

**Borders, Citizenship and Immigration Bill (Bill 86)
House of Commons Public Bill Committee****ILPA BRIEFING – Part 1 Tabled Amendments
(Presumed Purposes)**

Mr Phil Woolas

18

- ★ Clause 1, page 2, line 17, after 'section' insert '(other than in subsection (8))'.

Presumed Purpose

See Amendment No. 19 (below).

Mr Phil Woolas

19

- ★ Clause 1, page 2, line 36, leave out from 'means' to end of line 37 and insert '—

- (a) a function that is exercisable—
 - (i) by the Secretary of State by virtue of this section, or
 - (ii) by general customs officials by virtue of section 3,
- (b) a function that is conferred on general customs officials or the Secretary of State by or by virtue of any of sections 22 to 24 (investigations and detention), or
- (c) a function under Community law that is exercisable by the Secretary of State or general customs officials in relation to a matter—
 - (i) in relation to which functions under Community law are

exercisable by the
Commissioners or officers of
Revenue and
Customs, and
that is not listed in
(ii) paragraphs (a) to (e) of
subsection (2).’.

Presumed Purpose

The Member’s explanatory statement accompanying the amendment on the order paper states that the amendment provides a definition of “*general customs functions*”. Members may wish to probe as to what of substance is provided by the definition. It is not immediately clear as to what functions would be included or excluded from the range of general customs functions by way of this amendment. However, since subparagraph (a) covers functions in relation to “*general customs matters*” (which is the current provision in clause 1), because these are functions exercisable by virtue of clause 1, it may be that subparagraphs (b) and (c) of the amendment are intended to include additional functions. (See also Amendment No. 29, below)

Mr Phil Woolas

20

☆ Clause 2, page 3, line 6, at end insert—

make provision for a function of
the Secretary of State or general
() customs officials to be treated, or
not to be treated, as a general
customs function.’.

Presumed Purpose

This would significantly expand the power of the Secretary of State to designate functions as “*general customs functions*”. Currently, clause 2 provides some limitation upon the power of the Secretary of State by making clear reference to the functions of the Commissioners for Her Majesty’s Revenue or Customs and allowing for these to be included or excluded from those “*general customs matters*” in relation to which “*general customs functions*” are exercised. However, the new subparagraph places no limitation on the power of the Secretary of State to designate any of his functions (of whatever nature) as “*general customs functions*”.

Damian Green
Mr Crispin Blunt

2

Clause 2, page 3, line 15, at end add—

(4) The Secretary of State must lay an annual report before both Houses of Parliament detailing the amendments that have been made by order under subsection (1).'

Presumed Purpose

This will allow Members to probe the Government as to the Secretary of State's accountability to Parliament in respect of any amendment (including, increase) of the functions that he has designated as "*general customs functions*". It is also a stark example of a general complaint made during Second Reading as to the "*degree of reliance [on] statutory instruments... [giving] Ministers the power to make things up at a later date*" (*Hansard*, HC 2 Jun 2009 : Column 192 *per* Chris Huhne MP); a complaint which other Members raised specifically in connection with the Government's citizenship proposals (e.g. *Hansard*, HC 2 June 2009 : Columns 182 and 231-231 *per* Chris Grayling MP and Damian Green MP respectively). These concerns take on added significance in light of Government Amendment No. 20 (see above).

Damian Green
Mr Crispin Blunt

3

Clause 3, page 3, line 20, leave out from 'officer' to 'as' in line 22.

Presumed Purpose

This will allow Members to probe the Government as to what other officials (other than immigration officers) it is intended that the Secretary of State may delegate general customs functions.

Damian Green
Mr Crispin Blunt

4

Clause 3, page 3, line 28, leave out subsection (3).

Presumed Purpose

This will allow Members to probe the Government as to whether and why it is intended that functions of the Secretary of State in relation to customs should be exercisable by any official of the Secretary of State despite his or her not being designated to perform such functions.

Damian Green
Mr Crispin Blunt

5

Clause 4, page 4, line 29, at end insert—

(3A) Any designation made under this section must be approved by a resolution of both Houses of Parliament.'

Presumed Purpose

This will allow Members to probe the Government as to the Secretary of State's accountability to Parliament in respect of designating immigration officers or other officials to exercise customs functions. However, having regard to subparagraph (3) of the clause (see above, Amendment No. 4), it should be noted that any such accountability would be of limited value if any official of the Secretary of State is empowered to perform such functions whether or not he or she is designated to do so.

Mr Phil Woolas

21

★ Clause 5, page 4, line 41, leave out from 'of' to end of line 41 and insert 'general customs functions.'

Presumed Purpose

See Amendment No. 19 (above).

