



Library Note

Immigration Bill (HL Bill 79 of 2015–16)

This House of Lords Library briefing provides an overview of the Immigration Bill's main provisions and a summary of the Bill's report stage and third reading in the House of Commons.

The Immigration Bill seeks to make a number of changes to legislation including:

- The establishment of a Director of Labour Market Enforcement.
- Extending the right to rent scheme and introducing new criminal offences for landlords who fail to comply with their legal obligations.
- The introduction of a new offence of illegal working.
- The creation of new provisions to allow local authorities to more easily transfer unaccompanied migrant children to other local authorities (added during the Bill's report stage in the House of Commons).
- Extending “deport first, appeal later” from persons liable for deportation to all human rights appeals.

Four amendments by opposition parties were divided on during the Bill's report stage. These were on the issues of illegal working; the extension of right to rent; the Bill's changes to the availability of local authority support to migrants and the Bill's changes to the appeals process. None were successful. The Government made a number of technical amendments to the Bill and added new clauses on the transfer of unaccompanied migrant children between local authorities.

The Immigration Bill passed third reading in the House of Commons by 307 votes to 245.

Further details can be found in the Explanatory Notes to the Immigration Bill. Readers may also be interested in the following publications by the House of Commons Library for earlier stages of the Bill:

- House of Commons Library, [Immigration Bill \[Bill 74 of 2015–16\]](#), 6 October 2015
- House of Commons Library, [Immigration Bill: Committee Stage Report](#), 27 November 2015

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I. Manifesto Commitments

The Immigration Bill seeks to implement a number of the Conservative Party's manifesto commitments on immigration, including:

- The extension of “deport first, appeal later” to “all immigration appeals and judicial reviews, including where a so-called right to family life is involved, apart from asylum claims”.¹
- The introduction of satellite tracking “for every foreign national offender subject to an outstanding deportation order or deportation proceedings”.²
- The introduction of a requirement for all customer-facing public sector workers to speak fluent English.³
- The introduction of “tougher labour market regulation to tackle illegal working and exploitation”.⁴

In a speech made shortly after the general election, the Prime Minister, David Cameron, announced the Government's intention to include an immigration bill in the Queen's Speech. Mr Cameron said that the:

[...] Bill, and the further measures we'll pursue, will focus on 3 big things:

1. Dealing with those who shouldn't be here, by rooting out illegal immigrants and boosting deportations.
2. Reforming our immigration and labour market rules, so we reduce the demand for skilled migrant labour and crack down on the exploitation of low-skilled workers.
3. Addressing the spike in EU migration by renegotiating in Europe.⁵

2. Overview of the Bill

The Immigration Bill was introduced in the House of Commons on 17 September 2015 and had its second reading on 13 October 2015.⁶ Responding on behalf of the Opposition, Andy Burnham, Shadow Home Secretary, moved that:

[...] this House, whilst affirming its belief that there should be firm and fair controls on illegal immigration including new immigration enforcement powers and immigration status checks on current account holders, and particularly welcoming proposals for a Director of Labour Market Enforcement and to strengthen sanctions to be applied to employers of illegal workers, declines to give a Second Reading to the Immigration Bill

¹ Conservative Party, [Conservative Party Manifesto 2015](#), 2015, p 30.

² *ibid*, p 30.

³ *ibid*, p 31.

⁴ *ibid*, p 31.

⁵ GOV.UK, '[PM Speech on Immigration](#)', 21 May 2015.

⁶ [HC Hansard, 13 October 2015, cols 195–285](#).

because the measures overall in the Bill will not decrease illegal immigration, will reduce social cohesion and will punish the children of illegal immigrants for their parents' illegal immigration, because the Government has failed to publish the report on the pilot Right to Rent scheme in the West Midlands which could cause widespread indirect discrimination and because the Bill enables the Home Secretary to remove from the UK migrants who are appealing against a refused asylum claim before the appeal has been determined, notwithstanding the slow appeal process and the high error rate in Home Office decisions.⁷

Labour's motion was defeated by 322 votes to 282.⁸ The Immigration Bill passed second reading by 323 votes to 274.⁹

The Bill's committee stage took place over 15 sittings between 20 October and 17 November 2015. The House of Commons Library explains that:

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

- Clause 11 and Schedule 2 (on illegal working in relation to private hire vehicles)
- Clause 29 and Schedule 6 (on supply of information to the Secretary of State)
- Clause 30 (on detention by immigration officers in Scotland)
- Clause 38 and Schedule 9 (on availability of local authority support)¹⁰

