HOUSE OF COMMONS LIBRARY

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Immigration Bill 2015-16: Lords amendments and ping-pong stages

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Summary

This briefing highlights the main changes made in the Lords and during ping-pong stages. It refers to the clause and schedule numbers in the Bill as amended on Lords Report (HL Bill 109 of 2015-16). The provisions of the Bill (as introduced) and debates at earlier stages are discussed in separate Library briefings:

- Library briefing 7034, *Immigration Bill 2015-16,* prepared in advance of Second Reading
- Library briefing 7394, *Immigration Bill: Committee Stage Report,* prepared in advance of Report stage
- Lords Library Note 2015/050, *Immigration Bill,* prepared in advance of Lords Second Reading stage

The Bill's pages on the Parliament website provide information about the progress of the Bill and related supporting documents (including a list of all Lords amendments made and amendments considered at ping-pong stages).

The *Immigration Bill* is currently in ping-pong stage. The Bill was significantly amended in the Lords, mostly as a result of Government amendments. In particular:

- Substantial additions were made to **Part 1**, including the creation of new "information gateways" allowing persons to disclose information to the Director of Labour Market Enforcement; renaming the Gangmasters Licencing Authority and adding to its functions and powers; establishing a new system of labour market enforcement undertakings and associated enforcement orders; and amending the offence of illegal working.
- **Part 2** was amended, including to introduce a defence against the offence of leasing premises to a disqualified person and to amend the offence of driving when unlawfully in the UK.
- Provisions in **Part 5**, on Home Office and local authorities' responsibilities for providing support to refused asylum seekers and some other categories of migrants, were amended in light of discussions with relevant stakeholders.

Four amendments which did not have Government support were approved at Lords Report stage:

- on extending asylum seekers' rights to work (**Lords amendment 59**)
- on extending overseas domestic workers' rights to change employer in the UK (**Lords amendment 60**)
- on judicial oversight of immigration detention decisions (**Lords amendment 84**)
- on establishing a scheme to relocate to the UK some unaccompanied refugee children from other countries in Europe (**Lords amendment 87**)

A further non-Government amendment was approved at Lords Third Reading stage:

- on excluding pregnant women from immigration detention (**Lords amendment 85**)

The Commons rejected all of the non-Government Lords amendments on the first day of ping-pong. It approved amendments in lieu on judicial oversight of immigration detention and the detention of pregnant women. The Lords subsequently insisted on its amendment on judicial oversight of detention, and proposed alternative amendments on the detention of pregnant women and the relocation of unaccompanied children. It did not insist on its amendments on asylum seekers' rights to work, and overseas domestic workers. On 4 May, the Government confirmed that it will accept the amendment on relocation of unaccompanied children.

1. Commons Report stage

Commons Report stage took place on 1 December 2015.

A number of Government amendments were made to the Bill. In particular:

- to Schedule 9 (**Schedule 12** of the Bill as amended on Lords Report), which sets out restrictions on the availability of local authority support
- to add new clauses to allow the transfer of unaccompanied migrant children's cases between local authorities (**clauses 71-75** of the Bill as amended)

Many amendments were tabled by opposition parties but were not pressed to a division. Four opposition amendments were defeated upon division:

- on illegal working (to delete the clause making illegal working a criminal offence)
- on right to rent (to remove the Bill's provisions on the right to rent scheme)
- on local authority support (to remove the provisions changing the support available to refused asylum seeker households)
- on appeal rights (to remove the clause extending the 'remove first, appeal later' provisions)

There was also detailed discussion of the use of immigration detention, including the case for introducing maximum time limits for detention, and refugee family reunion policies. Discussion of both of these issues continued during the Bill's passage through the Lords.

The Bill was approved by the Commons at Third Reading by 307 votes to 245.[1]

[1] HC Deb 1 December 2015 c277-81

2. Lords stages (in brief)

The Bill had Second Reading in the Lords on 22 December 2015. Committee stage took place between 18 January and 9 February 2016. Report stage took place over three days and was completed on 21 March. Third Reading was on 12 April.

Committee stage

The letters from Lord Bates (then Home Office Minister) to Lord Rosser of 12 and 21 January (DEP 2016-0033 and DEP 2016-0084) provide an overview of the Government's amendments at Committee stage.

Parts of the Bill underwent substantial revision in Lords Committee as a result of Government amendments. In particular,

- Part 1 (labour market and illegal working)
- Part 5 and Schedule 11 (support for certain categories of migrant) – technical improvements in light of discussions with local authorities and other stakeholders
- Part 7 (language requirements for public sector workers) – amendments to confirm that the requirement that all customer-facing public sector workers speak fluent English (or English or Welsh, in Wales) only applies to reserved functions across Wales, Scotland and Northern Ireland

Report stage

A large number of Government amendments were tabled for consideration at Lords Report stage, which took place on 9, 15 and 21 March. The letters of 1 March from Lord Bates to Lord Rosser and Baroness Fookes (DEP 2016-0190 and DEP 2016-0190n) outline the details of the main amendments.

Third Reading

There were two divisions at Third Reading stage, on non-Government amendments, one of which was approved. A few Government amendments to other parts of the Bill were agreed to without divisions. These were largely technical.

Other scrutiny

The Bill was scrutinised by several Committees during its passage through the Lords:

- Joint Committee on Human Rights, letter from the Chair of 20 January 2016, and response from Lord Bates of 1 March 2016
- Lords Constitution Committee, *Seventh Report of 2015-16 session*, HL Paper 75, 11 January 2016 and response from Lord Bates of 1 March 2016
- Delegated Powers and Regulatory Reform Committee, 17th and 18th Reports of 2015-16 session, HL Paper 73, 22 December 2016 and HL Paper 83, 15 January 2016 and response from Lord Bates of 1 March (DEP 2016-0190n)

3. Significant Government amendments

3.1 Part 1 (Labour Market and Illegal working)

Substantial additions were made to Part 1 during the Bill's passage through the Lords, most of which were agreed without division and followed the Government's response to its consultation on *Tackling exploitation in the labour market*.

In summary, the main amendments would provide for:

- creation of new "information gateways" allowing persons to disclose information to the Director of Labour Market Enforcement;
- renaming the Gangmasters Licencing Authority as the Gangmasters and Labour Abuse Authority, and adding to its functions and powers;
- a new system of labour market enforcement undertakings and associated enforcement orders, based on the concept of "trigger offences", enabling enforcing authorities to impose measures aimed at preventing further or continued offending; and
- a new *mens rea*[2] for the offence of illegal working.

The following summarises the key features of the new clauses.

Information gateways and hub (clauses 6-8)

During the Bill's Report stage the Minister, Lord Bates, moved a group of amendments which would provide for the creation of new "information gateways" allowing persons to disclose information to the Director of Labour Market Enforcement, and for the Director to share information with specified persons, as defined in new **Schedule 1**. These persons include HMRC; the Health and Safety Executive; the Low Pay Commission; police bodies; local government; health bodies and the Independent Anti-slavery Commissioner.

Clause 6 would provide that a person may disclose information to the Director or a relevant staff member if the disclosure is made for the purpose of any function of the Director. Under **clause 7**, a disclosure so made would not breach any obligation of confidence owed by the person making the disclosure. Clause 7 also sets out a number of limitations governing information sharing by HMRC and intelligence services. Amendments to **clause 8** would enable the Director to request information from labour market enforcement bodies, and for those bodies to request information from the Director.

The Government's response to the *Tackling exploitation in the labour market* consultation set out the thinking behind the amendments:

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2 I.e. the mental element of a criminal offence, as distinct from the act itself (the *actus reus*).

> While there is already a great deal of co-operation and information sharing between the three enforcement bodies, the Government has concluded that the Director will only be able to set an effective labour market enforcement strategy if it is evidence based, and that there is greater benefit to joint working between enforcement bodies if they share a coherent view of the nature and extent of exploitation and noncompliance in the labour market. Giving the new Director and the three enforcement bodies the powers to routinely share data and intelligence would establish a more formal basis to improve current information sharing practice. We intend to implement a structured mechanism to do this, through the creation of an Intelligence Hub. This will provide central co-ordination for information and data to help the Director to identify trends and patterns in areas of the economy where workers are at risk of exploitation, and thus enable the Director to develop the annual labour market enforcement strategy.
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> .To enable the Intelligence Hub to work, the Government intends to legislate to create the necessary data sharing gateways. The most important set will be between the Director and the Intelligence Hub and the three enforcement bodies (EAS, HMRC's NMW team and the GLA). This will allow the Director to access much of the information needed for the strategy. We envisage this would cover, for example, details of complaints and intelligence that led to enforcement action being taken, and the outcomes of investigations. To ensure the gateway is used appropriately, we will require the Director to set out in the annual labour market enforcement strategy what data sets the three bodies should be required to share in the coming year. The strategy is approved jointly by the Secretary of State for Business, Innovation and Skills and the Home Secretary, who will consider whether the proposals are reasonable and necessary.[3]

The Gangmasters and Labour Abuse Authority (clauses 10-13)

Clause 10 would rename the Gangmasters Licensing Authority the Gangmasters and Labour Abuse Authority ("GLAA") reflecting its new remit to enforce the *National Minimum Wage Act 1998*, the *Employment Agencies Act 1973* and parts of the *Modern Slavery Act 2015* (see **Schedule 2**, inserted by **clause 11**) across the labour market.[4]

Clause 12 would amend the *Police and Criminal Evidence Act 1984* enabling the Secretary of State by regulations to confer investigative powers on labour abuse prevention officers. The powers the Government sees as appropriate were set out in the consultation on *Tackling exploitation in the labour market*:

> We propose that the Home Secretary should be able to designate trained staff of the new Authority to use the following police-style powers, similar to HMRC and Immigration Enforcement officers:

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3 BIS, *Tackling Exploitation in the Labour Market – government response*, January 2016, pp26-28

4 The clauses were debated during the Committee's first sitting: HL Deb 18 January 2016 c569

- the ability to enter and search premises with a warrant authorised by a Justice of the Peace (under section 8 of the Police and Criminal Evidence Act 1984 (PACE));
- the power to enter premises to execute an arrest warrant or for the purpose of arresting someone for an indictable offence (under section 17 PACE);
- the power to search premises controlled by a person under arrest (under section 18 PACE);
- the powers to search a person at time of arrest and, when a person is arrested for an indictable offence, to search the premises the person was in immediately prior to arrest (section 32 PACE);
- the power to use reasonable force in exercise of PACE powers, (section 117 PACE); and
- the ability to seize evidence and then sift through it under section 50 of the Criminal Justice and Police Act 2001 when exercising a power of seizure under PACE or the Gangmasters (Licensing) Act 2004.[5]

Clause 13 would enable the GLAA to request assistance from the National Crime Agency, the police or immigration officers, if it considers that the assistance would facilitate any of its functions.

