HOUSE OF LORDS

Library Note

Immigration Bill (HL Bill 84 of 2013–14)

This Library Note provides information on the Immigration Bill, which is due for second reading in the House of Lords on 10 February 2014. The Note is intended to be read in conjunction with two House of Commons Library Notes, *Immigration Bill* (17 October 2013, RP13/59) and *Immigration Bill: Committee Stage Report* (27 January 2014, SN06806), which provide background information and summarise the second reading debate and committee stage in the House of Commons. This Note summarises the report stage and third reading debate in the House of Commons.

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Table of Contents

1. Introduction

The Immigration Bill was introduced in the House of Commons on 10 October 2013, as Bill 110 of 2013–14. The parliament website offers a page of information on the Bill, including the text of the Bill and links to each debate. The GOV.UK website also has a page of information on the Bill, with a range of key documents.

The Prime Minister, David Cameron, indicated in a speech in March 2013 that the Government intended to "radically toughen up the way we deal with illegal migrants working in this country".[1] The Immigration Bill was announced in the Queen's speech in May 2013; Mr Cameron described the Bill as the "centrepiece" of the Government's legislative programme, stating:

> The Bill goes across government, because for the first time we will look to ensure that everyone's immigration status is checked before they get access to a private rented home; for the first time, we will make sure that anyone not eligible for free health care foots the bill, either themselves or through their Government; and for the first time, foreign nationals who commit serious crimes will be deported, wherever possible, and will then have to appeal from their home country. That will be the effect of the Bill.[2]

Before the publication of the Bill, the Government carried out public consultation on several aspects of these proposals. The Home Office launched a consultation on 3 July 2013, *Controlling Immigration—Regulating Migrant Access to Health Services in the UK*, and published a summary of consultation responses and the Government response on 22 October 2013: *Controlling Immigration—Regulating Migrant Access to Health Services in the UK: Results of the Public Consultation*. The Home Office launched a consultation on *Tackling Illegal Immigration in Privately Rented Accommodation* on 3 July 2013, and published a summary of consultation responses and the Government response on 10 October 2013: *Tackling Illegal Immigration in Privately Rented Accommodation: The Government's Response to the Consultation*. The Home Office launched a consultation on 12 November 2013, *Fees and Charging Immigration and Visas*, and published a summary of consultation responses and the Government response on 30 January 2014: *Immigration Fees And Charging Consultation Response*. The Government's proposals on immigration were considered by the Joint Committee on Human Rights, which began receiving submissions of evidence in June 2013 ('Immigration Bill Correspondence and Memoranda'). The Committee has published a report on the Bill: *Legislative Scrutiny: Immigration Bill*.[3]

The Government published the Bill on 10 October 2013, alongside a number of supporting documents including an *Explanatory Memorandum*, a Home Office *Factsheet* on the Bill, an *Overarching Impact Assessment*, a *Delegated Powers Memorandum*, and a *Memorandum* considering issues arising under the European Convention on Human Rights.

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[1] 'David Cameron's Immigration Speech', GOV.UK, 25 March 2013.
[2] Debate on the Queen's Speech, HC *Hansard*, 8 May 2013, col 26.
[3] Joint Committee on Human Rights, *Legislative Scrutiny: Immigration Bill*, 18 December 2013, HL Paper 102 of session 2013–14.

2. The Bill

The Immigration Bill is in 7 parts, which can be summarised as follows:

- Part 1 of the Bill, and schedules 1 and 2, seek to simplify the process for removing people who do not have leave to remain in the UK. These sections of the Bill also seek to further restrict the right of those detained for immigration purposes to request bail; extend powers to collect biometric data; and provide immigration officers with new search powers and the power to use reasonable force.

- Part 2 would remove the right to appeal an immigration decision, unless the appeal is on human rights, asylum or humanitarian grounds. In other cases, an administrative review may be available. Part 2 would also enable the Secretary of State to order a person liable to deportation to leave the UK before their appeal is decided, provided they would not risk serious irreversible harm. And it would establish that a court considering a migrant's right to respect for private and family life under the European Convention on Human Rights must have regard for the public interest.

- Part 3 and schedule 3 seek to regulate migrants' access to services. Part 3 would introduce a requirement for landlords to check tenants' immigration status. Migrants with time limited immigration status would be required to pay a charge, when they apply to enter or remain in the UK, which would be considered a contribution towards the NHS. An immigration status check would be conducted before a person could open a bank account or obtain a driving licence. Penalties would be increased for employing illegal immigrants.

- Part 4 and schedules 4 and 5 contain new powers to investigate suspected sham marriages and civil partnerships.

- Part 5 and schedule 6 provide the Office of the Immigration Services Commissioner with new powers to regulate immigration advisers.

- Part 6 and schedule 7 would enable third parties, including port and transport carrier staff, to undertake exit checks on passengers. Part 6 also seeks to simplify the system whereby the government sets fees to be charged for immigration applications.

- Part 7 sets out the Bill's commencement provisions and territorial extent.

The House of Commons Library has published a Research Paper which provides a detailed briefing on the content of the Bill: *Immigration Bill*, 17 October 2013, RP13/59.

3. Second Reading and Committee Stage

The Immigration Bill received its second reading in the Commons on 22 October 2013, when the programme motion and money resolution were also agreed. Opening the debate, Theresa May, Home Secretary, explained that the Government's objective was to "reduce annual net migration to the tens of thousands by the end of the Parliament" and to create an immigration system which would "operate fairly and effectively".[4]

[4] HC *Hansard*, 22 October 2013, col 156.