A 'tracked changes' version of the Bill, as amended in Public Bill Committee, is available on the Bill's 'Bills Before Parliament' page on the parliamentary website.¹¹ Report stage took place on 1 December, which is discussed in more detail in section 3. The Bill passed third reading in the House of Commons on the same day by 307 votes to 245.¹²

The Immigration Bill, as brought from the House of Commons, consists of nine parts and twelve schedules. This section briefly summarises the Bill's provisions. These provisions include, but are not limited to, the following:

Part I: Labour Market and Illegal Working (clauses 1 to 12)

The Bill seeks to make a number of changes to legal provisions around illegal working. These include:

- The establishment of a Director of Labour Market Enforcement.¹³ The Director would be required to establish a Labour Market Enforcement Strategy before the beginning of

⁷ [HC Hansard, 13 October 2015, col 203.](#)

⁸ [ibid. cols 277–80.](#)

⁹ [ibid. cols 281–5.](#)

¹⁰ House of Commons Library, [Immigration Bill: Committee Stage Report](#), 27 November 2015, p 3.

¹¹ Immigration Bill, HC Bill 96, [As Amended in Public Bill Committee.](#)

¹² [HC Hansard, 1 December 2015, cols 277–81.](#)

¹³ The Government is currently analysing feedback from a consultation looking at '[Labour Market Exploitation: Improving Enforcement](#)'. The consultation ran from 13 October 2015 to 7 December 2015.

each financial year. This must be submitted to the Secretary of State for approval. Amongst its contents the strategy must include:

[...] an assessment of the scale and nature of non-compliance in the labour market; how labour market enforcement functions should be exercised (including education, training and research carried out by the relevant enforcers) and how the funding should be allocated; the activities the Director proposes to undertake during the year in relation to his or her intelligence hub and other matters the Director considers appropriate.¹⁴

- The amending of the Immigration, Asylum and Nationality Act 2006 to make it easier to bring criminal prosecutions against individuals who knowingly employ an illegal worker, when the individual has been directly involved in the offence.
- The creation of a new offence of illegal working and allowing the earnings of illegal workers to be seized under the Proceeds of Crime Act 2002.
- The provision of powers to immigration officers to enable them to close a business's premises for 48 hours in certain cases where the employer has previously been given a civil penalty or has been prosecuted for employing illegal workers.
- Amending licensing legislation so that a licence cannot be issued to an illegal worker and to make the employment of illegal workers a factor that may be taken into consideration when issuing or revoking licences.
- Making immigration checks by driving licensing authorities mandatory.

Part 2: Access to Services (clauses 13 to 19)

The Bill seeks to make provision for the extension of the 'right to rent scheme'.¹⁵ It would enable landlords to obtain possession of their property where their tenant no longer has legal right to rent under the Immigration Act 2014. It would also create four new offences to target 'rogue' landlords who repeatedly fail to comply with the right to rent scheme, or who fail to evict individuals whom they know or have reasonable cause to believe are unable to rent due to their immigration status. Part 2 would also:

- Make provision for police and immigration officers to search for and seize UK driving licences which are found in the possession of anyone who is not legally resident in the UK. It also introduces a new criminal offence of driving in the UK whilst being an illegal migrant.
- Place a duty on banks and building societies to perform periodic checks for individuals who may be holding a current account when they are disqualified from doing so by reason of their immigration status. The bank or building society must then notify the Home Office.

¹⁴ [Explanatory Notes](#), para 57.

¹⁵ Right to rent was established under powers in the Immigration Bill 2014 and has been in force in parts of the West Midlands as part of a pilot since 1 December 2014. The right to rent scheme requires private landlords to determine that their tenants have a legal right to remain in the UK.

Part 3: Enforcement (clauses 20 to 33)

The Bill would expand the existing powers of immigration officers. The Bill would give immigration officers—during the course of their immigration duties—the power to seize evidence they may find which relates to non-immigration offences. This would apply where the officer has reasonable grounds to believe the item has been obtained in the commission of a criminal offence, and where the item might otherwise be concealed, damaged or destroyed.

It would also allow immigration detainee custody officers, prison officers and prisoner custody officers to search for and seize nationality documents for individuals in their custody.

It would enable the Secretary of State to impose an electronic monitoring condition on foreign national offenders released on bail, in instances when the First-tier Tribunal has not added such a condition.

Part 4: Appeals (clauses 34 to 36)

Clause 34 of the Bill makes changes to the Secretary of State's power to certify that the temporary removal of a person liable to deportation will not breach the UK's human rights obligations, as provided by section 94B of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014). This would extend the Secretary of State's power to certify claims made on this basis to all those who have made a human rights claim (and are subject to immigration control).

