would have to consider its responsibilities in relation to children when determining whether a notice should be issued."[33]

Mr Starmer said he was "grateful" for the commitment to reflect on amendment 71 but given "very strong feeling" in the landlord

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28 PBC Deb 29 October 2015 c256
29 PBC Deb 29 October 2015 c262
30 PBC Deb 29 October 2015 c257
31 PBC Deb 29 October 2015 c258
32 PBC Deb 29 October 2015 c262
33 PBC Deb 29 October 2015 c262

community he pressed amendments 71, 87 and 89 to a vote. All three amendments were defeated by 9 votes to 6.[34]

Keir Starmer moved additional Opposition amendments to clauses 13 and 14 during the Committee's eighth sitting:

- amendment 73 to place a duty on the Home Secretary to lay a report before Parliament on the likely impact of clause 13 on minority groups and British citizens without passports;
- amendment 86 (to clause 14) to provide a safeguard to families with children where the Home Office serves a notice which would ordinarily prompt action to evict; and
- amendment 70 to delay the implementation of clause 13 until at least 1 January 2018 "to allow more time to give assurance to landlords and ensure that the scheme is rolled out in a way that is fair and proportionate and does not lead to discrimination."[35]

In response, the Minister referred to the policy equality statement and the Home Office evaluation of the Right to Rent pilot and said that "we judge there is no good reason to delay implementation of the new measures."[36] On amendment 86, he provided information on how the Home Office would treat families with children who are deemed not to have a Right to Rent:

> …where families are involved, they will be offered advice and assistance in returning home and the Home Office will seek to engage the family in the family returns process. Families, as with other illegal migrants, will be given clear warnings that a failure to regularise their stay, to return home or to engage and co-operate with attempts to assist them to return may lead to the Home Office contacting the landlord and advising that the family may be evicted.
>
> The measures make it clear that action can only be taken following service by the Home Office on a landlord of a notice or notices in respect of each occupier; those will only be issued when the Home Office is clear that all of the occupiers are illegal migrants and do not have the right to rent, and there is no bar to them leaving the United Kingdom. In serving a notice in respect of a child, the Home Office will have regard to its duty to safeguard and promote the rights of children. I made that point earlier. The measures also ensure that a landlord must provide at least a 28-day notice period, during which arrangements could be made by persons in the country without permission to leave the UK. Given the protections already in place, the amendment is unnecessary.[37]

All three amendments were pressed to a vote and were defeated.[38]

The following Government amendments to clauses 13, 14 and 15 were made:

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34 PBC Deb 29 October 2015 c269; PBC Deb 3 November c285; PBC Deb 3 November cc294-5
35 PBC Deb 29 October 2015 c275
36 PBC Deb 29 October 2015 c277
37 PBC Deb 29 October 2015 c278
38 PBC Deb 29 October 2015 c278 (amendment 73 by 9 votes to 6); PCB Deb 3 November 2015 c283 (amendment 86 by 9 votes to 5); PBC Deb 17 November c553 (amendment 70 by 8 votes to 6).

- amendment 12 to prevent transitional measures in the *Immigration Act 2014* (which limited the application of the Right to Rent scheme to new tenancies created after commencement) from applying to new clauses on evictions and offences (agreed on a division by 9 votes to 6);[39]
- amendment 18 to make it clear that the measures on landlords obtaining possession of their properties "would apply regardless of when the occupancy or tenancy agreement was entered into;"[40]
- amendments 13, 14 and 17 to 20 to provide that reference to a landlord under the Bill would mean any landlord, where there are joint landlords (agreed without division); and
- amendment 21 (minor drafting change).

During the debate on these amendments Keir Starmer referred to several concerns raised by Residential Landlords Association (RLA) including: the complexity of the documentation they will need to check; the support available to landlords; and the criminalisation of otherwise law-abiding landlords.[41] The Minister said he would write to the RLA "to underline the sense, purpose and nature of this clause and how it will operate."[42]

Clause 12, as amended (now **clause 13** of the Bill), was ordered to stand part of the Bill by 9 votes to 4.[43]

The Minister moved the following amendments to **clause 14** (Eviction):

- amendment 69 to clarify how a landlord may serve a notice terminating a tenancy. Electronic service may be allowed if prescribed in regulations;
- amendment 15 to ensure that a landlord will be able to use the powers of eviction in new section 33D only if there is a Home Office notice in respect of all occupants; and
- amendment 16 to change the definition of an occupier of rented premises in respect of action taken to evict. A landlord may be able to pursue eviction on the basis of "who they know to be occupying the property, including where that knowledge had been established through inquiries with the tenant or tenants."

All three amendments were agreed without a vote.

During the stand part debate on the clause, Keir Starmer raised the potential impact of enabling landlords to enforce a notice from the Home Office "as if it were an order of the High Court."[44] In response to concerns around the potential for wrongful eviction, the Minister explained that a Home Office notice could be challenged by judicial review and that injunctive relief may be available in the county court.[45] He went on:

39 PBC Deb 29 October 2015 c274
40 PBC Deb 29 October 2015 c270
41 PBC Deb 29 October 2015 cc270-71
42 PBC Deb 29 October 2015 cc272-3
43 PBC Deb 3 November 2015 c283
44 PBC Deb 3 November 2015 cc286-94
45 PBC Deb 3 November 2015 c291

> Eviction will generally be inappropriate where there are existing medical conditions or specific care needs evident, and eviction may mean that a local authority is placed under a duty to remedy the loss of accommodation. There will also be cases where invoking eviction is considered inappropriate. These will be cases where the family involved is considered to have recognised barriers to returning home. These instances can include no viable route of return to their home country, difficulties in securing travel documents or in ensuring that their home country will accept the family's return, and medical or health conditions that make it difficult for a family to return home.
>
> The intent of the issuance of the notice is that the Home Office will have gone through that process. It is only at the end of the process of examination that the Home Office would seek to issue a notice to allow the process contemplated in clause 13 to operate.[46]

Clause 13, as amended (now **clause 14**), was ordered to stand part of the Bill by 9 votes to 6.

Government amendments to **clause 15** (Order for possession of a dwelling-house) were debated and agreed during consideration of the previous clause. During the stand part debate on clause 15 (clause 14 of the Bill as introduced) the Minister explained its purpose:

> Clause 14 amends the Housing Act 1988 to create a new mandatory ground for a landlord to obtain possession of a property following receipt of notification from the Secretary of State that an occupant is disqualified from renting as a result of their immigration status. The clause works in parallel with clause 13 and enables landlords to regain possession of their properties where some of the occupants are illegal migrants and some are in the UK lawfully with the right to rent. We have debated clause 13. Clause 14 provides slightly different mechanisms: it inserts a new mandatory ground into the 1988 Act, as I have indicated, and contains some ancillary provisions.[47]

The clause was ordered to stand part of the Bill.

Anne McLaughlin, for the SNP, moved amendment 78 to **clause 16** (Extension to Wales, Scotland and Northern Ireland) to prevent the Right to Rent from applying in Scotland. It was considered alongside amendments 79, 80, 81, 82 which were all concerned to limit the application of the Right to Rent provisions in the 2014 Act and the Bill in Scotland, and also New Clause 12,[48] which would have required the consent of the devolved administrations to the application of the Right to Rent in those areas.

In response, the Minister argued that immigration control is a reserved matter and that the amendments would lead to different immigration controls applying in different areas of the UK.[49]

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46 PBC Deb 3 November 2015 c292
47 PBC Deb 3 November 2015 c295
48 Tabled by Labour.
49 PBC Deb 3 November 2015 c300

Amendments 78, 79, 80, 81 and 82 were pressed to a vote – they were all defeated by 9 votes to 2.[50] Keir Starmer did not press for a vote on new clause 12.

