Immigration Bill: Committee Stage Report

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The *Immigration Bill* was introduced in the House of Commons on 10 October 2013 and had its Second Reading on 22 October. Background information about the Bill is available from the Immigration Bill pages on the Gov.uk website.

The Bill was considered in Public Bill Committee over 11 sittings held between 29 October and 19 November 2013. The Committee took evidence from external stakeholders and the Minister for Immigration during the first four sittings and also invited written submissions of evidence. These submissions can be found on the Immigration Bill pages on the Parliament website, alongside other information about the Bill and its progress through Parliament.

This Note discusses the main issues debated in Committee over the remaining seven sessions. It complements House of Commons Library Research Paper 13/59, which was prepared for Second Reading debate.

The Immigration Bill is due to have Report stage and Third Reading on 30 January 2014.

Contents

1 Introduction

The *Immigration Bill* was introduced in the House of Commons on 10 October 2013 and had its Second Reading on 22 October. Background information about the Bill is provided in the House of Commons Library Research Paper 13/59, which was prepared for Second Reading debate. Further background information is available from the Immigration Bill pages on the Gov.uk website.[1]

There were 11 sittings of the Commons Public Bill Committee, running from 29 October to 19 November. The Committee took evidence from external stakeholders and the Minister for Immigration over the first four sittings. The Committee also issued a call for written evidence from interested parties. These submissions of evidence, along with other information about the Bill's progress, can be found on the Immigration Bill pages on the Parliament website.

2 Second Reading debate

Speaking on behalf of the Opposition at Second Reading on 22 October 2013, Yvette Cooper, Shadow Home Secretary, said that Labour agreed that some of the Bill's proposals were sensible. These included those related to preventing sham marriages, restricting access to driving licences and bank accounts, and introducing a migrant healthcare levy to contribute to the costs of the NHS, although Ms Cooper cast doubt on how effectively some of these would tackle illegal immigration in practice.[2] She criticised the proposals related to landlords' obligations to check tenants' immigration statuses for lack of detail, and said that

1 Gov.uk, Immigration Bill pages [accessed 23 January 2014]
2 HC Deb 22 October 2013 c170-2

the clauses proposing widespread abolition of appeal rights raised "genuine and serious concerns".[3]

However, she contended that the Bill "did not go far enough" in dealing with issues related to immigration and the labour market and illegal immigration:

> The real gap in the Bill is that is says nothing about the exploitation of immigration in the workplace. There is nothing to deal with employers who take on illegal migrant workers or to tackle the exploitation of legal migration by the undercutting of wages and conditions in the local labour market. There is nothing to deal with the lack of enforcement of the minimum wage, or employers who use loopholes in the minimum wage to overcharge workers for overcrowded accommodation and offset that against their pay. There is nothing to deal with agencies that recruit only from overseas and exclude local workers from their books, or employers who recruit for some shifts only from certain nationalities.[4]

She said that Labour intended to table amendments to deal with some of those issues, in particular in relation to enforcement of the minimum wage and unscrupulous practices in employment agencies. She concluded:

> The Bill does not do what the Government claim it does. Some of the measures are sensible, some are confused, and some are of serious concern. They claim it tackles illegal immigration, but it does nothing of the sort. It fails to do enough to tackle the serious problems.[5]

Nevertheless, she said that Labour would not oppose the Bill at Second Reading stage, on the basis that

> "we believe it should go to Committee so we can amend and reform it, use the opportunity to introduce better and fairer controls to deal with the Government's failures, and make immigration work for all".[6]

The provisions related to restrictions on appeal rights, landlords' obligations to check tenants' immigration status, and restrictions on migrants' access to the NHS were referred to by many other Members who spoke in the debate.[7]

Barry Gardiner was one of the Members who criticised the proposals related to appeal rights. He said that, when taken in conjunction with proposed changes to judicial review funding and legal aid changes, the proposed changes would result in "individuals without any form of redress and the Home Office with no imperative to improve its processes."[8] Several other Members also spoke of the importance of providing for an independent route of appeal, and argued in favour of improving the speed and quality of initial decision-making and Home Office administration.[9] Conversely, some other Members considered that the reforms to appeal rights would help to simplify and speed up the process of making and enforcing immigration decisions.[10]

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3 HC Deb 22 October 2013 c172; c176
4 HC Deb 22 October 2013 c176
5 HC Deb 22 October 2013 c176
6 HC Deb 22 October 2013 c176
7 HC Deb 22 October 2013 c156-262
8 HC Deb 22 October 2013 c198
9 HC Deb 22 October 2013 c181-2; c188-9; c233
10 HC Deb 22 October 2013 c213; c219, c232, c237

Several Members raised concerns about the proposals on landlords' obligations, arguing in particular that they would be unworkable and could lead to racial profiling in the letting of properties.[11] Pete Wishart contended that the Bill "will turn race relations into a nightmare, bringing suspicion based on ethnicity into our social services and the housing market".[12] David Lammy suggested that some British citizens would also encounter difficulties proving their status and entitlements, bearing in mind that up to 40% of the British population do not have a passport.[13]

On the other hand, Robert Syms and Jake Berry, amongst others, argued that many landlords already perform the type of checks proposed in the Bill, and that persons with a right to be in the UK would not be adversely affected.[14] John Howell suggested that the proposed measures would be "a positive way of landlords contributing to British society given the proven link between migrants and rented accommodation", whilst acknowledging that the system must be "clear and easy to comply with".[15]

Some measures in the Bill attracted broad support from Members at Second Reading stage, for example those related to preventing sham marriages and oversight of immigration advisers.[16]

The House agreed to the Bill's Second Reading by 303 votes to 18.[17]

3 Issues raised at Committee Stage

The Public Bill Committee had 11 sittings between 29 October and 19 November. The Committee took evidence from external stakeholders over the first three sittings (as listed in Appendix 2). The Minister for Immigration gave evidence at the fourth sitting.

The Committee also issued a call for written evidence from interested parties. These submissions of evidence can be found on the Immigration Bill pages on the Parliament website, along with other information about the Bill's progress.

This section highlights the main issues debated in Committee over the remaining seven sessions.

Part 1: Removal and other powers

Will persons liable to removal be given written notice?

In response to amendments to **clause 1** (removal of persons unlawfully in the UK) moved by David Hanson, Shadow Immigration Minister, Mark Harper, Minister for Immigration confirmed that persons would receive written notice of the decision to refuse or vary leave to enter/remain, as this is already required by section 4 of the *Immigration Act 1971.* The written notice would, amongst other things, inform the person of the removal destination, and be issued at least 72 hours before removal is attempted.[18] Mark Harper agreed to reflect on

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11 HC Deb 22 October 2013 c187; c193-4; c216; c222
12 HC Deb 22 October 2012 c204
13 HC Deb 22 October 2013 c181
14 HC Deb 22 October 2013 c178; c191-2
15 HC Deb 22 October 2013 c191-2
16 See, for example, HC Deb 22 October 2013 c224; c246
17 HC Deb 22 October 2013 c257
18 PBC 5 November 2013 c133-4

whether it would be possible to produce a draft set of regulations about the removal of family members before Royal Assent.[19] Mr Hanson withdrew his amendments.[20]

Dr Julian Huppert moved an amendment to clause 1 which aimed to enshrine the Government's policy not to detain children for immigration purposes in primary legislation. However, Meg Hillier and Mark Harper raised concerns about the potential for children to be perceived by immigration offenders as "a ticket to more lenient treatment", which they argued could result in an increase in trafficking.[21] Mark Harper said that the proposed amendment would not have the effect Dr Huppert intended. He agreed to consider whether it would be possible to produce alternative wording which would put some or all of current Government policy into primary legislation, but warned that "It is not always as easy to put such things in primary legislation, given that the area is very litigious and will be leaped on by lawyers looking for loopholes either for the best of motives or, (...) sometimes not for the best of motives."[22] Dr Huppert withdrew the amendment.[23]

Oversight in Northern Ireland

During debate on **clause 2** and **Schedule 1**, Mark Harper confirmed the existing oversight arrangements for the exercise of immigration and customs enforcement powers in Scotland, England and Wales.[24] Following discussions between the Government and Northern Ireland Executive, the Government tabled New Clause 3 (**clause 58 in the Bill as amended**) which the Committee agreed to without a division.[25] It allows for the Police Ombudsman for Northern Ireland to have oversight of the exercise of specified immigration and customs enforcement powers by immigration officers and designated customs officials in Northern Ireland. These arrangements would be in line with the Independent Police Complaints Commission's responsibilities to oversee complaints and serious incidents relating to the exercise of these powers in England and Wales, and arrangements in Scotland.

