

ILLEGAL MIGRATION BILL EFFECTS AND REASONS

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 1, page 2, line 28

leave out subsection (5)

Effect

This amendment deletes clause 1(5)

Reason

Clause 1(5) provides that Section 3 of the Human Rights Act 1998 (HRA) (interpretation of legislation) does not apply in relation to provision made by or by virtue of this Act.

Section 3 HRA provides that:

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

This ensures that the courts should so far as possible make sure that Acts of Parliament are read and given effect in a way which is compatible with the Convention rights brought into UK domestic law by the HRA. The Government's intention to disapply section 3 in the case of the bill is a direct consequence of the nature of the compatibility statement made by the Home Secretary.

The HRA section 19(1) provides that a Minister of the Crown "*in charge of a Bill...must, before Second Reading of the Bill— (a) make a statement to the effect that in the Minister's view the provisions of the Bill are compatible with the Convention rights ("a statement of compatibility"); or (b) make a statement to the effect that although the Minister is unable to make a statement of compatibility the Government nevertheless wishes the House to proceed with the Bill. (2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate*". The Home Secretary has chosen to make the following statement: "*I am unable to make a statement that, in my view, the provisions of the Illegal Migration Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill*". Section 19 has been in force since 24 November 1998 and this is the first time that immigration and asylum law has been proposed which is subject to such a statement. It has been reported in the Daily Telegraph on 8 March, *The key points in Rishi Sunak's illegal immigration bill* that: "In a letter to MPs, the Home Secretary said this acknowledgement in the Bill - known as a section 19 (1)(b) of the Human Rights Act 1998 - did not mean it was incompatible with the convention but that there was more than a 50 per cent chance that it may not be. This means government lawyers have assessed its chances of withstanding a legal challenge as more likely to fail than succeed..." As Professor Aileen Kavanagh states

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in A. Kavanagh, *'Is the Illegal Migration Act itself illegal? The Meaning and Methods of Section 19 HRA'*, *U.K. Const. L. Blog* (10th March 2023) (available at <https://ukconstitutionallaw.org/>) “a negative Statement under section 19(1)(b) embodies a conclusion that the courts are more likely than not to find a violation with rights, but that the government nevertheless wishes to proceed with the Bill.”

In the light of this approach to the compatibility issue it is important that the existing interpretation provisions remain in effect and are not disapplied in relation to the bill.

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Clause 2, page 2, line 32

leave out “must” and insert “may”

Effect

This amendment allows the Secretary of State some discretion in the exercise of the powers to remove under clause 2 of the bill.

Reason

Our view is that the obligation to make arrangements to remove migrants who meet certain conditions will effectively remove the right to claim asylum and breach the UK's obligations under The Refugee Convention [UNHCR - Convention and Protocol Relating to the Status of Refugees](#).

Article 31 of the Convention stipulates refugees should not be penalised for their illegal entry or stay, however this bill places an obligation on the Secretary of State to penalise illegal entrants without giving consideration to whether they are genuine refugees.

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Clause 2, page 3, line 9

leave out “7 March 2023” and insert
“the commencement of this section.”

Effect

This amendment removes the retrospective provision from clause 2

Reason

We note the second condition (Clause 2(3)) applies the obligation to remove to all individuals entering the UK on or after 7 March 2023 and not the date the law would come into force. We have concerns about the use of retrospective law making as it undermines the rule of law and no justification has been provided for this. We therefore suggest this clause is amended so the law applies only to those entering the UK after the Act comes into force.

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Clause 2, page 3. Line 10

leave out subsection (4).

Effect

This amendment deletes clause 2(4).

Reason

The third condition detailed in clause 2(4)) is inconsistent with the Refugee Convention (1951) which does not require a claim to be made in the first safe country. In the case of people who have been trafficked to the UK, it is not uncommon for them to be under control of the people smuggler until they arrive in the UK and it is unjust to penalise them for not making a claim in a country where they were unable to do so. We propose that clause 2(4) should be removed from the bill.

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Clause 3, page 4, line 9

leave out subsection (2).

Effect

This amendment deletes clause 3(2).

Reason

Although there is no obligation to remove unaccompanied asylum seeking children while they are under the age of 18, such an obligation would arise when they turn 18 regardless of how long they have spent in the UK. The provisions of this bill could lead to unaccompanied children spending their formative years in the UK and developing significant family and private life ties here. Clause 3(2) would mean these family and private life ties would be disregarded as soon as the child turns 18 and the Secretary of State would be obliged to remove the individual in spite of these ties. We propose that clause 3(2) should be removed from the bill.