Clause 16 (unamended) was ordered to stand part of the Bill.

During the fifteenth and final sitting of the Committee on 17 November 2015 Keir Starmer moved new clause 7 to remove the residential tenancy provisions from the *Immigration Act 2014* and the current Bill, and also new clause 8 to provide protection for landlords from prosecution when a tenant's leave comes to an end. Both were withdrawn. New clause 9, to exclude tenancies relating to accommodation shared with a landlord or member of his/her family from the Right to Rent provisions, was considered alongside new clause 8. Mr Starmer said the purpose of new clause 9 was to draw a distinction between professional landlords and those "who simply let out a room in their house or flat."[51] The Minister said that this had been debated at length during the passage of the *Immigration Act 2014* and referred to existing guidance on the matter. He went on:

> Our concern is that taking lodgers out of the scheme will mean that a significant number of illegal migrants and those who exploit them are left untouched, in essence creating a gap in the legislation. That would provide an easy means by which rogue landlords could avoid any sanctions, for instance by arguing that the property was their family home or by arranging for one tenant to take in another occupant as a lodger. Sadly, we know that there is exploitation, there are rogue landlords and that that is a risk. We believe that the checks are straightforward and should be no more difficult for someone letting out a spare room than for any other person who might be within the ambit of the Bill, for example through a formal tenancy. Anyone who accepts remuneration for renting property should accept the responsibilities involved in doing so, such as carrying out the basic checks previously debated and discussed in Committee. The concern about the gap that would be created and the risk that it might lead to further exploitation, with people being taken advantage of, means that we judge that this provision is not appropriate.[52]

Keir Starmer moved new clause 11 to probe what action the Government is taking to tackle an issue that has arisen in relation certain migrants who have leave to remain and access to public funds but who may not access local authority housing. The Minister provided the following response:

> **James Brokenshire:** Migrants granted leave to enter or remain in the UK are generally expected to be able to maintain and accommodate themselves without recourse to public funds in the form of mainstream welfare benefits or local authority housing support. There is legislation in place to ensure that the majority of migrants cannot access those public funds. The Government are aware that in some cases a person granted immigration leave with no bar to accessing public funds might require local authority

50 PBC Deb 3 November 2015 c302-3
51 PBC Deb 17 November 2015 c537
52 PBC Deb 17 November 2015 c538

> housing or homelessness support but would currently be ineligible as they are not settled here.
>
> The Home Office is working with other Departments—the Department for Communities and Local Government in particular—to remedy the situation as swiftly as possible. It does not follow, however, that everyone who has been granted leave should have an immediate and enforceable claim to access local authority support and services, even where there is no bar to them accessing other public funds.
>
> The No Recourse to Public Funds Network has highlighted the issue of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006, which control access to homelessness assistance and still refer to the discretionary leave category. That is quite a technical but important point. I assure the Committee that we are working closely with the Department for Communities and Local Government to examine amendments to the 2006 regulations, which is the relevant point.
>
> There is an issue here, but I hope, with that assurance, the hon. and learned Member for Holborn and St Pancras will be minded to withdraw the new clause, while noting that this is something we are aware of and will take steps to remedy.[53]

New clause 11 was withdrawn.

3.2 Driving - clauses 17-18

There was a short debate on **clause 17** (Powers to carry out searches relating to driving licences), in which Robert Buckland QC, the Solicitor General, argued that the new power would allow an authorised officer, such as an immigration or police officer, to search people and/or premises for and seize a UK driving licence held by a person not lawfully resident in the UK. It relates to driving licences issued both by the Driver and Vehicle Licensing Agency and the Driver and Vehicle Agency in Northern Ireland.[54]

Keir Starmer, asked the Solicitor General to clarify whether the process "is straightforward where a driving licence is invalid or already revoked, but if a licence is not revoked and is, on its face, valid, the purpose of the provision is to allow a revocation process to be completed". Mr Buckland agreed that this was the case.[55] He went on to say: "The provisions will not, in my view, lead to the random targeting of people based on their ethnicity. That would be wholly wrong and it is not something that the Government support".[56]

The clause was agreed, unamended.

Clause 18 (Offence of driving when unlawfully in the United Kingdom) was subject to more substantial debate. The Committee accepted Government amendments 44-48 without debate:

- to clarify that a vehicle must be released where a decision is taken not to institute criminal proceedings for the offence of driving when unlawfully in the UK;

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53 PBC Deb 17 November 2015 c540
54 PBC Deb 3 November 2015, c304
55 PBC Deb 3 November 2015 c305
56 PBC Deb 3 November 2015 c306

- to make clear that a vehicle can be detained by a senior officer or constable at any place they are lawfully present;
- to provide the police and immigration officers with the power to enter premises in order to detain a relevant vehicle and ensure that an illegal migrant who commits the offence of driving when unlawfully present in the UK cannot frustrate seizure by keeping the vehicle on private land; and
- to ensure that a person accompanying a constable in the execution of a warrant may detain a vehicle and that a constable may use reasonable force in order to detain a vehicle.[57]

The Solicitor General rejected Labour amendments 74-76:

- to ensure that the Home Secretary conducted a pilot of the proposed powers to allow police forces to confiscate the cars of suspected illegal immigrants before the measures were introduced;
- to provide a defence for those prosecuted for driving while illegally in the UK if they can show that they had a reason to believe that they did have legal right to be in the UK; and
- to ensure that the introduction of an offence of driving while illegally in the UK would not interfere with the validity of motor insurance.[58]

Mr Starmer argued that the police "did not seek the new power and that they had not found any gap in their ability to deal with drivers who did not have regular status" and sought clarity from the Solicitor General as to why the Government had decided to introduce this new criminal offence.[59] The Solicitor General responded that:

> There is a loophole involving people who are unlawfully here—illegal migrants—who are driving with foreign-issued licences. The offence will cover all aspects of driving by migrants who are in the United Kingdom unlawfully.
>
> Every year, about 10,000 queries are referred to the Home Office by the police relating to either road-side stops or vehicle stops. We do not have precise numbers on cases where an illegal migrant was found to be driving a vehicle, but of the one fifth of cases related to vehicle stops, about 10% relate to drivers who are in the UK illegally. I am talking about a loophole here. I think it is right that we try to close that when it comes to covering all incidents in which the authorities through other intelligence and other reasons to stop vehicles come into contact with people who are here unlawfully. The provision is another important tool to deal with a matter of public concern.[60]

The Solicitor General also sought to reassure the Committee that on the subject of amendment 75 (a defence where one believes oneself to be legally present in the UK), this was unnecessary because "a person who is prosecuted for this offence has the opportunity before the court issues judgment to put in mitigation about their belief as to whether they were legally present in the UK, and that would affect any sentence

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57 PBC Deb 3 November 2015 cc309-14
58 PBC Deb 3 November 2015 cc306-14
59 PBC Deb 3 November 2015 c306
60 PBC Deb 3 November 2015 cc307-8

that might be passed by the court". Further, "the Crown Prosecution Service will have guidance to ensure that migrants are not inappropriately prosecuted for this offence. Should a migrant be able to genuinely show that they believed themselves to be legally present, the public interest test … would apply".[61]

Finally, on the subject of accidents involving illegal migrant drivers, the Solicitor General said: "we are exploring with the insurance industry the potential impact of the offence on policies, but I can give reassurance today that a person involved in an accident with an illegal migrant driver will be protected".[62]

The clause was agreed, as amended by the Government.