Should politicians be allowed to decide on bail, and what constitutes a 'material change in circumstances'?

Helen Jones, Shadow Home Office Minister, moved a probing amendment to test the Government's case for allowing the Home Secretary to withhold consent to release of a person on bail when removal is scheduled within 14 days, as is provided for in **clause 3**.[26] She pressed the Minister to provide figures for the number of cases in which bail has been granted and detainees have absconded in such circumstances, and to explain why the Government's solution is to allow for political involvement rather than change the guidance given to the judiciary. Emphasising that the Opposition's concerns were about whether the Government's proposal would work in practice, she asked for clarification of whether the Home Secretary would consider the same issues as the Tribunal or different factors, and queried whether there is a risk that the Home Secretary's decision to reuse bail would be appealed, leading to further delays and costs.

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19 PBC 5 November 2013 c140. A draft set of regulations were subsequently deposited in the House Libraries: DEP 2013-2050, 9 December 2013
20 PBC 5 November 2013 c135; c140
21 PBC 5 November 2013 c144; 150
22 PBC 5 November 2013 c150-1
23 PBC 5 November 2013 c151
24 PBC 5 November 2013 c155
25 PBC 12 November 2013 c364-6
26 PBC 5 November 2013 c159-162

Meg Hillier expressed concerns that the power is widely drawn, and may affect more persons than intended.[27]

In response, Norman Baker, Minister for Crime Prevention, said that the Home Secretary would consider the same matters as a Tribunal, and confirmed that her decision would be open to challenge through judicial review and habeas corpus proceedings. He did not provide any figures, but said that "there have been many instances in which individuals very close to deportation have absconded".[28] In explaining why the Government considers that it is appropriate for the Home Secretary to have a role in such cases, he said

> The fact of the matter is that whether we like it or not these things are highly political, and Abu Qatada is an example. (...) Ultimately, the Secretary of State is responsible for the operation of immigration law. It is perfectly proper that she should have that reserved power in these limited circumstances.[29]

Helen Jones withdrew the amendment, but said that she was not satisfied with the Minister's response, and reserved the right to return to the issue at Report stage.[30]

Dr Julian Huppert tabled a probing amendment in order to confirm whether a further application for bail made within 28 days of a previous unsuccessful hearing would be allowed on the grounds that a procedural error had occurred in the previous hearing.[31] Satisfied with the Minister's confirmation that the Tribunal could consider a procedural error as a material change in circumstances, Dr Huppert withdrew the amendment.

Powers to use biometric information for non-immigration functions

Helen Jones moved a probing amendment to **clause 10**, seeking to clarify what type of purposes regulations permitting the use of biometric information for non-immigration or nationality functions might be used for.[32] She raised particular examples relating to access to benefits and healthcare. She contrasted the Government's opposition to ID cards with the wide powers the Bill would give to use biometric information for non-immigration purposes; Pat McFadden described the Government's position as being "against the cards, but not the data".[33] In response, Mark Harper said that the details of how the Government intended to use the powers would be set out in regulations, which would be subject to the affirmative procedure.[34]

Helen Jones said she was concerned about the lack of clarity over how some of the provisions would work, particularly those which would allow for biometric information to be used to ascertain "whether a person has acted unlawfully or has obtained or sought anything to which the person is not legally entitled". She withdrew her amendment, but said that Labour may wish to return to the issue at a later stage.[35]

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27 PBC 5 November 2013 c162
28 PBC 5 November 2013 c165
29 PBC 5 November 2013 c166
30 PBC 5 November 2013 c166
31 PBC 5 November 2013 c166-173
32 PBC 5 November 2013 c182-4
33 PBC 5 November 2013 c183
34 PBC 5 November 2013 c185
35 PBC 5 November 2013 c187

Part 2: Appeals Etc.

Will 'administrative review' be an adequate replacement for appeal rights?

David Hanson moved an amendment which would have prevented **clause 11** from coming into effect until immigration decision-making had been inspected by the Independent Chief Inspector of Borders and Immigration and deemed by the Home Secretary to be "efficient, effective and fair".[36]

Acknowledging that there had been criticisms of Home Office decision-making in immigration cases under successive governments, Mr Hanson said that "there are still too many mistakes made in the initial decision-making by the Home Office."[37] He asked how removing the right of appeal could be justified whilst the number of decisions overturned at appeal stage remains high, and what action is being taken to improve the quality of decision making. In support of his arguments, he cited appeal outcome statistics for immigration cases affected by the clause, and referred to comments about the fundamental importance of rights of appeal in immigration cases made by the Wilson Committee on immigration appeals in 1967 and by senior members of the judiciary more recently. He also noted that the Government's impact assessment had not provided details of the costs of the proposed administrative review system, or of the potential costs if the changes resulted in more judicial reviews and asylum or human rights applications.[38]

Meg Hillier raised the related issues of the quality of legal advice available to applicants and cuts to legal aid, expressing concerns that "the Ministry of Justice is effectively cost-shunting many of the services on which it wants to save money to the Home Office and, in turn, the Home Office is shutting off an avenue of appeal to many of my constituents and others who want a fair decision."[39] She also suggested that abolishing appeal rights could lead to increased referrals and costs for other agencies such as the Parliamentary Ombudsman.[40] The Minister agreed to look into whether the Home Office had done any work to monitor any increases in costs since family visitor visa appeal rights had been withdrawn in summer 2013.[41]

Mark Harper argued that Mr Hanson's amendment was unnecessary and counter-productive, and said that critics of the clause should be reassured by the government's plans for administrative reviews for managed migration cases, as set out in a statement of intent.[42]

In particular, he argued that the administrative review process would assist efforts to improve the quality of decision-making, since information about administrative review outcomes could be shared more easily between the reviewer and the initial decision-maker.[43] He did not consider that the fact that decisions would be reviewed by other Home Office staff gave cause for concern. Home Office sampling of cases dealt with through the administrative review system already in place for overseas applications showed that 21% of reviews resulted in the initial refusal decision being overturned. In the Minister's view, this

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36 PBC 5 November 2013 c187
37 PBC 5 November 2013 c188
38 PBC 5 November 2013 c188-198
39 PBC 5 November 2013 c198
40 PBC 5 November 2013 c201
41 PBC 5 November 2013 c202
42 '*Immigration Bill: Statement of Intent Administrative review in lieu of appeals (clause 11)'*, (undated; accessed 24 January 2014), available from Gov.uk, Immigration Bill: part 2 - appeals
43 PBC 5 November 2013 c199-200

demonstrated that administrative review is a robust process in spite of the absence of external oversight.