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Clause 4, page 4, line 27

leave out clause 4

Effect

This amendment deletes clause 4.

Reason

We have deep concerns about the provisions of Clause 4(1). This clause requires the Secretary of State to disregard judicial reviews, refugee protection claims, human rights claims and issues of slavery and trafficking. It means the Secretary of State will be under a duty to remove people regardless of legitimate legal proceedings or claims being in progress. This is inconsistent with the rule of law. This amendment seeks the removal of this problematic clause.

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Clause 5, page 5, line 36

add at end “(2) If the Secretary of State is unable to make arrangements for the removal of the person from the United Kingdom within three months from the date of the person’s arrival in the United Kingdom the Secretary of State must:

- (a) Revoke the declaration of inadmissibility made under section 4(2) in relation to a protection claim, or a human rights claim, and
- (b) Consider a protection claim or a human rights claim made by the person.”

Effect

This amendment requires the revocation of a declaration of inadmissibility in certain circumstances.

Reason

In the absence of returns agreements with safe 3rd countries, this clause’s effect is to make almost all non-EU, Swiss or Albanian nationals unremovable. Clauses 5(8) and 5(9) state that where these individuals make a protection or human rights claim they will not be removed to their home country but will instead be removed to the country from where they embarked to the UK or another country where they will be admitted (a safe 3rd country).

At present the only proposed returns partnership is with Rwanda and is designed with hundreds of arrivals. Given the large number of arrivals this clause would apply to, it is likely that most arrivals would be unremovable but would also be in a position where the Secretary of State is legally prohibited from considering their human rights or protection claim.

This would create a large population, including children, without status in the UK. We would therefore recommend that a new provision is inserted to state that if the Secretary of State cannot remove someone from the UK within a period of 3 months, she would be obliged to consider their human rights or protection claim.

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Clause 6, page 7, line 34

add at end “(2) Regulations under subsection 1 are subject to super affirmative procedure as provided for in the Schedule (Regulations under Section 6: Super Affirmative procedure).”

Effect

This amendment makes provision for a super affirmative procedure to apply to regulations containing any new countries.

Reason

We take the view that this clause should be amended to require Parliament to approve any new countries which the Secretary of State considers to be safe to return asylum seekers. It is important that such additions are subject to particular focussed scrutiny by Parliament.

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Clause 8, page 10, line 17

add at end "(8) This section does not apply to a family member who has been living in the United Kingdom prior to the commencement of this Act."

Effect

This amendment narrows the categories of person to which clause 8 applies.

Reason

Clause 8 is extremely wide and could apply to those who would otherwise not fall within Clause 2, for example if a family member is present in the UK before 7 March, or the date the law comes into force if our amendment is accepted, they could still be removed under this Bill despite having a pending human rights or protection claim.

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Clause 9, page 10, line 26

leave out clause 9.

Effect

This amendment deletes clause 9.

Reason

Although clause 9 is designed to prevent those covered by the bill from accessing public funds, it will not do so. Local Authorities will still have an obligation under the Human Rights Act 1998 to provide support to those who would otherwise be destitute and therefore the cost of supporting people, who are unlikely to be removed, will only be moved from one public body to another. We take the view this clause should be deleted.

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Clause 15, page 22, line 32

add at end “(3) In providing or arranging for the provision of accommodation for unaccompanied migrant children under this section the Secretary of State must regard the best interests of the child as a primary consideration.”

Effect

This amendment requires the Secretary of State when exercising the powers under clause 15 to regard the best interests of the child as a primary consideration.

Reason

This clause allows the Secretary of State to provide for or arrange for the provision of accommodation of accommodation to children of Scotland. There is no provision in this clause outlining any safeguards relating to the accommodation to be provided. There is also no provision for the circumstances in which it would be reasonable or appropriate for the Secretary of State to make an order that the care of the child be transferred and to safeguards in place to limit that power for children of a particular age or vulnerability.

The effect of this is to give a legal basis for the unlawful Home Office practice of housing unaccompanied children in hotel accommodation. This section would permit accommodating an unaccompanied child of any age in hotel accommodation not just on a temporary basis but for an undetermined period of time. This raises significant safeguarding concerns due to the fact that the accommodation would not have the same levels of support which would normally be provided by the local authority. This amendment requires the Secretary of State to regard the best interests of the child as a primary consideration and ensure the welfare of such children subject to clause 15.

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Clause 15, page 22, line 36

leave out “7 March 2023” and insert
“the commencement of this section.”

