



## **ILPA Proposed Amendments Borders, Immigration and Citizenship**

### **PART 1 (BORDER FUNCTIONS)**

#### **House of Commons Committee Stage**

ILPA is a professional association with some 1000 members (individuals and organisations), who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-government organisations working in this field are also members. ILPA aims to promote and improve the giving of advice on immigration and asylum, through teaching, provision of resources and information. ILPA is represented on numerous government, court and tribunal stakeholder and advisory groups.

ILPA is happy to assist Members of Parliament in considering and/or drafting other amendments of interest to them.

#### **PART 1**

##### **Clause 23 (Investigations and Detention: England and Wales and Northern Ireland)**

###### **PROPOSED AMENDMENT**

THE

Page 17, line 27 leave out 'may' and insert 'must'

###### **Purpose**

To change the power to apply the PACE Codes to the acts of customs officials and immigration officers to a duty.

###### **PROPOSED AMENDMENT**

THE

Page 17, line 34, after 'officers' insert –

(e) the provision of services provided by another person pursuant to arrangements which are made by the Secretary of State and relate relating to the discharge of a function within subsections (a) to (d).

**Purpose**

To ensure that private contractors exercising functions in connection with investigations or detention are subject to the PACE codes.

**Clause 25 (Short-term holding facilities)****PROPOSED AMENDMENT**

THE

Page 18, leave out lines 42 to page 19, line 3

**Purpose**

To avoid several possibilities for mischief that the clause may otherwise cause including (a) designating any place where people are sometimes held under immigration powers for less than seven days (which include prisons, police cells and immigration removal centres) as short-term holding facility, (b) allowing people to be held under immigration powers in short-term holding facilities for more than seven days and (c) permitting inappropriate and dangerous co-detention of persons for varying periods of time under various powers (immigration and non-immigration, including policing) in places not suitable for such co-detention.

**Briefing note**

Section 147, Immigration and Asylum Act 1999 provides the following current definitions:

*'detained persons' means persons detained or required to be detained under the 1971 Act [or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)]*

*'short-term holding facility' means a place used solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed.*

**Clause 30 (Complaints and misconduct)****PROPOSED AMENDMENT**

THE

Page 23, line 26 at end insert

- (2B) Regulations made under subsection (1) or (2A) may make provision conferring functions on the Independent Police Complaints commission in respect of the exercise of immigration functions, customs functions and the provision of services pursuant to

arrangements relating to the discharge of those functions whether in the UK or overseas.

### **Purpose**

To ensure that complaints can be made to the IPCC about the conduct not only of customs officials but also of immigration officials both within and outside the UK. While the amendment does not propose a duty on the Secretary of State to make regulations conferring functions on the IPCC it provides an opportunity to debate the point and also to seek to understand the division between the IPCC and the Parliamentary Ombuds.

### **Briefing note**

Section 41 of the Police and Justice Act 2006 (as enacted) reads as follows:

#### **41 Immigration and asylum enforcement functions: complaints and misconduct**

- (1) The Secretary of State may make regulations conferring functions on the Independent Police Complaints Commission in relation to—
- (a) the exercise by immigration officers of specified enforcement functions;
  - (b) the exercise by officials of the Secretary of State of specified enforcement functions relating to immigration or asylum.
- (2) In subsection (1) the reference to enforcement functions includes, in particular, reference to—
- (a) powers of entry,
  - (b) powers to search persons or property,
  - (c) powers to seize or detain property,
  - (d) powers to arrest persons,
  - (e) powers to detain persons,
  - (f) powers to examine persons or otherwise to obtain information (including powers to take fingerprints or to acquire other personal data), and
  - (g) powers in connection with the removal of persons from the United Kingdom.
- (3) Regulations under subsection (1) may not confer functions on the Independent Police Complaints Commission in relation to the exercise by any person of a function conferred on him by or under Part 8 of the Immigration and Asylum Act [1999 \(c. 33\)](#).
- (4) Regulations under subsection (1)—
- (a) may apply (with or without modification) or make provision similar to any provision of or made under Part 2 of the Police Reform Act [2002 \(c. 30\)](#) (complaints);
  - (b) may make provision for payment by the Secretary of State to or in respect of the Independent Police Complaints Commission.
- (5) The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration may disclose information to each other for the purposes of the exercise of a function—
- (a) by virtue of this section, or
  - (b) under the Parliamentary Commissioner Act 1967 (c. 13).
- (6) The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration may jointly investigate a matter in relation to which—
- (a) the Independent Police Complaints Commission has functions by virtue of this section, and
  - (b) the Parliamentary Commissioner for Administration has functions by virtue of the Parliamentary Commissioner Act 1967 (c. 13).
- (7) Regulations under subsection (1) shall relate only to the exercise of functions in or in relation to England and Wales.
- (8) In this section “immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971 (c. 77).

**For further information or for ILPA’s amendments on subsequent parts of the Bill please get in touch with Steve Symonds or Alison Harvey**

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