Furthermore, he said that Home Office sampling had suggested that around 60% of appeals lost by the Home Office are due to caseworking error. The Minister said that it would be faster and cheaper for them and the public sector to resolve such issues through administrative review rather than an appeal mechanism.[44]

In response to concerns that a reduction in appeal rights would encourage more people to raise human rights grounds (since there would still be a right of appeal on these grounds), the Minister pointed out that this already happens: currently, around 30% of points-based system appeals succeed on Article 8 grounds. However, under the proposed administrative review system, refused applicants would not be allowed to raise asylum or human rights grounds as part of the review; rather they would have to make a separate application for leave to remain on those grounds.[45]

Home Office sampling estimated that around 9% of allowed appeals succeed because the Immigration Judge came to a different conclusion to the Home Office. The Minister said that judicial review would be the appropriate remedy in these cases.[46]

The Committee disapproved the amendment on division by 9 votes to 6, and clause 11 was ordered to stand part of the Bill. However David Hanson said that he would reflect on the Minister's comments, with a view to returning to clause 11 with a specific amendment at Report stage.[47]

Broadening the scope of powers to 'deport first, appeal later'

Clause 12 of the Bill as introduced provided for powers to deport "foreign criminals" appealing to stay in the UK on human rights grounds before their appeal had been heard, if the Home Secretary certified that upon removal they would not face a real risk of "serious irreversible harm". Government amendments considered at Committee Stage subsequently broadened the scope of clause 12, so that the powers could be used in respect of "persons liable to deportation" rather than "foreign criminals". Mark Harper explained why the amendments were considered necessary:

> The clause as originally drafted would apply only to foreign criminals, and so would be focused on those convicted of a serious offence. On reflection, we realised that the definition would leave out a cohort of harmful individuals who should not have a suspensive right of appeal ... That group would include individuals who were being deported from the UK on the ground that their presence would not be conducive to the public good. That is a slightly broader judgment than automatic deportation on the ground of a single serious offence.[48]

David Hanson requested further details about how the broader powers would be applied, such as what types of case would be affected, how many more people would be affected, and how deportees' family members would be affected. Mark Harper offered to provide

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44 PBC 5 November 2013 c202
45 PBC 5 November 2013 c203
46 PBC 5 November 2013 c203
47 PBC 5 November 2013 c204
48 PBC 5 November 2013 c205

answers whilst the Committee was sitting and before Report stage, and to have further discussions with David Hanson if necessary.[49]

Clause 12, as amended, was ordered to stand part without a division.[50]

Are the Bill's Article 8 provisions compatible with legal obligations to protect children's best interests?

Dr Julian Huppert asked how **clause 14** (which specifies certain factors that a court or tribunal must consider when assessing whether interference with a person's Article 8 rights is proportionate) is compatible with the UN Convention on the Rights of the Child and section 55 of the *Borders, Citizenship and Immigration Act 2009.*[51] These require that a child's best interests must be given primary consideration ('the children's duty').

Mark Harper confirmed that the Bill does not change the Home Office's duty to consider the best interests of the child when making immigration decisions. Rather, clause 14 sets out the 'public interest' tests which must be balanced against the best interests of the child when a court or tribunal is considering Article 8 issues.[52]

Julian Huppert's probing amendment would have broadened the definition of 'qualifying child' to include children who had been born in the UK and always lived here. However, Mark Harper said "We do not want to create a position in which the moment a person has a child in the UK the Article 8 balance shifts in their favour."[53] The Minister also argued that a child born in the UK "is not analogous with a British child or a child who has lived in the UK for seven years." Children who had not spent seven years in the UK would be able to adapt to their country of origin, either due to their young age, or on account of having lived elsewhere before coming to the UK.[54] Mr Harper emphasised that in any case, the child's best interests would be considered, including in cases that fell outside the scope of clause 14.

The amendment was withdrawn and clause 14 was ordered to stand part of the Bill.[55]

Part 3: Access to Services Etc, Chapter 1: Residential tenancies

Clauses 15 to 32 of the Bill would place a duty on private landlords/agents to request evidence from a prospective tenant of their entitlement to be in the UK. If the prospective tenant cannot produce satisfactory evidence the landlord/agent would be expected not to let to that individual; a landlord/agent found to be in breach would be liable to a civil penalty.

The impact assessment *Tackling illegal immigration in privately rented accommodation* was published on 25 September 2013.

The provisions are controversial. The summary of responses to the Home Office's consultation exercise conducted between 3 July and 21 August 2013 concluded that "the majority of landlord representative organisations were opposed to the proposals and/or

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49 PBC 5 November 2013 c209-10
50 PBC 5 November 2013 c210
51 PBC 5 November 2013 c211
52 PBC 5 November 2013 c215
53 PBC 5 November 2013 c217
54 PBC 5 November 2013 c217
55 PBC 5 November 2013 c218

expressed concerns with the details of what was proposed."[56] More than half of all respondents disagreed with the principle of the policy.[57]

Devolved administrations

During consideration of **clause 15**, which defines the type of tenancy arrangements under which a landlord will be required to check the prospective tenant's immigration status, the Committee considered David Hanson's New Clause 1 which would provide for consultation to take place with the devolved administrations prior to clauses 15 - 32 coming into force.[58] Alongside this David Hanson, for Labour, tabled an amendment to clause 15 to include reference to "consultation with the devolved administrations."

Housing is a devolved matter in Scotland, Wales and Northern Ireland. There is a perceived tension between the use of powers in respect of immigration matters which may, in turn, impact upon housing policies within the devolved areas. The Scottish Parliament legislated to make it unlawful for a landlord or letting agent to levy any charges on a tenant (other than rent and a refundable deposit) with effect from 30 November 2012. William Bain questioned whether the cost of carrying out immigration checks might require the Scottish Parliament to reintroduce these fees[59] and raised the potential for costs to be passed on to tenants in the form of higher rents:

> **Mr Bain:** We heard evidence from the private tenancy community that the impact will more than likely be passed on to tenants through higher rents or higher letting agency fees. We have established that the devolved responsibilities in Scotland mean that the latter is illegal, so what discussions is the Minister having with the Scottish Government about how the policy will affect private sector rents?[60]

David Hanson highlighted an issue around the cost of enforcing immigration checks, which will fall on authorities in Scotland and Northern Ireland, while any penalties accrued under clause 26 will be paid into the Consolidated Fund run by the UK Government.[61]

The Minister, Norman Baker, rejected these concerns:

> **Norman Baker:** Opposition Members have been keen to suggest some sort of huge consequence in the housing market in the devolved Administration areas due to these proposals. There will not be. The immigration proposals are entirely separate from those relating to housing regulation, which is properly a devolved matter for those Administrations. The landlord scheme will not create a new system of letting fees in Scotland because the scheme is reserved. It does not change the powers or responsibilities of the devolved Administrations in any way. If Members are keen to hear about them, I will come to the discussions that have taken place in a moment.[62]

He continued:

> **Norman Baker:** I am not sure that the cost to landlords is particularly onerous in the first place. We will perhaps come to this issue when we discuss the next group of amendments, but many landlords already check the status of their tenants for all sorts

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56 Home Office, *Tackling illegal immigration in privately rented accommodation – The Government's response to the consultation*, 10 October 2013, p9
57 *Ibid* p12
58 PBC 7 November 2013 c223
59 PBC 7 November 2013 c224
60 PBC 7 November 2013 c226
61 PBC 7 November 2013 c225
62 PBC 7 November 2013 c226-7

> of reasons, including to ensure that they are able to pay their rent. A huge, onerous bureaucratic structure is not being created that will engender huge costs for landlords, either in Scotland or anywhere else. If I may say so, this point is something of a red herring. As I was saying, the scheme is an immigration matter, which is reserved in relation to Scotland, excepted in relation to Northern Ireland and non-devolved in relation to Wales.
>
> To answer the earlier query, in practice, landlords, agents, tenants and occupants will need information about how the scheme operates. It is important that all stakeholder views are taken into account to ensure that measures are appropriately targeted and proportionate. We have been keen to ensure that they are proportionate and so have engaged the devolved Administrations, and we will continue to do so during the implementation of the scheme.
>
> My fellow Minister wrote to Margaret Burgess MSP on 3 July as the first part of that engagement. There has been correspondence with Carl Sargeant in Wales and with Nelson McCausland in Northern Ireland. It should not surprise any member of the Committee that we of course talk to devolved Administrations when we introduce measures with a UK-wide impact. That happens both at ministerial and official levels. Those discussions are continuing, but I must say that so far I have not noticed the devolved Administrations expressing any great concerns about the Bill of the type that Opposition Members describe.[63]

