



ILPA Proposed Amendments Borders, Immigration and Citizenship

PART 1 AND PART 2 (NATURALISATION ONLY)

House of Lords Report 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 peers 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).

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

Amendments unchanged from Committee Stage when they were laid by the Lord Avebury, save for clause page and line numbers and also that they have been deliberately split up because the first is the more likely one for any vote or commitment from the Minister and stronger than the second (because the Minister indicated that PACE codes do not apply to private contractors working for the police

PROPOSED AMENDMENT

Clause 30 (Complaints and misconduct)

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.

Amendment has changed from Committee State because the government laid an amendment to do half of what the first amendment proposed, ie extend the power to private contractors and also substantially changed the clause. The effect of the amendment in respect of functions exercised overseas is the same.

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).

PART 2

PROPOSED AMENDMENTS

Part 2 Citizenship Acquisition of British Citizenship by naturalisation

THE

Page 29 line three, leave out ‘Acquisition of British Citizenship by naturalisation’

Leave out Clause 39

Leave out Clause 40

Leave out Clause 41

Purpose:

To remove from this Bill those clauses that change the route to naturalisation as a British citizen. While further work would be needed to tidy up the Bill were these clauses removed, the amendments should be sufficient at this stage to indicate the decision of parliament that these changes are premature.

Briefing Note

It was clear from the government amendments and the debate at Committee stage that government drafting and thinking on these amendments is not as far advanced as it ought to be and that parliament was, in sum, being asked to buy a pig in a poke. One that gives rise to immense legislative and practical complexity. Given that the government proposes to bring forward a draft bill in October, there is an opportunity to return to these provisions when thinking is more advanced and proposals are sufficiently developed for parliament to scrutinise them.

PROPOSED AMENDMENTS

Part 2 Citizenship Acquisition of British Citizenship by naturalisation

ILPA is working on an amendment to deal with questions of transitional provision.

PROPOSED AMENDMENTS

Part 2 Citizenship Acquisition of British Citizenship by naturalisation

ILPA considers that the amendments proposed for Committee stage are still workable amendments. What is less clear is whether there is any interest in parliament in returning to many of these matters. If that is the case, we are happy to produce new versions of these amendments relating to these matters. The amendments below are those, or versions of those, where there did appear to be at least some appetite for returning to the matter.

CLAUSE 37

PROPOSED AMENDMENT

Page 30, line 34 after 'entitlement' insert –

“ ;or

(f) a pending application for leave to remain pursuant to an asylum claim or a human rights claim,

(g) leave to remain outside the immigration rules.

(1A) An asylum claim and a human rights claim have the meaning given in section 113 of the Nationality, Immigration and Asylum Act 2002. A pending application is one that has not yet been determined or that is the subject of a pending appeal within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002.

Purpose

To ensure that time spent by refugees or those claiming on human rights grounds prior to determination of the application and any appeals, where the outcome of the claim is that the person is given leave in the UK, counts as part of the qualifying period for citizenship. Such people may have had to wait years for a decision. Why should the delay in deciding asylum claims slow down their route to citizenship? Such people would still be required to satisfy the requirement that they were not at any time during the qualifying period in the UK in breach of the immigration laws. A refugee is a refugee once the criteria in the 1951 UN Convention Relating to the Status of Refugees are met; the asylum determination procedure is one of recognition. Under that Convention, a refugee is not to be penalised for having been forced to use false documents to flee.

The amendment has changed from Committee stage in that the reference to EEA nationals has been removed.

CLAUSE 37**PROPOSED AMENDMENT**

Page 39, line 26, leave out "been in continuous employment" and insert "not been in breach of conditions of that leave"

Purpose

The amendment would allow peers to press the Minister further on what is meant by 'continuous' employment and why this condition is thought necessary. It would also provide an opportunity to probe whether migrant domestic workers will be limited to working in domestic service for the whole of their probationary citizenship leave or whether, as now, at the end of five years they will be free to take any type of job.