Damian Green
Mr Crispin Blunt

6

Clause 6, page 5, line 3, leave out 'must' and insert 'may'.

Presumed Purpose

This will allow Members to probe the Government as to why or whether the Director of Border Revenue should be an official of the department of the Secretary of State. This may have particular relevance in relation to information sharing between those exercising or responsible for the exercise of revenue and customs functions and immigration functions.

Mr Phil Woolas

22

★ Clause 7, page 6, line 21, leave out from 'means' to end of line 22 and insert '—

- (a) a function that is exercisable—
 - (i) by the Director by virtue of this section, or
 - (ii) by customs revenue officials by virtue of section 11,
- a function that is conferred on customs revenue officials or the

Director by or by virtue of any of sections 22 to 24 (investigations and detention), or

- a function under Community law that is exercisable by the Director or customs revenue officials in relation to a customs revenue matter.’.
- (c)

Presumed Purpose

The Member’s explanatory statement accompanying this Amendment is in the same vein as that accompanying Amendment 19 (see above). Similar questions arise in relation to this Amendment as to that.

Damian Green
Mr Crispin Blunt

7

Clause 9, page 6, line 37, leave out ‘make arrangements to delegate’ and insert ‘designate by approval of the Secretary of State’.

Presumed Purpose

This will allow Members to probe the Government as to the accountability of the Director of Border Revenue to Parliament in respect of delegating his or her functions. This question takes on added significance in light of Government Amendment No. 23 (see below).

Mr Phil Woolas

23

★ Clause 9, page 6, line 38, leave out from ‘Director’ to end of line 39.

Presumed Purpose

This will expand the range of functions of the Director of Border Revenue, which he or she may delegate, insofar as it is intended that he or she will have functions other than functions conferred by legislation. Members may wish to probe the Government as to what other functions it is intended the Director should have, other than those conferred by legislation, and whether or why these should be capable of delegation.

Mr Phil Woolas

24

★ Clause 10, page 7, line 8, leave out ‘functions in relation to customs revenue matters’ and insert ‘customs revenue functions’.

Presumed Purpose

See Amendment No. 19 (above).

Damian Green
Mr Crispin Blunt

8

Clause 11, page 7, line 28, at end insert—

(1A) The Director of Border Revenue may not designate any official as a customs revenue official unless they have been properly trained.’.

Presumed Purpose

This Amendment will allow Members to probe the Government as to the training that will be undertaken before an official is designated as a customs revenue official; and as to the procedures for designation by the Director of Border Revenue so as to ensure that he or she only designates officials that have received adequate training.

Mr Phil Woolas

25

★ Clause 13, page 9, line 3, leave out from ‘of’ to end of line 4 and insert ‘customs revenue functions.’.

Presumed Purpose

See Amendment No. 19 (above).

Damian Green
Mr Crispin Blunt

9

Clause 14, page 10, line 7, at end add—

(8) Nothing in this Act shall enable any of the officers designated under this Part to use any personal data of UK citizens to restrict their right to enter or leave the United Kingdom for legitimate purposes.’.

Presumed Purpose

This will allow Members to probe the Government as to information sharing, particular in relation to information sharing between officials exercising customs and revenue functions and officials exercising immigration functions; and as regards how officials exercising both functions will handle information disclosed or revealed in the exercise of the former when exercising the latter.

Damian Green
Mr Crispin Blunt

10

Clause 20, page 14, leave out lines 19 and 20.

Presumed Purpose

This will allow Members to probe the Government as to why a person to whom information has been supplied by Her Majesty's Revenue and Customs (HMRC) or Revenue and Customs Prosecutions Office (RCPO) should be permitted to disclose that information. Specifically, the Amendment would exclude disclosure (as would be permitted by the current drafting) of information for the purposes of civil proceedings. Members may question why there should be powers to disclose information provided by HMRC or RCPO since either HMRC or RCPO would be free to consider providing the information to a third party if disclosure were considered appropriate or necessary, or it should be questioned why a disclosure should be made if HMRC or RCPO were not empowered to make it.

Damian Green
Mr Crispin Blunt

11

Clause 20, page 14, line 25, leave out 'consent (which may be general or specific)' and insert 'specific consent'.

Presumed Purpose

This will allow Members to further probe the Government in connection with matters that may be probed in relation to Amendment No. 10 (see above).

Damian Green
Mr Crispin Blunt

12

Clause 20, page 14, line 29, after 'relates', insert 'exclusively'.

Presumed Purpose

This will allow Members to probe the Government as to the circumstances in which information that relates to more than one person may be disclosed, and in particular whether consent will be required from each such person and how consent will be obtained.