3.3 Bank accounts - clause 19 and Schedule 4

During the stand part debate on clause 18 (now **clause 19** of the Bill as amended), Robert Buckland explained that banks and building societies would be required to check account holders' details against lists of known illegal migrants provided by the Home Office, at regular intervals, and notify the Home Office of matches. The Home Office would have a range of options available if it subsequently confirmed that an account holder did not have a valid immigration status, with a view to encouraging the person to leave the UK. In routine cases it would instruct the bank to close the account.[63]

Minor changes were made to Schedule 3 (**Schedule 4** of the Bill as amended) as a result of Government amendments.[64]

Keir Starmer indicated that the Opposition was not against the Bill's bank account provisions in general, but was concerned for individuals wrongly denied access to a bank account.[65] He moved amendment 93, which sought to ensure that people denied access to a current account would be provided with the information underpinning that decision. The Committee also discussed the related amendment 94, which would have introduced some compensation arrangements for people whose account was closed or suspended as a result of inaccurate information having been provided by the Home Office.

Robert Buckland said that the amendments were unnecessary. Migrants would be aware of the reason why they were deemed to be ineligible for a bank account, given that only those who did not have a valid immigration status in the UK would be affected. Home Office decision letters would inform migrants refused leave to remain in the UK of the practical consequences of staying in the UK without permission, including in relation to bank accounts. Banks would not be required by the Home Office to take action to close an account until after the Home Office had conducted a thorough check of the account holder's immigration status, in order to ensure that they act on the most up to

61 Ibid., c308
62 Ibid., c309
63 PBC Deb 3 November 2015 c314-5
64 PBC Deb 3 November 2015 c321-323
65 PBC Deb 3 November 2015 c316

date information. If a person maintained that they had been erroneously denied access to a current account, they would be given information to enable them to contact the Home Office to resolve the matter. Any mistakes in the information provided to the banks would be corrected in real time. In the event of an account being closed, the credit balance would be returned to the individual.

Mr Buckland agreed to write to the Committee to confirm the procedures he outlined and the amendment was withdrawn.

Schedule 3, as amended (now Schedule 4 of the Bill), was agreed to.

4. Part 3: Enforcement

Part 3 of the Bill proposes new immigration enforcement powers, including powers to search for, seize and retain evidence of certain offences, as well as changes to legislative provisions on granting immigration bail or forms of temporary admission.

4.1 Immigration Officers' powers – clauses 20-28

Are immigration officers' powers akin to 'stop and search'?

Gavin Newlands said that people living in the UK without a valid immigration status should be treated with respect and dignity, and that the problem of illegal immigration should not be handled in a way which negatively affects lawful migrants' experiences. He cautioned that giving powers to curtail leave to immigration officers at ports of entry (now **clause 20** of the Bill as amended) "will create a nervous, unpleasant environment for those who have the correct paperwork".[66]

Keir Starmer introduced an amendment which would have limited immigration officers' powers to examine people who have arrived in the UK (as specified in Schedule 2 of the *Immigration Act 1971*) so that they only applied at ports of entry. This led to a discussion about how the powers are currently used - particularly, whether they are used speculatively. Paul Blomfield cited examples of immigration officers conducting operations at tube stations in ethnically diverse areas, and suggested that the powers were similar to police stop and search powers, and had the potential to adversely affect community relations. Gavin Newlands and Sarah Champion echoed that concern.[67]

Robert Buckland emphasised that the powers to question individuals require 'reasonable suspicion'. He contended that where people are referred to immigration officers during joint 'crime reduction operations' (for example, in relation to fare evasion), "that is intelligence-led enforcement".[68] He also distinguished the power from police stop and search powers, noting that immigration officer powers are in relation to potential civil offences rather than criminal offences.

With regards to the proposed amendment, he cautioned that there was a risk that limiting immigration officers' powers of examination to apply only at ports of entry would result in a greater use of powers of arrest.

Keir Starmer maintained that regardless of the technical differences between the powers and stop and search, the potential impact on community relations remains. He pushed the amendment to a vote, which was rejected by 9 votes to 6.[69]

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66 PBC Deb 3 November 2015 c324-5
67 PBC Deb 3 November 2015 c325-6
68 PBC Deb 3 November 2015 c327
69 PBC Deb 3 November 2015 c329

A minor, technical Government amendment was made to **clause 23** (duty to pass on items seized), to give immigration officers discretion to hold on to an item seized under clause 22 if they believe that it may also be evidence of an immigration offence. Robert Buckland confirmed that there would be no specific timeframe for how long the item could be retained, but said that the proposed arrangements mirrored those in the *Police and Criminal Evidence Act 1987*.

Powers to conduct strip searches and search for nationality documents

Keir Starmer introduced amendment 197, which sought to remove detainee custody officers' proposed power to conduct strip searches (as per **clause 25** of the Bill as amended). Mr Starmer cited longstanding concerns about the exercise of powers over immigration detainees as the backdrop to the amendment.

Robert Buckland confirmed that it would not be possible for strip searches to be conducted by a person of the opposite sex, and said strip searches would not be carried out in such a way that the person would be left completely naked at any stage.[70] Responding to a point raised by Sarah Champion, as to whether the powers would be used in children's cases, he said that this would only be the case in exceptional circumstances. In any case, the strip search powers would not be used in respect of children aged under 10.[71] He also said that additional guidance on the strip search power would be provided to staff.

Amendment 197 was defeated on division by 9 votes to 5.[72]

A separate proposed amendment sought to narrow the definition of "nationality document" that the powers of search would apply to. Robert Buckland countered that the Bill used the same definition as used elsewhere in immigration legislation. He said that it was "essential" to keep a wider definition of nationality document, in order to support the objective of obtaining emergency travel documents to facilitate removals. The amendment was withdrawn.[73]

A string of Government amendments were made to the search warrant provisions (now **Schedule 5** of the Bill as amended), in order to improve immigration search warrant processes in the Scottish criminal justice system. Some minor and technical amendments were also made.[74]

4.2 Supply of information to the Secretary of State - clause 29

New clause 15 and new schedule 2 (**clause 29 and Schedule 6** of the Bill as amended) amend section 20 of the *Immigration and Asylum Act 1999* and introduce a new section 20A and Schedule A1 to that Act, in order to provide that any public authority other than those expressly

70 PBC Deb 3 November 2015 c337
71 PBC Deb 3 November 2015 c338-340
72 PBC Deb 3 November 2015 c340
73 PBC Deb 3 November 2015 c341
74 PBC Deb 3 November 2015 c342-3

excluded is able to pass on information they already hold to the Home Secretary (in practice, her officials) for immigration purposes. In addition, it would enable the Home Secretary to require specified public authorities to provide nationality documents which are lawfully in their possession and relate to a person who may be liable to removal from the UK. The Solicitor General, Robert Buckland, summarised the intended purpose of the clause and schedule as ensuring that "the public sector works together to achieve effective immigration control."[75] They were agreed to without debate.

4.3 Detention by immigration officers in Scotland - clause 30

Robert Buckland explained that the clause (introduced as new clause 16) seeks to ensure that immigration officers have consistent powers in immigration-related criminal investigations across the United Kingdom. In particular, it amends the power of detention in section 24 of the *Criminal Law (Consolidation) (Scotland) Act 1995*, so that Scottish powers of detention prior to arrest and of arrest without warrant apply to all immigration offences contained in, or for which immigration officers have a power of arrest under, the Immigration Acts. It is not within the competence of the Scottish Parliament to vary the powers of immigration officers.[76] It was added to the Bill without debate or division.