Part 5: Support for Certain Categories of Migrant (clauses 37 to 43)

The Bill makes a number of changes to the way in which local authorities assess and provide accommodation and subsistence support for destitute families without immigration status. It prevents a local authority from giving care leaver support to adult migrants without immigration status, including failed asylum seekers who have exhausted their appeal rights. The Bill makes alternative arrangements for their support prior to their departure from the UK.

The Bill seeks to enable local authorities to transfer unaccompanied children to other local authorities to ensure the responsibility for such individuals is not borne by a small number of authorities. This was added to the Bill during its report stage in the House of Commons (see section 3.2).

Part 6: Border Security (clauses 44 to 46)

The Bill would introduce a civil penalty regime to be applied to airlines and port operators who allow passengers to disembark without being presented to immigration control.

The Bill would extend certain immigration officer powers so that they can be used in UK territorial waters. This would mean that vessels are not necessarily required to reach the UK and disembark their passengers for such powers to be exercised.

The Bill would enable 'travel bans' to take effect in the UK automatically without the need for secondary legislation.

Part 7: Language Requirements for Public Sector Workers (clauses 47 to 54)

Public sector workers in customer-facing roles would be required to speak fluent English, with guidance to be provided in a code of practice.

Part 8: Fees (clauses 55 to 59)

The Bill would introduce an “immigration skills charge” which would be levied on employers who sponsor non-EEA migrants. The scope of this provision and the rate charged would be set out in regulations.

The Bill would make amendments to the way in which fees are charged for passports. This would allow fees to be charged which can exceed the operational costs of premium services, in order that the basic service may be subsidised.

Additional provisions would be made to allow fees to be set for a wider range of services offered by the General Register Office, for example for the correction of birth or death certificates.

Part 9: Final Provisions

This Part provides powers to make transitional and consequential provision. It also makes provision for commencement by order and about the extent of the Act

Further details can be found in the Explanatory Notes to the Immigration Bill.¹⁶ Readers may also be interested in the following publications by the House of Commons Library for commentary on earlier stages of the Bill’s consideration in the House of Commons:

- House of Commons Library, [Immigration Bill \[Bill 74 of 2015–16\]](#), 6 October 2015
- House of Commons Library, [Immigration Bill: Committee Stage Report](#), 27 November 2015

3. Report Stage

Four opposition amendments were divided upon during the Bill’s report stage in the House of Commons, on 1 December 2015. The Government also tabled a number of amendments which were agreed without division. This section outlines these amendments and provides a brief summary of the debate on them. It should also be noted that a number of other amendments were also tabled to the same areas of the Bill as the amendments which proceeded to division.

There were a number of amendments tabled by Labour and SNP MPs which were also discussed but not pressed to division. These included the possibility of time limits being placed on immigration detention, the detention of vulnerable people (especially of pregnant women), new clauses to more easily enable family reunions and some discussion on the Bill’s provisions on English language requirements for customer-facing public sector workers. Section 3.3 provides a very short overview of the discussion on immigration detention.

The full range of amendments that were tabled can be found in the [House of Commons amendment paper Consideration of Bill \(Report Stage\)](#) (1 December 2015).

¹⁶ [Explanatory Notes](#).

3.1 Divisions on Opposition Amendments

Illegal Working

A number of amendments were tabled to the Bill's provisions for the introduction of a new offence of illegal working by illegal immigrants. Amendment 19 was the only such amendment that was pressed to division.

Labour's amendment 19 would have deleted clause 8 from the Bill, effectively removing its provisions on illegal working. The explanatory notes to the Bill explain that clause 8 would:

[...] make it a criminal offence for a person subject to immigration control to work if they have not been granted leave to enter or remain, have overstayed that leave, or are in breach of a condition on that leave that prohibits work.¹⁷

Individuals convicted of this new offence could have their earnings seized under the Proceeds of Crime Act 2002.¹⁸

Speaking on clause 8, Keir Starmer, Shadow Home Office Minister, argued that "Time and again in the House and elsewhere the point has been made about the exploitation of the vulnerable",¹⁹ and that:

Clause 8 is likely to ensure that the most exploited and vulnerable will become even more so; in effect, it will simply strengthen the hand of gangmasters over exploited workers. It also fails the test of necessity. There are already criminal provisions relating to those who have breached immigration rules and there is no need to introduce a new criminal offence for employees. We are talking about the most vulnerable and exploited people, who need the confidence to come forward if the director [of Labour Market Enforcement] is to achieve the functions set out in the Bill.²⁰

Stuart C McDonald (SNP MP for Cumbernauld, Kilsyth and Kirkintilloch East) also spoke in favour of the amendment. He said that the SNP were concerned that the new offence:

[...] will have little effect in terms of immigration control, but will have other significant adverse effects. In this case, the negative consequence is to undermine the decent work that the Government have been doing to tackle slavery and trafficking. The Bill will drive exploited, undocumented workers further underground, and leave them more at risk of exploitation, rather than less.²¹

However, Gavin Robinson (DUP MP for Belfast East) explained that his party could not lend its support to amendment 19, arguing that it:

[...] is important that the Government take the necessary powers and tools to ensure that those working in the country do so legally and properly and recognise that there are penalties and consequences for not adhering to the law of the land.²²

¹⁷ [Explanatory Notes](#), para 73.