The Bill would achieve these aims, she suggested, by the following means:

> First, the Bill will cut abuse of the appeal process. It will streamline the labyrinthine legal process, which at present allows appeals against 17 different Home Office decisions—17 different opportunities for immigration lawyers to cash in and for immigrants who should not be here to delay their deportation or removal. By limiting the grounds for appeal to four—only those that engage fundamental rights—we will cut that abuse.
>
> Secondly, we will extend the number of non-suspensive appeals so that, where there is no risk of serious and irreversible harm, we can deport first and hear appeals later. We will also end the abuse of article 8. There are some who seem to think that the right to family life should always take precedence over public interest in immigration control and when deporting foreign criminals. The Bill will make the view of Parliament on the issue very clear. Finally, the Bill will clamp down on those who live and work in the UK illegally and take advantage of our public services. That is not fair to the British public and to the legitimate migrants who contribute to our society and economy.[5]

Yvette Cooper, Shadow Home Secretary, responded for the Labour Party. She agreed that "stronger controls" were needed to "control immigration, deal with its impact and tackle illegal immigration".[6] She suggested that some measures in the Bill were "sensible" including charging more immigrants to use the NHS, restricting access to driving licences and the provisions relating to sham marriages. However, she questioned how the system requiring landlords to check the immigration status of private tenants would work, asking:

> There are countless different documents to show that people are entitled to be here. Will private landlords have to know each one? On some figures, nearly one in five usual residents, including British citizens, do not have passports. What will they have to do to rent a flat?[7]

Ms Cooper also raised "serious concerns" about the removal of appeal rights for most immigrants, suggesting that many immigration decisions are overturned at present:

> The Government got it wrong in 50 percent of entry clearance cases that went to appeal. In managed migration cases that went to appeal, they got it wrong in 49 percent of decisions. In the majority of those cases the problem was Home Office error, so why not just put a bit of effort into getting the decision right in the first place? If those appeal rights are removed, many cases will cite human rights grounds to get an appeal and more cases will go to judicial review. The Government's own impact assessment shows that that could cost £100 million, halving any savings the Home Secretary might hope to make.[8]

Ms Cooper suggested that the Bill does not go far enough in the measures it proposes to penalise employers who take on illegal migrant workers.[9] She concluded that the Labour Party would "not oppose the Bill as we believe it should go to Committee so we can amend and

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[5] ibid, col 158.
[6] ibid, col 168.
[7] ibid, col 172.
[8] ibid, col 176.
[9] ibid.

reform it, use the opportunity to introduce better and fairer controls to deal with the Government's failures, and make immigration work for all".[10]

The Public Bill Committee on the Immigration Bill published its call for written evidence on 23 October 2013. The Bill had eleven sittings in committee between and 29 October and 19 November 2013. In its first four sessions, the Committee took evidence from a range of witnesses. Proceedings of the Committee's sessions, along with all written evidence, can be found on the Committee's page of the parliament website.

A number of government amendments were made to the Bill during the committee stage. The Government amended clause 12, so that the provisions which would allow a migrant to be deported before their appeal is decided would apply not just to "foreign criminals" (as in the Bill as originally drafted) but all "persons liable to deportation".[11] This category would include those who have not been convicted of an offence but whose deportation the Secretary of State deems to be "conducive to the public good".[12]

The Government amended clause 17, in response to concerns raised by the Residential Landlords Association, to make it clear that, provided a landlord carried out the required checks on a tenant's immigration status, the landlord would not be penalised, and the tenancy agreement would remain enforceable, even if it later emerged that the tenant was an illegal migrant.[13] The Government amended clause 29, so that if the Government were to draft a statutory instrument on the requirements for landlords, which applied only to a specific region, it would not need to be treated as a hybrid instrument for purposes of parliamentary scrutiny.[14]

The Government passed a number of technical and drafting amendments.[15] Government new clause 3 (clause 59 in the Bill as amended) was also added to the Bill without a division. This clause allows the Police Ombudsman for Northern Ireland to oversee powers exercised by immigration officers.[16] A copy of the Bill published on the parliament website on 20 November 2013 shows all changes that were made in the Committee.

The Committee divided on several opposition amendments, which did not pass. David Hanson, Shadow Minister for Home Affairs, tabled an amendment to prevent the provisions on the right of appeal from coming into force until a review of immigration decision-making had been completed by the Independent Chief Inspector of Borders and Immigration. The amendment was rejected by 9 votes to 6.[17] Mr Hanson also moved a new clause to delay the introduction of the provisions relating to landlords until the system had been piloted in five areas around the UK. Norman Baker, Minister of State for Crime Prevention, Home Office, stated that the system would be piloted in one area,[18] and would be rolled out "on a phased geographical basis".[19] The Opposition's new clause was defeated by 10 votes to 7.[20]

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[10] ibid.
[11] House of Commons Public Bill Committee, Immigration Bill, Sixth Sitting, 5 November 2013, col 210.
[12] ibid, col 205.
[13] House of Commons Public Bill Committee, Immigration Bill, Eighth Sitting, 7 November 2013, col 266.
[14] ibid, cols 277–8.
[15] House of Commons Public Bill Committee, Immigration Bill, Ninth Sitting, 12 November 2013, col 326.
[16] House of Commons Public Bill Committee, Immigration Bill, Tenth Sitting, 12 November 2013, cols 364–6.
[17] House of Commons Public Bill Committee, Immigration Bill, Sixth Sitting, 5 November 2013, col 204.
[18] House of Commons Public Bill Committee, Immigration Bill, Seventh Sitting, 7 November 2013, col 224.
[19] House of Commons Public Bill Committee, Immigration Bill, Eighth Sitting, 7 November 2013, col 277.
[20] House of Commons Public Bill Committee, Immigration Bill, Tenth Sitting, 12 November 2013, cols 363–4.

A House of Commons Library Standard Note provides a more detailed account of the committee stage on the Immigration Bill, and a summary of the second reading debate: *Immigration Bill: Committee Stage Report*, 27 January 2014, SN06806. This Note will summarise the report stage and third reading debate in the House of Commons.