Effect

Consequential amendment.

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Clause 16, page 23, line 4

add at end “(2) In making the decision under subsection (1) the Secretary of State must (a) regard the best interests of the child as a primary consideration.”

Effect

This amendment requires the Secretary of State when exercising the powers under clause 16 to regard the best interests of the child as a primary consideration.

Reason

Providing the Secretary of State with the power to order the transfer of an unaccompanied asylum seeking child from the local authority’s care into the care of the Secretary of State would undermine the protections for children in the Children’s (Scotland) Act 1995. This amendment requires the Secretary of State to regard the best interests of the child as a primary consideration and ensure the welfare of such children subject to clause 16.

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Clause 19, page 24, line 27

add at end Secretary of State must consult with: --

- (a) the Welsh Ministers,
 - (b) the Scottish Ministers,
 - (c) the First Minister and deputy First Minister in Northern Ireland,
 - (d) a Northern Ireland Minister, or
 - (e) a Northern Ireland department and
 - (f) local authorities in Wales,
 - (g) local authorities in Scotland: and
 - (h) local authorities in Northern Ireland; and
 - (g) such other persons or bodies, as the Secretary of State considers appropriate.
- (3) The Secretary of State must publish the result of the consultation before the regulations under subsection (1) are laid in Parliament.

Effect

This amendment requires the Secretary of State to consult with the affected devolved administrations and local authorities across the UK before extending clauses 15 to 18 to Wales, Scotland and Northern Ireland.

Reason

This clause gives the Secretary of State the power to introduce regulations which would extend the remit of clauses 15-18 so they apply to Scotland. These regulations would create law on devolved matters (care of young people housing and social services) which can be done without the consent of the devolved legislatures.

We take the view that the Secretary of State should consult with the devolved administrations and local authorities in order to ensure that the best interests of the children concerned is paramount.

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Clause 21, page 25, line 15

leave out clause 21

Effect

This amendment deletes clause 21.

Reason

This clause offers conditional protection for asylum seekers that are victims of modern slavery and in so doing, fundamentally goes against the purpose of the Modern Slavery Act 2015 which seeks to protect victims of modern slavery. Making an exception on the grounds that victims co-operate with public authorities in connection with investigations or criminal proceedings in respect of the relevant exploitation, undermines a victim centred approach to dealing with trauma resulting from modern slavery and connected matters.

Furthermore, s.45 of the Modern Slavery Act 2015 provides a defence for slavery or trafficking victims who commit offence. This provision acknowledges the impact of modern slavery on victims and seeks to mitigate this impact by not further criminalising them for offences committed as a victim of modern slavery or human trafficking. By disapplying the provisions of s.45 of the Modern Slavery Act 2015, clause 21 seeks to criminalize victims of trafficking. This creates an unjust result and accordingly the clause should be deleted from the bill.

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Clause 29, page 33, line 35

leave out “or (e) the person—

(i) is a member of the family of a person who has ever met those four conditions, and

(ii) meets the three conditions in section 8 of that Act (removal of family members);”.

Effect

This amendment disapplies clause 29 in relation to family members.

Reason

Clause 29’s provisions apply to family members even if the family member was in the UK before the person who meets the four conditions. Individuals already in the UK who may have an asylum claim under consideration would be caught by this, even if they have a legitimate claim that is likely to be granted. The scope of this should be reduced and only apply to family members that arrive after the main applicant. This amendment achieves that objective.

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Clause 29, page 34, line 7

leave out “and (b) the person—

(i) is a member of the family of a person who has ever met those four conditions, and

(ii) meets the three conditions in section 8 of that Act (removal of family members);”.

Effect

Consequential amendment.

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Clause 30, page 35, after line 25,

insert – “() Nothing in this Act shall exclude any entitlement to British citizenship under the British Nationality Act 1981.”

Effect

To protect British citizenship rights.

Reason

This amendment ensures the act will not apply to any entitlement to British Citizenship. Clauses 31-34 could apply to people born in the UK or born to a British citizen. This amendment ensures that anyone's entitlement to British citizenship under the British Nationality Act 1981 is preserved.

This amendment was prepared by Solange Valdez-Symonds CEO of the Project for the Registration of Children as British Citizens (PRCBC). We agree with the amendment and thank PRCBC for drawing it to our attention see [prcbc – The Project for the Registration of Children as British Citizens](#).

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Clause 30, page 35, line 34

leave out subsection (4)

Effect

This amendment deletes subsection (4) from clause 30.