¹⁸ *ibid*, para 9.

¹⁹ [HC Hansard, 1 December 2015, col 184](#).

²⁰ *ibid*, col 185.

²¹ *ibid*, col 181.

²² *ibid*, col 202.

Amendment 19 was defeated by 312 votes to 256.²³

Speaking at third reading, Theresa May, Home Secretary, returned to the illegal working provisions, asserting that:

[...] illegal working remains one of the principal pull factors for people coming to live in the UK illegally, so we are taking the necessary step of making illegal working a criminal offence. This addresses a genuine gap in our ability to use proceeds of crime powers to seize and confiscate the profits made by those who choose to break our immigration laws. But we should be clear that this measure is not intended to—nor will it—punish the vulnerable, such as those who are trafficked here and forced to work illegally. The safeguards provided in the Modern Slavery Act 2015 will continue to protect people in those circumstances.²⁴

Extension of Right to Rent Legislation

Right to rent was established under powers in the Immigration Bill 2014 and has been in force in parts of the West Midlands as part of a pilot since 1 December 2014. The right to rent scheme requires private landlords to determine that their tenants have a legal right to remain in the UK. The Bill's right to rent provisions would introduce new offences for landlords and letting agents who fail to comply with their obligations; make it easier for landlords to obtain possession of their properties where tenants no longer have a right to rent; and provide for the scheme to be extended to other parts of the United Kingdom. Further background to right to rent can be found in the House of Commons Library's briefing [Private Landlords: Duty to Carry out Immigration Checks](#) (21 September 2015).

A number of amendments were tabled to the Bill's provisions on the right to rent scheme, which addressed different aspects of the provisions. Amendment 35 was the only such amendment to be pressed to division.

The SNP's amendment 35 would have deleted clauses 13, 14, 15 and 16 from the Bill, effectively removing the Bill's provisions on right to rent. Stuart C McDonald (SNP MP for Cumbernauld, Kilsyth and Kirkintilloch East) described the eviction provisions as "Dickensian". He argued that the right to rent scheme was not:

[...] evidence-based, but in fact flies in the face of the evidence provided by the Joint Council for the Welfare of Immigrants, and indeed parts of the Government's own pilot review. It is unfair to place these duties and now criminal sanctions on landlords, and it will lead to inadvertent discrimination or racism, with foreign nationals and even British citizens without documents at risk of being rejected from a tenancy whenever there is a safe and easy option of a British passport holder to rent to. It will push more families away from authorities and immigration control, making enforcement harder, not easier.²⁵

²³ [HC Hansard, 1 December 2015, cols 209–13.](#)

²⁴ [ibid, col 269.](#)

²⁵ [ibid, col 181.](#)

Anne McLaughlin (SNP MP for Glasgow North East) spoke against the right to rent provisions stating that in her view they “simply will not work, but will increase discrimination and racism”.²⁶ She also argued that:

It certainly should not be implemented in Scotland without seeking the permission of Members of the Scottish Parliament, to whom housing is devolved, among other things. It should be removed in its entirety from the Bill.²⁷

On 20 October 2015, the Government published [Evaluation of the Right to Rent Scheme: Full Evaluation Report of Phase One](#). The report used a variety of research methods including interviews, online surveys and focus groups. It employed a ‘mystery shopper’ method to check for possible discrimination resulting from the scheme. The Joint Council for the Welfare of Immigrants (JCWI) published an evaluation of the scheme entitled [“No Passport Equals No Home”: An Independent Evaluation of the ‘Right to Rent’ Scheme](#) (3 September 2015). JCWI used a combination of surveys, meetings and a call for evidence to assess the pilot.