4. Report Stage

The report stage and third reading debate took place on 30 January 2013. For a list of all the amendments and new clauses which MPs considered during report stage, and the outcomes of divisions on each, please see the page of the parliament website entitled 'MPs debate remaining stages of the Immigration Bill'.

4.1 Report Stage Timetabling

Some MPs suggested that the Government, in arranging the legislative timetable, deliberately delayed the report stage debate on the Immigration Bill until January 2014. Nigel Mills (Conservative MP for Amber Valley) tabled an amendment, in November 2013, for discussion at report stage.[21] His amendment proposed that transitional restrictions on Romanian and Bulgarian workers' right to freedom of movement within the EU should be extended. These restrictions were due to come to an end on 1 January 2014. The Government denied that this was the reason that the report stage debate was delayed, suggesting that the legislative timetable was too busy to continue proceedings on the Immigration Bill until after Christmas.[22]

The Government also received criticism for tabling a large number of amendments for discussion at report. The programme motion agreed on 22 October 2013 allowed one day for the report stage and third reading. Caroline Lucas (Green Party MP for Brighton, Pavilion) made a point of order before the start of the report stage debate, protesting that the programme motion would not allow enough time for debate; she said "the Government are heavily amending the Immigration Bill on report, which means that a substantial piece of legislation is skipping the normal process of scrutiny and extra time is not being given".[23] Theresa May, Home Secretary, responded to say that "I take the point made by the hon. Member for Brighton, Pavilion (Caroline Lucas) about the number of amendments, but many of them are very technical and minor amendments".[24] Some MPs suggested during the report stage debate that the Government had tabled amendments in order to avoid giving time to backbench and opposition amendments.[25]

4.2 Key Government Amendments

4.2.1 New Clause 18: Deprivation of Citizenship

The Home Secretary tabled a new clause (NC18) which would enable the deprivation of citizenship in cases where a person's conduct had been determined by the Home Secretary to have been seriously prejudicial to the vital interests of the UK, even if doing so would make the person stateless. Currently, the Home Secretary can deprive a person of citizenship if she is

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[21] 'Notice of Amendments Given on 19 November 2013', 20 November 2013.
[22] 'Andrew Lansley Denies Immigration Bill Delaying Tactics', *BBC News*, 5 December 2013.
[23] HC *Hansard*, 30 January 2014, col 1024.
[24] ibid, col 1029.
[25] ibid, col 1056.

"satisfied that deprivation is conducive to the public good", but not if doing so would make the person stateless. The powers in NC18 would only apply to people who had acquired their citizenship by naturalisation.

In her opening statement, Theresa May said that whilst she recognised that this was a serious issue, it was one with a long history:

> Depriving people of their citizenship is a serious matter. It is one of the most serious sanctions a state can take against a person and it is therefore not an issue that I take lightly […] It is noteworthy that depriving people of their citizenship is a concept with a long history. Almost as soon as world war one broke out, demands were made for denaturalisation of enemy aliens on grounds of disloyalty and/or their German past. That is the origin of the power. Before the war was over, legislation had been passed that made provision for revocation of citizenship if a naturalised person was suspected of treasonable activities. It has subsequently been amended to cover matters such as overt disloyalty, criminality, absence from the UK without maintaining a connection, through to it being conducive to the public good to deprive.[26]

The UK signed the UN Convention on the Reduction of Statelessness on 30 August 1961 and ratified it on 29 March 1966.[27] The Convention seeks to reduce statelessness through articles which direct, or otherwise limit, the powers of contracting states in regard to the granting or deprivation of citizenship. During the report stage of the Immigration Bill, the Home Secretary argued that NC18 would still enable the UK to fulfil its obligations under the Convention, stating that:

> We are not suggesting that we put the United Kingdom into a situation that it has not been in before. We are suggesting that we put the United Kingdom into the situation that is required by the UN convention to which it has signed up. A decision was taken a few years ago to go beyond that UN convention. We think it is right to go back to the UN convention.[28]

Theresa May went on to explain the reasons why the Government had tabled NC18:

> […] in December 2007, one of my predecessors deprived the individual [Hilal Al-Jedda] of his British citizenship. That gave rise to lengthy litigation, which culminated at a Supreme Court hearing in June 2013, with the verdict promulgated in October 2013. The Court—disappointingly to my mind—rejected my assertion that the individual could reassert his Iraqi nationality and that his failure to do so was the cause of his statelessness. Its conclusion was that the question was simply whether the person held another nationality at the date of the order depriving them of British citizenship.
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> Having studied the Supreme Court determination carefully and considered my options, I asked my officials to explore the possibility of legislating to address the key point identified in the al-Jedda case, namely that our domestic legislation, and the changes brought about in the [Nationality, Immigration and Asylum] 2002 and [Immigration, Asylum, and Nationality] 2006 Acts, go further than is necessary to honour our

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[26] ibid, col 1038.
[27] Details of signatories: UN Convention on the Reduction of Statelessness. Text of convention: Convention on the Reduction in Statelessness 1961, United Nations, Treaty Series, vol 989, p 175.
[28] HC *Hansard,* 30 January 2014, col 1040.

> international obligations in terms of limiting our ability to render people stateless. That may have been well intended. It was done, as I believe, in anticipation of signing the 1997 European Convention on Nationality. We have never signed that convention and this Government have no plans to do so.[29]

The Home Secretary clarified the specific circumstances in which the new power could be applied:

> It applies to somebody who is a naturalised person. That is who it applies to. It seeks to recreate the very specific sub-set of cases that are currently provided for under the "conducive" power. It would allow me to deprive a person of their citizenship, regardless of whether it left them stateless, but as I say, it applies only to those who are naturalised, not those who are British by birth or those who register to acquire citizenship under other provisions of the 1981 Act […] such as those which provide for children to acquire British citizenship. And it would apply only to very serious cases of people whose conduct is 'seriously prejudicial to the vital interests of the United Kingdom'.[30]

Several Members raised questions as to the application and implementation of NC18 in practice. These concerns focussed primarily on the potential for judicial challenges, the length of time given to the House of Commons to consider the new clause, the potential breadth of the new power and the status of those made stateless by the new power (as well as the status of their dependents).