4.4 Immigration bail - clause 32 and Schedule 7

There was considerable debate of the proposed changes to immigration bail during the Committee's 10th session. Labour and SNP members tabled many amendments to clause 29 and the related schedule (now **clause 32 and Schedule 7**).

Is it inappropriate to describe the status as "immigration bail"?

Labour and the SNP backed a string of amendments which would have renamed "immigration bail" as "temporary admission". Keir Starmer said that temporary admission better reflects the individual's status and the presumptions about how they are treated. Similarly, Gavin Newlands objected to using the term immigration bail in this context, on the grounds that "saying that someone is on immigration bail implies that they have conducted a criminal act of some sort, and that they are on temporary release from their place of imprisonment".[77]

In response, James Brokenshire emphasised that the decision to use the term "is not in any sense an effort to give some sort of criminal context

75 PBC Deb 10 November 2015 c500
76 PBC Deb 10 November 2015 c500-501
77 PBC Deb 3 November 2015 c350-1

nor to change policy in any way."[78] He reiterated that the changes proposed by the Bill would not affect the underlying policy on the use of immigration detention or how individuals would be treated. There would remain a presumption in favour of liberty, with detention used as a last resort.[79] He said that the Government had decided to use the term in the belief that "it is already commonly understood among practitioners in the system and should therefore aid attempts to understand the system better."[80]

The lead amendment moved by Keir Starmer was withdrawn and the clause (now **clause 32**) was ordered to stand part of the Bill.[81]

The exercise of powers relating to immigration bail

Labour and the SNP proposed several amendments to the schedule on immigration bail:

- to introduce automatic bail hearings after eight days, 28 days, and every 28 days thereafter (amendment 199);
- to remove the Home Secretary's power to detain an individual granted bail from a tribunal without just cause (amendment 200);
- to remove the Home Secretary's powers to override the tribunal's decisions in relation to bail conditions (electronic monitoring or residence requirements) (amendments 201 – 203);
- to oblige the Home Secretary to provide for accommodation for people released on immigration bail, and for a right of appeal for persons refused such support (amendments 204 – 206);
- to provide that a person arrested and detained for having breached, or being suspected of breaching, a bail condition be brought before a Tribunal (amendment 207);
- to probe why the Government wishes to include a restriction on a person's studies as a possible condition of immigration bail and what other conditions are envisaged (amendments 210 and 211); and
- to probe the circumstances when continuing immigration detention might be in an individual's best interests (amendments 212 – 214).

James Brokenshire outlined the Government's objections to the amendments.

He said that the Government did not consider automatic bail hearings necessary, arguing that immigration detainees already have "unrestricted opportunity" to apply to the tribunal for bail at any time, as well as access to judicial review and habeas corpus processes. He argued that automatic bail hearings would be a significant additional burden on the tribunal, which could affect the taxpayer and other appellants, and reminded the Committee that a previous Labour government had cited similar concerns in 2002 when it repealed legislation providing for automatic bail hearings.[82]

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78 PBC Deb 3 November 2015 c352
79 PBC Deb 3 November 2015 c351-2
80 PBC Deb 3 November 2015 c352
81 PBC Deb 3 November 2015 c353
82 PBC Deb 3 November 2015 c363-4

On amendment 200, he said that the intention is to ensure "that detention is still available as an option when an individual is on bail and there is a change of circumstances", rather than to marginalise the tribunal's powers to grant bail. He explained that the power was most likely to be used shortly before an enforced removal, and reminded the Committee that having been granted "immigration bail" did not necessarily mean that a person had previously been detained.[83]

With regards to amendments 201 – 203, Mr Brokenshire noted that the Government had made a manifesto commitment to extend the use of electronic monitoring. The Government anticipated using the power to impose a tagging requirement "very rarely", and its decisions would be open to judicial review.

On accommodation for detainees seeking bail, the Minister said that individuals would be expected to make their own accommodation arrangements. If they were unable to find suitable accommodation, the Home Office would consider using powers provided for by paragraph 7 of the schedule, which allow the Home Secretary to cover accommodation and travel costs for people granted immigration bail on a case-by-case basis.

He confirmed that the Government did not intend to use the power to include a restriction on study in order to impose a blanket restriction on asylum seekers accessing education. He said it could be used to specify a place of study, which could help to maintain contact with the individual/family concerned.[84]

The Minister spoke at greater length about issues related to immigration detention and mental health and when it might be considered to be in a person's best interests to be detained:

> I underline the Home Office policy on the detention of individuals suffering from mental illness: other than in very exceptional circumstances, those suffering from serious mental illness which cannot be satisfactorily managed in detention should not normally be detained. All cases are considered on the basis of particular circumstances, and all factors arguing both for and against detention must be considered when deciding whether to detain. Serious mental health problems are likely to be an argument against detention but do not automatically preclude it. There may be other factors, particularly the risks of absconding and of public harm, that argue in favour of detention, and equally I point to cases where detention may be appropriate. For example, it may be necessary and appropriate in exceptional circumstances to maintain a short period of immigration detention when an individual is to be transferred to local authority care ….
>
> I underline—and this is something that I continue to discuss with colleagues in the Department of Health—the transfer from detention to a health setting. Someone with a severe mental health episode is likely to require some form of stay in, for example, a secure mental health unit. It is not appropriate to hold someone with an acute mental health problem in an immigration removal centre. There is guidance in place and we have to analyse

83 PBC Deb 3 November 2015 c365
84 PBC Deb 3 November 2015 c366

> the issue carefully on a case-by-case basis. If detention is not appropriate, someone should be dealt with under the Mental Health Acts and be taken to a place of safety such as a secure mental health unit. Equally, where a mental health condition may arise in detention, consideration would be given, particularly if it is a severe episode, to their transfer from an immigration removal centre to a health setting in order to treat them properly and appropriately.

He agreed to give further thought to the issue, in response to probing from Keir Starmer:

> I understand the point that the hon. and learned Gentleman makes about whether, from the utility of a public protection standpoint, the provisions and the conditions for immigration bail might be triggered purely on the basis of the individual's state of mind. I am happy to reflect further on that. Certainly, as I have set out, the approach and the intent concerns what is an appropriate setting for someone. I will look at what the hon. and learned Gentleman has said in Committee and, if there is some further clarification that I can offer, I will certainly review that.[85]

Keir Starmer indicated that he may wish to return to amendments 199 – 203 and 212 – 214 at Report stage. He pressed a vote on amendment 207, which was duly rejected by nine votes to five.[86]

In addition, a couple of Government amendments to the schedule (now **Schedule 7** of the Bill as amended) were agreed to without debate.[87]

85 PBC Deb 3 November 2015 c362-3
86 PBC Deb 3 November 2015 c370
87 PBC Deb 3 November 2015 c370-1

5. Part 4: Appeals

Part 4 would extend changes to appeal rights introduced by the *Immigration Act 2014,* in order to enable the Home Secretary to remove from the UK migrants who are appealing against a refusal of a human rights claim before the appeal has been determined, if she certifies that the person's temporary removal would not cause serious irreversible harm or breach the UK's human rights obligations.

5.1 Certification of human rights claims - clause 34 of the Bill

Is it appropriate to extend 'remove first, appeal later' powers to all human rights appeals?