Speaking for the Opposition, Keir Starmer, Shadow Home Office Minister, argued that the right to rent provisions had not been properly evaluated, contesting that:

The Home Office itself said that it was not sure about the statistical significance of part of the evaluation and that the sample sizes were too small to draw any robust conclusions. We say that the assurance in relation to the civil penalty scheme has not been fulfilled and there is no warrant for extending the scheme to include a criminal sanction.²⁸

Labour also tabled a number of amendments to the eviction provisions with Mr Starmer arguing that the Bill “cuts through [the] protection” of due process “for no good reason”, particularly the provisions which give a notice from the landlord the force of an order of the High Court (paragraph 7 of section 33D as inserted into the Immigration Act 2014 by clause 14 of the Bill).²⁹

Responding to the debate on the extension to right to rent, James Brokenshire, Minister of State at the Home Office for security and immigration, stated that the right to rent scheme “restricts the access of illegal migrants to the private rented sector, stopping them setting down roots and building ties”.³⁰ He also argued that scheme had been in place for one year and as working as intended.³¹ Mr Brokenshire spoke against concerns of increased discrimination, contending that the Government’s evaluation of the scheme “found no hard evidence of discrimination or any new barriers to lawful residents accessing the private rented sector”, and that:

Repealing the right-to-rent scheme would remove a significant part of the Government’s measures to deter illegal migration. The Bill’s provisions on residential tenancies are aimed to make it easier for the majority of reputable landlords to evict illegal migrant

²⁶ [HC Hansard, 1 December 2015, col 195.](#)

²⁷ [ibid, col 195.](#)

²⁸ [ibid, col 185.](#)

²⁹ [ibid, col 186.](#)

³⁰ [ibid, col 207.](#)

³¹ [ibid, col 207.](#)

tenants and to crack down further on those rogue landlords who do so much to damage the sector.³²

He sought to allay the concerns of some Members by stating the new offences were not:

[...] designed to catch out a landlord who has made a genuine mistake, and it is difficult to foresee a situation in which it would be in the public interest to pursue a prosecution against a landlord making reasonable efforts to remove illegal migrants from their property.³³

Amendment 35 was defeated by 309 votes to 257.³⁴

Availability of Local Authority Support for Certain Categories of Migrant

Labour's amendment 29 would have removed clause 37 from the Bill. Clause 37 gives effect to the Bill's schedule 8. Schedule 8 makes a number of changes to the support available to certain categories of migrant. It amends the provisions to support destitute asylum seekers and their dependents under section 95 of the Immigration and Asylum Act 1999, in the following ways:

- a) Persons who have children in their household at the time their asylum claim and any appeal is finally rejected will no longer be treated as though they were still asylum seekers and so will no longer be eligible for support under section 95.
- b) Persons who have been refused asylum but made further submissions that they have asked to be treated as a fresh claim for asylum may be eligible for support under section 95 if a decision on the further submissions has not yet been made.
- c) Persons whose further submissions have been rejected but who have been granted permission to apply for a judicial review of the rejection may be eligible for support under section 95.³⁵

Speaking in support of amendment 29, Keir Starmer, Shadow Home Office Minister, argued that the removal of support by clause 37 and schedule 8:

[...] is wrong in principle and likely to be counterproductive. All the evidence is one way—support for families facing removal is the best means of ensuring that they leave. By support, I mean not only support in the terms set out in the Bill, but support by way of help with obstacles, documents and advice. It is the families that are supported in that broad way that are most likely to leave, and thus the objective is achieved by having the support in place. By contrast, withdrawing support has the opposite effect.³⁶

Much of the discussion on this part of the Bill focussed on a pilot that was conducted by the then Labour Government in 2005. This piloted powers in schedule 3 of the Nationality, Immigration and Asylum Act 2002 to cease support to failed asylum seeker families. In August 2015, the current Conservative Government started a consultation on 'Reforming Support for

³² [HC Hansard, 1 December 2015, col 207.](#)

³³ [ibid, col 208.](#)

³⁴ [ibid, cols 213–17.](#)

³⁵ [Explanatory Notes](#), para 372.

³⁶ [HC Hansard, 1 December 2015, col 234.](#)

Failed Asylum Seekers and Other Illegal Migrants'. The consultation response was published on 3 November 2015.³⁷ The consultation response stated that the 2005 pilot:

[...] showed that [ceasing support to failed asylum seeker families] would not lead to more failed asylum seeker families leaving the UK. They would instead abscond and 'go to ground', increasing the welfare risk to their children and their own risk of exploitation.³⁸

However, addressing amendment 29 during report, James Brokenshire, Minister of State at the Home Office for security and immigration, argued that there were several reasons why the Government now believed that such a policy would be effective. Firstly, Mr Brokenshire argued that the onus on the Home Office to show that a family was not cooperating with return would be removed and that "the family will have to show that there is a genuine obstacle to their departure at the point when they have exhausted their appeal rights".³⁹ Secondly, that:

[...] the 2005 pilot involved a largely correspondence-based process in cases that had exhausted appeal rights in the previous eleven months. The new approach will involve a managed process of engagement with the family, in tandem with the local authority, following the end of the appeal process, to discuss their situation and the consequences of not leaving the UK when they can.⁴⁰

Thirdly, that the Government judged that "circumstances have changed: it is now more generally recognised that the taxpayer should not have to support illegal migrants who could and should leave the UK".⁴¹

Keir Starmer responded to these points by saying that "the idea seems to be that putting the onus on the family to prove a genuine obstacle will make them less likely to go underground if support is withdrawn".⁴² Mr Starmer argued that "there is no rational link between the two propositions".⁴³ He also said that he did not think that a move towards a more "engaged" process would make a difference to the "stark results of the 2005 pilot" and that "destitution should not be a means of enforcing immigration rules".⁴⁴

Stuart C McDonald also spoke against the Bill's provisions in this area, and in favour of amendment 29, saying that:

In our view, provisions that seek to use the further deliberate infliction of destitution, including of children, as a tool of immigration policy must be thoroughly opposed. The provisions fly in the face of evidence, are counter-productive and show a grim lack of compassion. We support all amendments seeking to prevent, or at least limit, the damage. They include amendment 29, which would remove clause 37 and therefore most of the damaging changes.⁴⁵

³⁷ Home Office, [Reforming Support for Failed Asylum Seekers and Other Illegal Migrants: Response to Consultation](#), 3 November 2015.

³⁸ *ibid.*, p 4.

³⁹ [HC Hansard, 1 December 2015, col 226](#).

⁴⁰ [ibid., col 226](#).

⁴¹ [ibid., col 226](#).

⁴² [ibid., col 234](#).

⁴³ [ibid., col 234](#).

⁴⁴ [ibid., col 234](#).

⁴⁵ [ibid., col 243](#).

Responding to Keir Starmer, James Brokenshire added that:

[...] there will be focused and targeted engagement with appeal rights-exhausted families together with local authorities. That close engagement with families is in contrast with what happened before. The Local Government Association acknowledges the need for focused efforts to engage with families and adults to promote returns, and that is precisely what we intend to do.⁴⁶

Amendment 29 was defeated by 313 votes to 259.⁴⁷

Appeals within the UK: Certification of Human Rights Claims

Clause 34 of the Bill makes changes to the Secretary of State's power to certify that the temporary removal of a person liable to deportation will not breach the UK's human rights obligations, as provided by section 94B of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014). The Explanatory Notes to the Bill explain that:

The Secretary of State can use this power even if there is an appeal outstanding against the decision to refuse a person's human rights claim. Where this power is exercised an appeal may only be brought (or continued) from outside the UK.⁴⁸

Clause 34 would extend the Secretary of State's power to certify claims made on this basis to:

[...] all those who have made a human rights claim (and are subject to immigration control). This is consistent with the case-law of the European Court of Human Rights, which does not require that appeals against all human rights claims must suspend removal.⁴⁹

The SNP's amendment 27 would have removed clause 34 from the Bill. James Brokenshire explained that these provisions were a Conservative manifesto commitment. He argued that the provisions would:

[...] build on the success of section 94B, which was introduced by the Immigration Act 2014 and has resulted in more than 230 foreign national offenders being deported before their appeal.⁵⁰

Speaking for the SNP, Stuart C McDonald described the provisions as "atrocious" and said that the provisions would mean "no longer just 'deport first, appeal later' for those convicted, but 'remove first, appeal later' for all", and would risk:

[...] people having to give up jobs, studies and family life while appeals are ongoing. Families could be separated for lengthy and unknown periods until their appeal is finally determined.⁵¹

⁴⁶ [HC Hansard, 1 December 2015, cols 253–4.](#)

⁴⁷ [ibid, cols 257–61.](#)

⁴⁸ [Explanatory Notes](#), para 174.

⁴⁹ [ibid](#), para 175.

⁵⁰ [HC Hansard, 1 December 2015, col 233.](#)

⁵¹ [ibid, col 245.](#)

Keir Starmer was concerned that although “there may be court cases establishing that these provisions or their forerunners do not extinguish the rights of appeal, there is no question but that they materially inhibit the right of appeal”.⁵²

Amendment 27 was defeated by 304 votes to 260.⁵³

3.2 Government Amendments

The Government made a number of amendments to the provisions of schedule 9 (which simplifies the framework on restrictions on access to local authority support). James Brokenshire, Minister of State at the Home Office for security and immigration, explained that “amendments 8 to 16 make technical improvements to those provisions”.⁵⁴ The Government also made amendments to change the wording of clause 25 to replace ‘strip search’ with ‘full search’ in order to allay any concerns that a person may be stripped completely.⁵⁵ Clause 25 would give detainee custody officers, prison offers and prison custody officers the power to search a detained person, who is liable to removal or deportation, for relevant documents, when directed by the Secretary of State.

