Purpose of amendments 2 to 5 (Sarah Teather MP)
The purpose of these amendments would not create additional rights of appeal but would simply ensure that when the courts consider an appeal, they take into account the best interests of all affected children.

Introduction
The RCC believes Clause 14 does not allow for proper consideration of the best interests of all children, in particular children who are not British citizens and who have not lived in the UK for seven years or more. Wide powers already exist for the state to remove migrants without leave and deport foreign national ex-offenders.

The RCC believes Clause 14 must be revised to ensure that best interests of all children can be properly considered by the courts.

The law on children's best interests
Decision-makers must establish the best interests of any child in accordance with the UNCRC, the General Comments of the Committee on the Rights of the Child, the jurisprudence of the European Court of Human Rights and the UK Supreme Court and any decision must ensure that a child's best interests are a primary consideration in all actions affecting them. The RCC believes Clause 14 does not reflect established case law on children’s best interests as set out in the landmark judgment ZH (Tanzania) in the Supreme Court and other domestic and Strasbourg jurisprudence. In particular, the Bill fails to highlight the importance that must be accorded to first understanding the best interests of the child and their weight, before going on to consider any other countervailing public interest factors. The Bill fails to realise the UK's obligations to children, despite the Supreme Court’s recognition that children should not be blamed for the actions of their parents.

In the ZH Tanzania judgment it was noted that: “In making the proportionality assessment under article 8, the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations. In this case, the countervailing considerations were the need to maintain firm and fair immigration control, coupled with the mother’s appalling immigration history and the precariousness of her position when family life was created. But, as the Tribunal rightly pointed out, the children were not to be blamed for that. And the inevitable result of removing their primary carer would be that they had to leave with her.” (Paragraph 33, emphasis added)

There is an obvious tension between the need to maintain a proper and efficient system of immigration control and the principle that, where children are involved, the best interests of the children must be a primary consideration. The proper approach...is, having taken this as the starting point, to assess whether their best interests are outweighed by the strength of any other considerations. The fact that the mother's immigration status was precarious when they were conceived may lead to a suspicion that the parents saw this as a way of strengthening

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1 According to Home Office figures only 177 appeals (10% of all appeals by foreign criminals) against deportation in 2011/12 succeeded on Article 8 grounds. Many of these cases will have raised very serious child welfare issues. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249313/Factsheet_06_-_Article_8.pdf
2 Both Article 3 of the UN Convention on the Rights of the Child and Charter of Fundamental Rights referred to in Article 6 of the Treaty on European Union make the child's best interests 'a primary consideration' in all actions concerning children. There is a distinct but related domestic statutory obligation imposed by section 55 of the Borders, Citizenship and Immigration Act 2009.
3 See Kerr L at paragraph 144 in HH v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25
4 The Supreme Court in HH v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25 also recognised that the interests of the child were of themselves a public interest consideration not just private/personal interests – see for example Hale L at paragraph 26.
5 ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4
her case for being allowed to remain here. **But considerations of that kind cannot be held against the children in this assessment. It would be wrong in principle to devalue what was in their best interests by something for which they could in no way be held to be responsible.**” (Paragraph 44, emphasis added)

In the Supreme Court case *HH*, Lord Kerr stated that best interests ‘must always be at the forefront of any decision-maker’s mind.’ He said:

“This calls for a sequencing of, **first, consideration of the importance to be attached to the children’s rights** (by obtaining a clear-sighted understanding of their nature), then an assessment of the degree of interference and finally addressing the question whether [the government’s action] justifies the interference. This is not merely a mechanistic or slavishly technical approach to the order in which the various considerations require to be evaluated. It accords proper prominence to the matter of the children’s interests.”

It has been argued that the provisions in the Bill protect children by stopping parents from using their children as a means to remain in the UK. This is illogical - children cannot be protected by ignoring their best interests out of concern that parents might benefit from action to safeguard children. The courts must carefully consider what action is in each child’s best interests, even when their parent’s immigration history is poor. Any proper assessment would by necessity assess whether their parent had a genuine, caring relationship with the child. Clause 14 fails to recognise that promoting and protecting the rights of children is in itself a necessary and valuable benefit to society and an essential part of the public interest. For the avoidance of doubt these interests should be clearly stated as public interests on the face of the Bill and not left to give the impression, as is currently the case, that children’s interests amount to no more than private and personal interests of an individual and their family.

**“Qualifying child”**

The tests introduced for Article 8 creates an extraordinarily narrow space to consider best interests and makes it effectively impossible for them to be considered in the manner they should be. Any child who is not a “qualifying child” - any non-citizen child who has not lived in the UK for a continuous period of seven years or more - does not even come into consideration. The Bill does not mirror the Rules and makes the tests even tighter. This is contrary to the UNCRC, which makes clear that the best interest considerations should be afforded to all children under 18 without discrimination (Article 2). This test incorrectly assumes that children who have lived in the UK for less than seven years will not be seriously affected by their parent’s expulsion because they will be able to accompany their parent and adapt to life abroad. This ignores the complexity of these cases whereby for example, the parents may well be separated, and children often face the impossible choice of leaving one parent behind in the UK or being split from the deported parent for the rest of their childhood.

**Suggested question for the Minister**

*Can the Minister undertake a children rights impact assessment to inform this clause in the bill?*

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Barnardo’s, British Red Cross, Office of the Children’s Commissioner (England), UNICEF UK & UNHCR all have observer status. [http://www.refugeechildrenconsortium.org.uk/](http://www.refugeechildrenconsortium.org.uk/)

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8 Immigration Bill Committee debate Tuesday 5 November 2013 (Afternoon)