Damian Green
Mr Crispin Blunt

13

Clause 22, page 17, line 25, at end add—

(10) In the application of PACE orders

by virtue of this section—

(a) no person may be detained in an office of the UK Border Agency which has not been designated as a police cell for a period exceeding three hours;

(b) no person may be detained in a police cell under powers granted to the UK Border Agency for more than five days.’.

Presumed Purpose

This Amendment will allow Members to probe the Government as to the length of time for which persons may be detained, and the places in which persons may be detained, under criminal investigation powers relating to customs and revenue. This is of added significance in view of the introduction of clause 25 (short-term holding facilities) into the Bill during its passage through the House of Lords; and the inadequate explanations given as to the effect of the amended definition of a short-term holding facility.

The amended definition provided by clause 25 would permit persons to be held in these facilities (including at airports) for any length of time and under any powers, despite these facilities having been established for the purpose of holding persons for no more than 7 days (and in respect of certain of these facilities designated as holding rooms) for no more than 18 hours (or 24 hours with Secretary of State’s approval) under immigration powers only. This raises questions both as to the suitability of holding people in such places for longer than the originally intended periods, of holding persons together under different powers and of holding persons together for different lengths of time. Any or all of these questions gives rise to important questions as to the safety of those held or working in such facilities.

Appended to this Briefing is an extract on clause 25 (short-term holding facilities) from ILPA’s House of Commons Second Reading briefing.

Damian Green
Mr Crispin Blunt

14

Clause 23, page 18, line 6, leave out subsection (5) and add—

‘(5) A designated immigration officer or a designated customs official at a port in England, Wales or Northern Ireland may detain an individual if the immigration officer thinks that the individual—

(a) may be liable to arrest by a constable under section 24(1), (2), or (3) of the Police and Criminal Evidence Act 1984 (c. 60) or Article 26(1), (2) or (3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I., 1989/1341 (N.I. 12)), or

(b) is subject to a warrant for arrest.

(6) A designated immigration officer who detains an individual—

(a) must arrange for a constable to attend as soon as is reasonably practicable;

(b) may search the individual for, and retain, anything that might be used to assist escape or to cause physical injury to the individual or another person;

(c) must retain anything found on a search which the immigration officer thinks may be evidence of the commission of an offence; and

(d) must, when the constable arrives, deliver to the constable the individual and anything retained on a search.

(7) A designated immigration officer may use reasonable force for the purpose of exercising a power under this section.

(8) Where an individual whom a designated immigration officer has detained or attempted to detain under this section leaves the port, a designated immigration officer may—

(a) pursue the individual, and

(b) return the individual to the port.

Detention under this section shall be

treated as detention under the Immigration Act 1971 (c. 77) for the purposes of Part 8 of the Immigration and Asylum Act 1999 (c. 33).'

Presumed Purpose

This Amendment, and when read with Amendment No. 25 (above), mirrors in significant part section 2 of the UK Borders Act 2007. It will allow Members to probe the Government as to whether and why it is intended that immigration officers may be empowered to detain persons for more than 3 hours in relation to potential criminal investigations where these investigations relate to customs and revenue matters.

Mr Phil Woolas

26

Clause 26, page 20, line 7, leave out from 'means' to end of line 8 and insert 'a function which before the passing of this Act was exercisable by the Commissioners or officers of Revenue and Customs (whether or not it remains so exercisable) and that—

- (a) is conferred by or by virtue of this Part on the Secretary of State, the Director or a designated customs official, or
- (b) is a function under Community law that is exercisable by the Secretary of State, the Director or a designated customs official;'

Presumed Purpose

The Member's explanatory statement accompanying the amendment on the order paper states that the amendment provides that clause 26 "*applies to things done by the Secretary of State, the Director or designated customs official...*". Members may wish to probe as to what of substance is provided by this Amendment. It is not immediately clear as to what transfer schemes would be included or excluded by way of this amendment.

Damian Green
Mr Crispin Blunt

15

Clause 26, page 20, line 8, leave out from 'State' to end of line and insert 'or the Director'.

Presumed Purpose

This Amendment will allow Members to probe the Government as to why and what functions of a designated customs officials, which are not functions of the Secretary of State or the Director of Border Revenue, it is intended should be relevant functions for the purpose of the Commissioners making a transfer scheme.

Mr Phil Woolas

27

★ Clause 28, page 21, line 5, at end insert ‘, and

() after paragraph (g) insert—

“(ga) practice and procedure
in relation to the
prevention, detection
and investigation of
offences,

(gb) practice and procedure
in relation to the
conduct of criminal
proceedings,

(gc) whether customs
functions have been
appropriately
exercised by the
Secretary of State and
the Director of Border
Revenue.”.