The Government also added several new clauses to the Bill to allow unaccompanied migrant children to be transferred between local authorities (clauses 39, 40, 41, 42 and 43 in the Bill as introduced in the House of Lords). James Brokenshire, Minister of State at the Home Office for security and immigration, explained that:

The amendments introduce a new power to facilitate the transfer of unaccompanied asylum-seeking children from one local authority to another; enable the Secretary of State to direct local authorities to provide information about their support to children in their care—this will inform new transfer arrangements; enable the Secretary of State to direct a local authority that refuses to comply with a request to accept an unaccompanied asylum-seeking child to provide written reasons; enable the Secretary of State to require local authorities to co-operate in respect of transfers; and enable the provisions to be extended across the UK by regulations, subject to the affirmative procedure and informed by further dialogue with the devolved Administrations.⁵⁶

The Minister argued that these provisions would assist local authorities such as Kent who have “nearly 1,000 unaccompanied asylum-seeking children”⁵⁷ and that “the new provisions will ensure that there is a more equitable distribution of such cases across the country and that the welfare of vulnerable children continues to be safeguarded”.⁵⁸

Kelly Tolhurst (Conservative MP for Rochester and Strood) said that she was pleased by the amendments on unaccompanied minors, because of the “great pressure on social care” in

⁵² [HC Hansard, 1 December 2015, col 235.](#)

⁵³ [ibid, cols 264–8.](#)

⁵⁴ [ibid, col 225.](#)

⁵⁵ Please see the House of Commons Library’s [Immigration Bill: Committee Stage Report](#) (27 November 2015, p 21) for a fuller discussion of this issue during the Bill’s House of Commons committee stage.

⁵⁶ [HC Hansard, 1 December 2015, cols 224–5.](#)

⁵⁷ [ibid, col 224.](#)

⁵⁸ [ibid, col 225.](#)

counties such as Kent.⁵⁹ Keir Starmer, Shadow Home Office Minister, said that Labour also supported the new clauses.⁶⁰

3.3 Other Issues Discussed

Beyond those subjects on which there were divisions, a number of other issues were discussed at length at the Bill's report stage. These included:

- Time limits for those held in immigration detention.
- The detention of vulnerable people, such as pregnant women.
- The issue of family reunions for asylum seekers.

Detention: Time Limits and Vulnerable People

The Bill's provisions on English language fluency for customer-facing public sector workers were also briefly discussed.

Several amendments were tabled to the Bill to make provision for the introduction of a time limit on immigration detention. Speaking for the SNP, Stuart C McDonald argued that "immigration detention without a fixed and certain time limit was no longer acceptable".⁶¹ Keir Starmer echoed this by saying that the issue of immigration detention is "one of increasing concern and justifying indefinite immigration detention is increasingly difficult".⁶² Rebecca Harris (Conservative MP for Castle Point) argued that whilst:

[...] I fully appreciate the thinking behind such amendments, I cannot support them because introducing a time limit on detention is, I believe, a poor approach to an important issue. I believe also that new clause 13 is premature as we await the results of several Government reviews of the whole system of detention.⁶³

In February 2015, the Government appointed Stephen Shaw—a former Prisons and Probation Ombudsman for England and Wales—to lead a review of immigration detention, including healthcare provision, Home Office policies and operational practices.⁶⁴ On 26 March 2015, Lord Bates, Parliamentary Under-Secretary of State at the Home Office, said that he would write to Mr Shaw to ask him to extend his review to include the detention of pregnant women and people with disabilities.⁶⁵ The House of Commons Library's [Immigration Detention in the UK: An Overview](#) (7 September 2015), provides further background information on this subject.⁶⁶

⁵⁹ [HC Hansard, 1 December 2015, col 243.](#)

⁶⁰ [ibid, col 234.](#)

⁶¹ [ibid, col 182.](#)

⁶² [ibid, col 186.](#)

⁶³ [ibid, col 183.](#)

⁶⁴ GOV.UK, '[Home Secretary Announces Independent Review of Welfare in Detention](#)', 9 February 2015.