Reason

There is no justification for prohibiting children born in the UK from obtaining British citizenship. What about where the child may otherwise be stateless?

Preventing these individuals from ever obtaining leave to remain will likely expose them to exploitation, working illegally for unscrupulous employers and living in terrible conditions. The consequences of this provision will mean that there will be individuals in the UK without leave to remain and without the possibility of regulating their status. Children born in the UK to those individuals will never have lived in any other country but will have no way to gain leave to remain or citizenship, even after living here for many years.

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Clause 39, page 41, line 19

leave out “not”

Effect

This amendment ensures that a serious harm suspensive claim under the bill is a human rights claim for the purposes of the Nationality, Immigration and Asylum Act 2002 or the Nationality and Borders Act 2022

Reason

The absence of a right of appeal (see Section 39(4)) to determine any human rights claims means that affected individuals and their family members will not have access to *any* mechanism for independently assessing the best interests of children. This is concerning as it is likely to be individuals who have family life with children in the UK who might well seek to make human rights claims in this context.

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Clause 39, page 41, line 22

leave out subsection (2).

Effect

Consequential amendment.

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Clause 40, page 43, line 1

leave out “8” and insert “30”

Effect

This amendment increases the claim period.

Reason

We consider that it seems unrealistic to expect claimants to be able to gather the “compelling evidence” they are ordained to provide within the short claim period of 8 days or decision period of 4 days. Such a system seems analogous to the discredited “detained fast-track” system for processing asylum claims, which was declared unlawful by the Court of Appeal in 2015 ([Lord Chancellor v Detention Action \[2015\] EWCA \(Civ\) 840](#)). Whilst the time limits are slightly longer in the remedies proposed by the Bill this is offset by the imposition of higher evidential standards (ie. The oft-repeated and exacting requirement to provide “compelling” evidence or, even, “compelling evidence [of] compelling reasons” see clause 44(5)(a).

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Clause 40, page 43, line 3

leave out "4" and insert "30"

Effect

Consequential amendment

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Clause 42, page 44, line 15

leave out "Upper" and insert "First-tier"

Effect

Consequential amendment

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Clause 42, page 44, line 25

leave out line 25

Effect

This amendment deletes the requirement that each notice of appeal must contain compelling evidence of ground of claim under clause 42 (3)9a) or (b).

Reason

In our view it is difficult to reconcile the requirement for an Appellant to prove “compelling evidence” (in 42(3)) with the lower standard of proof (“real risk”) envisaged in 42(6). Resolving this contradiction might well be problematic for the judiciary. The scope for confusion and ambiguity here is also arguably contrary to the rule of law – in particular the requirement that the law should be “so far as possible intelligible, clear and predictable” (per the Rt Hon Lord Bingham: “The Rule of Law”, 2010).

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Clause 42, page 44, line 27

leave out “Upper” and insert “First-tier”

Effect

Consequential amendment

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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 42, page 44, line 30

leave out "Upper" and insert "First-tier"

Effect

Consequential amendment

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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 42, page 44, line 32

leave out “Upper” and insert “First-tier”

Effect

Consequential amendment

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Clause 42, page 44, line 41

leave out subsection (7)

Effect

This amendment deletes clause 43(7)

Reason

We take the view that the absence of any right of appeal to the higher courts would limit yet further the degree of judicial oversight permitted over the executive branch of government. Another likely consequence of this could be that more Appellants are forced to take their cases to Strasbourg in the absence of any further rights of appeal before the UK courts.

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Clause 43, page 45, line 9

leave out “Upper” and insert “First-tier”

Effect

Consequential amendment

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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 43, page 45, line 10

leave out “Upper” and insert “First-tier”

Effect

Consequential amendment.

**ILLEGAL MIGRATION BILL
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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 43, page 45, line 11

leave out "Upper" and insert "First-tier"

Effect

Consequential amendment.

**ILLEGAL MIGRATION BILL
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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 43, page 45, line 12

leave out “Upper” and insert “First-tier”

Effect

Consequential amendment.

**ILLEGAL MIGRATION BILL
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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 43, page 45, line 14

leave out “only”

Effect

This amendment removes the word “only” from clause 43(3).

Reason

Clause 43(3) provides the test applied by the Upper Tribunal when considering an application for permission to appeal in relation to a serious harm suspensive claim. The tribunal may grant permission to appeal, *only* if it considers only there is compelling evidence that the person would face an obvious and real risk of serious and irreversible harm if removed to the safe third country specified in the removal notice.