Labour market enforcement (clauses 14-33)

Clauses 14-33 would provide the basis for new labour market enforcement ("LME") undertakings and enforcement orders.[6] The provisions are based on the Government's response to the *Tackling exploitation in the labour market* consultation (see paragraphs 89-96).[7]

In introducing the amendments the Government spokesperson, Lord Ashton, explained the intended operation of the LME system:

> these government amendments introduce new clauses to create a new regime of labour market enforcement—LME—undertakings and orders, backed up with a criminal offence for non-compliance. As such, they are an important part of the Government's response to the consultation *Tackling Exploitation in the Labour Market*, where respondents agreed that there was a need to tackle exploitation falling between routine breaches of labour market legislation and very serious offences, which are dealt with by the police or the National Crime Agency. This means that, for the first time, individuals within rogue businesses face the possibility of imprisonment for repeated or serious breaches of labour market legislation, many of which are currently punishable only by a fine. However, as I am about to describe, a business will have several opportunities to put matters right before facing prosecution.[8]

In overview, the system would operate as follows.

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5 BIS, *Tackling exploitation in the labour market – consultation*, October 2015, p36
6 The clauses were debated during the Committee's 1st sitting HL Deb 18 January 2016 c600
7 BIS, *Tackling Exploitation in the Labour Market – government response*, January 2016
8 Ibid., c601

Where an enforcing authority believes that a person has committed, or is committing, a "trigger offence" the authority may invite the person to give a LME undertaking. A trigger offence is one under the *Employment Agencies Act 1973*, the *National Minimum Wage Act 1998* or the *Gangmasters (Licensing) Act 2004*, including related offences (**clause 14**).

The LME undertaking may include measures with the purpose of preventing or reducing the risk of non-compliance or publicising the existence of the undertaking (**clause 15**). Lord Ashton gave an example:

> Taking national minimum wage offences as an example, an initial offence would be dealt with using the existing civil penalty regime. Money owed to the worker would also be recovered and the new regime will not affect this. However, if a business decided to take the hit and continue underpaying its workers then a labour market enforcement undertaking could be sought, requiring the business to take reasonable steps to ensure compliance in future. This could be an update to its software, for example, a measure which a law-abiding business would have implemented on its own initiative. If the business refused to give or failed to comply with an undertaking, the enforcer could apply to the court for a labour market enforcement order. This would contain similar corrective measures, as ordered by the court. A court could also make such an order when sentencing for a labour market offence. Only where the business failed to comply with the order would prosecution be a consequence.
>
> …
>
> The new clauses … set out what measures may be included in an LME undertaking and their duration. These must secure compliance with labour market legislation, publicise the undertaking and subsequent remedial action or be a measure of a kind prescribed in regulations by the Secretary of State. We envisage this power being used to prescribe measures to protect workers such as taking steps to inform them of their rights or preventing the unlawful retention of documents. All the measures must be just and reasonable, and at least one measure must be necessary to prevent or reduce further offending. The undertaking must make clear how any such measures will secure compliance.[9]

The undertaking may take effect for up to two years, although the authority may release the subject from it and must do so if the measures become unnecessary (**clause 16**).

The authority could apply to the magistrates' court[10] for an LME order where a proposed respondent refuses or fails to give an LME undertaking within 14 days or such longer period as agreed, or fails to comply with the undertaking (**clause 19**). If the court is satisfied on the balance of probabilities that the person has committed, or is committing, a trigger offence, it may make an order imposing restrictions and requirements if it considers it is just and reasonable to do so (**clause 18**). The measures includable in an order are the same as those that can be included in an LME undertaking (see clause 15 above).

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9 Ibid., cc601-602

10 In Scotland to the sheriff; in Northern Ireland to a court of summary justice

Additionally, a court convicting a person of a trigger offence may make an LME order in addition to a sentence or conditional discharge (**clause 20**).

The respondent may appeal against an LME order to the relevant court (**clause 24**).

The Secretary of State must issue a code of practice giving guidance to enforcing authorities about the exercise of their functions in relation to LME undertakings and applications for orders. A draft code must first be laid before Parliament (**clause 25**).

A person against whom an LME order is made commits an offence if the person, without reasonable excuse, fails to comply with the order. A person guilty of the offence is liable to conviction on indictment for up to two years, to a fine or to both; or on summary conviction for up to twelve months, to a fine or to both (**clause 27**).

Clauses 28-30 make provision for offences by bodies corporate, unincorporated associations and partnerships, and the potential prosecution of officers, members or partners.

Illegal working (clause 34)

The Bill 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 by working. There is however no freestanding offence of illegal working for those who require but do not have leave to remain, yet engage in paid work.

In the Bill as originally introduced, the offence would have been strict without any defence. That is to say, if a person was working illegally unintentionally (e.g. due to an administrative error) he would nonetheless be guilty of the offence.

Following opposition to the strict nature of the offence, both in the Commons and the Lords, the Government moved an amendment on Report, introducing a mental element to the offence:

> we have listened carefully to the concerns expressed by noble Lords about the strict liability nature of the offence and the resulting disparity with the offence of employing an illegal worker. By tabling the amendments in my name, the Government propose to introduce a mens rea for the offence. The effect of the Government's amendments is that the individual must either know or have reasonable cause to believe that they have no right to work. This means that the offence would not be committed by someone who is working illegally but does not know, or does not have reasonable cause to believe, that he or she lacks permission to work.
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> We feel that this strikes the right balance between protecting the vulnerable and ensuring that those who make no effort to ensure that they are complying with UK immigration law cannot simply plead ignorance of our Immigration Rules where they should have known that they had no permission to work.[11]

[11] HL Deb 9 March 2016 cc1312-1313

3.2 Part 2 (Access to services)

The **residential tenancy provisions** were amended at Report, in order to introduce a defence for a landlord charged with the offence of leasing premises to a disqualified person (**clause 41**), where the landlord has taken reasonable steps to end the tenancy within a reasonable period of time. Furthermore, the courts will be required to have regard to guidance, to be issued by the Home Secretary, on what constitutes reasonable steps and a reasonable period of time. A further amendment was made to ensure that a tenancy agreement is not invalidated if a landlord is charged with one of the residential tenancy offences.[12]

Provisions allowing the Home Secretary to amend, repeal or revoke enactments within the Bill when making provision to extend the residential tenancies provisions to Scotland, Wales and Northern Ireland were removed from what is now **clause 44**.

The **offence of driving when unlawfully in the UK** (**clause 46**) was amended at Report in order to require that an individual must know or have reasonable cause to believe that they are disqualified from driving due to their immigration status in order for the offence to be committed.[13]

Lord Bates also confirmed in a letter of 1 March that there will be a public consultation on the draft guidance issued to the police and immigration officers on the new powers, and that the power to carry out searches relating to driving licences (**clause 45**) will be piloted in one or two police areas before national roll-out.[14]

3.3 Part 3 (Enforcement)

Immigration detention

The Government tabled a new clause (**clause 62**) at Report which requires the Home Secretary to issue guidance on the issues to take into account when considering whether a person would be particularly vulnerable to harm if detained or kept in detention, and whether to detain or maintain detention for a person who has been identified as being particularly vulnerable to harm.[15] The clause also requires that a draft version of the guidance must be laid before Parliament for approval. Lord Keen of Elie confirmed during debate that this would be subject to the negative procedure.

The clause reflects a commitment made by the Government, in response to Stephen Shaw's review into the welfare of vulnerable people in detention, to introduce a new "adult at risk" concept into immigration decision-making. This would reflect a wider definition of those at risk, to include victims of sexual violence, individuals with mental health issues, pregnant women, those with learning difficulties or post-traumatic

12 HL Deb 15 March 2016 c1746-52
13 HL Deb 15 March 2016 c1773
14 Letter from Lord Bates to Lord Rosser, 1 March 2016 (DEP 2016-0190)
15 HL Deb 15 March 2016 c1807

stress disorder and elderly people. There would be a clear presumption that those at risk should not be detained.[16]

A letter from Lord Bates of 1 March gave more detailed information about the Government's proposed immigration detention reforms, including the new concept of "adult at risk":

> Adults at risk will be considered generally unsuitable for immigration detention unless there is evidence that other factors which relate to immigration abuse and the integrity of the immigration system, such as matters of criminality, compliance history and the imminence of removal, are of such significance as to outweigh the vulnerability factors.[17]

Annex B to the letter goes into further detail.

Lord Bates' letter also outlined an implementation timetable:

- Draft guidance on identifying adults at risk to be published by May 2016
- A separate "gatekeeper" team to be in place by summer 2016, to approve detention intake decisions and assess vulnerability
- A new team to build greater expertise on making detention decisions for adults at risk, by autumn 2016

At Third Reading stage on 12 April, peers voted by 274 votes to 215 in favour of an **amendment to clause 62**, which was moved by Baroness Lister (Labour). The amendment goes further than the Government had originally proposed, by exempting from immigration detention any "person whom the Secretary of State knows, or could reasonably be expected to know, is pregnant".[18] This is discussed further in section 4.4 of this briefing.