⁶⁵ [HL Hansard, 26 March 2015, col 1588.](#)

⁶⁶ The Government has said that it wants to ensure that the report and the Government's response is laid before parliament before the Immigration Bill completes its passage through parliament; [House of Lords, written answer: Welfare in Detention of Vulnerable Persons Review, 9 November 2015, HL3401.](#)

Richard Fuller (Conservative MP for Bedford) argued that “immigration detention has moved from being a part of the immigration system to being the substantive and default position”.⁶⁷ He went on to say that:

It would be nice to hear from the Minister that he gets that and that he is focusing on an effective way to achieve what the people of this country want: that we remove, effectively and compassionately, people with no right to be here, while standing up for things we want to protect—namely, our compassion and our values.⁶⁸

Responding to Mr Fuller, James Brokenshire, Minister of State at the Home Office for security and immigration, said that:

My hon. Friend makes some important points about vulnerability, and he knows that Stephen Shaw’s review will focus on that. We will come back to the House soon—before Committee stage in the House of Lords—to respond to the report and to allow, I hope, further detailed examination.⁶⁹

English Language Fluency Requirement

On the Bill’s provisions on English language fluency requirements for public sector workers, Gavin Robinson (DUP MP for Belfast East) highlighted the fact that “the Bill specifically excludes the provisions in part 7 from applying to Northern Ireland”.⁷⁰ Mr Brokenshire responded saying that:

[...] certain drafting issues need further attention to make the provision effective and consistent with those in the other nations of the UK, but we certainly intend to return to it in the Lords.⁷¹

4. Third Reading

In opening debate on third reading in the House of Commons, Theresa May, Home Secretary, said that:

This Bill will build on our achievements and ensure that we have an immigration system that is firm and effective, fair on the British public and on those who come here legitimately, and, most importantly, serves the national interest.⁷²

Speaking for the Opposition at third reading, Andy Burnham, Shadow Home Secretary, said that Labour would be voting against giving the Bill a third reading because:

[...] the Government have failed to listen in Committee and failed to produce any meaningful evidence that the measures in the Bill will have any more success than the steps that they took in the last Parliament. Worse, by legislating in this ill-conceived

⁶⁷ [HC Hansard, 1 December 2015, col 203.](#)

⁶⁸ [ibid, col 203.](#)

⁶⁹ [ibid, col 204.](#)

⁷⁰ [ibid, col 246.](#)

⁷¹ [ibid, col 247.](#)

⁷² [ibid, col 270.](#)

way, they have produced a Bill that could have a number of unintended and pernicious consequences.⁷³

However, closing his comments on the Bill, Mr Burnham said:

Let me end on a more positive note that gives us a glimmer of hope for the Bill's onward passage to another place. I am pleased that the Minister, whom Labour Members have time for, has conceded significant ground on immigration detention. That has had strong support from Members on both sides [...]⁷⁴

The SNP's Stuart C McDonald also said that the SNP would be voting against giving the Bill a third reading, stating:

We should reject this flawed Bill, which is designed to pursue a flawed target. Indeed, saying that it seeks to pursue that flawed target is in itself almost certainly being too kind, because it has zero chance of getting us anywhere near the target. This is not pursuit, but pretence. The Bill has been well described as "immigration theatre".⁷⁵

The Immigration Bill passed third reading in the House of Commons by 307 votes to 245.⁷⁶

⁷³ [HC Hansard, 1 December 2015, col 271.](#)

⁷⁴ [ibid, col 273.](#)

⁷⁵ [ibid, col 274.](#)

⁷⁶ [ibid, cols 277–81.](#)

5. Selected Further Reading

- All-Party Parliamentary Group on Migration and All-Party Parliamentary Group on Refugees, [The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom](#), 3 March 2015. The report was debated in both Houses: [HC Hansard, 10 September 2015, cols 578–80](#) and [HL Hansard, 26 March 2015, cols 1565–89](#).
- Home Office, [Immigration Bill: European Convention on Human Rights Memorandum](#), 17 December 2015
- Home Office, [Immigration Bill: Delegated Powers Memorandum](#), 1 December 2015
- Home Office, [Immigration Bill European Convention on Human Rights](#), 26 November 2015
- Home Office, [Immigration Bill: Overarching Impact Assessment](#), 25 November 2015
- Home Office, [Reforming Support for Failed Asylum Seekers and Other Illegal Migrants: Response to Consultation](#), 3 November 2015
- Home Office, [Immigration Bill 2015/16: Factsheet—Overview of the Bill](#), September 2015
- House of Commons Library, [Migration Statistics](#), 3 December 2015
- House of Commons Library, [Immigration Bill: Committee Stage Report](#), 27 November 2015
- House of Commons Library, [Immigration Bill \[Bill 74 of 2015–16\]](#), 6 October 2015
- House of Commons Library, [Private Landlords: Duty to Carry out Immigration Checks](#), 21 September 2015
- House of Commons Library, [Asylum Statistics](#), 23 September 2015
- House of Commons Library, [Immigration Detention in the UK: An Overview](#), 7 September 2015