David Hanson withdrew his amendment but said that he may return to the issue on Report.[64]

David Hanson revisited the issue of court costs falling on the Scottish and Northern Irish systems during the stand part debate on clause 26.[65] The Minister said that if the devolved administrations want to make representations on this point "we will consider the matter carefully."[66]

Piloting the provisions

The Committee considered New Clause 2, introduced by David Hanson, and an amendment to clause 15 to provide for it not to come into force until piloted in 5 areas (an authority in each of London, England, Wales, Scotland and Northern Ireland) and fully evaluated.[67] David Hanson described the purpose of New Clause 2:

> **Mr Hanson:** The purpose of proposed new clause 2 is to ensure that we put into legislation the principle of a pilot for the residential housing provisions scheme. The aim is to get some clarity from the Government on their intention concerning the pilot/phased roll-out of the proposal. Secondly, the new clause provides the opportunity for a wider debate on the concerns that mean a pilot of the scheme is needed in order to consider the proposals fully.[68]

The Minister confirmed that the measures in respect of residential tenancies will be piloted in one area before wider implementation:

> The reality is that my fellow Minister and I are joined at the hip like Siamese twins when it comes to the matter. We both want to ensure that the legislation works, and we agree that it is sensible to go slowly to take account of the legitimate concerns that

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63 PBC 7 November 2013 c227
64 PBC 7 November 2013 c229
65 PBC 7 November 2013 c273
66 PBC 7 November 2013 c273
67 PBC 7 November 2013 c229
68 PBC 7 November 2013 c229

> people have raised to ensure that we do not end up with a situation that neither of us wants. We want to address the problem of people who are here illegally accessing public services, but we do not want to cause problems for innocent people or for landlords. That is why it is sensible to proceed slowly, step by step.
>
> As we have heard, clause 63 contains provisions to ensure that the scheme can be scrutinised to see how it has worked. Those provisions indicate the Government's commitment to making sure that should it wish to do so, Parliament can scrutinise the implementation of the scheme following the first stage. Any commencement order that introduces the landlord provisions into a subsequent area, following the initial pilot, will be subject to the negative resolution procedure. The House will be able, if it considers it appropriate, to trigger a debate when there is any suggestion of a further roll-out of the measures, at which point any questions can be addressed.
>
> My fellow Minister and I want to ensure that the proposal works properly. My colleague may have more confidence than I do that it will work properly, but there is nothing wrong with that. We both agree that it is sensible to proceed step by step and to look at the scheme after the first pilot. If it has worked properly, without encountering the concerns that Members on both sides of the Committee have rightly expressed, I have no doubt that it will be taken further. If serious problems have arisen, nobody, including my hon. Friend, will want to take the scheme further.[69]

The amendment was pressed to a division and rejected by 12 votes to 8. The Committee divided on New Clause 2 during its tenth sitting – the clause was rejected by 10 votes to 7.[70]

A Government amendment to **clause 29** was agreed in relation to order making powers affecting the phased roll-out of immigration checks for landlords:

> The provisions related to landlords will be implemented on a phased geographical basis—however one wants to describe it. Parliament can allow review of the operation of the scheme to take place, to ensure that the measures are appropriately targeted. If, during that period, it is identified that it would be appropriate to exercise any of the order-making powers contained in this chapter in relation to one geographical area, pending anything else happening the future, the order is likely to be considered hybrid. If it was then subject to the affirmative order procedure, the hybrid instrument procedure would apply.
>
> Although it is unlikely that such an order should need to be made, it is theoretically possible. The order-making power in clause 15(7) will allow amendments to be made to the exclusions set out in schedule 3. The exclusions will need to be closely considered during the initial period to ensure that they are appropriately targeted. Should amendments be required, it should be possible to make them quickly in the interests of persons living in the area affected. Amendment 12 will ensure that an appropriate level of scrutiny is applied should a statutory instrument need to be introduced. I hope that that is clear.[71]

Excluded residential tenancies

Schedule 3 to the Bill provides for residential tenancy agreements to which immigration checks will not apply. In Public Bill Committee David Hanson moved amendments to add night shelters and domestic women's refuges to the definition of "hostels" already included in the schedule.[72] The Minister confirmed that both types of accommodation would fall within

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69 PBC 7 November 2013 c224
70 PBC 12 November 2013 cc363-4
71 PBC 7 November 2013 c277-8
72 PBC 7 November 2013 c251

the definition of hostels but said "we are making further enquiries to relevant bodies to check whether there may be – we do not think there is – any refuge accommodation that would not benefit from the exemption in paragraph 5."[73] The amendment was withdrawn.

David Hanson moved a further amendment to test whether the exclusion of agreements to which the *Mobile Homes Act 1983* applies "could be a back-door route for somebody to subvert the legislation."[74] The Minister replied:

> If someone rents a plot—in other words, they have a right to put their mobile home on a piece of land—that is not covered by the Bill. That is not what is meant by rent; that is the purpose of the language in the Bill. However, if someone rents a plot and then effectively has a tenant in their mobile home, just as they would in another kind of home, that is covered. In that sense, a mobile home is no different from any other place that somebody might rent.[75]

The amendment was withdrawn.

Meg Hillier moved an amendment to exclude certain students who enter into tenancy agreements with private landlords from the requirement for checks where they have already successfully undergone a checking process; for example, to obtain a student visitor visa for longer than six months.[76] She argued that the measures in the Bill would "put barriers in the way of legitimate students renting accommodation." The Minister said that students renting accommodation other than in halls of residence or other excluded accommodation should "be treated like any other tenant."[77] Meg Hillier withdrew her amendment but said she may bring it back on Report.[78]

Invalidation of rental agreements

A Government amendment to **clause 17** was agreed in response to concerns raised by the Residential Landlords Association (RLA). The RLA felt that the original drafting could result in tenancy agreements entered into with an illegal immigrant becoming invalid, such that landlords would be unable to enforce tenancy conditions:

> Amendment 10 makes it clear that the restriction set out in subsection (1) will be broken only in the circumstance set out in the clause, and a breach cannot arise in any other way. The intention is to provide reassurance to landlords that, provided they comply with the steps set out in the provisions, they will not risk inadvertently breaching the restrictions in any other way.
>
> Amendment 11 clarifies and confirms that the restriction in the clause is not intended to affect the validity or enforceability of any provisions of a residential tenancy agreement. A breach of the prohibition in the clause will not impact on a landlord's or tenant's ability to enforce any provision in the agreement that they have entered into. I hope that my explanation has clarified the matter.[79]

Renewal of visas/leave to remain etc

Meg Hillier, in moving an amendment to **clause 19,** raised the issue of tenants being unable to apply for visa renewals/leave extensions until one month before their leave expires. Her

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73 PBC 7 November 2013 c252
74 PBC 7 November 2013 c254
75 PBC 7 November 2013 c255
76 PBC 7 November 2013 c255
77 PBC 7 November 2013 c259
78 PBC 7 November 2013 c261
79 PBC 7 November 2013 c266

amendment would have added confirmation that an application had been made from an "accredited legal representative" and proof of delivery as evidence that a private landlord could rely on in order to avoid a penalty charge.[80]

In response, the Minister referred to the 48-hour hotline that landlords will be able to use – if they do not receive a response to their enquiry within 48 hours they will have an "excuse" against a penalty charge. He went on to explain when a landlord will have to carry out repeat checks on a tenant and advised that the Government is looking at the situation of migrants with limited leave:

> The landlord's responsibility is to ensure that someone is legally able to rent a property at that particular point. Whether that leave exists for a further three months, six months or whatever is neither here nor there; it is simply about whether they are entitled to rent at that particular point. The landlord is not obliged to do anything else until a year has passed, when he or she will then make a further check, if that person is still in the same rented accommodation. It is not an incentive to have three or four-month rental agreements. There is no reason not to have a year's rental agreement, if that is what the landlord wants.
>
> Let me give the hon. Lady some good news; I hope that she will welcome it. We recognise that there are legitimate concerns about some of the issues that she raised, so in relation to migrants with limited leave, we propose amending the process for extending leave so as to allow migrants to retain their biometric residence permit; the right hon. Member for Wolverhampton South East made that point. When leave is still extant, that could be taken as evidence of a limited right to rent, and a landlord need not conduct a further check for a year. To help further, we intend to allow the use of expired passports where they contain a relevant immigration stamp and an identifiable photograph. I hope that with that good news, the hon. Lady will be happy to withdraw her amendment.[81]

The amendment was withdrawn.