The **immigration bail** provisions (**Schedule 10**) were amended at Report in response to constitutional issues raised during Committee stage, and by the Constitution Committee and the Joint Committee on Human Rights. Those concerns related to the Home Secretary's proposed power to impose an electronic monitoring or residence condition on an individual where the Tribunal has not done so. The amendment replaces the power with a duty on the Home Secretary or Tribunal to make a person who is the subject of deportation proceedings subject to an electronic monitoring condition when released on immigration bail, unless it would be impractical or a breach of the ECHR to do so.[19]

3.4 Part 5 (Support for certain categories of migrant)

A succession of amendments have been made to this part of the Bill, in light of ongoing discussions between the Home Office, local authorities and other stakeholders.

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16 GOV.UK, *Government response to Stephen Shaw's review into the welfare of vulnerable people in detention*, 14 January 2016 and HCWS470
17 Letter from Lord Bates to Lord Rosser, 1 March 2016 (DEP 2016-0190)
18 Division No. 1, HL Deb 12 April 2016 c141-144
19 HL Deb 15 March 2016 c1808-10

Much of the detail of the proposed new arrangements is to be specified in future regulations. A Home Office policy paper published in January 2016, *Reforming support for migrants without immigration status: The new system contained in Schedules 8 and 9 to the Immigration Bill,* gives some detail about how the provisions would operate in practice. The following section draws heavily on information in that document, and the related factsheets published by the No Recourse to Public Funds Network (a network of local authorities and partner organisations that work on issues related to migrants with no recourse to public funds).[20]

Asylum support for refused asylum seekers

Schedule 11 of the Bill would repeal 'section 4' support for refused asylum seekers. A new 'section 95A' support would provide support for refused asylum seekers, if they face a "genuine obstacle" to departing the UK at the point of becoming 'appeal rights exhausted'. These arrangements would also apply to:

- Refused family cases (currently, they continue to be eligible for 'section 95' support until departure from the UK).
- Refused asylum seekers who are over 18 and were previously cared for by local authorities as unaccompanied children.

The 'grace period' for terminating section 95 support after a final refusal decision had been made in family cases would be 90 days. The grace period for non-family cases would remain at 21 days. It would not be possible to apply for section 95A support outside of the relevant grace period, except for reasons outside the person's control (where permitted by regulations, which would be subject to Parliamentary approval under the affirmative process).[21] "Genuine obstacle" would include where a person is medically unfit to travel, or where a person does not have the necessary travel document but is taking all reasonable steps to obtain it.

There would be no right of appeal against a decision to refuse section 95A support. The Government considers that such decisions will be based on straightforward matters of fact (i.e. whether or not there is a genuine obstacle to departure).

The Government does not intend for the changes to support for refused asylum seekers to have a knock-on impact on local authorities. However the No Recourse to Public Funds network has cautioned that there may be some circumstances in which local authorities may be required to assess whether refused asylum seeker families who are ineligible for Home Office support may be eligible for accommodation and financial support from local authorities under the new scheme proposed in Schedule 12 to the Bill (discussed below). This could be, for example, in circumstances where a genuine obstacle to departing the UK arises after

[20] NRPF Network, *factsheets*, Immigration Bill 2015-16, March 2016
[21] This reflects a recommendation made by the Delegated Powers and Regulatory Reform Committee.

the end of the refused asylum seeker's grace period for termination of Home Office support.[22]

A working group of central and local government officials is considering how to implement the measures in **Schedules 11 and 12**. The objective is to ensure the measures have the maximum impact on managing families without immigration status, maintain appropriate safeguards, reduce costs and facilitate more removals.

Availability of local authority support

Local authority support for families without immigration status

Currently, when there is a "child in need" in the family, social services may provide accommodation and financial assistance to families who have no recourse to public funds due to their immigration status, under section 17 of the *Children Act 1989*. Schedule 3 to the *Nationality, Immigration and Asylum Act 2002* specifies certain exceptions to providing such assistance, although assistance can still be provided if necessary to avoid a breach of human rights or under EU treaties.

The existing legislation and caselaw for determining local authorities' obligations has been criticised as complex and burdensome to apply.

Schedule 12 amends Schedule 3 of the 2002 Act as it applies in England, in order to simplify the way in which local authorities assess and provide accommodation and subsistence support to destitute families without immigration status. Paragraph 14(4) amends paragraph 15 of Schedule 3 of the 2002 Act in order to allow for regulations to be made to apply the measures in the devolved administrations.

Where there is a need for a local authority to provide accommodation and/or financial assistance to a destitute migrant family who do not have a valid immigration status, this will be provided under a new scheme to be specified in regulations made under a new paragraph 10A to Schedule 3 of the 2002 Act, rather than the section 17 of the *Children Act 1989*.

'Zambrano carers' (non-EEA nationals who have the right to be in the UK due to being the primary carer of a British citizen child, but do not have access to many benefits or council housing) will also be covered by this new scheme.

The regulations establishing the new scheme will be subject to the affirmative procedure.

The new scheme would enable local authorities to provide for the accommodation and subsistence needs of destitute families where one of five conditions is met:

- The family has a specified outstanding non-asylum immigration application
- The family could bring an in-country non-asylum appeal
- The family has an outstanding in-country non-asylum appeal

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22 NRPF Network, *factsheet*, Immigration Bill 2015-16: local authority support for families (England), 23 March 2016

- The family have exhausted their appeal rights and have not failed to cooperate with removal arrangements
- Provision of support is necessary to safeguard and promote the welfare of a child in the family. Regulations will specify factors to be taken into account when undertaking this assessment.

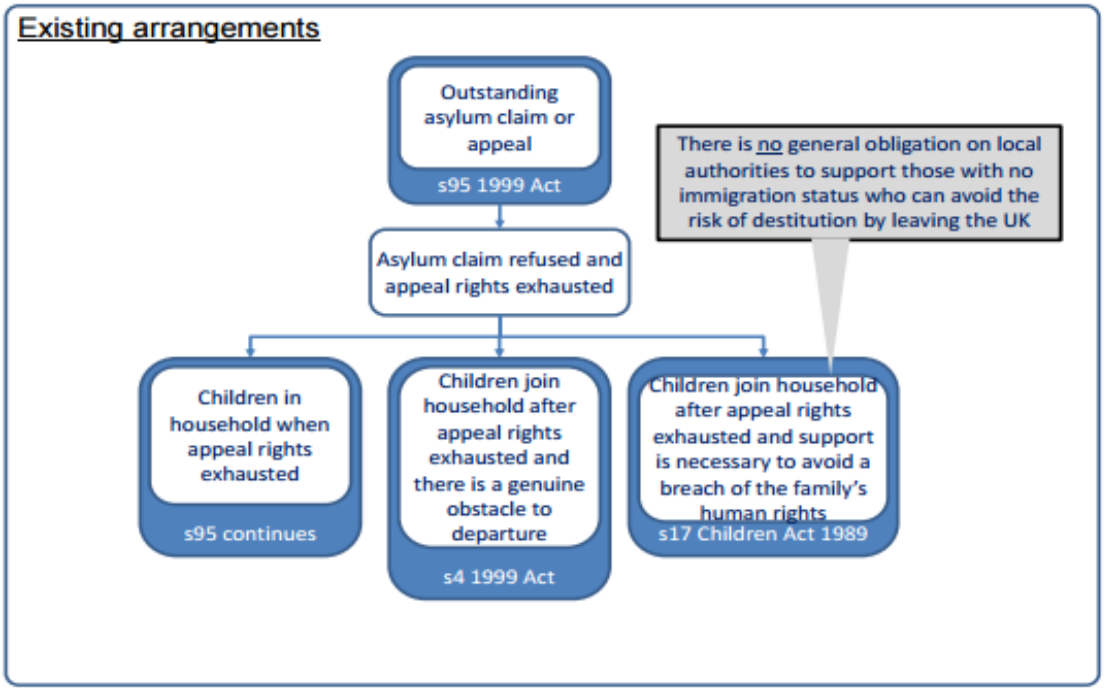
Local authorities will also be able to provide support under the regulations made under paragraph 10A on an emergency basis, in order to prevent destitution, pending a decision on whether the family is eligible for support or a transfer to Home Office support.

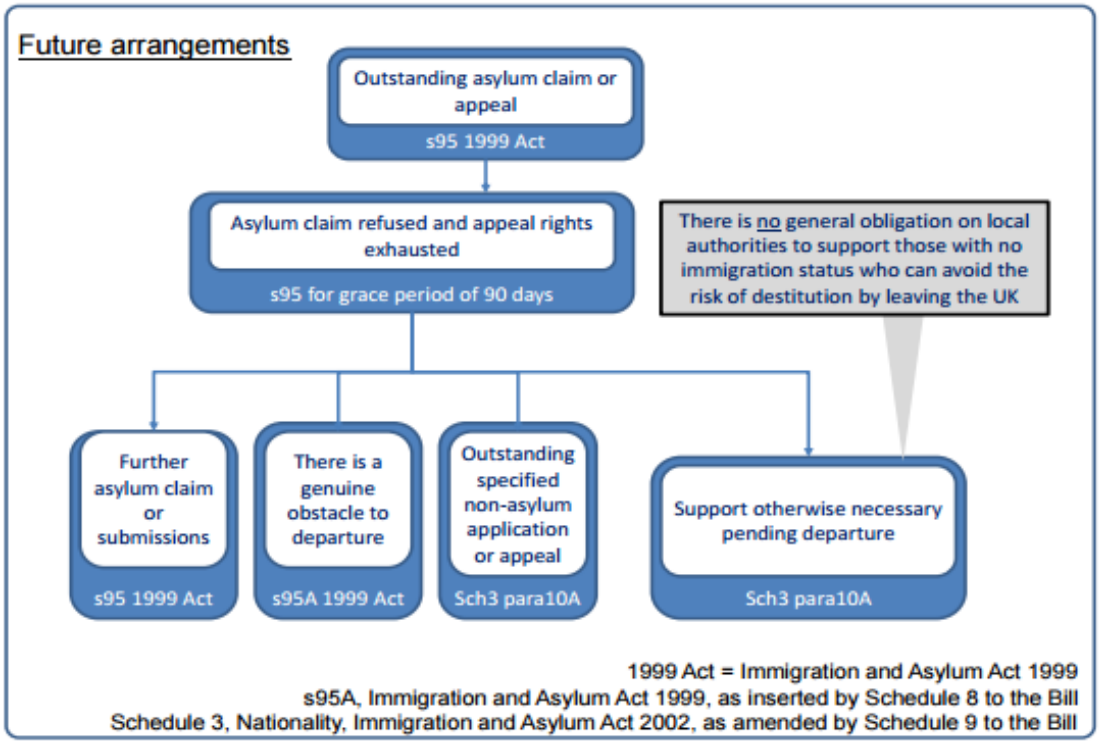
The Government considers that it is more appropriate for accommodation and subsistence support to be provided under regulations made under new paragraph 10A of Schedule 3 to the 2002 Act, rather than section 17 of the *Children's Act*. However, local authorities will be able to continue to provide support under section 17 for any other needs beyond destitution.