The deletion of “only” from this subsection will enable the Tribunal to take into account other matters when determining to allow an appeal.

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Clause 43, page 45, line 14

after "if" insert "among other matters"

Effect

Consequential amendment

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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 43, page 45, line 18

leave out “Upper” and insert “First-tier”

Effect

Consequential amendment.

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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 43, page 45, line 20

leave out "only"

Effect

Consequential amendment

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Clause 43, page 45, line 20

after "if" insert "among other matters"

Effect

Consequential amendment

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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 43, page 45, line 23

leave out “Upper” and insert “First-tier”

Effect

Consequential amendment.

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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 43, page 45, line 25

leave out "Upper" and insert "First-tier"

Effect

Consequential amendment.

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Clause 43, page 45, line 27

leave out "Upper" and insert "First-tier"

Effect

Consequential amendment.

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Clause 43, page 45, line 28

leave out "Upper" and insert "First-tier"

Effect

Consequential amendment.

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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 43, page 45, line 30

leave out subsection (7)

Effect

This amendment deletes clause 43(7)

Reason

We take the view that the absence of any right of appeal to the higher courts would limit yet further the degree of judicial oversight permitted over the executive branch of government. Another likely consequence of this could be that more appellants are forced to take their cases to Strasbourg in the absence of any further rights of appeal before the UK courts.

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Clause 43, page 45, line 33

leave out subsection (8)

Effect

Paving amendment for the deletion of clause 48.

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Clause 46, page 47, line 43

after “matter” insert “including a new matter”

Effect

This amendment clarifies the jurisdiction of the Tribunal.

Reason

Clause 46(3) prohibits the Tribunal from considering any new matter without the consent of the Secretary of State. This restriction on what the Tribunal can consider is inimical to the interests of justice, see our comment on clause 46(3). If clause 46(3) is deleted the jurisdiction of the Tribunal will need to include “new matters”. This amendment achieves that objective.

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Clause 46, page 48, line 1

leave out subsection (3).

Effect

This amendment deletes clause 46 (3)

Reason

We take the view that allowing the Secretary of State to set the limits on what can or cannot be adjudicated upon in individual appeals seems inconsistent with the rule of law. For example it arguably offends against the principles that all are equal before the law, that no-one should be a judge in their own cause, and that adjudicative procedures provided by the state should be fair (cf the Rt Hon Lord Bingham: "The Rule of Law", 2010).

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Clause 46, page 48, line 9

leave out from line 9 to the end of line
29.

Effect

This amendment deletes provisions of the bill consequential on the previous amendment.

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Clause 48, page 49, line 29

leave out clause 48

Effect

This amendment deletes clause 48.

Reason

We take the view that further restrictions on rights of appeal to the higher courts could result in situations whereby erroneous or unlawful decisions are unchallengeable. It is difficult to see how this could ever represent the “highest standards of fairness”. This amendment is designed to probe the Government’s policy in respect of finality of decisions.

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Schedule 2

to move the following Schedule —

Insert the following new Schedule—

“Regulations under Section 6 Super Affirmative Procedure

(1) If the Secretary of State considers it necessary to make regulations under this Act which are subject to the super-affirmative resolution procedure, the Secretary of State must lay before Parliament—

- (a) draft regulations, and;
- (b) an explanatory document.

(2) The explanatory document must introduce and give reasons for draft regulations.

(3) Subject as follows, if after the expiry of the 40-day period the draft regulations laid under paragraph 1 are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.

(4) The procedure in paragraphs 5 to 8 apply to the draft regulations instead of the procedure in paragraph 3 if— (a) either House of Parliament resolves within the 30-day period, or (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.

(5) The Secretary of State must consult the:

- (1) The Scottish Ministers
- (2) The Welsh Ministers and

(3) The Northern Ireland Executive and have regard to—

- (a) their representations,
 - (b) any other representations received and
 - (c) any resolution of either House of Parliament, and
- any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations, made during the 60 day period on the draft regulations.

(6) If, after the expiry of the 60-day period, the draft regulations are approved by each House the Secretary of State may make regulations in the terms of the draft regulations.

(7) If, after the expiry of the 60-day period, the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament— (a) a revised draft of the regulations, and (b) a statement giving a summary of the changes proposed which may be approved by each House.

(8) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.

(9) For the purposes of this Schedule regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.

(10) In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament.”

**ILLEGAL MIGRATION BILL
EFFECTS AND REASONS**

AMENDMENTS TO BE MOVED IN COMMITTEE