Responsibility for conducting checks

Meg Hillier moved an amendment to **clause 27** in order to clarify whether the landlord or agent (where applicable) is the default party responsible for carrying out immigration checks.[82] The Minister responded:

> **Norman Baker:** It is clear: the landlord is responsible for complying with the Bill when it becomes an Act. The landlord can, if they wish, enter into an agreement with a lettings agency, or some other agent, who will then expressly have to—in writing, I would suggest—take on the landlord's responsibilities; if a contravention took place, they would be held responsible. However, outwith such an agreement, the landlord would retain responsibility. If the landlord is badly advised by lettings agents, that becomes a matter that the landlord may or may not pursue in a civil case. However, the law is quite clear that a landlord is responsible for complying with the law, unless the agent has expressly accepted responsibility for doing so.
>
> The code of practice that will be available will offer guidance to landlords and agents on how liability may be transferred, where there is a wish to do so, and on the issues that they may want to consider when entering into agreements. That would include guidance that will be in the interest of landlords and agents alike and good practice to

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80 PBC 7 November 2013 c266
81 PBC 7 November 2013 c270
82 PBC 7 November 2013 c274

> ensure that any agency agreement clearly sets out the responsibility for undertaking immigration status checks.
>
> We hope that most agents will discuss that aspect with the landlords as a matter of course in any event, but I want to make it clear that the backstop position is that it remains the responsibility of the landlord. I hope that that has been helpful in clarifying the matter for the hon. Lady.[83]

The amendment was withdrawn but Meg Hillier said she would consider whether to return to it on Report. There is concern that landlords will be unaware of their responsibilities, particularly where they use a managing agent; if the agent does not conduct the check it will be the landlord, rather than the agent, who will be fined.[84]

Part 3, Chapter 2: Other Services Etc

Should particular categories of migrant be exempt from the immigration health surcharge, and how should the money raised be allocated?

There was discussion of whether international students and certain temporary workers should be exempted from the immigration health surcharge provided for in **clause 33**.

Dr Julian Huppert and Meg Hillier argued that the charge should not apply to international students, in particular considering their economic value to the UK and the risk that the charge would make the UK a less attractive study destination.[85] Julian Huppert's amendment also proposed that temporary migrants who were working in the UK and had built up a record of paying income tax and national insurance should not have to pay the surcharge.[86]

Mark Harper said that the Bill would bring the rules on temporary migrants' access to health care in line with existing rules on their access to benefits and social housing: only persons with permanent immigration status would have access to free-of-charge healthcare; temporary migrants would be required to pay the immigration health surcharge.[87]

The Minister was not persuaded that the surcharge would affect the UK's competitiveness in the international student market, bearing in mind competitor countries' comparable requirements (some of which were likely to be more expensive than the proposed £150 surcharge for students). In fact he suggested that it is possible that "when students compare internationally and make their choices about where to go, the offer that we are proposing will add to the competitiveness, rather than reduce it."[88] Nor was he convinced that the surcharge might create a "cheap route for health tourists", as Meg Hillier queried. He contended that they were unlikely to financially benefit from such a scam, bearing in mind the expense and effort that they would have to go through in order to satisfy the visa eligibility criteria.[89] Persons entering as visitors would not be able to pay the surcharge in order to get access to the NHS.

The Minister said that details of groups exempt from the requirement to pay the surcharge would be set out in an order which would be subject to the affirmative resolution procedure. It was not necessary to specify exempted groups in the Bill itself, although he noted that the

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83 PBC 7 November 2013 c276
84 PBC 7 November 2013 c277
85 PBC 7 November c278-281; c281-284
86 PBC 7 November 2013 c280
87 PBC 7 November 2013 c284-5
88 PBC 7 November 2013 286
89 PBC 7 November 2013 286

Government has previously said that asylum seekers and intra-company transfer workers would be exempted.[90] Dr Huppert withdrew his amendment.[91]

Meg Hillier's group of amendments to clause 33 (amendments 54 and 55) and proposed new clauses were concerned with the impact of the health surcharge on specific groups, namely persons needing treatment for certain communicable diseases including HIV and TB, pregnant women, victims of domestic abuse or female genital mutilation and victims of human trafficking.[92] She also moved an amendment to **clause 34**, which would have provided for NHS charging regulations to make reference to the need to safeguard public health.[93]

Whilst expressing a preference for people to "pay their way", she argued that "any extension of charging will keep people away from health care", with associated risks to public health and future costs to the health service.[94]

Mark Harper confirmed that victims of trafficking would be exempt from the immigration health surcharge. He said that many of the issues Ms Hillier had raised fell outside the scope of the Bill and were matters for the Department of Health to deal with.[95] However, he emphasised that the Government understood the public health arguments for ensuring access to health treatment, including for persons who do not have leave to remain.[96] Ms Hillier withdrew her amendments to clauses 33 and 34.[97]

Amendment 51, moved by Labour, would have required the Home Secretary to lay a report before Parliament 12 months after Royal Assent reporting on sums collected and expenditure under the immigration health charge.[98] Helen Jones said that Labour supported the principle of clause 33, apart from the issue of whether money raised should go into the Consolidated Fund (as provided for by clause 60) or to the NHS.[99] She queried how money raised by the charge would be shared with the devolved administrations or allocated between hospitals, for example. She also probed for details of how exemptions would be applied, pointing out that exempt groups such as victims of trafficking might be difficult to identify in practice, and asked for details of the type of expensive treatments which the charge might not provide cover for.[100]

Mark Harper said that public spending decisions were matters for the Treasury and confirmed that discussions about what (if any) money would go to the devolved administrations were taking place. He agreed to report back to the Committee on the status of those discussions before Report stage.[101] He confirmed that the Government would publish income from the surcharge whilst it was in operation, in accordance with existing Treasury guidance.[102]

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90 PBC 7 November 2013 c286
91 PBC 7 November 2013 c291
92 PBC 7 November 2013 c291-2
93 PBC 12 November 2013 c309
94 PBC 7 November 2013 c293
95 PBC 7 November 2013 c296-7
96 PBC 12 November 2013 c310
97 PBC 7 November 2013 c298; PBC 12 November 2013 c311
98 PBC 7 November 2013 c298
99 PBC 7 November 2013 c299
100 PBC 7 November 2013 c300-2
101 PBC 7 November 2013 c302
102 PBC 7 November 2013 c303

Ms Jones withdrew the amendment, but said that there were a couple of issues which Labour might wish to return to on Report. Clause 33 was ordered to stand part of the Bill.[103]

Strengthening sanctions against employing illegal workers

Helen Jones confirmed Labour's support for **clauses 39 and 40**, which seek to amend the civil penalty scheme for employers of illegal migrant labour, but said that the Bill does not go far enough in seeking to tackle exploitation in the labour market.[104]