Local authorities will continue to be able to provide accommodation and support under section 17 of the 1989 Act to families with an immigration status (e.g. limited leave to remain).

Statutory guidance to local authorities on implementing the regulations made under paragraph 10A will be produced, following consultation with local authorities and other stakeholders.

Annex A to the Home Office's January 2016 policy paper on the new support arrangements illustrates the changes affecting destitute families without immigration status:





The NRPF network has cautioned that, in the absence of details about the proposed regulations, it is not clear whether assessing eligibility under the new approach will be less complex than the current arrangements. It has identified that refused asylum seekers who are ineligible for Home Office support may qualify for accommodation and financial support from a local authority, as per the condition specified in proposed paragraph 10A of the 2002 Act:[23]

Circumstances of refused asylum seeker	**Paragraph 10A Schedule 3 Nationality Immigration and Asylum Act 2002 provisions that the local authority will need to consider**
They have a 'genuine obstacle to leaving the UK' that arises *after* their section 95 Home Office support has ended	D - if 'taking all reasonable steps' to obtain travel documentation E - *support is necessary to safeguard and promote the welfare of a dependant child*
They have made further submissions for a fresh asylum claim and the 'prescribed period' has not passed	E - *support is necessary to safeguard and promote the welfare of a dependant child*
They are undertaking Judicial Review action with regards to their asylum claim but have not yet been granted permission	E - *support is necessary to safeguard and promote the welfare of a dependant child*
They submit a non-asylum application/ appeal	A – C – provisions relating to pending applications/appeals
None of the above apply	E - *support is necessary to safeguard and promote the welfare of a dependant child*

[23] NRPF Network, *factsheet*, Immigration Bill 2015-16: local authority support for families (England), 23 March 2016

Local authority support for young adults who were previously cared for as unaccompanied children and have been refused leave to remain

The Bill alters English local authorities' responsibilities for providing leaving care **support to former unaccompanied children** (i.e. over 18s who were previously in local authority care) and have been refused permission to remain in the UK.

Currently, local authority social services have duties under the *Children Act 1989* to provide accommodation and financial support to 'former looked after children' who do not have recourse to public funds due to their immigration status.[24] Local authorities' leaving care responsibilities apply until the young person is 21 (or 25, if the young person is in education or training). Schedule 3 to the 2002 Act makes an exception to providing accommodation and financial support, if the care leaver is over 18 and has no immigration permission. However, support can still be provided if the local authority considers that this is necessary to prevent a breach of the person's human rights, or rights under EU treaties. Local authorities must therefore conduct a human rights assessment in such cases, in order to determine whether to continue to provide accommodation and financial support to a young adult refused permission to remain in the UK. If support is not deemed to be necessary, the young person remains entitled to some broader leaving care provisions, such as a personal adviser and pathway plan. If a young adult care leaver has an outstanding asylum application (e.g. a fresh claim), support is provided by the local authority rather than the Home Office.

The Government considers that it is inappropriate for local authorities to provide support under the *Children Act 1989* to cases where it has been determined that the young person's long-term future will not be in the UK.[25] It also considers that the current arrangements encourage some unfounded asylum claims from children and adults falsely claiming to be children, due to a perception that generous long-term support is provided to children, regardless of the outcome of the asylum application.

Schedule 12 to the Bill therefore amends Schedule 3 of the 2002 Act in order to exclude young adult care leavers refused status from accessing accommodation, financial support and certain other forms of assistance outlined in the *Children Act 1989,* namely:

- personal adviser
- ongoing review of a pathway plan outlining the services and support needed until the young person turns 21
- support for education and training, including payment of university tuition fees

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24 'Former looked after children' – children who have been looked after by a local authority under section 20 of the *Children Act 1989* for a period of at least 13 weeks since they were 14

25 The Bill does not alter local authorities' duties to provide support under the *Children Act 1989* (or equivalent devolved legislation) to unaccompanied migrant children, and unaccompanied children who are granted asylum or Humanitarian Protection status (before or after turning 18).

- 'staying put' duty, which enables a young adult care leaver to remain with their foster parents until they are 21

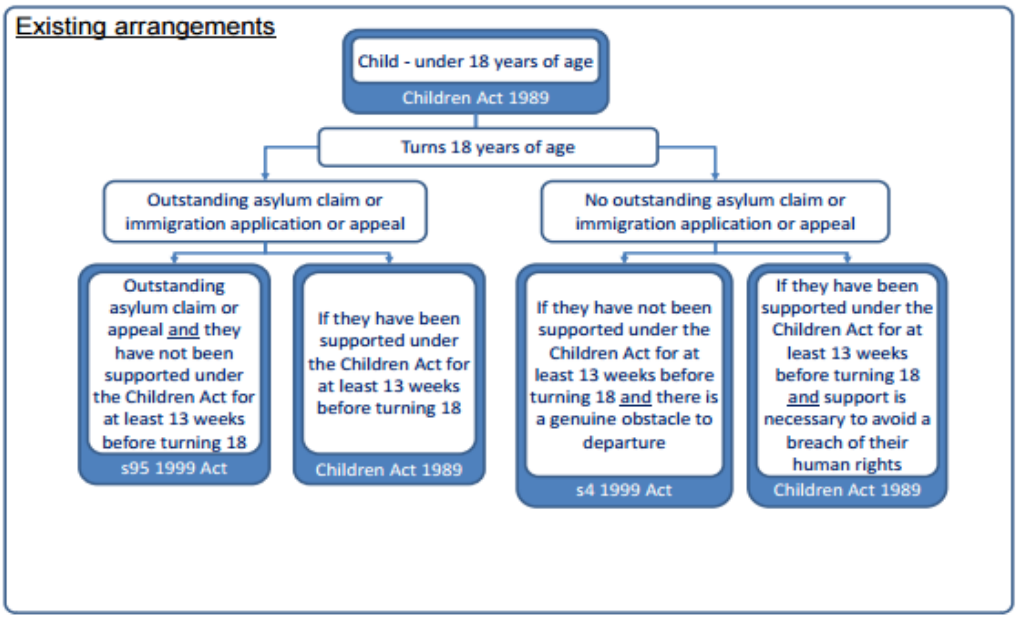
Instead, English local authorities would be given powers to provide accommodation and financial/other support to young adults leaving care without immigration status (before their departure from the UK), under regulations made pursuant to a new paragraph 10B Schedule 3 to the 2002 Act. Eligibility for such support would depend on satisfying one of four conditions:

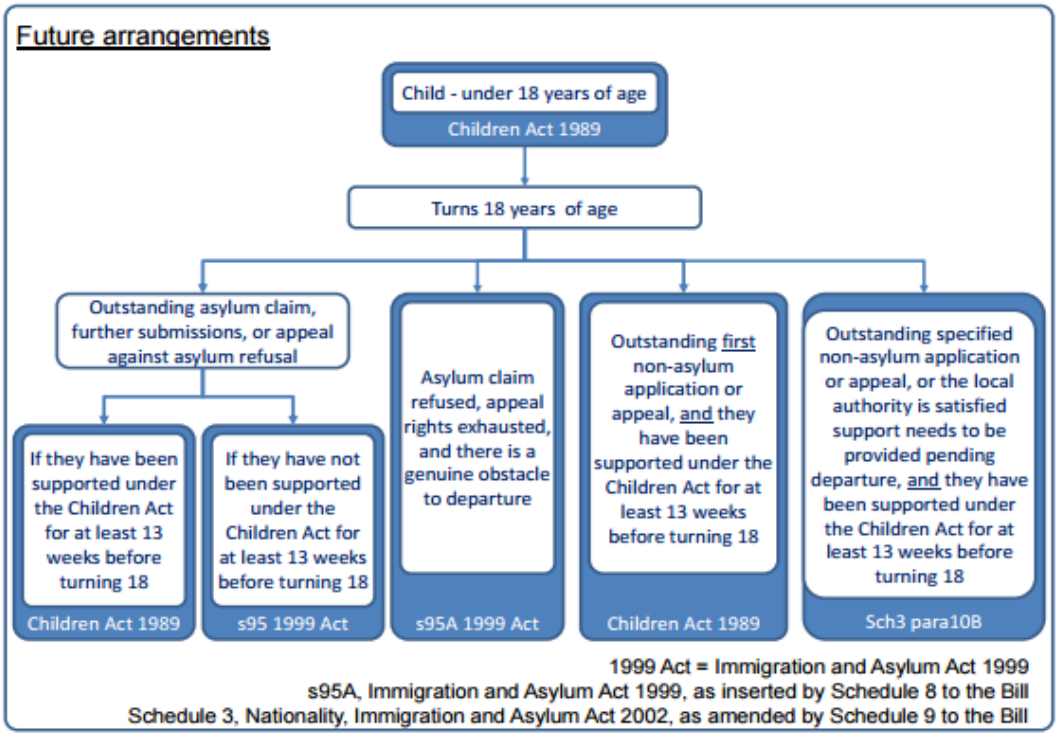
- the care leaver is destitute and has an outstanding non-asylum application; or
- the care-leaver is destitute and has an outstanding right of appeal against an immigration decision; or
- the care-leaver is destitute and has a pending in-country appeal against an immigration decision; or
- the care leaver has exhausted their appeal rights and the local authority is satisfied that support needs to be provided (regulations would specify factors to take into account when assessing such cases).