The Labour Party tabled a manuscript amendment which would have put in place an explicit requirement for judicial assessment of any decision by a Home Secretary to exercise their powers under NC18.[31] David Hanson, Shadow Minister for Immigration, raised the concern that limited time had been given to discuss the new power, stating that:

> The situation is such that we have had to table manuscript amendments to deal with serious concerns about it. Will she explain why she is acting with such urgency today, rather than allowing for consultation before introducing a measure in another place that could then be examined by both Houses?[32]

Theresa May responded to the manuscript amendment:

> I do not agree with the manuscript amendments to new clause 18 that were tabled by the right hon Member for Delyn (Mr Hanson). It is right for the Secretary of State, as someone who is democratically accountable, to take the initial decision, but I confirm that there will be a full right of appeal, so a judicial process will apply. I accept that the Opposition have concerns about the new clause, so I will be happy for the Minister for Immigration to sit down with the right hon Gentleman and go through his concerns before the provision is considered by the other place. I hope that that will be of benefit to him and that it brings him some comfort.[33]

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[29] ibid, cols 1041–2. The reference for the judgment in the *Al Jedda* case can be found here: *Al Jedda* v *SSHD* [2013] UKSC 62.
[30] HC *Hansard*, 30 January 2014, col 1042.
[31] Labour Manuscript Amendment, Immigration Bill, Consideration, 30 January 2014.
[32] HC *Hansard*, 30 January 2014, col 1040.
[33] ibid, col 1102.

Concerns were also raised that "serious prejudicial behaviour" was not clearly defined in the new clause. The Home Secretary responded to this point by saying:

> I think that the concept of something that is seriously prejudicial to the interests of Her Britannic Majesty—to the interests of the United Kingdom—will be understood. There will of course be an opportunity for a review of that through a court process—a judicial review—so the definition would be tested.[34]

She also stated that "the key consideration" would be "whether the person's actions are consistent with the values [...] encapsulated by the oath that naturalised citizens take when they attend their citizenship ceremonies". [35]

The Home Secretary confirmed that "people need not have been convicted of an offence to be deprived of their citizenship".[36] Mark Lazarowicz (Labour/Co-operative MP for Edinburgh North and Leith) raised this point:

> Under the current proposals, the person whose passport was removed would not necessarily appear in a court anywhere. The proposed measure gives the Secretary of State a very broad power when she considers it conducive to the public good to deprive someone of a passport because his or her conduct is 'seriously prejudicial to the vital interests' of the United Kingdom. No actual crime is specified anywhere. Everyone has been talking about terrorists or other criminals, but the problem is that the proposed power is so broad.[37]

Paragraph 381 of the Explanatory Notes to the Immigration Bill provides examples of behaviour which would be considered "seriously prejudicial to the vital interests" of the UK, including "cases involving national security, terrorism, espionage or taking up arms against British or allied forces".[38]

Julian Huppert (Liberal Democrat MP for Cambridge, East) asked the Home Secretary what immigration status a person made stateless whilst within the UK would have, given that "there would be nowhere to remove them to"?[39] The Home Secretary responded by saying that an individual made stateless by the power in NC18 would not necessarily remain stateless, given that "they would be able to acquire statehood from somewhere else".[40] She furthermore stated:

> A stateless person is defined by article 1.1 of the 1954 convention relating to the status of stateless persons as one 'who is not considered as a national by any State under the operation of its law'. If they are inside the UK, we, as a party to that convention, are legally obliged to comply with its provisions, which set out various rights for stateless people. One of our aims in seeking to deprive might be to remove the individual from the United Kingdom, as I have indicated. It might not always be possible to do that,

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[34] ibid, col 1044.
[35] ibid, col 1042.
[36] ibid, col 1045.
[37] ibid, col 1094.
[38] Explanatory Notes.
[39] HC *Hansard*, 30 January 2014, ibid, col 1040.
[40] ibid.

> especially when the individual is stateless. If they are deprived, they become subject to immigration control, but we have provisions in the immigration rules that enable a person regarded as stateless to regularise their stay.[41]

Jeremy Corbyn (Labour MP for Islington North) asked the Home Secretary whether a person made stateless within the UK would become destitute because they would not be eligible for access to any benefits or other aspects of society. Theresa May responded by saying:

> If somebody is stateless and either does not apply for citizenship of another state despite having access or is denied permission to do so, but stays in the United Kingdom, we would have to look at the situation and at their immigration status. Crucially, their status would not attract the privileges of a British citizen—they would not be entitled to hold a British passport or to have full access to certain services—so they would therefore be in a different position from the one they were in when they held British citizenship.[42]

Julian Huppert questioned whether it was realistic to expect another country to offer citizenship to an individual who had been made stateless by the UK. The Home Secretary replied to his concern by saying:

> As I made absolutely clear, if somebody was in a position to acquire other citizenship, I would expect them to do so. As I indicated earlier, there may be circumstances in which somebody remains stateless, in which case our international obligations to those who are stateless would kick in, and we would abide by them.[43]

Julian Brazier (Conservative MP for Canterbury) asked whether the power could be used to deprive someone of citizenship who was outside the UK. Theresa May confirmed that it could be.[44] David Hanson asked what would happen to a child under 18 whose parent, and sole carer, was deprived of British citizenship whilst outside of the UK. The Home Secretary replied that:

> That would be considered on a case by case basis—there would not be a tick-box, mechanistic approach. All circumstances would be looked at in considering whether it was appropriate to apply the new power to an individual. There are safeguards within the proposal, such as the seriously prejudicial nature of the activity that an individual must have undertaken.[45]

NC12 (Power to Charge Fees for Attendance Services in Particular Cases) and NC18 were divided on together. Both clauses were passed together by 297 votes to 34 and were therefore added to the Bill.[46] NC12 is now clause 64 and NC18 is now clause 60 in the Immigration Bill as brought from the House of Commons. NC12 is discussed in the following section.