Robert Buckland introduced the clause by saying that it builds on the success of existing legislative powers which permit the removal of certain categories of applicant before appeal, and implements a manifesto commitment to extend the powers to all human rights appeals (except asylum claims and cases where removal would risk serious irreversible harm or other breach of human rights). He emphasised that the certification decisions would be made on a case by case basis, taking into account the effect of a decision on family members.[88]

Gavin Newlands said that the impact of the 'deport first, appeal later' provisions in the 2014 Act should be evaluated before the extending the powers to all human rights appeals.[89] Similarly, Paul Blomfield said that the Government had not provided sufficient justification for extending the use of the powers beyond their current scope so that they would also apply to legal migrants who had not committed any crime.[90] He drew attention to a concern raised by the Law Society that the clause may result in successful appellants seeking compensation from the Government for enforced separation from their families. He also noted that the Law Society has identified that the clause would affect family members of British citizens, but not family members of EEA nationals living in the UK (who would continue to have an in-country right of appeal).

The potential impact on cases involving children

There was particular interest in the clause's potential impact on children. Robert Buckland confirmed that the certification power would not normally apply to unaccompanied children's cases, but that there would be scope to apply the powers in individual cases involving unaccompanied children approaching 18, such as if they had family members in their country of origin.[91]

88 PBC Deb 5 November 2015 c379-80
89 PBC Deb 5 November 2015 c387
90 PBC Deb 5 November 2015 c391
91 PBC Deb 5 November 2015 c380

Several Members highlighted the detrimental effect that lengthy separation can have on children and families, referring to evidence gathered in respect of the minimum income requirement for partner visas.[92] They highlighted that current appeal processing times are between six and twelve months. During discussion of the following clause (on repealing section 3D leave), Anne McLaughlin contended that "those who support Part 4 of the Bill will needlessly split up families", and said that the provisions "make a mockery of the Government's professed support of family values.[93]

In response, Robert Buckland emphasised that section 55 of the *Borders, Citizenship and Immigration Act 2009* already requires that a child's best interests are a primary consideration in decision-making. Furthermore, whilst he acknowledged that families and children can be affected by temporary separation, he remarked that many parents and children endure periods of temporary separation, for various reasons.[94]

To what extent are out of country appellants disadvantaged?

The practicality of pursuing an appeal from overseas was also questioned. Sarah Champion argued that removing in-country appeal rights was likely to make it impossible in practice for many people to exercise their right of appeal, and that ultimately this would undermine the integrity of the immigration system.[95] Paul Blomfield referred to evidence from the Anti-trafficking and Labour Exploitation Unit about the practical difficulties that their vulnerable clients would have in maintaining contact with their legal representatives and giving instructions remotely from overseas, due to limited resources, literacy, or familiarity with modern communications technology.[96]

In response, Robert Buckland acknowledged that out of country appeals may be "less advantageous" to appellants, but noted that the Court of Appeal had found that the ECHR does not require that appellants have access to the best or most advantageous appeal procedure. He also argued that the success rates for entry clearance appeals (which are made out of country) and comparable in-country appeal outcomes over the past five years (38% and 42% respectively) did not suggest that out of country applicants suffer an obvious detriment.[97]

After the Committee divided, the clause, (now **clause 34** of the Bill as amended) was ordered to stand part of the Bill, by nine votes to seven.[98]

How to challenge decision-making errors if there is no right of appeal

92 PBC Deb 5 November 2015 c387-388
93 PBC Deb 5 November 2015 c402
94 PBC Deb 5 November 2015 c395-6
95 PBC Deb 5 November 2015 c386
96 PBC Deb 5 November 2015 c391-2
97 PBC Deb 5 November 2015 c384;395
98 PBC Deb 5 November 2015 c398

The issue of how refused applicants can challenge decision-making errors if they do not have a right of appeal was raised by Anne McLaughlin and Keir Starmer during discussion of **clause 35** of the Bill (as amended).[99]

Robert Buckland set out the Government's view that there should not be a right of appeal or administrative review when immigration leave is cancelled or revoked. However, he said that there is an 'error correction policy' in place, which does not extend the refused applicant's leave (as section 3D did), but does give applicants an opportunity to raise errors with the Home Office.[100]

He also reminded the Committee that refused applicants would also have access to judicial review. Keir Starmer questioned the appropriateness of judicial review in such circumstances, noting that it is a "long and expensive" process, and queried whether this might lead to an unwelcome increase in the volume of judicial review applications. However, Robert Buckland said that he was "not overly alarmed or concerned about a potential spike in applications for judicial review", since the Coalition Government had already taken action to stem an increase in judicial review applications.

The clause was agreed to stand part of the Bill, without a division.[101]

99 PBC Deb 5 November 2015 c401-405
100 PBC Deb 5 November 2015 c403-4
101 PBC Deb 5 November 2015 c405

6. Part 5: Support for certain categories of migrant

Part 5 would replace 'section 4' support for certain categories of migrant without immigration leave with more limited provisions.

6.1 Support for certain categories of migrant - clause 37 and Schedules 8

The Bill's asylum support provisions were debated in the 12th and 13th Committee sessions.

James Brokenshire began by outlining the underlying policy intentions of the provisions (now **clause 37 and Schedule 8**):

> We say that it is not appropriate for public money to be used to support illegal migrants, including those whose asylum claims have been found to be without merit, who can leave the UK and should do so.[102]

He returned to the issue during debate on the schedule (now **Schedule 8** of the Bill):

> Instead of indefinitely supporting failed asylum seekers because they have children, we need a better basis of incentives and possible sanctions. We, together with local authorities, can then work with these families in a process that secures their departure from the UK, and schedule 6 to the Bill will deliver that.[103]

During the course of the Committee's consideration of the clause and related schedule, several members of the Committee expressed strong concerns about the potential impact of withdrawing support from refused families.[104]

On the other hand, Simon Hoare supported the Government's view, contending that "most ordinary folk in our constituencies, irrespective of their political affiliation, conclude on the basis of common sense that once a fair system has been tried, tested and exhausted, there must be a point at which the state…withdraws."[105]

Withdrawing support from refused families: how does the Bill differ from the unsuccessful 2005 pilot?

James Brokenshire said that the Government had taken account of the previous attempt to encourage family removals by ceasing asylum support (as piloted in 2005 without great success), and that the Government's intended approach would differ in three respects.

Firstly, in order to qualify for proposed section 95A support, the onus would be on the family to show that there is a genuine obstacle to their departure from the UK (in the 2005 pilot, the onus was on the Home Office to show that the family was not cooperating with removal).

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102 PBC Deb 5 November 2015 c406
103 PBC Deb 10 November 2015 c451
104 See, for example, PBC Deb 10 November 2015 c442-451
105 PBC Deb 5 November 2015 c429

Secondly, the new approach will be part of a "managed engagement process with the family, in tandem with the local authority" (whereas the 2005 pilot was largely correspondence-based). Finally, the Minister contended that there was now a greater recognition across central and local government that public funds should not be spent on migrants who do not have the right to remain in the UK.[106]

Mr Brokenshire said that he would reflect further on the 28-day 'cooling off period' prior to support being withdrawn from families.[107]

Keir Starmer was sceptical about whether the differences were so great that families would be significantly more likely to comply with removal than they were in 2005. He suggested that it would be better to focus on improving the family returns process, which operates alongside existing support provisions and is showing signs of success.[108] In response, James Brokenshire emphasised that engagement with families would start before their support was terminated, and that from January 2016, the Home Office would have direct responsibility for promoting assisted voluntary returns schemes to refused applicants. This would enable it to ensure that the schemes are promoted to newly-refused families as part of the engagement process surrounding the cessation of support.[109]

The potential impact on local authorities

Keir Starmer and Emma Lewell-Buck pressed the Minister on the issue of whether the proposed changes to refused applicants' support entitlements would result in greater costs for local authorities.