PROPOSED AMENDMENT

Page 34, line 19, leave out from "period" to end of line 20 and insert "is—

- (a) 6 years in a case within paragraph 1;
- (b) 3 years in a case within paragraph 3."

79* Page 31, leave out lines 21 to 33

Purpose

This amendment, read with the amendment above and that below removes the activity condition from the Bill. Together they restore the qualification periods for citizenship to their current levels, six years, and a shorter three- year route for those relying on a family association.

This amendment replicates amendment 79 laid by the Baroness Hanham and The Viscount Bridgeman at Committee stage

PROPOSED AMENDMENT

Page 34, line 34, leave out subsections (2) to (5)

Purpose

This amendment forms part of the groups of amendments removing the activity condition from the bill

This amendment replicates amendment 84 laid at Committee Stage in the names of the Viscount Brigeman, the Lady Hanham, the Lord Avebury and the Baroness Falkner of Margravine.

PROPOSED AMENDMENT

Page 34, line 7, leave out "different" and insert "lower"

Purpose

This amendment would ensure that the government could only reduce the qualifying period and not lengthen it.

This amendment replicates amendment 85 laid by the Lord Avebury and the Baroness Falker of Margravine at Committee stage

ILPA has prepared a separate briefing on clause 39(2).

CLAUSE 44 MEANING OF IN BREACH OF IMMIGRATION LAWS

PROPOSED AMENDMENT

Page 37 line 21 insert

(5) The period during which a person had a pending application for leave to remain pursuant to an asylum claim or a human rights claim shall not be treated as a period when that person was in the UK in breach of the immigration laws if the outcome of the claim is that the person is given leave to remain as a refugee, on human rights grounds or outside the immigration rules.

(6) An asylum claim and a human rights claim have the meaning given in section 113 of the Nationality, Immigration and Asylum Act 2002. A pending application is one that has not yet been determined or that is the subject of a pending appeal within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002.

Purpose

To address the point made by the Lord Hylton in Committee and by the UNHCR in briefings that a person in need of international protection should not be penalised for having used clandestine means to flee.

Also..

Clause 54

Page 43 line 11 after 'naturalisation)' insert
'the appointed day must be no less than five years after the day this Act is passed and'

Purpose

To ensure that those who are currently in the UK with leave in a category that currently leads to settlement (to Indefinite Leave to Remain) will be able to progress to Indefinite Leave to Remain and at that point be deemed to have Permanent Residence (under new paragraph 11(4) of Schedule 1 to the British Nationality Act 1981 inserted by the Bill).

ALTER NATIVE

Page 43 line 10 at end insert

'and must

- (c) make provision for those who on the appointed day have leave to enter or remain in the United Kingdom
 - (i) in a category in which an application for indefinite leave to remain may be made under the Immigration Rules HC 395 as in force on the appointed day
 - (ii) as refugees and persons with humanitarian protection, or as persons with

a

pending application for leave to remain pursuant to an asylum claim or a human rights claim provided that when the application is no longer pending the person is granted leave to enter or remain in the UK

to make an application for indefinite leave to remain in accordance with the provisions of those rules as in force on the appointed day or as a refugee or person with humanitarian protection.'

- (d) An asylum claim and a human rights claim have the meaning given in section 113 of the Nationality, Immigration and Asylum Act 2002
- (e) A pending application is one that has not yet been determined or that is the subject of a pending appeal within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002."

Purpose:

To ensure that those who are currently in the UK with leave in a category that currently leads to settlement (to Indefinite Leave to Remain) will be able to progress to Indefinite Leave to Remain and at that point be deemed to have Permanent Residence (under new paragraph 11(4) of Schedule 1 to the British Nationality Act 1981 inserted by the Bill).

For further information or for ILPA's amendments on subsequent parts of the Bill please get in touch with Steve Symonds or Alison Harvey
Steve.Symonds@ilpa.org.uk, Alison.Harvey@ilpa.org.uk 0207 251 8383