

BORDERS, CITIZENSHIP AND IMMIGRATION BILL – HL BILL 15**HOUSE OF LORDS COMMITTEE****Clause 22**

LORD AVEBURY

LORD ROBERTS OF LLANDUDNO

Page 15, line 18, leave out "may" and insert "must"

Page 15, line 25, at end insert—

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

Purpose:

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

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

Briefing:

The Police and Crime Evidence Act 1984 was introduced in the aftermath of the civil disorder of the early 1980s and the recommendations of the Scarman Report. The Act was intended to protect both police officers and those being dealt with by the police, by putting in place codes of practice governing the proper exercise of police powers, particularly in sensitive areas such as stop and search, arrest, detention and questioning. Immigration officers now exercise similarly sensitive powers in relation to potentially vulnerable persons and for their own protection as well as the person who is subject to their powers, these activities should be governed by the PACE Codes of Practice.

Section 145, Immigration and Asylum Act 1999 provided a power (not a duty) for the Secretary of State to apply full or modified versions of the PACE codes to the exercise of immigration officers' powers to arrest, question, search or take fingerprints of a person, enter and search premises or seize property. If the Codes were applied, officers were under a duty to follow them. Only two Orders have been

made under that section¹, one in 2000 and one (not in the public domain) in 2001. During the passage of subsequent Bills, Ministers have stated that these directions were under review². While the power has been forgotten, the exercise of police powers by immigration officers and private contractors has increased with every subsequent Act.

Immigration officers now exercise several policing and police-like powers, including powers to:

- arrest with and without warrant³
- search and arrest with and without warrant⁴
- enter business premises to make an arrest⁵
- enter and search premises⁶
- search personnel records with and without warrant⁷
- search arrested persons and those in police custody⁸
- seize material⁹
- detain¹⁰
- search detained persons and retain evidence¹¹
- fingerprint persons¹²

The use of force in the exercise of all of these powers is expressly sanctioned, including by private contractors who may exercise several of the powers¹³.

While many of these powers relate to immigration-related offences, those who may be subjected to these powers include British citizens and foreign nationals, adults and children. Some of these powers have no specific relation to immigration-related offences – e.g. the power to detain someone at a port for up to three hours on

¹ The Immigration (PACE Codes of Practice) Direction 2000 and Immigration (PACE Codes of Practice No. 2 and Amendment) Direction 2000 (on taking, retention and destruction of fingerprints).

² *Hansard*, HC Standing Committee 15 Jun 2004 : Column 205 (Beverley Hughes MP, Minister for Immigration)

³ Sections 28AA and 28A, Immigration Act 1971 respectively (as introduced by the Immigration and Asylum Act 1999 and amended by the Nationality, Immigration and Asylum Act 2002)

⁴ Sections 28C and 28B, Immigration Act 1971 respectively (as introduced by the Immigration and Asylum Act 1999 and amended by the Nationality, Immigration and Asylum Act 2002)

⁵ Section 28CA, Immigration Act 1971 (as introduced by the Nationality, Immigration and Asylum Act 2002)

⁶ Sections 28D, 28E and 28F, Immigration Act 1971 (as introduced by the Immigration and Asylum Act 1999 and amended by the Nationality, Immigration and Asylum Act 2002)

⁷ Sections 28FB and 28FA respectively, Immigration Act 1971 (as introduced by the Immigration and Asylum Act 1999 and Nationality, Immigration and Asylum Act 2002) ; and section 14, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

⁸ Sections 28G and 28H, Immigration Act 1971 (as introduced by the Immigration and Asylum Act 1999)

⁹ Section 28I, Immigration Act 1971 (as introduced by the Immigration and Asylum Act 1999)

¹⁰ Paragraph 16, Schedule 2 to the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999, Nationality, Immigration and Asylum Act 2002, and the Immigration, Asylum and Nationality Act 2006); section 62, Nationality, Immigration and Asylum Act 2002; and section 2, UK Borders Act 2007

¹¹ Section 2, UK Borders Act 2007

¹² Section 141, Immigration and Asylum Act 1999 (as amended by the Nationality, Immigration and Asylum Act 2002, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and Immigration, Asylum and Nationality Act 2006

¹³ Section 146, Immigration and Asylum Act 1999 (as amended by the Nationality, Immigration and Asylum Act 2002) and section 2(4), UK Borders Act 2007

suspicion that the person may be of interest to the police, and to retain evidence revealed from a search of that person¹⁴.

During the passage of the UK Borders Bill, Ministers stressed the importance of “*much stronger oversight*”¹⁵, transparency¹⁶ and accountability¹⁷ of what is now the UK Border Agency. But this is not possible if the guidance to which those exercising the powers of that Agency is not in the public domain and does not reflect the standards expected of police in exercising the same or similar powers.

The current situation is despite the recognition by the Government in 1999 that the power to extend PACE must be exercised. The Lord Williams of Mostyn, speaking for the government said:

Amendment No. 195C allows that the Secretary of State may bring immigration officers under the auspices of the Police and Criminal Evidence Act codes of practice. That plainly must be so. Immigration officers are already required to have regard to PACE codes when investigating offences by virtue of Section 67(9) of the Act. If the government amendment is accepted by the Committee, it will ensure that immigration officers exercising powers of entry, search and seizure under Schedule 2 to the Immigration Act 1971 will have to have regard to the PACE codes in the same way. In reply to the noble Baroness and the noble Lord, Lord Dholakia, it is important to bear in mind that the PACE codes govern not only the exercise of the statutory powers but the manner in which police officers are obliged to conduct their duties. Immigration officers will be no different. If an immigration officer breaches any applicable requirements of the code, he or she will be accountable and subject to discipline. I believe that every aspect of the immigration officer's use of these new powers is covered.
(Hansard HL Report 28 July 1993 cols 1592-3.)