James Brokenshire referred to the related impact assessment and the Government's commitment to undertake a new burdens assessment. He underlined that the Government did not wish to simply move the costs of support to local government, and was continuing to discuss the issue with local government representatives and other parties:

> If the measures led to, or risked leading to, migrants being supported by local authorities when they would previously have been supported by the Home Office, we have made it clear through the consultation that we would wish to discuss and address those impacts and their financial implications with local authorities and the devolved Administrations in accordance with the new burdens doctrine.[110]

The Committee divided on whether clause 34 (now **clause 37**) should stand part of the Bill. It was approved by nine votes to seven.[111]

Should there be a right of appeal against refusal of section 95A support?

During consideration of the schedule, there was a lengthy discussion on whether there should be a right of appeal against a decision to refuse or

106 PBC Deb 5 November 2015 c408
107 PBC Deb 5 November 2015 c409
108 PBC Deb 5 November 2015 c412-4
109 PBC Deb 5 November 2015 c414
110 PBC Deb 5 November 2015 c411
111 PBC Deb 5 November 2015 c414

discontinue support under proposed section 95A of *the Immigration and Asylum Act 1999*, as proposed by the opposition amendment 222.

Gavin Newlands said that if the schedule was not amended, "we will be treating refused asylum seekers with complete contempt". Similarly, Emma Lewell-Buck, Sarah Champion and Paul Blomfield warned of potentially catastrophic consequences of decisions to refuse access to support.

Keir Starmer and several other Members referred to the high success rate for appeals against decisions to refuse or discontinue support under the current arrangements as evidence of poor decision-making. Asylum support appeal outcomes from September 2014 – August 2015 showed that 44% were allowed by the tribunal and a further 18% were remitted to the Home Office or withdrawn as flawed decisions.[112]

James Brokenshire countered that "appeal statistics are not a good indicator of the quality of decision making", and referred instead to a 2014 independent inspection report by the Chief Inspector of Borders and Immigration, which had found a good quality of decision making in asylum support cases.[113] He further contended that there is no need for a right of appeal, since decisions to refuse section 95A support would be on the grounds that there is no obstacle to leaving the UK, and such assessments "should be a straightforward matter of fact". Emma Lewell-Buck argued that the grounds for providing support under section 95A should be specified in primary legislation rather than regulations. James Brokenshire indicated that the acceptable obstacles were likely to relate to a lack of necessary documentation or a medical condition.[114]

Keir Starmer pressed the proposed amendment to a vote. It was rejected by nine votes to seven.[115]

Other unsuccessful amendments

Keir Starmer pressed several other proposed amendments to Schedule 8 to divisions. These were all defeated by nine votes to seven:[116]

- An amendment which would have ensured that former unaccompanied asylum seeking children continued to be eligible for local authority support under leaving care arrangements after their applications had been refused and they had turned 18 (amendment 223).
- An amendment which would have allowed refused asylum seeking families to continue to be eligible for asylum support until removal from the UK (amendment 226).
- An amendment which would have required that asylum support rates are set at no less than 60% of Income Support rates for single adults over 25 (amendment 227).
- An amendment which would have extended asylum seekers' right to work in the UK, so that they would be eligible to apply for

112 PBC Deb 5 November 2015 c415
113 PBC Deb 5 November 2015 c422
114 PBC 5 November 2015 c417; c422
115 PBC Deb 5 November 2015 c425
116 PBC Deb 5 November 2015 c430; PBC Deb 10 November c457; c465

> permission to work after waiting for longer than six months for a decision on their asylum claim or further submission, and would not be restricted to doing jobs on the shortage occupation list (amendment 228).

Various Government amendments were made to the schedule. Most of these were minor and technical.[117] A Government amendment (amendment 101) was made in order to give flexibility to provide section 4 support in cash or vouchers rather than via the Azure pre-payment card (as is currently used). This would affect people covered by the Bill's transitional arrangements on support. The Minister explained that this flexibility would be useful in the event that the dwindling numbers in receipt of such support made ongoing use of the pre-payment card uneconomical. Some additional technical amendments were made to the transitional arrangements.[118]

6.2 Availability of local authority support - clause 38 and Schedule 9

During debate on clause 37 and schedule 8 of the Bill, James Brokenshire had confirmed that the Government was continuing to consider with local government whether further measures could be taken to reduce potential costs to local authorities.[119]

A new clause and schedule to deal with this issue in England (new clause 17 and new schedule 3, which became **clause 38 and Schedule 9** of the Bill as amended) were introduced by the Government and discussed during the 15th Committee session. The Minister confirmed that the Government intended to amend the Bill at a further stage in order to extend the provisions to other parts of the UK, following further discussions with the devolved Administrations.[120]

The provisions would amend Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*, which restricts the type of support that migrants without immigration status can access. James Brokenshire said that the provisions were in response to concerns raised during the Home Office's consultation on reforming asylum support and in evidence from local authorities, about the complexity of legislation, case law and assessment processes relating to local authorities' duties to provide support to migrants without immigration status. He highlighted two changes:

> First, new schedule 3 simplifies the way in which local authorities in England assess and provide accommodation and subsistence for destitute families without immigration status. It enables local authorities to continue to provide under section 17 of the Children Act 1989 for any other needs of a child or their family to safeguard and promote the child's welfare. Secondly, the new schedule prevents adult migrant care leavers who have exhausted their appeal rights and have established no lawful basis to remain here from accessing local authority support under the 1989 Act. It

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117 PBC Deb 5 November 2015 c426-7; PBC Deb 10 November 2015 c441; c458
118 PBC Deb 5 November 2015 c465-6
119 PBC Deb 5 November 2015 c409; c413
120 PBC Deb 17 November 2015 c520

> makes alternative provision for their accommodation, subsistence and other support before they leave the UK.[121]

The Minister gave further details of the changes, as summarised below.

Paragraph 7 of Schedule 9 simplifies existing provisions in Schedule 3 of the *Nationality, Immigration and Asylum Act 2002,* in order to provide that a person is ineligible for the forms of local authority support specified in the schedule if they are not an asylum seeker and require immigration leave but do not have it, or are a dependant of such a person.

Paragraph 8 of Schedule 9 would insert a new paragraph 10A into Schedule 3 of the 2002 Act, in order to provide (through regulations) for local authorities to provide accommodation and subsistence support to destitute families if they are found ineligible for support under section 95A of the *Immigration and Asylum Act 1999* (as amended by the Bill), and:

- they have an outstanding immigration application or appeal; or
- they have exhausted their appeal rights and have not failed to cooperate with removal; or
- the provision of support is necessary to safeguard and promote the welfare of a dependent child.

Accommodation and subsistence would be provided under the regulations rather than under section 17 of the *Children Act 1989*. However, any other needs of the child or family which are considered necessary to safeguard and promote the child's welfare could be provided for by the local authority under the Children Act 1989. Local authorities would continue to have duties to provide for the child's schooling and address specific educational needs.[122]

Paragraph 8 of Schedule 9 would insert a new paragraph 10B to Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*. This would allow the Home Secretary to make regulations providing for support to be provided to adult migrant care leavers (e.g. former unaccompanied asylum seeking children) who had been refused asylum if:

- they have an outstanding immigration application appeal and are destitute; or
- they have exhausted their appeal rights but a person specified in the regulations is satisfied that support should be provided.