As an exception to the above, if the young adult has an outstanding non-asylum application or appeal, and it is their first application, they will continue to be eligible for leaving care support from a local authority under the *Children Act 1989*. This exception is intended to cater for the needs of children who were trafficked to the UK and may have been unable to make an earlier application.

If the young adult has been refused asylum, they may be eligible for accommodation and financial support from the Home Office, subject to satisfying the eligibility criteria for new section 95A support (as per Schedule 11).

Annex B to the Home Office's January 2016 policy paper illustrates the changes affecting care leavers without immigration status:





Local authorities' responsibilities for funding student tuition fees for migrant care leavers

The Bill reduces English local authorities' responsibilities to pay for migrant care leavers' higher education costs.

Currently, local authorities are required to meet former looked after children's education expenses up to the age of 25, under the *Children Act 1989*. When determining whether to provide such assistance, local authorities can take into account how the care leaver's immigration status may affect their ability to complete a course.

Paragraph 3 of Schedule 12 of the Bill amends Schedule 3 of the 2002 Act, in order to prevent an English local authority from paying for student tuition fees where a person

- has been granted limited leave to remain; or
- has an outstanding application for leave to remain in the UK; or
- is an asylum seeker.

Establishing a dispersal scheme for unaccompanied migrant children

The powers to allow for the **transfer of responsibility for migrant children between local authorities**, as set out in **clauses 71 – 75**, were amended in order to apply also to children granted refugee status. This is to ensure that unaccompanied children who are brought to the UK under a proposed new resettlement scheme for unaccompanied children from conflict regions could also be transferred. The Government confirmed that it was considering establishing such a scheme in January 2016. Clauses 71-74 apply to local authorities in

England; clause 75 allows for similar provisions to be made by regulations to apply in Wales, Scotland and Northern Ireland.

3.5 Part 9 (Miscellaneous)

Clause 92 on the **duty regarding the welfare of children** was inserted in order to confirm that all the provisions in the Bill are subject to the Home Secretary's duty to have regard to the best interests of children, as per section 55 of the *Borders, Citizenship and Immigration Act 2009*. This was in response to concerns about the impact on children of the "remove first, appeal later" provisions in Part 4 of the Bill.

4. Successful non-Government amendments, and developments during ping-pong stages

4.1 Extending asylum seekers' rights to work (Lords amendment 59)

On the first day of Report, a new clause extending asylum seekers' rights to apply for permission to work in the UK was agreed to upon division (280 votes to 195).[26] It was sponsored by sponsored by Crossbench, Labour and Liberal Democrat peers (Lord Alton of Liverpool, Lord Rosser, Baroness Hamwee and Lord Paddick). The issue had previously been debated during Committee stage.

The new clause would require the Home Secretary to allow for asylum seekers to apply for permission to work (including self-employment and voluntary work). Permission to work "must" be granted if:

- an initial decision has not been made on the asylum application within six months of it being lodged; or
- a decision has not been made on whether or not to accept further submissions as a new asylum claim, within six months of them being lodged.

The clause would also require that permission to work is not granted on less favourable terms than those granted to recognised refugees. In practice, this would mean that asylum seekers would no longer be restricted to taking up jobs on the UK's shortage occupation list (as is currently the case).

Background

Under current policy, asylum seekers can apply for permission to work if they have been waiting for a decision for over 12 months, and are not considered responsible for the delay in decision-making. Those granted permission to work can only take up jobs on the official shortage occupation list. Permission to work expires once a final decision has been made on the asylum claim (people granted leave to remain can work, those refused cannot).

Library briefing *Should asylum seekers have unrestricted rights to work in the UK?* gives more background to the current restrictions on asylum seekers' rights to work, and the Government's response to previous calls for reform.

The Government's objections to the clause, and the counter-arguments

[26] Division No. 1, HL Deb 9 March 2016 c1336-9

The arguments made in favour of and against the proposed new clause broadly reflected similar debates on this issue. In particular:[27]

- Whether or not extending rights to work would act as a "pull factor" for people with unfounded asylum claims
- Whether or not the current policy "strikes the right balance"
- What conclusions can be drawn from comparable policies in other countries

In his concluding remarks made on behalf of the Government, Lord Bates said:

> … in this Bill we seek to provide a protection of the existing laws governing immigration in this country, recognising that there is a great migration crisis on, and many people are seeking to make their way through Europe on this journey. We are seeking control of migration flows into this country. Therefore, now is not the time to change rules that were introduced in 2005 by the Labour Government and which were then refined under the coalition Government.

In response, Lord Alton said:

> We are witnessing mass migration on a huge scale. This amendment, sadly, is unable to deal with that; it is far beyond its scope. What it will do is to offer some hope or support for people who find themselves in a position where their human dignity has been utterly degraded.[28]

Ping-pong stages

Consideration of Lords amendments took place on 25 April. The Commons voted to disagree with the Lords amendment, by 303 votes to 60.[29] The reason given (**Reason 59A**) was that "appropriate measures which govern asylum seekers' ability to work are already in place".

On 26 April, when the Bill returned to the Lords, Peers considered an alternative amendment moved by Lord Alton of Liverpool **(Amendment 59B**), which would have enabled asylum seekers to apply for permission to work after they had waited nine months for a decision on their asylum claim. The amendment was rejected by 217 votes to 157.[30]

4.2 Extending overseas domestic workers' rights to change employer (Lords amendment 60)

An amendment to ensure the implementation of a recommendation arising from James Ewins QC's independent review of overseas domestic worker (ODW) visas was approved upon division on the first day of Report, by 226 votes to 198.[31] It was proposed by Lord Hylton, Lord

27 HL Deb 9 March 2016 c1320-1336
28 HL Deb 9 March 2016 c1334-5; 1335-6
29 Division No. 250, HC Deb 25 April 2016 c1255-7
30 Division No. 2, HL Deb 26 April 21016 c1071--4
31 Division No. 2, HL Deb 9 March 2016 c1348-1351

Rosser and Baroness Hamwee (Crossbench, Labour and Liberal Democrat peers).

Background

Currently, only ODWs who have been recognised to be victims of trafficking or slavery can change employer as an ODW in the UK, and they cannot stay for longer than their initial six month visa.

Library briefing *Calls to change overseas domestic worker visa conditions* gives background information to this issue. Put briefly, the Coalition Government commissioned James Ewins QC to conduct an independent review of the overseas domestic worker visas in early 2015. The review found that the current visa terms, including the tie to a specific employer, are incompatible with the protection of domestic workers' fundamental rights whilst in the UK. It made a number of recommendations for changes to the visa system. In particular, it called for all overseas domestic workers to be given the right to change employer and apply for further leave to remain in the UK (for up to 30 months), but not permanent settlement.

The report argued that a universal right to change employer would give abused workers a practical way out of abuse without risking a precarious immigration status or threat to their livelihood. It considered that allowing a maximum stay of two and a half years is the minimum required to give effective protection to abused ODWs. It further contended that a universal right to change employer was needed, since it would be "impractical and invidious to discriminate between seriously abused, mildly abused and non-abused workers".

It acknowledged that an unintended consequence of a universal right to change employer is that some people who had not been abused would be able to change employer and extend their stay in the UK. It argued that this "is of limited detriment compared to the benefit of the central intended consequence." And it also highlighted the "real possibility" that many ODWs would not make use of the right to change employer, owing to their good relationships with their employers.

The Government had announced its response to Mr Ewins' report in a Written Ministerial Statement on 7 March. It accepted many of the recommendations (including some referred to in the Lords amendment, such as the provision of independent information sessions for newly-arrived ODWs). However, it did not agree with Mr Ewins' recommendation that all ODWs should be able to change employer and extend their stay in the UK by a further two years.

In line with Mr Ewins' recommendation, the amendment approved at Lords Report stage would enable all ODWs to change employer for any reason during their initial six month stay in the UK, and apply to remain in the UK for a maximum of 2 ½ years.

The Government's objections to the clause, and the counter-arguments

The Government's explanation for rejecting Mr Ewins' recommendation is that, although it is sympathetic to the argument that ODWs need an immediate escape route from abuse, it is concerned that workers may be less likely to report abuse if they are able to change employer and extend their stay in the UK regardless of whether or not they report abuse.

Having taken advice from the Independent Anti-Slavery Commissioner, the Government tabled some changes to the Immigration Rules on 11 March (HC 877), which provide a different remedy:

- All ODWs (including those in diplomatic households) will be allowed to change employer, for any reason, within the six month period they are admitted to the UK (but will not be eligible to extend their stay in the UK)
- ODWs who receive a positive conclusive grounds decision under the National Referral Mechanism will be allowed to extend their stay in the UK to two years (rather than six months as is currently the case)

Speaking to the amendment at Lords Report stage, Lord Hylton explained why, in his view, the Government's response was inadequate:

> The Statement candidly admits that the Government have taken the advice of the anti-slavery commissioner rather than implementing in full the recommendations of the review. The weakness of that decision is, first, that it allows the domestic workers to find alternative employment only during the balance of their original six-month stay. In practice, that is likely to be just a few months or weeks. Few employers will want to take someone for such a short time—all the more if they have no references from an employer here. There is therefore a serious risk that the worker leaving their original job will become destitute and then be deported. The Government have failed to produce, in the very words of the Statement,
>
> "an immediate escape route from abuse".
>
> (…) The second weakness is that the Minister in Committee and in the recent Statement relies heavily on the national referral mechanism, which was never designed to deal with the problems of tied domestic workers. (…) One can say that the mechanism is not entirely relevant to the wrong we seek to address; it is not suited to important hardships that may be less than crimes. How are workers even to know that the NRM exists?[32]

In response, Lords Bates gave some details of ODW NRM cases:

> Between January 2009 and December 2015, there were 80 positive conclusive grounds decisions under the NRM in respect of non-EEA nationals admitted as overseas domestic workers. Those admitted as overseas domestic workers accounted for 3% of all NRM referrals between July and December 2015. Of those overseas domestic workers in the NRM process, so far about 30% have obtained a positive conclusive grounds decision and at least 29 referrals still await a decision.