At a later stage in the Committee's proceedings, David Hanson introduced New Clause 14, which aimed to establish a minimum fine for employing illegal workers.[105] Mark Harper explained that the fine levels are specified in secondary legislation, and that a statutory code of practice outlines the factors considered when determining the level of penalty to be applied against an employer. He said that the code of practice could specify a minimum level, and confirmed that the Government intends to double the starting point for the calculation of a first-time penalty to £15,000. He identified a range of other actions that the Government is planning to introduce in order to strengthen prevention of illegal working legislation, such as doubling the maximum fine to £20,000 per worker from April 2014, clarifying and amending the range of 'mitigating factors', and restricting the circumstances in which an employer might be served with a 'warning letter' rather than a fine. However with regards to establishing a minimum fine level, he argued that it is important to retain a flexible and proportionate approach to determining fines, in order to be able to reflect the extent of the employer's culpability and ensure that small or new businesses are not unfairly penalised. He noted that that when the regulations are changed, under the affirmative resolution procedure, there will be an opportunity for Members to debate the Government's approach.[106]

Mr Hanson with drew the amendment but said that he will seek to return to the issue "at some point".[107]

Part 4: Marriage and Civil Partnership

Strengthening powers to prevent sham marriages across the UK

David Hanson agreed that action against sham marriages is needed, and moved an amendment to **clause 43** in order to test the extent of the Home Secretary's powers to investigate cases that had not been referred by the registration services.[108] Norman Baker confirmed that the Bill does not limit the scope to investigate suspected sham marriage or civil partnership cases to those referred by the registration authorities, and that investigations may be triggered by information received from third parties. He also confirmed that the Home Office has published guidance containing background information about how the proposed referral and investigation scheme would work.[109] Mr Hanson withdrew his amendment.

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103 PBC 7 November 2013 c304
104 PBC 12 November 2013 c316
105 PBC 19 November 2013 c393
106 PBC 19 November 2013 c394-6
107 PBC 19 November 2013 c396
108 PBC 12 November 2013 c318
109 PBC 12 November 2013 c318-322. See Home Office, *Sham marriages and civil partnerships: Background information and proposed referral and investigation scheme*, November 2013

Mr Baker also confirmed that the provisions in the Bill also apply to same-sex marriages, and said he would write to Mr Hanson to clarify where this is expressed in the Bill.[110]

David Hanson's amendment to **clause 46** aimed to provide that suspected sham marriage investigations would be carried out with due regard to individuals' childcare or caring responsibilities. Norman Baker gave an assurance that this would be the case, but argued that it is more appropriate for such matters to be specified in statutory regulations and guidance rather than the Bill itself. Satisfied with these assurances, Mr Hanson withdrew the amendment.[111]

A set of Government amendments, which made minor technical changes and drafting corrections to **clauses 45, 46, 48 and schedule 4,** were approved without divisions.[112]

David Hanson, William Bain and John Robertson pressed the Minister for an update on discussions about extending the proposed referral and investigation scheme to Scotland and Northern Ireland, and in particular for details of the likely timeframe for using the order-making power in **clause 48**. They expressed concerns that a long delay in enacting the provisions in Scotland and Northern Ireland might make those areas magnets for sham marriages.

Norman Baker responded that powers to deal with sham marriages already exist. Furthermore, he confirmed that the discussions with the devolved Administrations have already begun, and said that they share the Government's concerns about sham marriages so he did not anticipate any particular problems arising. Although he could not provide details of a likely timeframe for using the order-making power, he said that the Government intends to have the provisions "in place for the whole of the UK as soon as possible".[113]

Clause 48 (as amended), **clauses 49 to 56** and **Schedule 5** were agreed to and ordered to stand part of the Bill without divisions.

Part 5: Oversight (Office of the Immigration Services Commissioner)

Should the OISC have powers to safeguard client files?

During stand part debate on **clause 57**, Meg Hillier asked Norman Baker to confirm whether organisations providing advice free of charge would not be required to pay a fee to register with the OISC. Norman Baker confirmed that the Government intends to lay an order requiring the OISC to waive registration fees for such organisations.[114]

Meg Hillier argued that measures are needed to ensure the safeguarding of client files in the event that an advice provider has their registration cancelled or ceases to operate, because currently it can be difficult for individuals to retrieve their documents in such circumstances. She noted that former clients of reputable advice providers, notably the Refugee Legal Centre and Immigration Advisory Service, have also experienced difficulties, and pointed out that the Home Office and courts are also inconvenienced.[115]

Norman Baker said that the Government was not persuaded that the regulator should be given responsibility for administering client files in the event that a company is wound up. He

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[110] PBC 12 November 2013 c322
[111] PBC 12 November 2013 c326
[112] PBC 12 November 2013 c326-330; c333
[113] PBC 12 November 2013 c332-3
[114] PBC 12 November 2013 c335
[115] PBC 12 November 2013 c334

argued that legislation was unlikely to be effective in dealing with cases involving unscrupulous advisers. He offered to reflect on whether anything could be done, but warned that he could not think of a way of achieving complete certainty. Meg Hillier suggested that discussions continue outside of the Committee and said she would return to the issue at Report stage, since it is "an important issue that we need to resolve".[116]

Part 6: Miscellaneous (embarkation checks and fees)

Will embarkation checks put burdens on transport carriers and port operators?

During stand part debate on **clause 58** Helen Jones sought further information from the Minister about how the embarkation (exit) controls would operate and what impact the Government's plans would have on transport carriers and port operators, bearing in mind their existing procedures for processing passengers and obligations under employment laws. She expressed a concern that the Government was asking third parties to enforce border security "on the cheap" and questioned how much consultation had taken place with industry representatives, noting that many travel firms, particularly airline and cruise industry representatives, had expressed similar concerns about this part of the Bill.[117]

John Robertson, Meg Hillier and William Bain also identified some uncertainties about the Government's proposals, including the risks involved in transferring responsibility for border security to designated third parties, how exit checks would be implemented at sea ports, and what additional costs and bureaucracy would be imposed on businesses and passengers.

On the other hand, Robert Syms and Nicholas Soames were more optimistic about the proposed measures. They observed that airlines have previously demonstrated a willingness to cooperate with immigration requirements, and already collect a lot of information from passengers which could be shared with the border agencies.[118]

Mark Harper rejected the idea that the Government is trying to transfer its border security responsibilities onto transport staff or impose significant burdens on businesses. He emphasised that the responsibilities of designated staff in facilitating exit checks would be limited to conducting basic identity checks and confirming departure. He further explained:

> The point of the powers in the Bill is to allow us to put in place procedures that work with the grain of business processes. For example, where travel operators are already collecting information, as they frequently do either for security reasons or as part of their business process, they could be empowered to share that information with us and we could therefore make checks.
>
> We do not want to put in place an enormously burdensome process. We are not talking about the power to decide whether people can exit the United Kingdom; we are talking about working with carriers and port operators and trying to have provisions that fit well with their business.
>
> (...).To be clear to the hon. Lady, I say to her that we do not expect that decisions on denying boarding will be taken by the boarding and checking staff. That is not the intention at all.[119]

With regards to the impact on airlines, he pointed out that passengers are already required to present their passports (or provide the details online) when checking-in. The Government's

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[116] PBC 12 November 2013 c336-7
[117] PBC 12 November 2013 c338-342
[118] PBC 12 November 2013 c344-45
[119] PBC 12 November 2013 c346

intention is "to ensure that the existing processes for collecting information are properly utilised" rather than to "put burdens on businesses to do things that they would not otherwise do."[120] Furthermore, the Minister contended that it is much more likely that the measures in the Bill would be used in respect of cruise, ferry and rail travel rather than the airline sector, because the e-Borders system has already been implemented to a significant extent for air travel. Nevertheless, the powers in the Bill must apply to all transport sectors in order to create a level playing field across different carriers and to ensure that the Government has the legal power to use existing information and processes.[121]

Mr Harper confirmed that the Home Office had begun discussions with transport carriers and port operators, and that the Secretary of State for Scotland had also been involved in discussions relevant to the Scottish cruise industry.[122] He reassured the Committee that there would not be a "one size fits all" approach; rather "there will be different solutions to fit the different business models" of specific transport sectors and ports.[123] He explained why this flexible approach is deemed preferable to simply establishing passport control points at departure gates:

> As I said, the alternative to working with carriers—using information that they currently collect and perhaps examining their business processes—is effectively putting in place the equivalent of passport checks on outbound journeys. That would require more space at ports, which does not exist and which would have to be paid for. It would require staff, which would be costly, and that cost would fall on the taxpayer. It would also put a barrier in the journey process. I recognise that a lot of ports are looking into making the process as swift as possible by offering online check-in and so on. We have no wish to insert a process that slows things down or makes travel more burdensome.[124]

Clause 58 was ordered to stand part of the Bill and Schedule 7 was agreed to, without divisions.[125]

Should sanctions be applied when the Home Office fails to meet its service standards?