As per paragraph 4 of Schedule 9, this support would either be provided under the proposed section 95A of the *Immigration and Asylum Act 1999* (as amended by the Bill), or by a local authority under regulations made under Schedule 3 of the 2002 act (as amended by the Bill), rather than under the *Children Act 1989*. The Minister set out the Government's view on why it is not appropriate for former unaccompanied asylum seeking children to continue to be eligible for local authority support as care leavers, under the *Children's Act 1989*:

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121 PBC Deb 17 November 2015 c 520
122 PBC Deb 17 November 2015 c521

> Nearly all of those adult migrants are former asylum-seeking children whose asylum and any other human rights claims have failed. The provisions in the 1989 Act are geared to support the needs and onward development of young adults leaving local authority care whose long-term future is in the UK. Those provisions are not appropriate to the support needs, pending their departure from the UK, of adult migrants who the courts have agreed have no right to remain here.[123]

Keir Starmer and Sarah Champion voiced concerns that the clause and schedule undermine the protections set out in the *Children Act 1989* for all children leaving care.[124] Gavin Newlands highlighted previous findings by the Joint Committee on Human Rights, which said that unaccompanied children should be properly supported in the transition to adulthood, and said that denying access to leaving care support on the basis of immigration status may contravene Article 2 of the UN Convention on the Rights of the Child. This requires states to ensure the rights of children in their jurisdiction without discrimination.[125]

In response, the Minister emphasised that the provisions relate to adults rather than children, and that any accommodation or other support they require prior to departure from the UK should be given under provisions specifically intended for that purpose.[126] Keir Starmer maintained that the provisions would affect young people who had just turned 18, and who may be very vulnerable and traumatised, regardless of their age. Similarly, Sarah Champion said that migrant children often need assistance from a personal adviser or advocate in order to instruct an immigration lawyer.[127] James Brokenshire said that unaccompanied children are reminded of the need to take action to regularise their immigration status before they turn 18, and so would have access to a personal adviser provided through local authority support at that stage. He also disagreed with the implication that an adult should have an enhanced right to remain in the country of they entered as an unaccompanied asylum seeking child.[128]

On divisions, the Committee agreed by eight votes to six to giving the new clause and new schedule second readings.[129]

123 PBC Deb 17 November 2015 c521
124 PBC Deb 17 November 2015 c525
125 PBC Deb 17 November 2015 c525; c527
126 PBC Deb 17 November 2015 c527-8
127 PBC Deb 17 November 2015 c525
128 PBC Deb 17 November 2015 c528
129 PBC Deb 17 November 2015 c530; c553

7. Part 6: Border Security

Part 6 would, amongst other things, extend some immigration enforcement powers to UK territorial waters.

7.1 Maritime Enforcement - clause 40

James Brokenshire explained that although there have been relatively few incidents of suspected facilitation offences in UK territorial waters, the purpose of the provisions (now **clause 40 and Schedule 11** of the Bill as amended) is to close a gap in legislation, so that the UK is well-placed to respond to any such risk in the future.[130]

Several technical corrections to Schedule 8 (now Schedule 11) of the Bill were made by Government amendments.

Could the powers be used to 'push back' asylum seekers?

In response to probing amendments moved by Keir Starmer, James Brokenshire confirmed that the Bill would not change the position with regards to the right of hot pursuit from UK territorial waters into international waters. Hot pursuit could only commence when a ship is in UK territorial or internal waters, as provided for by the UN Convention on the Law of the Sea. He also confirmed that the powers would not allow officers to 'push back' vessels thought to contain asylum seekers. It would only be possible to divert vessels to UK ports, from where individuals would have the opportunity to claim asylum.[131]

Are there sufficient safeguards on the exercise of the powers?

A string of amendments tabled by Labour and the SNP sought to deal with various concerns related to new schedule 4A to the *Immigration Act 1971* (as would be amended by Schedule 11). Keir Starmer spoke to three main areas of concern:

- That officers would be have open-ended scope to exercise their powers "on the ship or elsewhere" (as per proposed paragraph 3(5)(sub-paragraph 8).
- That any other person accompanying an immigration/enforcement officer would be authorised to exercise the search powers (as per paragraph 7),
- That enforcement officers would have a wide-ranging immunity in criminal or civil proceedings related to the exercise of these powers (as per paragraph 10)

Gavin Newlands, speaking for the SNP, reiterated the view that the powers should only be exercised by fully trained immigration officers, drawing attention to the particular safety concerns which arise when operating at sea.

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130 PBC Deb 10 November 2015 c474
131 PBC Deb 10 November 2015 c467-8

In response to these concerns, James Brokenshire said that:

- The power to search "elsewhere" arises in the context of a suspicion related to a ship. It is intended to prevent gaps in the search powers (such as if a person on a ship jumped overboard or onto land).
- The provisions to authorise "accompanying officers" to exercise the powers are intended to facilitate effective joint working with partner agencies, and are in line with existing powers under other pieces of legislation.
- Officers would have protection against personal liability in civil or criminal proceedings, but would not prevent a claim for which an employer would be vicariously liable.[132]

The clause and schedule as amended were agreed to, without divisions.

[132] PBC Deb 10 November 2015 c474-477

8. Part 7: Language requirements for public sector workers

Part 7 would introduce a duty on public authorities to ensure that all public sector workers in public-facing roles are able to speak fluent English.

Clause 38 is the principle provision in Part 7, and would introduce the requirement to ensure relevant employees speak fluent English. Clause 38(8) defines "fluent" as being "a command of spoken English which is sufficient to enable the effective performance of the person's role". In complying with the duty, public authorities would be required to have regard to a code of practice.

An SNP Member, Anne McLaughlin, opposed legislating to introduce language requirements:

> Part 7 of the Bill, which comprises clauses 38 to 45, is completely unnecessary and unworkable. It will have negative consequences, whether intended or not; I have some difficulty coming to a conclusion on that one. Perhaps when the Minister speaks later, it will be easier for me to do so. It goes against the wider measures advocated by the Government in the Bill. I will argue those points in turn, but I hope that the Committee will allow common sense to prevail and scrap this part of the Bill.
>
> It is clear that the clauses are unnecessary from the overwhelming lack of evidence from the Government or anyone else that legislation is required. Page 25 of the explanatory notes state that clause 38 is being introduced in order
>
> "to improve the quality of service provided by public authorities, such as the NHS and the police".
>
> The question is surely why those professionals have not demanded such legislation themselves. I note the submission from the British Medical Association stating that doctors must already pass the international English language testing system to a level set by the General Medical Council or provide evidence to the equivalent.
>
> …
>
> The fact is that part 7 in its entirety is merely a duplication of what any employer asks of an applicant: do they have the skills for the role? I challenge any Member here to tell me whether they know of any firefighters turning up to save our lives who have to bring an interpreter with them, or whether any of them have visited a GP and had to explain their symptoms in mime because the GP does not speak English.[133]

For the Government, the Solicitor General, Robert Buckland QC, said:

> the Home Office has done pre-consultation modelling, based on the proportion of over-16s in employment in the public administration, education and healthcare sectors according to 2011 census data—those are important, objective, statutory data obtained from the British population. According to that modelling, about 3.6 million employees are within the scope of

[133] PBC Deb 10 November 2015 cc478-479

> the proposed duty and about 1.5 million employees in Great Britain, excluding Northern Ireland, are subject to English language standards, so an extra 2.1 million employees will be newly affected by the duty. We anticipate that between a low of 8,500 workers and a high of 25,000 workers may not have the required standards of English fluency. There is objective evidence upon which we can base this policy.[134]

The clause was agreed to on division, with nine Members voting to support it and one Member (Ms McLaughlin) voting against.[135] The remaining provisions of Part 7 were agreed to without substantial debate.