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[41] ibid, col 1043.
[42] ibid, col 1044.
[43] ibid, col 1049.
[44] ibid, col 1046.
[45] ibid, col 1048.
[46] ibid, col 1103–6.

4.2.2 Immigration Fees

Part 6 of the Bill seeks to simplify the system whereby the Government sets fees to be charged for immigration applications. A Home Office factsheet sets out the case for reforming the fees regime. It explains:

> Income from immigration and visa application fees helps to cover the cost of running the immigration system, and reduces the amount of funding required from general taxation. Under the current arrangement fees are reviewed and updated annually. The complexity of the process, which involves making two or three new statutory instruments on each occasion, makes it difficult to change fees more than once a year. Existing fees legislation is currently spread across four separate Acts, which builds further complexity into the process to review and amend them.[47]

Provisions in the Immigration Bill would enable the Government to alter fees more than once a year. The Bill also proposes that the criteria which the Government may consider when setting fees are expanded to include matters such as the Government's plans for growth (so for example, the Home Office would be able to offer reductions in fees for routes that support economic growth).[48]

The Government introduced new clause 12 at report which would enable the Government to charge for "bespoke" visa services. Theresa May, Home Secretary, described the "added-value" visa services which are already offered by the Home Office, such as the "super priority" visa service which allows some Indian visitors to the UK to have their visa processed in 24 hours.[49] She said the Government would like to introduce bespoke visa services, for example, a service whereby Home Office staff could fly to visa applicants in their home country. She said that:

> The cost of providing a service could vary from around £100 to several thousand pounds depending on the precise nature of the request. It is not possible to use regulations to set out fees that take account of all the possible service variations that could apply, so we have made a new clause that enables fees for those services to be set without the need for regulations.[50]

Tobias Ellwood (Conservative MP for Bournemouth East) suggested that people in China and Russia sometimes have to travel "thousands of miles" to a visa application centre, and this risked deterring "high-value customers" from visiting the UK.[51] Theresa May said that she would "go away and look at the whole issue of how visas are being processed and the length of time that it is taking".[52] New clause 12 was added to the Bill on a division together with new clause 18 by 297 votes to 34.[53] New clause 12 has become clause 64 in the Bill as amended.

4.2.3 Marriage and Civil Partnership

Part 4 and schedules 4 and 5 would extend the period of notice which must be given for marriages and civil partnerships, and contain new powers to investigate suspected sham

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[47] Home Office, *Immigration Bill Factsheet: Fees*, October 2013.
[48] ibid.
[49] HC *Hansard*, 30 January 2014, col 1033.
[50] ibid, cols 1036–7.
[51] ibid, col 1035.
[52] ibid, col 1036.
[53] ibid, col 1104.

marriages and civil partnerships. The Government introduced new clause 52, and new schedules 1 and 4 at report stage, in order to enable registration officials to share information about suspected sham marriages and civil partnerships, to allow for secondary legislation to be made on the investigation of suspected sham marriages and civil partnerships, and to enable the extension of the scheme to Scotland and Northern Ireland. Theresa May, Home Secretary, suggested that "between 4,000 and 10,000 applications a year are made to the Home Office on the basis of a sham marriage or civil partnership".[54] She clarified that the provisions on investigation of sham marriages and civil partnerships apply only to civil registrars and not to members of the clergy; adding that "we have discussed new measures with the Church of England and the Church in Wales and will continue to involve them in our plans for implementation".[55] New clause 52 and new schedules 1 and 4 passed without a division. In the Bill as amended, these are clause 53 and schedules 5 and 4 respectively.

4.3 Key Opposition and Backbench Amendments

4.3.1 Deportation and Human Rights

The Bill proposes two changes to the law on deportation. Part 2, clause 12 of the Immigration Bill would enable the Secretary of State to order a person liable to deportation to leave the UK before their appeal is decided. This person would be required to make the appeal, or await the result of their appeal, from outside the UK, provided that the Secretary of State was able to certify that they would not risk serious irreversible harm. The Home Office impact assessment sets out the Government's justification for this provision:

> The Government takes the view that where an in-country appeal is not required such an appeal should not be provided. A power to certify that such an appeal should be heard out-of-country is in line with our international obligations, will bring forward the date of removal, will save detention costs and will help reduce the opportunities for abuse of the appeals system.[56]

Clause 14 of the Bill also seeks to place in primary legislation that a court considering a migrant's right to respect for private and family life under article 8 of the European Convention on Human Rights, must have regard for the public interest. The Immigration Rules were amended to this effect in 2012, however, courts have not always regarded the Immigration Rules as legally binding in this respect.[57] Further information on this subject is available in a House of Commons Library Standard Note: *Article 8 of the ECHR and Immigration Cases*.[58]

Dominic Raab (Conservative MP for Esher and Walton) sought to introduce new clause 15 to the Bill which would have meant that a person liable to automatic deportation (a migrant who had been convicted of a crime and sentenced to a year or more) could no longer appeal against their deportation on human rights grounds, with the exception of the right not to be tortured and the right to life. Appeals on any other human rights grounds, such as the right to respect for private and family life under article 8 of the European Convention on Human Rights, would

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[54] ibid, col 1033.
[55] ibid, col 1031.
[56] Home Office, *Impact Assessment of Reforming Immigration Appeal Rights*, 15 July 2013, p 4.
[57] Izuazu (Article 8—New Rules) [2013] UKUT 00045.
[58] House of Commons Library, *Article 8 of the ECHR and Immigration Cases*, 18 October 2013, SN06355.