Presumed Purpose

The purpose of this Amendment is given in the Member’s explanatory statement accompanying the Amendment. However, the numbering of the subparagraphs to be introduced by this Amendment does not appear consistent with the numbering of clause 28 as brought from the Lords. This may indicate that there are missing provisions as regards the intended expansion of the remit of the Chief Inspector. The Amendment raises the question, also put in the Lords (*Hansard*, HL Committee 25 Feb 2009 : Column 292 *per* The Baroness Hanham), as to whether the Chief Inspector’s resources are to be increased commensurately with the extension of his remit, failing which the assurances previously given to Parliament during the passage of the UK Borders Bill as to the intention of the Chief Inspector to provide the means for much stronger oversight of the UK Border Agency will effectively have been reduced (see *Hansard*, HC UK Borders Bill Committee, Fifth Sitting, 6 Mar 2007 : Column 142 *per* Liam Byrne MP).

Mr Phil Woolas

28

★ Clause 28, page 21, leave out lines 7 to 15.

Presumed Purpose

In considering this Amendment and Amendment No. 27 (see above), Members may wish to probe the Government as to the extent to which the Chief Inspector's remit would be extended or restricted by the amendments.

Damian Green
Mr Crispin Blunt

16

Clause 28, page 21, leave out lines 16 to 26.

Presumed Purpose

This Amendment will allow Members to probe the Government as to the intended relationship between the inspection powers of Her Majesty's Chief Inspector of Prisons, the Scottish inspectors or the Northern Ireland inspectors with a view to ensuring, amongst other things, that the inspection powers in relation to the safety and welfare of persons in detention are adequate to ensure that not merely the conditions in detention but also the consideration of the cases of those in detention (whether in respect of the progress of investigations, consideration of whether to continue to detain or consideration of whether to remove or deport or grant leave to enter or remain) are effective and efficient.

Damian Green
Mr Crispin Blunt

17

Page 22, line 1, leave out Clause 29.

Presumed Purpose

This Amendment will allow Members to probe the Government as to the adequacy and consistency of inspection powers and regimes throughout the United Kingdom.

Mr Phil Woolas

29

★ Clause 38, page 28, line 16, at end insert—

“Community law” means—

all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and

(a) all the remedies and procedures from time to time provided for by or under the Community Treaties, as in accordance with the Community Treaties are without further enactment to be given legal effect or used in the United Kingdom;’.

Presumed Purpose

As stated in the Member’s explanatory statement, this provides a definition of “*Community law*” for the purposes of Amendments Nos. 19, 22 and 26 (see above).

For further information, please contact:

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APPENDIX

From ILPA's House of Commons Second Reading Briefing on clause 25 (short-term holding facilities):

This clause would amend the statutory definition of a short-term holding facility. These facilities are currently used to detain people immediately on arrival at a port, pending consideration of their application for leave to enter the UK, or immediately prior to removal from the UK. They include 'holding rooms' at ports, where people may be detained for no more than 24 hours. The current definition limits these facilities to places where people are held under immigration powers only and for no longer than seven days¹.

The new definition would allow for people to be held in these facilities under any (including non-immigration) powers of detention, and for periods in excess of seven days. There are three problems with the new definition, none of which has been adequately addressed by the Government during the Bill's passage to date:

- These facilities are not designed to hold people for in excess of seven days (or 24 hours, in holding rooms).
- They are not designed to hold a mix of people for varying periods and under varying powers.
- The new definition would potentially include a range of places (e.g. prisons, police cells and immigration removal centers) within it because these may hold someone under immigration powers for less than seven days, and it would be unclear what would be the relevant rules or guidance in respect of the treatment and welfare of people held in such places².

The clause was introduced into the Bill at Committee stage in the House of Lords. The Minister then described himself to be "*a little confused*"³ over short-term holding facilities and said he would write to peers. At Report stage, by which time the Minister had not written, he twice referred to "*confusion*" in relation to the period of time for which someone might be detained at a port⁴ and said he would write. Ultimately, his letter was not sent until after Report stage⁵. This clause was not considered at Third Reading in the House of Lords.⁶

¹ section 147, Immigration and Asylum Act 1999

² The UK Border Agency has recently consulted on Rules for short-term holding facilities

³ *Hansard* HL, 25 Feb 2009 : Column 290

⁴ *Hansard* HL, 25 Mar 2009 : Columns 697 & 698

⁵ Report stage was concluded on 4 April 2009. The Minister's letter, dated 7 April, is available at <http://deposits.parliament.uk/>

⁶ The Bill was considered between 5.50pm and 6.20pm – see *Hansard* HL, 22 April 2009 : Column 1535 et seq