[134] PBC Deb 10 November 2015, c483
[135] PBC Deb 10 November 2015 c487

9. Other significant areas of debate

9.1 Restrictions on the use of immigration detention

Paul Blomfield introduced two new clauses which would have exempted certain groups from liability to detention (pregnant women, victims of trafficking, victims of torture, victims of sexual violence, and any other group prescribed by the Secretary of State), and introduced maximum time limits for immigration detention (28 days, with scope to make exceptions for certain categories of case).[136]

The proposed new clauses had been tabled by Richard Fuller and had some cross-party support. They reflected recommendations made in the report of the inquiry into the use of immigration detention, which was conducted by the All Party Parliamentary Groups on Refugees and Migration and the subject of a Backbench Business Committee debate on 10 September.

Gavin Newlands, Keir Starmer, Anne McLaughlin and Sarah Champion also spoke in support of the amendments.[137] Gavin Newlands argued that the proposal to introduce a maximum time limit did not go far enough but nevertheless welcomed it as "a massive step in the right direction".

Exemptions for certain groups: the Government's objections

James Brokenshire set out the Government's reasons for opposing the new clauses.[138] With regards to exemptions for certain categories of people, he identified some technical deficiencies in the drafting of the clause, and contended that there was a risk that it could encourage some detainees to make false claims about their experiences. He also emphasised that existing policy already states that vulnerable people should not normally be detained, including pregnant women, victims of torture and victims of trafficking. Furthermore, the Government is actively considering the report and recommendations it commissioned from Stephen Shaw, former Prisons and Probation Ombudsman, relating to Home Office policies towards the treatment of vulnerable immigration detainees. The Minister confirmed that it is intended that the report and Government's response will be published before the Bill completes its passage through Parliament. He suggested that the Government should be given time to consider the recommendations before legislation is made on the issue.

136 PBC Deb 10 November 2015 c501-505
137 PBC Deb 10 November 2015 c505-509
138 PBC Deb 10 November 2015 c509-512

The Government's reasons for opposing a statutory time limit on detention

The Minister disagreed with the contention that existing UK policy and legislation amounts to 'indefinite detention', arguing that:

> Although there is no fixed statutory time limit on the duration of detention under immigration powers, it is not the case that there is no time limit. It is limited by statutory measures, the European convention on human rights, the common law, including principles set out in domestic case law, and the legal obligations arising from the Home Office's published policy, which states:
>
> > "Detention must be used sparingly, and for the shortest period necessary." [139]

In response to probing from Keir Starmer, the Minister further contended that "Indefinite detention implies detention that cannot be brought to an end", and this does not reflect the position in the UK.[140]

He also argued that the published statistics do not bear out the characterisation of indefinite detention, noting that "the majority of individuals leave detention after 28 days or less, with more than 90% of them leaving detention within four months."[141]

Furthermore, he argued that a fixed, statutory time limit would create a practical difficulty when dealing with non-compliant cases. He recognised that the proposed clause would retain scope to specify different maximum time limits for different categories of case. However, the Minister argued that this would mean that the proposed clause would have little overall impact, since immigration detention is increasingly focussing on non-compliant cases.[142]

Paul Blomfield withdrew the clauses on the understanding that there would be further opportunity to consider the issues during the Bill's passage after the Government has confirmed its response to Stephen Shaw's review.[143]

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139 PBC Deb 10 November 2015 c512
140 PBC Deb 10 November 2015 c513
141 PBC Deb 10 November 2015 c512
142 PBC Deb 10 November 2015 c513
143 PBC Deb 10 November 2015 c514

10. Report and Third Reading stages: a forward look

Some of the new clauses proposed for consideration at Report stage have attracted particular interest.

10.1 New Clause 1 (extended criteria for refugees joining refugee sponsors)

New Clause 1, which is supported by Labour, SNP, Liberal Democrat and Green party Members, would extend the scope of refugee family reunion provisions in the Immigration Rules, so that they applied to a wider range of relatives. The explanatory statement to the proposed clause explains:

> This amendment would allow those separated from their family, and who have refugee or humanitarian protection status in the UK, to sponsor family members beyond spouses or under-18 children to join them. It would also remedy an anomaly that prevents children with refugee status in the UK from sponsoring their parents to join them.

The Clause is supported by the Refugee Council.

The current Immigration Rules on refugee family reunion provide for a refugee's pre-flight immediate family members (i.e. the partner and dependent children under 18 who formed part of the refugee's family unit before he or she fled to claim asylum) to join the refugee in the UK, with the same duration of leave as the refugee.[144]

The Immigration Rules provide for some other routes of entry for certain family members who do not fall within the above eligibility criteria, but these are not considered to fall under the 'refugee family reunion' provisions, and therefore more restrictive eligibility criteria apply.[145]

Separately, **New Clause 11**, supported by Labour and the Green Party, calls on the Home Secretary to conduct and publish a review of the current family reunion rules within six months of the Bill receiving Royal Assent.

10.2 New clauses 3 – 7 (transfer of responsibility for relevant children)

New Clauses 3 – 7 (on transfer of responsibility for relevant children), tabled by the Government, introduce provisions which would establish systems allowing for responsibility for providing support to unaccompanied asylum seeking children to be transferred between local authorities in England and Wales. In effect, this would allow for a dispersal scheme to operate for unaccompanied asylum seeking children. New Clause 7 provides that the arrangements could be

144 Immigration Rules (HC 395 of 1993-4 as amended), paragraphs 352A-352FJ.
145 Se Immigration Rules paragraphs 319L-U; paragraphs 319V-YB

extended to Wales, Scotland and Northern Ireland, through regulations which would be subject to the draft affirmative procedure.

New Clause 3 allows a local authority to make arrangements with another local authority to transfer its responsibilities towards certain categories of unaccompanied migrant children. A local authority that failed to comply with a request to accept responsibility for a case from another local authority could be compelled to provide written reasons (New Clause 5). New Clause 6 would allow the Home Secretary to establish a scheme for the transfer of cases between local authorities and require local authorities to cooperate with it, subject to certain conditions.

Currently, there is no formal system for transferring cases between different local authorities. There have been concerns that the current arrangements place greater burdens on the local authorities in areas where most unaccompanied children present, (such as Kent and London boroughs near ports of entry to the UK or Home Office premises). In recent months there has been a significant increase in the number of unaccompanied children arriving in Kent. Kent County Council has warned of a significant shortfall in funds to care for the children, and a significant proportion of the children have had to be placed in other local authorities. Efforts to establish a voluntary dispersal scheme have had limited effect, as outlined in a letter to all local council leaders from the Government, on 24 November:

> On 28 July, Kent wrote to all 151 other local authorities in England with social services responsibilities to request assistance under s27 of Children Act 1989. We recognise the efforts of the 19 local authorities who have responded positively and have accepted UASC into their care from Kent. However, to date only 42 of the nearly 1,000 children in Kent's care have been transferred into the care of another local authority. This is simply not enough. We are clear that local authorities with the capacity to support UASC, who can be some of the most vulnerable children in care, should do so.[146]

The details of how the scheme would work, including the factors to be taken into account in identifying the basis on which specific cases should be transferred between local authorities, are not specified on the face of the Bill.

10.3 New Clause 13 (review of immigration detention)

New Clause 13, which has support from some Conservative, Labour, SNP, Liberal Democrat and Green party Members, would require the Home Secretary to commission an independently-chaired panel to report on certain aspects of current immigration policy and practice, including the process for introducing a 28-day time limit, the effectiveness of detention and how to reduce the number of people detained.

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146 *Letter to all Local Council Leaders from Theresa May, Nicky Morgan and Greg Clark re. dispersal of unaccompanied children*, 24 November 2015

The clause seeks to implement a recommendation made in the All Party Parliamentary Groups on Refugee and Migration's March 2015 *Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*.

Several other proposed amendments also relate to specific aspects of current immigration policy.

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