He went on to outline the Government's concerns that in practice, the amendment could undermine existing protection mechanisms:

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[32] HL Deb 9 March 2016 c1340-1

> Our primary aim is to ensure that, where abuse takes place, it is brought to light so that victims can be supported and action can be taken against perpetrators. Our concern is that if overseas domestic workers enjoyed an unconditional freedom to change employers and extend their stay for as long as two years, this would undermine the national referral mechanism and perpetuate a revolving door of abuse. The Government have also noted the view of the Independent Anti-slavery Commissioner that such arrangements might create a situation in which the trafficking of victims between employers flourished more easily.
>
> (…) [The Government's measures] strike the right balance between ensuring that overseas domestic workers have a "self-help" remedy and ensuring that the national referral mechanism is not undermined.
>
> (…) I personally firmly believe that his amendment would put more people at risk than the current policy, as set out and amended, before us today—it is a carefully considered mechanism. I ask the noble Lord and the Opposition to think very carefully about that. They are proposing that there should be no obligation for people to go through the national referral mechanism, but if they do not, we do not have a record of who employers have been carrying out this abuse on. It is a revolving door for abuse: the employers can go on abusing and go on bringing people in, and they will not be prosecuted. That is a tragedy and a complete failure, not just for the people who are here but for those who are going to be brought here in the future.
>
> Under the national referral mechanism, people get access to a whole range of benefits provided by the Salvation Army. They get safe accommodation; emergency medical treatment; material assistance; access to a complaints service; translation and interpretation services; information and signposting; advocacy for specialist services; access to education for dependent school-age minors; transport services. They get access to all those things but under this amendment they would not.[33]

Ping-pong stages

On 25 April, the Commons disagreed with the Lords amendment by 304 votes to 268.[34] The reason given (**Reason 60A**) was that "appropriate measures to ensure the protection of overseas domestic workers can be put in place using existing legislative powers". On 26 April, Peers agreed with a motion not to insist on the Lords amendment.[35]

4.3 Judicial oversight of decisions to detain for longer than 28 days (Lords amendment 84)

On the second day of Report, Lord Ramsbotham (CB) moved a new clause, supported by Lord Rosser (Labour), and Baroness Hamwee and Lord Roberts of Llandudno (Liberal Democrats). The clause provides for

33 HL Deb 9 March 2016 c1345-7
34 Division No. 247, HC Deb 25 April 2016 c1242-1246
35 HL Deb 26 April 2016 c1080

judicial oversight of some decisions to detain a person under immigration powers, where the person would be in immigration detention for longer than 28 days. It was approved by 187 votes to 170.[36]

Put briefly, the clause provides that in order to detain a person for longer than 28 days (consecutively or in aggregate), the Home Secretary would be required to apply to the First-tier Tribunal to extend detention. The Tribunal would be able to extend detention (more than once, and for unlimited lengths of time) if required due to "exceptional circumstances" in the case. The First-tier Tribunal would also have the power to review an extended period of detention without the Home Secretary making a new application.

The clause would not apply to people who had been sentenced to imprisonment for 12 months or longer, or who were facing deportation action. Some anti-detention campaigners have been critical of those exclusions, pointing out that a significant proportion of immigration detainees fall into those categories, and are particularly vulnerable to prolonged periods in detention.[37]

Speaking for the Government at Report stage, Lord Keen of Elie gave some details of lengths of detention, and the profile of detainees.

Of those who left detention in the year ending September 2015:

- 62% had been detained for fewer than 28 days
- 93% left detention within four months

He said that approximately 40% of detainees were subject to deportation action, having been convicted of criminal offences, and "the majority of the remainder had committed an immigration offence in the United Kingdom and had … refused to depart on a voluntary basis". He said that long-term detainees were, generally speaking, "those who have disposed of their passport, destroyed their travel documentation, lied about their nationality and lied about their arrival in the United Kingdom."[38]

Background

In recent years, there has been increasing recognition and support amongst parliamentarians of longstanding NGO concerns about the use of immigration detention in the UK, including the absence of a statutory time limit for detention. Many comparable states apply maximum time limits for immigration detention.

The Government has also been reviewing the use of immigration detention, although it has consistently rejected calls for a statutory maximum time limit.

One of the recommendations made by Stephen Shaw 's review of immigration detention policies was that the Home Office give further

36 Division No. 1, HL Deb 15 March 2016 c1804-7
37 Bail for Immigration Detainees, 'Comment – Amendment to the Immigration Bill on time limits for detention', 16 March 2016
38 HL Deb 15 March 2016 c1799, 1801

consideration to ways of strengthening the legal safeguards against excessive detention periods (recommendation 62).

The Government's Written Statement outlining its response to the review said that it accepted the "broad thrust" of Mr Shaw's recommendations. One of the areas of planned reforms is to introduce a new approach to managing detained cases, in order to maximise the efficiency and effectiveness of detention and to ensure that detention is used for the minimum amount of time. This is to be achieved through adopting a more rigorous approach to identifying cases appropriate for detention, combined with a focus on removal plans for every detainee.

The Government has described this new approach as preferable to introducing "arbitrary time limits" which would potentially be open to abuse.

The Government's objections to the clause, and the counter-arguments

Lord Keen set out the Government's objections with the new clause. A central concern was that it would undermine immigration controls, by giving detainees scope to engineer release from detention after 28 days and undermining broader compliance with the system:

> The reality is this: the vast majority of those detained are either foreign criminals or individuals who, as in the case to which I referred earlier, have broken immigration laws. Not being able to effect enforced removals would make it less likely that others would depart voluntarily from the United Kingdom and would mean more immigration rule-breakers in the community at large.[39]

He foresaw several difficulties with a 28-day limit:

- It would be an "easy target" for detainees resisting removal to aim for, and could lead to spurious asylum and judicial review applications being submitted in order to delay processing of a case and thereby trigger release from detention.
- The process of obtaining appropriate travel documentation for detainees can take significantly longer than 28 days, even in compliant cases.
- Aggregating detention periods would cause additional difficulties. For example, an individual's incentive to comply with immigration bail conditions could be undermined if they had already been detained for 28 days.

Although the clause allows for the Tribunal to extend detention beyond 28 days if there are "exceptional circumstances", Lord Keen was doubtful that any of the above examples, which he said were common, would be deemed sufficiently exceptional by the Tribunal.

He cautioned that the clause would generate significant additional workload for the Tribunal, with knock-on implications for other types of case. He also questioned whether the Tribunal's proposed free-standing right to review extended detention could work in practice, since it would not have access to relevant information about the case. He said

[39] HL Deb 15 March 2016 c1800

that the Tribunal already has an opportunity to consider the appropriateness of detention, when an individual makes a bail application.[40]

Lord Ramsbotham acknowledged concerns raised by some peers about aspects of the amendment, such as whether 28 days was an appropriate limit, and whether excluding people with criminal convictions or due for deportation from the scope of the clause would undermine the impact of the clause. He suggested that such technical issues could be resolved by the Government at Third Reading. He further contended that if the Government successfully implements a new approach to immigration detention, as intended, detention for longer than 28 days should rarely be needed in any case.[41]

Ping-pong stages

On the first day of ping-pong, the Commons disagreed with the Lords amendment, by 302 votes to 266.[42] It approved a Government amendment in lieu (**Amendment 84A**), which would provide for automatic bail hearings after six month's detention (or six months after bail was last considered), for people who have been detained as a person liable to examination or removal (this would operate in addition to individuals' rights to apply for bail at any time). People detained pending deportation from the UK would not be covered by the amendment:

> Page **108**, line **7**, at end insert—
>
> *"Duty to arrange consideration of bail*
>
> (1) Subject as follows, the Secretary of State must arrange a reference to the First-tier Tribunal for the Tribunal to decide whether to grant bail to a person if—
>
> (a) the person is being detained under a provision mentioned in paragraph 1(1)(a) or (c), and
>
> (b) the period of six months beginning with the relevant date has elapsed.
>
> (2) In sub-paragraph (1)(b) "the relevant date" means—
>
> (a) the date on which the person's detention began, or
>
> (b) if a relevant event has occurred in relation to the person since that date, the last date on which such an event has occurred in relation to the person.
>
> (3) The following are relevant events in relation to a person for the purposes of sub-paragraph (2)(b)—
>
> (a) consideration by the First-tier Tribunal of whether to grant immigration bail to the person;
>
> (b) withdrawal by the person of an application for immigration bail treated as made by the person as the result of a reference under this paragraph;

40 HL Deb 15 March 2016 c1799-1801
41 HL Deb 15 March 2016 c1790
42 Division No. 248, HC Deb 25 April 2016

(c) withdrawal by the person of a notice given under sub-paragraph (6)(b).

(4) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person—

(a) includes such consideration regardless of whether there is a hearing or the First-tier Tribunal makes a determination in the case in question;

(b) includes the dismissal of an application by virtue of provision made under paragraph 9(2).

(5) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person does not include such consideration in a case where—

(a) the person has made an application for bail, other than one treated as made by the person as the result of a reference under this paragraph, and

(b) the First-tier Tribunal is prevented from granting bail to the person by paragraph 3(4) (requirement for Secretary of State's consent to bail).