no longer be valid, apart from where deportation would "cause such manifest and overwhelming harm to [a person's] children that it overrides the public interest". This was, Dominic Raab suggested, necessary because:

> The problem with which the new clause would deal results from the judicial expansion of the right to family life under article 8 of the European convention, which allows serious foreign criminals to evade deportation. It is, I think, common ground that the Strasbourg Court has steadily eroded United Kingdom deportation powers over the past few decades, but the tightest fetters have come from the UK courts as a result—rightly or wrongly—of the Human Rights Act 1998.[59]

Mr Raab suggested that his new clause was supported by "105 other hon Members from across three parties in this House".[60] He cited examples of cases in which he believed the perpetrator of a crime in the UK had escaped deportation on grounds of the right to family life. He said:

> According to the reply to a freedom of information request that I submitted, the number of successful article 8 challenges to deportations by foreign criminals ranges from 200 to 400 a year, and the latest snapshot indicates that they constitute 89 percent of all successful human rights challenges to deportation orders. It is necessary to study the case law of the Immigration and Asylum Tribunal to appreciate the extent to which such cases warp the moral balance of British justice, endanger the public, and, for many people outside this place, make "human rights" dirty words. That is something that I deeply regret.[61]

Theresa May, Home Secretary, stated "I strongly support the intention behind new clause 15".[62] However, she suggested that the new clause would not be lawful:

> The advice I have received is that it is incompatible with the European Convention on Human Rights. I am concerned with other aspects of the new clause because I believe that in a number of areas it weakens the Government's proposals in relation to article 8. I am also concerned about the practical application of the new clause, because in reality I think we would effectively hinder our ability to deport people for a period of time because there would be considerable legal wrangling about the issue.[63]

Dominic Raab countered that:

> On this point of the legality, it is clear from how the Human Rights Act has been drafted that, where there is an incompatibility, ultimate sovereignty remains with Parliament and the Government. Therefore, the issue of illegality is separate from incompatibility.

He also said that he had taken advice from the Home Office in relation to requests to the European Court of Human Rights to suspend deportation, extradition or expulsion proceedings, known as "rule 39":

> It is also clear from the most recent Home Office advice that I have received, to which hon Members have also referred, that the new clause would not attract a rule 39

[59] HC *Hansard*, 30 January 2014, col 1062.
[60] ibid.
[61] ibid, col 1063.
[62] ibid, col 1102.
[63] ibid, col 1051.

> injunction from Strasbourg. That is because there would be no irreversible harm. It is extremely rare that Strasbourg would even consider a rule 39 injunction in such a case. The original memo that the shadow Minister cited referred to this matter, but the most recent memo from the Home Office team that has been sent to me, which is from November, is very clear: "we do not expect interim measures under rule 39 to be issued routinely, if at all".[64]

David Hanson, Shadow Minister for Immigration, said that "the principle of removal is a reasonable one".[65] However, he agreed with Theresa May that the new clause would not be compatible with the ECHR, and commented that "the ECHR is a valuable tool and we should uphold our obligations within it".[66]

Jack Straw (Labour MP for Blackburn) said that he was "the Minister responsible" for the Human Rights Act, and he remained "proud of it".[67] He suggested that:

> The problem with the Human Rights Act is the way in which our higher courts have interpreted sections 2 and 3. They place on the courts an obligation to "take into account" Strasbourg jurisprudence, but our courts have interpreted that as meaning that our courts should follow Strasbourg jurisprudence. If the House had meant to use the word "follow", we would have put it into the legislation. We did not do so; we used the words "take into account".[68]

Mr Straw suggested that Dominic Raab's new clause would not be compatible with the ECHR, and therefore "with regret" he would not be able to support it.[69] However, he said:

> I hope that the Home Secretary will take away and consider what the hon Member for Esher and Walton has proposed. He was a very good lawyer in the Foreign Office when I was Foreign Secretary. He is not someone who is foaming at the mouth about the Human Rights Act. There is serious purpose in what he has suggested, and there may be a way through to meet halfway, between what the Home Secretary proposes and what he proposes.[70]

Keith Vaz, Chair of the Select Committee on Home Affairs, declared his support for the new clause:

> I was very impressed by the speech made by the hon Member for Esher and Walton (Mr Raab) and I will support new clause 15 if he moves it. It is compatible with what the Select Committee on Home Affairs has been saying for a number of years. We hold the Government to account every three months on the number of foreign prisoners that they manage to remove from this country and every month they produce figures for the Committee. If the new clause is a way of ensuring that that happens on a more regular basis, I will certainly support it.[71]

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[64] ibid, col 1066.
[65] ibid, col 1060.
[66] ibid, col 1061.
[67] ibid, col 1070.
[68] ibid.
[69] ibid, col 1069.
[70] ibid, col 1071.
[71] ibid, col 1099.

Peter Wishart (Scottish National MP for Perth and North Perthshire) described the proposal as an "attack" on the "great protections that we have secured over many decades on the back of the ECHR".[72] New clause 15 was defeated on a division by 241 votes to 97.[73]

4.3.2 The Right of Appeal

Part 2, clause 11, of the Bill would remove the right to appeal an immigration decision at a tribunal, unless the appeal is on human rights, asylum or humanitarian grounds. In other cases, an administrative review may be available. A Home Office impact assessment states that this is necessary because:

> Currently an individual's remedy against an application refused in error is to appeal against that refusal. We do not believe that a costly, complex and lengthy appeal process is the most appropriate way to resolve factual errors. Appeal rights are appropriate for legally and factually complex issues that engage fundamental rights, namely EU free movement rights, human rights, asylum and humanitarian protection.[74]

The Government proposes that appeals should remain available when the appeal is made on human rights, asylum or humanitarian grounds. For all other cases, the Government proposes that an administrative review would be more appropriate. A Home Office factsheet provides information on the administrative review system:

> We make millions of immigration decisions every year and inevitably we do make mistakes. For simple case working errors, we will replicate for those in the UK what we do overseas, which is to have a cheap and quick process of administrative review.
>
> There will be a ten day time limit to apply for review of a refused application. The review will be performed by someone other than the original decision maker. While a review is pending the person in question will not be required to leave the country. If the migrant has permission to work or study they will normally be able to continue to do so while the review is pending. The service standard will be to complete administrative reviews within 28 days, substantially quicker than the current average of twelve weeks for an equivalent appeal to be resolved.[75]

The Public Bill Committee had divided on an opposition amendment to prevent the provisions on the right of appeal from coming into force until a review of immigration decision making had been completed by the Independent Chief Inspector of Borders and Immigration.[76] During the report stage debate, the House divided on opposition amendment 1, which sought to delete clause 11 from the Bill entirely. David Hanson, Shadow Minister for Immigration, said:

> Clause 11 will remove immigration tribunal appeals from the armoury of individuals who wish to stay in the UK, and replace them with administrative review, which, in my view, is already part of the process. This is important because, while the tribunals continue to uphold decisions, in many cases they overturn decisions made by the Home Office. We

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[72] ibid, col 1082.
[73] ibid, col 1107.
[74] Home Office, *Impact Assessment of Reforming Immigration Appeal Rights*, 15 July 2013.
[75] Home Office, *Factsheet: Appeals* (clauses 11–13), October 2013.
[76] House of Commons Public Bill Committee, Immigration Bill, Sixth Sitting, 5 November 2013, col 204.

> have discussed this matter in Committee and elsewhere. We estimate that 50 percent are overturned; the Government have a lower estimate, but we agree that decisions are being overturned at tribunal. If tribunals are abolished, such decisions could not be overturned at tribunal.[77]

The Home Secretary, Theresa May, defended clause 11 during third reading:

> The current appeals system is very complex. There are 17 different immigration decisions that attract rights of appeal, but the Bill will cut that number to four, which I think will prevent abuse of the appeal process. It will also ensure that appeals address only fundamental rights.[78]

Caroline Lucas (Green Party MP for Brighton, Pavilion) supported the opposition amendment, saying:

> It is important that we support that amendment because the latest figures reveal that 32 percent of deportation decisions and 49 percent of entry-clearance applications were successfully appealed last year, yet the Government's depressing response to that large margin of error is not to try to improve the quality of decision making, but to reduce the opportunities for challenge by slashing the scope for appeal.[79]

Amendment 1 was defeated on a division by 301 votes to 210.[80]

4.3.3 Immigration Detention

Sarah Teather (Liberal Democrat MP for Brent Central) spoke to a number of amendments on the detention of immigrants. Amendment 56 sought to limit the time of immigration detention to 28 days. Amendment 57 related to the review of immigration detention cases. Sarah Teather said: "Amendment 57 would ensure that people had an opportunity to challenge their detention by ensuring that it came up regularly for review. The review first happens shortly after they went into detention and then at intervals thereafter. The UNHCR has repeatedly asked us to look at that and I strongly urge the Home Secretary to consider it".[81] Amendments 56 and 57 were not called.

4.3.4 Rights of Children in Immigration Cases

Sarah Teather's amendments 2, 5 and 58 related to the consideration of children in immigration cases. Clause 14 of the Immigration Bill seeks to establish that a court considering a migrant's right to respect for private and family life under the European Convention on Human Rights must have regard for the public interest. Amendment 2 sought to insert a line to determine that the court must first have regard to the best interests of any child affected by such a decision. Amendment 5 sought to remove the requirement in the Bill that a child must be a British Citizen, resident in the UK for a period of seven years or more, in order to be considered as a reason to grant an exception on human rights grounds in immigration or deportation cases.

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[77] HC *Hansard*, 30 January 2014, col 1059.
[78] ibid, col 1125.
[79] ibid, col 1101.
[80] ibid, col 1109.
[81] HC *Hansard*, 30 January 2014, cols 1074–5.

Sarah Teather supported her amendments by saying that:

> Amendments 2 to 5 seek to try to correct the rather confused position in clause 14. If the Secretary of State must give her views about what is in the public interest, it must include children and must be in accordance with the UN convention on the rights of the child, which we have signed up to.
>
> [...] When colleagues have pressed the Immigration Minister on such matters, he has sought to assure them that the courts are still bound by our duties under UNCRC [United Nations Convention on the Rights of the Child] and by the section 55 duty in the Borders, Citizenship and Immigration Act 2009 to ensure that welfare and safeguarding for children are provided for all children in the exercise of immigration functions. If that is the case, I wonder what the point is of tabling something that is confused and contradicts what the Immigration Minister claims will take primacy. As the Joint Committee on Human Rights has noticed, the most likely outcome is that front-line immigration officers will be unclear about the relationship between the section 55 duty and the test in the Bill.[82]

In response to Sarah Teather's arguments Anne Main (Conservative MP for St Albans) said:

> […] if she [Sarah Teather] looks at the intent behind it, she will see that Members such as myself and others across the House wish to see the greater good of the population trump the good of the individual? She is losing sight of other people who may be harmed, who might be other people's children.[83]

Sarah Teather stated that she probably did not share "her utilitarian view of what the greater good is".[84] Jacob Rees-Mogg (Conservative MP for North East Somerset) argued that "if someone is deported for committing a serious crime, it is the fault of that person, not of the state for following the consequence of what that person has chosen to do".[85] Sarah Teather questioned whether it was also the fault of their child. Diane Abbott (Labour MP for Hackney North and Stoke Newington) spoke in defence of Sarah Teather's amendments raising the question:

> Does the hon Lady agree that it has long been a principle of British law that we cannot hold children responsible for the wrongdoing of their parents? I do not know how many Members would want to live in a society where some children have more value than others.[86]

Amendment 58 also addressed the issue of children in immigration cases by seeking to insert a provision into clause 14 of the Bill stating that, in deportation cases, "the promotion of the best interests of children is in the public interest". Amendments 2, 5 and 58 were not called.

