

ILPA Briefing on Presumed Purposes of Amendments**House of Commons, Committee Stage****Parts 3 & 4, Borders, Citizenship and Immigration Bill, Bill 86****June 2009**

Mr Phil Woolas

31Page **43**, line **18**, leave out Clause 51.**Presumed Purpose**

Amendment No. 31 seeks to remove clause 51 which was inserted into the Bill in the House of Lords in order to restrain the Government from exercising powers under section 10 of the Immigration Act 1971 to introduce immigration controls on the land border between the UK and the Republic of Ireland.

Mr Damian Green
Mr Crispin Blunt**57**

★ Clause **52**, page **43**, line **28**, at beginning insert 'where leave is granted for the purpose of studies in the United Kingdom,'.

Purpose

This Amendment would restrict the clause, which allows for restrictions to be placed on the studies of migrants with limited leave to enter or remain, to those whose limited leave to enter or remain is granted for the purpose of their studying in the UK.

Briefing

ILPA supports this Amendment. A briefing on clause 52 has been made available to Committee Members. As explained there, the Amendment does not restrict the Government in any way adverse to the stated intentions behind the clause. As such, the Amendment would constitute a significant improvement upon the clause in restricting it more closely to its purposes. Currently, the clause is very widely drawn and could be used to restrict other migrants in relation to studies, including those who have been granted limited leave for the purpose of work, or because of their relationship or because they are refugees.

Mr Damian Green
Mr Crispin Blunt

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★ Clause 52, page 43, line 29, at end insert—

a condition restricting
his studies to an
(ib) education institution
registered as a sponsor
of non-EU nationals.

(1A) An educational institution registered as a
sponsor of non-EU nationals must be
defined as a University, Institute, Royal
College or College under the Company
and Business Names Regulations 1981
(S.I. 1981/1685).’.

Presumed Purpose

This Amendment should be read with New Clause 10. The purpose of the Amendment and New Clause 10 is to restrict overseas students to the UK (other than those who are EU nationals) to institutions registered to sponsor such students to the UK; and to further control which institutions may be registered to so sponsor overseas students.

Mr Damian Green
Mr Crispin Blunt

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Clause 54, page 44, line 18, leave out ‘thinks’ and insert ‘has reasonable suspicion.’.

Presumed Purpose

The Amendment addresses in relation to the specific clause a general problem in recent legislation where the words ‘has reasonable suspicion’ or similar wording has been replaced with the word “*thinks*”. It has been said that this the use of ‘thinks’ is part of simplification, but in plain English usage the word does not convey the same meaning as phrases such as ‘has reasonable suspicion’ or ‘has reasonable grounds for suspecting’ or ‘has reasonable grounds for believing’.

Mr Phil Woolas

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Page 44, line 30, leave out Clause 55.

Presumed Purpose

This Amendment seeks to remove clause 55, which was inserted by the House of Lords.

Briefing

Clause 55 has two distinct purposes. One is to restrict the transfer of judicial review applications from the High Court to the tribunal regime. The other is to restrict appeal rights to the Court of Appeal against decisions of that tribunal regime. Further briefing on this and related Amendments is available in the separate ILPA briefing on clause 55 and the Government Amendments, which briefing has been circulated to Committee members.

Tom Brake
Paul Rowen

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Clause 57, page 45, line 22, after ‘Kingdom’, insert ‘or the responsibility of the UK

Presumed Purpose

The Amendment seeks to extend the new duty to safeguard and promote the welfare of children so that children, whom the UK Border Agency is dealing with outside the UK are equally protected as those whom it is dealing with in the UK.