During stand part debate on **clause 59**, Dr Julian Huppert and Meg Hiller raised concerns about application fees and the quality of service provided.[126] Both complained that applicants frequently do not receive the level of service they are led to expect. Meg Hillier suggested that requiring the Home Office to reimburse fees or accept sanctions when it failed to meet its service targets might assist efforts to improve its performance. However, Mark Harper rejected this idea:

> If the Government were to give fee refunds when a service fell below a certain level, it would be a bit pointless; all that would happen would be that the burden would fall on the taxpayer. We are not dealing with a private sector company where the burden would fall on the shareholders.[127]

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120 PBC 12 November 2013 c347-8
121 PBC 12 November 2013 c345-7
122 PBC 12 November 2013 c345
123 PBC 12 November 2013 c347
124 PBC 12 November 2013 c348
125 PBC 12 November 2013 c349
126 PBC 12 November 2013 c349-350
127 PBC 12 November 2013 c350

Nevertheless, he acknowledged that there is an ongoing need to deliver better customer service and confirmed that UK Visas and Immigration are developing proposals for more meaningful service standards, which would be brought forward "in due course."

Clause 59 was ordered to stand part of the Bill without a division. **Clause 60** was also ordered to stand part without debate.

Other significant areas of debate during Committee Stage

The impact of EU immigration on the labour market

The impact of EU immigration on the UK labour market was raised in discussions of David Hanson's proposed New Clauses 13 and 17. Mr Hanson argued that there is a need

> ... to ensure that people who come here and those who are indigenous and live here now are not exploited by unscrupulous employers through their terms and conditions or recruitment practices.[128]

Mr Hanson summarised his concerns:

> When wider European migration is dealt with by unscrupulous people, it can lead to people being paid less than the minimum wage; to their being recruited by gangmasters who are not covered by the current legislation; to recruitment based on ethnicity or nationality, which may be illegal but needs clarification; and to their living in properties that could and should be managed under the Housing Act 2004.
>
> I want the Government to make a proper assessment of those four challenges and of the effectiveness of the four Acts in dealing with them. This should include their enforcement of the legislation and their wider knowledge of it, and their advice to agencies and businesses dealing with the legislation. It would be an opportunity for the indigenous and migrant communities to examine these issues, which I think are having an impact on community cohesion and on people's right to have decent standards of living in their communities.[129]

His proposed New Clause 13 sought to prevent recruitment agencies from being able to exclude UK workers by only recruiting workers of certain nationalities. It was considered alongside his proposed New Clause 17, which would have required the Government to assess the impact of European immigration to the UK within a year of the Bill receiving Royal Assent, with specific reference to non-compliance and enforcement of the *National Minimum Wage Act 1998*, the *Gangmasters Licensing Act 2004*, the *Equalities Act 2010* and the *Housing Act 2004*.

In support of his arguments, he cited examples of recruitment agencies "that are effectively open solely to foreign workers, which exclude UK workers from their employment opportunities".[130] He identified some jobs being advertised at below the minimum wage, for example because accommodation costs were deducted, and argued that there has been little enforcement of minimum wage legislation in recent years:

> Since the general election, only two people have been taken to court for paying below the legal limit of £6.19 an hour and just three have been referred to prosecutors. Workplace inspections have halved, from 3,643 in 2009-10 to just 1,693 in the past year. Her Majesty's Revenue and Customs, which is responsible for enforcement, has

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[128] PBC 19 November 2013 c376
[129] PBC 19 November 2013 c384
[130] PBC 19 November 2013 c377

> lost nearly £1 billion—a quarter of its budget. A number of people from eastern Europe come to this country and are potentially employed by employers who pay—as the website I have quoted shows—less than the minimum wage. However, there has been a small number of prosecutions and the number of workplace inspections has been halved.[131]

He also raised concerns about compliance with and enforcement of gangmasters legislation, and its lack of coverage in certain sectors such as hospitality and construction. Lastly he referred to problems related to breaches of housing regulations, particularly in terms of overcrowding and the prevalence of "beds in sheds".

In response, Mark Harper said that action to gather information about the impact of immigration was already underway, through the Government's balance of EU competences review and the Migration Advisory Committee's ongoing research into employers' use of EEA and non-EEA migrant labour in low-skilled work (which is due to be presented to the Minister by April 2014). He went on to outline specific actions that the Government was taking in response to EEA immigration in particular.[132] He referred to forthcoming changes to unemployed EEA nationals' right to reside and eligibility for benefits, ongoing work to improve the NHS' ability to reclaim the cost of treating EU nationals, and plans to issue new statutory guidance for eligibility for social housing. He also confirmed that Home Office, police and local authority staff were working to identify rough sleepers and remove those found not to have a right to reside in the UK, and said that the Government was also raising its concerns about abuse of free movement rights at EU level.

The Minister doubted whether New Clause 13 would be effective, because recruitment agencies could avoid its impact simply by registering a single UK national worker. However, he agreed with Mr Hanson about the importance of making sure that British workers "get a fair crack of the whip". The Minister confirmed that practices identified by Mr Hanson would violate existing legislation, such as advertising for workers exclusively in one country, or advertising for workers of a particular nationality if it is not a legitimate occupational requirement. He said that affected individuals could make a claim to an employment tribunal, and that the Equality and Human Rights Commission has legal duties to promote equality of opportunity and work towards the prevention of unlawful discrimination and related enforcement powers. Mr Harper offered to pass on some of the evidence referred to by Mr Hanson to the appropriate authorities:

> As a result of the right hon. Gentleman's general inquiry and the specific cases he raised, I will ask the EHRC what it has done, is doing and is planning to do to carry out its legal duty under section 8 of the Act, and whether it has conducted, is conducting or will conduct any inquiries on these matters. I will draw to its attention the specific examples that he has given me to see whether it wishes to take enforcement action. It is the correct enforcement body for this area of law, as set out clearly by the previous Government, and I will raise those points with it.
>
> The new clause mentions examining how well the Equality Act is working, and the right hon. Gentleman should know that the Government will shortly undertake a review of it to assess its impact and effectiveness in protecting people from unlawful discrimination, harassment and victimisation, and that includes the employment provisions. I will talk to ministerial colleagues who are going to conduct that

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131 PBC 19 November 2013 c381
132 PBC 19 November 2013 c385-7

> assessment, and I will ensure that the specific examples the right hon. Gentleman gave me, and the issues they raise, are looked at in that review of the Equality Act.[133]

He confirmed that employers can only deduct a modest amount from the minimum wage for accommodation costs, and said that HMRC takes enforcement action to recover money for workers in responses to reported breaches.[134] He gave further details of the Government's approach to enforcing the minimum wage:

> The right hon. Gentleman mentioned the minimum wage. We have revised the national minimum wage naming and shaming scheme, to make it simpler to name employers who break the law. My colleagues in the Department for Business, Innovation and Skills are carrying out an evaluation of the current penalty regime to ensure that it is effective.
>
> The right hon. Gentleman referred to penalties and the civil effects of the national minimum wage and prosecutions. I will come to prosecutions in a moment. It is important to note that every single complaint that a worker makes about the national minimum wage through the pay and work rights helpline is followed up. That compliance and enforcement action is having an impact. In 2012-13, HMRC, which acts to enforce the national minimum wage, identified nearly £4 million in wages arrears for 26,000 workers. That was a 33% increase in the number of workers that the Government were able to help, and a 26% increase in arrears identified, compared with 2009-10. The minimum wage is obviously vital for low-paid workers, and BIS keeps our compliance and enforcement strategy under review to ensure that it is effective.
>
> The right hon. Gentleman referred to the relatively low number of prosecutions. However, the last time I did the maths, I looked at the number of prosecutions during the period of the previous Government from when the national minimum wage came in to the end of their time in office. Our rate of prosecutions per year is actually slightly higher, although I accept that it is a low number. That is because the priority of both the previous Government and the current one has been to recover money for workers, so that they get the national minimum wage that they are entitled to.
>
> For nine years under the previous Government there were no prosecutions at all. The previous Government legislated to restrict prosecutions to only the most serious cases. I am disappointed that the right hon. Member for Wolverhampton South East is temporarily not in his seat, because by a spooky quirk of fate he was the Buiness Minister who said:
>
> > "Prosecution will still take place only in the most serious cases"—[*Official Report*, 14 July 2008; Vol. 479, c. 44.]
>
> That was the right judgment then, and we agree with it, because we prosecute in the most serious cases. The focus is on recovering wages for those who have not been paid the minimum wage. We have improved the number of workers we are helping and the value of wage arrears, which punishes the employer but also importantly gets the wages to the employees affected, as the right hon. Member for Delyn rightly said.[135]

The Minister also referred to Government action to enforce the *Housing Act 2004*, such as conducting joint operations with local authorities utilising their respective powers under immigration, housing, planning and other legislation. He continued:

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[133] PBC 19 November 2013 c388
[134] PBC 19 November 2013 c390
[135] PBC 19 November 2013 c389

> We also take the opportunity to notify HMRC of the situation, to ensure that landlords who are breaking many other laws do not also forget to pay their taxes. HMRC has extensive powers to take action against people who are in violation of the tax laws. It should be clear to people in breach of the laws that we will use the housing laws against them and immigration laws against immigration offenders. We want provisions on landlords in the Bill to give us a further power to fine landlords who let property to people who have no right to be here, but we will also examine housing and planning powers, and HMRC will examine tax powers. We will use all those powers against rogue landlords who house people in inappropriate accommodation.[136]

David Hanson withdrew the clause in order to reflect on the Minister's comments, but said that Labour still had concerns, particularly in relation to employment issues, and would return to the issue at Report stage.[137]

Extending transitional restrictions on Bulgarian and Romanian workers

New Clause 15, tabled by Nigel Mills, proposed extending for another five years the seven-year transitional restrictions on Bulgarian and Romanian workers' free movement rights, which expired at the end of 2013. Mr Mills recognised that the terms of the Bulgarian and Romanian accession treaties did not allow for transitional restrictions to be extended for longer than seven years, but argued:

> ... but we are a sovereign Parliament and we could, presumably, decide we no longer accepted the conditions in them, because things have changed so dramatically that we should exercise our sovereign right to renege on parts of them and impose restrictions regardless.[138]

The Minister for Immigration emphasised that the Government was taking a range of actions to deal with perceived "pull factors" for coming to the UK but did not consider that it was feasible to extend the transitional restrictions:

> ... there is no possibility under the treaties to extend those controls any further. The only way of doing so would be to negotiate a change to those treaties. Given that this would require the unanimous agreement of all member states, including Bulgaria and Romania, the Government's judgment—which I think is the right one—is that there is no prospect of achieving it. That is why the transitional restrictions come to an end at the end of this year.[139]

Mr Mills withdrew the clause.

Financial support for refused asylum seekers

New Clause 16, moved by Dr Julian Huppert, identified various technical changes to the asylum support system in order for refused asylum seekers temporarily unable to return to their country of origin to be able to receive financial and/or accommodation support on a similar basis as is provided to asylum seekers who are still waiting for a final decision on their asylum claim.[140] Dr Huppert referred to analysis conducted by the Still Human, Still Here campaign coalition, which estimated that such changes could generate savings of £2 - 4million.

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136 PBC 19 November 2013 c390
137 PBC 19 November 2013 c393
138 PBC 19 November 2013 c399
139 PBC 19 November 2013 c401
140 PBC 19 November 2013 c402-5

The Minister for Immigration maintained that it is appropriate to provide support to refused asylum seekers in a different way than is given to those who have an outstanding asylum claim. Nevertheless, he agreed to look again at Still Human, Still Here's analysis and to share the Government's conclusions with the committee. Dr Huppert withdrew the clause.[141]

Changes to British nationality laws

Dr Julian Huppert tabled an amendment to **clause 6** (provision of biometric information with citizenship applications) in order to argue in favour of changes to nationality law which would benefit persons born outside the UK before 1 January 1983 to British mothers and persons born outside the UK before 1 July 2006 to an unmarried British father (who currently are not automatically entitled to British citizenship).[142] Meg Hillier expressed her support and Dr Huppert noted that the Immigration Minister and his predecessor had previously indicated their support for the changes.[143]

Mark Harper confirmed that the Government was sympathetic to calls to change nationality laws for those specific groups, but said that the changes would be outside the scope of the Bill.[144] He suggested that a Private Member's Bill might be an appropriate vehicle for making such changes, and said that if a Member was successful in the next ballot for Private Member's Bills and chose to pursue this issue, the Government would be happy to work with them on such a Bill. Dr Huppert withdrew the amendment.[145]

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141 PBC 19 November 2013 c406
142 PBC 5 November 2013 c176-7
143 PBC 5 November 2013 c178
144 PBC 5 November 2013 c178-9
145 PBC 5 November 2013 c179

Appendix 1: Members of the Public Bill Committee

Chairs: Sir Roger Gale, Katy Clark

Members:

Mr William Bain (Lab)

Norman Baker *(LD, Minister for Crime Prevention)*

Jim Dowd (Lab)

Jackie Doyle-Price (Con)

Mr David Hanson (Lab, Shadow Immigration Minister)

Mr Mark Harper *(Con, Minister for Immigration)*

Meg Hillier (Lab/Co-op)

Dr Julian Huppert (LD)

Helen Jones (Lab, Shadow Home Office Minister)

Simon Kirby (Con)

Mr Pat McFadden (Lab)

Nigel Mills (Con)

Anne Milton *(Con, Lord Commissioner of Her Majesty's Treasury)*

Guy Opperman (Con)

Ian Paisley (DUP)

Priti Patel (Con)

John Robertson (Lab)

Henry Smith (Con)

Nicholas Soames (Con)

Mr Robert Syms (Con)

Phil Wilson (Lab)

Committee Clerks: John-Paul Flaherty, Matthew Hamlyn

Appendix 2: Witnesses for oral evidence sessions

The Committee took evidence from the following external stakeholders over its first three sittings:

- Professor J. Meirion Thomas, Senior Surgeon and Professor of Surgical Oncology, The Royal Marsden
- Jacqueline Bishop, Brighton and Sussex University Hospitals Trust and Co-Chair of the Overseas Visitors Advisory Group, NHS
- British Medical Association
- Royal College of General Practitioners
- Academy of Medical Royal Colleges
- Migration Watch UK
- National Landlords Association
- Residential Landlords Association
- UK Association of Letting Agents
- Crisis
- Universities UK
- Immigration Law Practitioners' Association
- Justice
- Liberty
- Joint Council for the Welfare of Immigrants