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[82] HC *Hansard*, 30 January 2014, col 1075.
[83] ibid, col 1076.
[84] ibid, col 1076.
[85] ibid, col 1076.
[86] ibid, col 1077.

4.3.5 The Use of Force by Immigration Officials

Schedule 1 of the Bill would amend section 146 of the Immigration and Asylum Act 1999 to provide for immigration officers to use reasonable force when it is necessary in the exercise of a power conferred on them by the Immigration Acts. Sarah Teather (Liberal Democrat MP for Brent Central) tabled amendment 60 which would have removed this provision from the Bill. She said:

> It [amendment 60] relates to limits in the use of force by immigration officers and tries to bring it back to the status quo. This seems to be another example of giving a blank cheque, and to an organisation that has hardly covered itself in glory where use of force is concerned. We have had issues with use of force against pregnant women—something on which Her Majesty's Inspectorate of Prisons was extremely critical of the Home Office. We have had the death of Jimmy Mubenga. Those are just two recent examples. It seems to me that a failing organisation that is poorly managed should never be given increased power to use force, especially as many of the functions of immigration officers do not properly involve the use of force at all.[87]

Both Jeremy Corbyn (Labour MP for Islington North) and Caroline Lucas (Green Party MP for Brighton, Pavilion) spoke in favour of amendment 60. Amendment 60 was not called.

5. Third Reading

The Home Secretary, Theresa May, started third reading by outlining why she believed the Bill is necessary:

> It will bring clarity, fairness and integrity to the immigration system, and will address long-standing problems that have prevented the effective operation of immigration controls. It will do that by ensuring that those who are refused permission to stay are required to leave the country, and know that they must do so; by streamlining the appeals system to reduce the scope for playing the system; by ensuring that foreign criminals can be deported first and appeal afterwards, unless there is a real risk of serious irreversible harm; and by ensuring that courts must have regard to the will of Parliament when considering article 8 in immigration cases.
>
> The Bill will make it more difficult for illegal migrants to live in the United Kingdom by denying access to the tools of everyday life. That will include giving landlords a duty to check the immigration status of tenants and imposing penalties on rogue landlords, and denying illegal migrants access to bank accounts and driving licences. We will also strengthen the enforcement of penalties for employers of illegal workers. The Bill reinforces controls to counter sham marriages and sham civil partnerships, conferring new powers and duties, and it will ensure that temporary legal migrants contribute to our national health service [...]
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> [...] The Bill will also help to discharge the Government's commitment to introduce exit checks on people leaving the UK in order to tackle overstaying and prevent people from fleeing British justice.[88]

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[87] ibid, cols 1077–8.
[88] ibid, col 1124.

Yvette Cooper, Shadow Home Secretary, responded by criticising the Government for the time made available for the Bill's report stage, and for lack of debate on several aspects of the Bill's provisions:

> Even though Parliament has had hardly any business, she has kept the Bill away from the House and has then tried to rush it through in four hours today. We have had just four hours to debate a series of important amendments. On our proposals to tackle the impact of immigration on jobs and growth, and to take stronger action on the minimum wage and agencies that exploit immigration, there has been no debate today. On the proposals of Tory Back Benchers on Bulgaria and Romania, there has been no debate today. On the workability of the housing proposals, there has been no debate today. On the fairness of the appeal proposals, there has been no debate today. A series of amendments has been tabled by Members from all parts of the House, but none of them has been debated today.[89]

Julian Huppert (Liberal Democrat MP for Cambridge, Eastern) also raised the fact that there had been no debate on the provisions for NHS charging at report stage. Sarah Teather (Liberal Democrat MP for Brent Central) referred to the potential impact that the Bill could have on the health of migrants:

> […] an issue that has not been mentioned at all today is health. The organisation Doctors of the World, whose clinic I visited last week, is very worried about the Bill's impact on those who do not have residence status. Such people are often extremely vulnerable, and many have been trafficked.[90]

Nicholas Soames (Conservative MP for Mid Sussex) supported the Bill's NHS charging provisions as a "welcome step" stating that:

> With respect to accessing public services, the outstanding business of the first importance relates to controlling access to the national health service. Although the Bill is important and achieves a great deal, there remains the first-order business of dealing with that access. I would be pleased if the Government were to have another look at the question of whether people should gain access to the NHS only on production of an identity card to show that they were entitled to use the services. Having said that, the Bill represents a welcome step and it will go a long way towards building a robust immigration system.[91]

Yvette Cooper criticised the Home Secretary for not voting against NC15 (which related to the automatic deportation of migrants convicted of a crime and sentenced to a year or more) saying that:

> The Home Secretary told the House that she disagreed with the hon Gentleman's new clause, so how on earth could she simply sit on her hands and not take a view on it when it came to the vote? How on earth could she tell the Prime Minister: 'I propose

[89] ibid, col 1126.
[90] ibid, col 1125.
[91] ibid, col 1128.

> that the Government does not support this amendment because it would be incompatible with the ECHR and counter-productive' and then—as Home Secretary, responsible for upholding law and order in Britain—just sit there, scared of her own Back Benchers, and fail to vote against it? There is no precedent for Ministers simply abstaining in this way. This is not a free vote, in which Members are able to make their own decision. The Government simply thought that they would not take a view on the new clause, despite the Home Secretary having told the House that she was opposed to it.[92]

The Shadow Home Secretary concluded her remarks by saying that: "The Bill will not sort out Britain's immigration problems. There are some sensible measures in it, but there is an awful lot missing. Maybe the Home Secretary can get it sorted out in the Lords […]"[93]

The Immigration Bill passed its third reading by 295 votes to 16.[94]

[92] ibid, col 1127.
[93] ibid, col 1127.
[94] ibid, col 1130–2.