Briefing

ILPA supports the removal of the words “*who are in the United Kingdom*” from the clause. ILPA has provided a more detailed briefing on this in March 2009 for the Committee stage in the House of Lords, and this is available in the Briefings section at www.ilpa.org.uk. The Government response to the amendment that was moved in the Lords to remove these words was somewhat confused. Lord West of Spithead (4 Mar 2009 : Column 819) expressly accepted “*UK border staff have responsibility to take appropriate action if, in the course of their duties, they come across children overseas whom they believe to be at risk of harm*”. It would surely also be acceptable to the Government that the UK Border Agency should seek to avoid actions on its part towards such children in ways that would be harmful to those children’s welfare or safety. So why not make that clear by including such circumstances within those contemplated by the duty in clause 57? The decision to include these words appears inexplicable. It is certainly not explained by the response of the Lord West that removing these words would require or could require interference with the jurisdiction of foreign states (4

Mar 2009 : Column 819. If the UK Border Agency has jurisdiction to operate overseas (and plainly it does), it is no interference with any other state's jurisdiction to require the UK Border Agency to ensure that in carrying out its duties towards the children whom it is dealing with as a consequence of its operations overseas, or operations affecting children overseas, it has regard to the safety and welfare of those children. ILPA would commend briefings of the Refugee Children's Consortium to Members.

Mr Damian Green
Mr Crispin Blunt

60

Clause 57, page 46, line 3, at end insert—

(5A) The Secretary of State shall collect and publish statistics regarding detention of children during the relevant period, on a regular basis.'

Presumed Purpose

This Amendment will allow Members to probe the Government as to the statistics that it collects and publishes in relation to children; and as to the adequacy of the UK Border Agency's capacity to monitor its duties, policies and practices towards children (and for outside scrutiny) by reference to appropriate data. ILPA would commend the briefing of the Refugee Children's Consortium to Members.

Mr Phil Woolas

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Clause 59, page 46, line 31, leave out '55' and insert '[*Transfer of immigration or nationality judicial review applications*]'

Presumed Purpose

This Amendment is consequent upon Government Amendment New Clause 4; and see Amendment No. 32 (above).

Mr Phil Woolas

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Clause 60, page 47, line 1, leave out ‘51 (entry otherwise than by sea or air: immigration control)’ and insert ‘[*Common Travel Area*] (Common Travel Area)’.

Presumed Purpose

This Amendment is consequent upon Government Amendment New Clause 3; and see Amendment No. 31 (above).

Mr Phil Woolas

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Clause 60, page 47, line 8, leave out ‘55 (fresh claim applications)’ and insert ‘[*Transfer of immigration or nationality judicial review applications*] (transfer of immigration or nationality judicial review applications)’.

Presumed Purpose

This Amendment is consequent upon Government Amendment New Clause 4; and see Amendment No. 32 (above).

Mr Damian Green
Mr Crispin Blunt

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Clause 60, page 47, line 35, at end add—

(12) If any part of this Act has not come into force within two years of it receiving Royal Assent the Secretary of State shall report to Parliament the reasons.’.

Presumed Purposes

This Amendment will allow Members to probe the Government about its intentions for commencement of the provisions in the Bill.

Mr Phil Woolas

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Clause 61, page 47, line 38, leave out subsection (2).

Presumed Purpose

The Members' explanatory statement records: *This amendment leaves out the common-form provision inserted by the House of Lords at Third Reading to avoid infringing the financial privileges of the House of Commons.*

Mr Phil Woolas

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Schedule, page 48, line 34, at end insert—

'Immigration Act 1971 (c. 77)	In section 11(2), in paragraphs (a) and (b), the words "or elsewhere in the common travel area".'
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Presumed Purpose

This Amendment is consequent upon Government Amendment New Clause 3; and see Amendment No. 31 (above).

Mr Phil Woolas

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Schedule, page 49, line 3, at end insert—

'Judicature (Northern Ireland) Act 1978 (c. 23)	Section 25A(7).
Supreme Court Act 1981 (c. 54)	Section 31A(7).
Tribunals, Courts and Enforcement Act 2007 (c. 15)	Section 20(5).'

Presumed Purpose

This Amendment is consequent upon Government Amendment New Clause 4; and see Amendment No. 32 (above).

For further information please get in touch with:

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