(6) The duty in sub-paragraph (1) to arrange a reference does not apply if—

(a) section 3(2) of the Special Immigration Appeals Commission Act 1997 (persons detained in interests of national security etc) applies to the person, or

(b) the person has given to the Secretary of State, and has not withdrawn, written notice that the person does not wish the person's case to be referred to the First-tier Tribunal under this paragraph.

(7) A reference to the First-tier Tribunal under this paragraph in relation to a person is to be treated for all purposes as an application by that person for the grant of bail under paragraph 1(3)."

On 26 April, Peers voted by 271 votes to 206 in favour of the original amendment (**Lords amendment 84**), for the reason (**Reason 84B**) that "Commons Amendment 84A does not make adequate provision for time limiting and judicial oversight of immigration detention".[43]

4.4 Excluding pregnant women from immigration detention (Lords amendment 85)

At Third Reading stage, peers voted by 274 votes to 215 in favour of an amendment to clause 62, in order to exempt from immigration detention any person "whom the Secretary of State knows, or could reasonably be expected to know, is pregnant".[44] The amendment was moved by Baroness Lister (Labour).

Baroness Lister acknowledged that the Government's plans for a new "adult at risk" policy would apply to pregnant women, but argued that, in effect, this would not represent a significant change from current

43 Division No.3, HL Deb 26 April 2016c1097-1100
44 Division No. 1, HL Deb 12 April 2016 c141-144

policy, which already states that as a general rule pregnant women should not be detained. She pointed out that, in spite of the current policy position, 99 pregnant women were detained in 2014, and 69 in 2015. Only nine women who were detained in 2014 were subsequently removed from the UK.[45]

Background

Stephen Shaw's review into the welfare in detention of vulnerable persons included a recommendation that the policy presumption against detention of pregnant women be replaced with an absolute exclusion (recommendation 10). The Government's response to the review (thus far) has not gone that far.

Pregnant women are covered by the new "adult at risk" concept being introduced to inform decisions to detain. They would be automatically considered to be at the highest level of risk, and therefore would only be detained if there was a compelling justification to do so on immigration control grounds.[46]

The Government's objections to the amendment, and counter-arguments

Lord Keen of Elie explained that, although the Government agrees that pregnant women should not usually be detained, it does not consider that an absolute prohibition would be workable.

He gave the examples of when an immediate removal from the UK is planned, or when a person did not qualify for entry to the UK and needed to be detained at the border pending departure from the UK.

Responding to Baroness Lister's observation that only a small proportion of pregnant detained women are removed from the UK, he suggested that this is partly because it is often the case that the woman is released from detention because removal has ceased to be imminent (for example, due to a late asylum claim or judicial review application).[47]

He confirmed that the Government was continuing to consider its position on the detention of pregnant women (it had previously said it would confirm its position by Third Reading stage). He said that a further announcement is due in the coming few days, and indicated that this will involve a time limit for detention:

> The announcement will not involve an absolute prohibition on the detention of pregnant women. It will, however, set out a very clear and limited time for detention, only in exceptional circumstances, as it may be applied to pregnant women.[48]

In pressing the amendment to a vote, Baroness Lister said:

> While the hint of a time limit is encouraging, I have heard nothing to reassure us that the new policy will be different from the old policy.

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45 HL Deb 12 April 2016 c132
46 Annex B to letter from Lord Bates to Lord Rosser, 1 March 2016 (DEP 2016-0190)
47 HL Deb 12 April 2016 c139
48 HL Deb 12 April 2016 c140

> (…) The Government have had over six months to consider this crucial issue, which they know many people—organisations, individuals who gave evidence to Shaw and individuals who gave evidence to the inquiry—feel very strongly about. They must have known that people would want a clear answer on this by now and I am afraid that clear answer has come there none.[49]

The Government's alternative proposal

On 18 April, shortly before the Bill returned to the Commons for consideration of Lords amendments, the Government published a Written Statement providing details of its new position on the detention of pregnant women, which is similar to the approach already taken in respect of detaining migrant children (HCWS679):

> The Government plans to end the routine detention of pregnant women. Similar to the arrangements put in place as part of the ending routine detention for families with children in 2014, the Government will table an amendment to the Immigration Bill, when it returns to this House shortly, placing a seventy-two hour time limit on the detention of pregnant women. This will be extendable to up to a week with Ministerial authorisation.
>
> We have already made progress on this and the Government is clear that pregnant women should be detained only in exceptional circumstances. This is a difficult issue - we need to balance the welfare of pregnant women with the need to maintain a robust and workable immigration system and ensure that those with no right to be here leave the UK.
>
> We expect people who do not have the right to stay here to leave voluntarily. As with the family returns process, we will be able to offer support to those who choose to leave voluntarily to ensure that individuals are able to exercise control over their departure.
>
> However, we need to ensure that we are able to effectively manage returns for those who do not depart voluntarily. This new safeguard will ensure that detention for pregnant women will be used as a last resort and for very short periods – for example: immediately prior to a managed return; to prevent illegal entry at the border where a return can be arranged quickly, or if a pregnant woman presents a public risk.
>
> Wider changes are underway to improve the welfare of all vulnerable people in detention through a series of reforms, including a new policy on "adults at risk." The Immigration Minister set out details of these reforms in a Written Ministerial Statement on 14 January in response to the recommendations in Stephen Shaw's report on the welfare of vulnerable people in detention.
>
> The Government has listened carefully to concerns expressed in Parliament and by others and believes that the proposed amendment, combined with the wider reforms, strikes the right balance between protecting vulnerable women and maintaining effective and proportionate immigration control.
>
> In due course the Government also intends to invite Stephen Shaw to carry out a short review in order to assess progress against the key actions from his previous report.

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49 HL Deb 12 April 2016 c141

Ping-pong stages

The Commons voted against the Lords amendment by 302 votes to 266.[50] The Commons approved **Amendments 84A and 84B** in lieu. Put briefly, Amendment 85A reflects the obligation on the Home Secretary to publish guidance on the new "adult at risk" policy (as discussed in section 3.3 above). Amendment 85B would insert a new clause to reflect the new policy on the detention of pregnant women, as outlined in the WMS of 18 April, which would apply "if the Secretary of State is satisfied the woman is pregnant."

When the Bill returned to the Lords on 26 April, Peers agreed by 259 votes to 203 to approve Commons Amendment 85A, but disagree with Amendment 85B and propose instead **Lords Amendment 85C.**[51] Put briefly, Amendment 85C builds on the Government's favoured approach of a 72hour/7 day maximum restriction, by:

- Including an "over-riding principle that no pregnant woman shall be detained… save in the most exceptional circumstances".
- Restricting the scope to detain a pregnant women in a short-term holding facility or pre-departure accommodation to where her needs can be met and provision made for her medical care (except where she is being transferred to/from such facilities and such provision is made, and the journey is less than one hour).
- Allowing for a 28 day grace period between a pregnant women reaching 'appeal rights exhausted' stage and removal action.
- Requiring the Home Secretary to consult the Independent Family Returns Panel on how to safeguard and promote the woman's welfare, in cases where it is proposed to remove a pregnant women or detain her in pre-departure accommodation or a short-term holding facility.
- Enabling the Home Secretary to make provisions in regulations about the constitution of the Independent Family Returns Panel in cases involving pregnant women, which must include for the Panel to include expertise in the care of pregnant women and maternity care.

4.5 Establishing a relocation scheme for 3,000 unaccompanied refugee children (Lords amendment 87)

On the third day of Report stage, Lord Dubs (Labour) moved a new clause which would require the Home Secretary, as soon as possible, to make arrangements to relocate to the UK and provide support to 3,000 unaccompanied refugee children in other countries in Europe. The relocation scheme would operate in addition to the existing Syrian Vulnerable Persons Relocation Scheme. The amendment was also supported by Lord Alton of Liverpool (Crossbench), Lord Roberts of Llandudno (Liberal Democrats) and the Lord Bishop of Chelmsford. It was agreed to upon division by 306 votes to 204.[52]

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50 Division No. 249, HC Deb 25 April 2016 c1250-1254
51 Division No. 4, HL Deb 26 April 2016 c1104-7
52 Division No. 1, HL Deb 21 March 2016 c2110-2114

Background

Save The Children has been calling on the UK Government to establish such a scheme since last summer. The campaign has attracted wider NGO and cross-party support. The charity is concerned that there are an estimated 26,000 unaccompanied children in Europe, and that many are vulnerable to exploitation, including trafficking and prostitution. Europol has warned that at least 10,000 unaccompanied children have gone missing since entering Europe. Save The Children has suggested that taking responsibility for 3,000 unaccompanied children would be a fair contribution for the UK.

There are also concerns that some unaccompanied children have family members in other EU states (including the UK), but are unable to join them in practice, due to restrictive asylum and family reunion policies, and difficulties in accessing the family reunion provisions in the Dublin III regulations.

Anticipating the Government's argument that a relocation scheme could act as a "pull factor", Lord Dubs said:

> I do not think that there is that much hard evidence to support that belief, but in any case, the consequence of doing nothing for these children who are now in Europe must be much more serious than the possibility that an amendment such as this would attract others to follow. We are dealing with a desperately important crisis at the moment; that is the key to the amendment.[53]

He also drew a parallel with the ongoing naval rescue operations in the Mediterranean. He noted that it was arguable that they also acted as a pull factor for further crossings, but "that is no reason not to save the lives of people at risk in the sea, and no one suggests that those naval forces should cease their life-saving operations."

The Government's objections to the clause, and the counter-arguments

Lord Bates said that the Government has already taken some action in response to Save the Children's calls for a relocation scheme for unaccompanied children, namely by:

- extending the Syrian Vulnerable Person Resettlement Scheme, in September 2015, to provide 20,000 resettlement places by 2020
- being a leading provider of funding to refugee camps in the Syrian region
- confirming, in January 2016, that it is considering the possibility of introducing a relocation scheme for unaccompanied children from conflict regions, informed by advice from UNHCR (which remains under consideration)
- establishing a new DfID fund, of up to £10 million, to support the needs of vulnerable migrant/refugee children in Europe, including unaccompanied and separated children, such as by providing safe places to stay, counselling and legal advice services

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53 HL Deb 21 March 2016 c2093

He also defended the Government's broader record on providing assistance to Syrian refugees:

> Noble Lords may seek to belittle some of what the Government are doing, but compared with our European colleagues, we are doing a great deal. We have relocated 1,000 already, as the Prime Minister said we would by Christmas. (…) In the whole period, the 27 other countries in Europe have managed to resettle 650. Only six countries actually take children, so when there is moral outrage at what the UK is doing in response to the Save the Children report that asked us to take our fair share, I hope that that moral outrage is being directed also at the 21 countries that have not actually taken one Syrian refugee.[54]

However, he said that the Government had a "principled objection" to Lord Dubs' proposal, on the basis that "The people who are in Europe … have the right to claim asylum here. The people most at risk, most vulnerable, are those who are still in the region."[55]

Lord Bates further questioned whether the scheme would help "the right people" by noting that 90% of unaccompanied asylum seeking children in the UK are male (whereas the Government's Syrian refugee strategy has a particular focus on women and girls), 61% of unaccompanied asylum seeking children in the UK are aged 16 or 17, and that the most common nationalities (in order) are Albanian, Eritrean and Afghan, followed by Syrians.

He also questioned whether there is adequate capacity to take on responsibility for more unaccompanied children, noting for example that the UK already has a shortfall of 8,000 foster parents.[56]

Responding to some of these points, Lord Dubs said that the proposed scheme would specifically cater for refugees who qualify under the *1951 Geneva Convention on Refugees*, and that it could be targeted to children aged below 16 if the Government desired.[57]

The Government's alternative proposal

On 21 April, the Government published a Written Statement which gave further details of a proposed new resettlement scheme to cater to the needs of vulnerable children in conflict regions (HCWS687). Put briefly, the scheme will be open to 'children at risk' (not exclusively unaccompanied children), with a view to resettling up to 3,000 individuals from the Middle East and North Africa region over the course of this Parliament. The scheme will operate in addition to the Syrian Vulnerable Persons Relocation Scheme. It will not resettle children/families who are already in Europe, because the Government considers that resettling people in Europe risks creating unintended consequences or perverse incentives for people to make dangerous journeys to Europe:

> Today I am able to announce the results of work with UNHCR and informed by a roundtable with NGOs, local authorities and

54 HL Deb 21 March 2016 c2108
55 HL Deb 21 March 2016 c2108
56 HL Deb 21 March 2016 c2109
57 HL Deb 21 March 2016 c2110

> devolved administrations to provide a resettlement route to the UK, specifically designed for 'Children at Risk' from the Middle East and North Africa region. On the UNHCR's recommendation the scheme will not target unaccompanied children alone, but will be extended to all 'Children at Risk' as defined by the UNHCR. This broad category encompasses unaccompanied children and separated children (those separated from their parents and/or other family members) as well as other vulnerable children such as child carers and those facing the risk of child labour, child marriage or other forms of neglect, abuse or exploitation.
>
> Through this category we will resettle the most vulnerable children, accompanied by their families, where the UNHCR deems resettlement is in the best interests of the child. We will commit to resettling several hundred individuals in the first year with a view to resettling up to 3000 individuals over the lifetime of this Parliament, the majority of whom will be children. We will also review the scheme at the two year mark. This unique initiative will be the largest resettlement effort that focuses on children at risk from the MENA region and will be over and above the commitment to resettle 20,000 refugees under the Syrian Resettlement Scheme. It will be open to all at risk groups and nationalities within the region, with the best interests of the child at the heart of the scheme. The UNHCR are fully supportive of the launch of this new initiative and the UK's commitment to assist vulnerable refugee children at risk through further resettlement efforts which uphold the principles of child protection.

The statement concluded by setting out the Government's reasons for opposing relocation schemes within Europe:

> We will do all we can to ensure that children in Europe with a right to be reunited with their family in the UK are supported to do so. However, the government remains of the view that relocation schemes within Europe risk creating unintended consequences or perverse incentives for people to put their lives into the hands of traffickers. Instead we are committed to providing safe and legal routes for the most vulnerable refugees from Syria to resettle to the UK. Under the Syrian Vulnerable Persons Resettlement Scheme we are committed to resettling 20,000 vulnerable refugees by 2020. In the last quarter of 2015 we resettled 1085 Syrian refugees under this scheme over half of whom were children.

The statement did outline some additional ways in which the UK is contributing to efforts to deal with migration flows in the EU, including:

- Offering 75 experts to help process migrants in reception centres (including those with expertise in supporting unaccompanied children) and providing equipment and medical supplies
- Participating in maritime search and rescue missions
- Contributing £250 million to the initial €3 billion Turkey Refugee Facility, to support refugees in Turkey.
- Contributing £65 million to the humanitarian response to the migration crisis in Europe and the Balkans, including a £10 million DfID Refugee Children Fund created to support the needs of vulnerable refugee and migrant children in Europe, which will support UNHCR, Save the Children and the International Rescue Committee (IRC) to work with host authorities to care for and assist unaccompanied or separated children in Europe and the Balkans. This includes identifying vulnerable children, providing for

their immediate support, referral to specialist care, and helping find solutions such as family reunification.

- Providing resources to facilitate family reunion under the Dublin III Regulation, including expert support to Italy and Greece and permanent bi-lateral co-operation with the French authorities to improve the process for transferring cases from France to the UK.

Ping-pong stages

Lord Dubs' amendment was narrowly rejected in the Commons on 25 April, by 294 votes to 276.[58] The reason given (**Commons Reason 87A**) was that "it would involve a charge on public funds".

Lord Dubs tabled an alternative amendment (**Lords Amendment 87B**) which was approved by Peers when the Bill returned to the Lords the following day, by The new amendment would give the Home Secretary discretion to determine the number of unaccompanied children resettled in the UK, in consultation with local authorities:

> **87B** Insert the following new Clause—
>
> **"Unaccompanied refugee children: relocation and support**
>
> (1) The Secretary of State must, as soon as possible after the passing of this Act, make arrangements to relocate to the United Kingdom and support a specified number of unaccompanied refugee children from other countries in Europe.
>
> (2) The number of children to be resettled under subsection (1) shall be determined by the Government in consultation with local authorities.
>
> (3) The relocation of children under subsection (1) shall be in addition to the resettlement of children under the Vulnerable Persons Relocation Scheme.""

The 'Dubs amendment' continued to attract widespread media and public attention in advance of the Bill returning to the Commons, and the Government continued to come under pressure for its position.[59]

Amid reports of a potential Government defeat, on 4 May the Prime Minister confirmed to the House that the Government would accept the Dubs amendment when the Bill returns to the Commons. A news release issued by Number 10 later the same day gave some details of how it intends to proceed:

> - children registered in Greece, Italy or France before 20 March to be eligible for resettlement
> - government to work with local authorities on plans to resettle unaccompanied children
> - programme to extend government's twin-track approach of helping vulnerable youngsters without encouraging any new perilous crossings to Europe
>
> Unaccompanied asylum-seeking children will be resettled from Greece, Italy and France, in an initiative announced today

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58 Division No. 246, HC Deb 25 April 2016 c1237-1242

59 See, for example, Daily Mail, 'Comment: The Mail's always been robust on immigration. But we MUST give these lost children sanctuary', 28 April 2016; *Daily Telegraph*, 'David Cameron must continue to stand firm and keep Europe's refugee children out of Britain', 29 April 2016

> following discussions between the government and Save the Children.
>
> This initiative builds on last month's announcement that up to 3,000 vulnerable children and family members will be resettled direct from the Middle East and North Africa.
>
> And it adds to the resettlement of 20,000 people direct from Syrian refugee communities, which has been under way since last year.
>
> The government has always adopted a twin-track approach to dealing with the migrant crisis: helping the most vulnerable while not encouraging new perilous crossings to Europe.
>
> That approach will continue through this initiative, by restricting resettlement to children registered before the EU migration agreement with Turkey came into force on 20 March.
>
> The retrospective nature of the scheme will avoid creating a perverse incentive for families to entrust their children to people traffickers.
>
> And it will mean that the UK can focus on the most vulnerable children already in Europe without encouraging more to make the journey.
>
> The government will work closely with the United Nations High Commissioner for Refugees (UNHCR) to deliver this scheme, as well as non-governmental organisations (NGOs) like Save the Children. It will be separate to any EU-administered resettlement schemes.
>
> Those at risk of trafficking or exploitation will be prioritised for resettlement. And existing family reunion routes will be accelerated. (…)[60]

The number of children to be resettled under the scheme will be determined in consultation with local authorities. The Government expects the first arrivals to come before the end of the year.

The announcement was immediately welcomed by Save the Children:

> The Prime Minister has today offered a lifeline to these vulnerable children and we will work with the government and the UN to ensure that these commitments are rapidly implemented so that thousands of lone, vulnerable children can reach safety in the UK in the coming months. Helping to resettle children already in Europe and in desperate need will provide vital humanitarian support. Under this scheme there can be no lingering anxieties about whether sanctuary represents a 'pull factor'.

The Refugee Council issued a more cautious response:

> Today's announcement could potentially offer limited chances for some lone children to find safe haven in Britain.
>
> However, we shouldn't be fooled into thinking the Government has suddenly discovered its conscience while it's simultaneously vilifying asylum seekers who are already in the UK and doing its best to trap all other refugees in poor countries.

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60 GOV.UK/Number 10, *press release*, 'Unaccompanied asylum-seeking children to be resettled from Europe', 4 May 2016

BRIEFING PAPER
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