At the time the Immigration and Asylum Bill was passing through Parliament, the deaths of Joy Gardner and Joseph Nalue in the course of immigration operations were fresh in the memory. At Second Reading of the Borders, Citizenship and Immigration Bill, several peers again drew attention to harm caused to individuals in the course of immigration operations. Lord Ramsbotham drew attention to “*a dossier... containing details of 48 alleged assaults on asylum seekers by security guards*”¹⁸, which he passed to the Home Secretary in July 2008¹⁹ and remains subject to an independent investigation by Dame Nuala O’Loan. In December 2005, the Chair of the Complaints Audit Committee also drew attention to large numbers of allegations of assaults, which she explained were not routinely referred to the police and, where allegations were referred, were inadequately investigated with no audit trail of any investigation²⁰.

¹⁴ Section 2, UK Borders Act 2007

¹⁵ Liam Byrne MP, Minister for Immigration, Citizenship and Nationality *Hansard*, HC UK Borders Bill Committee, Fifth Sitting 6 Mar 2007 : Column 142

¹⁶ Lord Bassam of Brighton, Minister of State *Hansard*, HL Grand Committee 2 Jul 2007 : Column GC57

¹⁷ Liam Byrne MP, Minister for Immigration, Citizenship and Nationality *Hansard*, HC Second Reading 5 Feb 2007 : Col 591

¹⁸ *Hansard*, HL 11 Feb 2009 : Col 1181

¹⁹ The dossier *Outsourcing Abuse* is available at

<http://www.medicaljustice.org.uk/images/stories/reports/outsourcing%20abuse.pdf>

²⁰ Oral evidence of Dr Ann Barker to the Home Affairs Select Committee on 13 December 2005, see in particular Qs5, 17 & 18 at

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/5121302.htm>

Attention was also drawn at Second Reading²¹ to the operation of secret and unlawful immigration policies, as revealed in the December 2008 judgment of the High Court in *R(Abdi & Ors)*²². On 18 February 2009, the High Court ruled in another case where another policy was not publicly disclosed and relied upon unlawfully in circumstances where serious allegations of mistreatment have been made²³. These policies relate to detention and removals respectively.

Clear and publicly available guidance and instructions to immigration officers and private contractors exercising immigration powers, which accords with the standards expected of police officers in exercising similar powers, are long overdue. As was recognised in 1999, adoption of PACE Codes of Practice is necessary. Peers will note that the Government has tabled a lengthy new clause to give immediate effect to PACE in relation to customs powers. Why only customs powers? The Government has had nearly a decade since the introduction of the Immigration and Asylum Act 1999 to implement PACE. If immigration officers and private contractors are insufficiently trained or not sufficiently competent to be made publicly subject to PACE, they ought not to be exercising the powers highlighted in this briefing.

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APPENDIX

²¹ Lord Thomas of Gresford *Hansard*, HL 11 Feb 2009 : Col 1150

²² [2008] EWHC 3166 (Admin)

²³ This case is as yet only reported on Lawtel as *R(X) v SSHD (2009)* QBD (Admin) (Sir George Newman) 18/2/2009

Case studies taken from *Outsourcing Report* (the dossier passed to the Home Secretary by Lord Ramsbotham and referred to at Second Reading) :
<http://www.medicaljustice.org.uk/images/stories/reports/outsourcing%20abuse.pdf>

Case A4

Mr. JI (Nigeria) – Heavy cell door slammed on hands and feet, smashing big toe nails

Nigerian, Mr IJ, claims that on 10th December 2006 he was assaulted by a detention custody officer employed by Serco at Colnbrook IRC.

Mr. IJ's statement: *"I demanded to make a phone call 10/12/06 around 0:33 hrs. An officer came and unlocked my door to make phone call. I demanded to see shift manager to find out when my induction would be. The shift manager came and began swearing at me and bullying me. He said he heard me shouting on phone. He was using many racist words which surprised me as I've been here 10 months and never heard this. He asked me to return to room which I did. As I got to room I asked to get numbers I'd left on top of phone. He said "No", pushed me in room and pulled door but my leg got stuck so I tried to free it using my hands. So he then pulled door hard twice on my hands. My roommate witnessed this. He then saw blood coming out of my hands and told me to wipe it on my T-shirt and he'd get me a clean one, so I did. The door was then shut and I waited but when he returned he had no T-shirt but other officers to remove me from my room to Segregation. After 3 to 5 hours I was taken to hospital for and X ray of my hands, legs and feet"*.

Medical notes from Hillingdon Hospital dated 10th December 2006; *"Heavy cell door slammed on both feet and hands @ 10:00. i ROM (reduced range of movement) both big toes... Sent for x-ray; Feet: no bony injury. Both big nails broken...hands: tender L middle f (finger) + superficial laceration"*.

Dr Frank Arnold (an independent doctor) wrote a medicolegal report on Mr. IJ's injuries noting; *"both great toes are painful on flexion and extension, more so on the right... The limitation of movement on the left are now improving. He is still tender over medial border of the feet from metatarsal heads to the calcaneus (e.g. along the entire sole), more markedly on the right and he still needs as uses a pad for the right heel. Left hand: There is tenderness over the proximal and middle phalanges of the middle and ring fingers. The pain in the feet, and tenderness of the fingers are consistent with these being caught in a door during an occurrence involving detention custody officers on December 10, 2006 at Colnbrook as documented by his written complaint of the following day."*

Mr. IJ made a written complaint to the Home Office on the December 11th 2007, but no response was given.

Case D1

Ms. NK (Cameroon) – Assaulted in front of her daughter, later granted leave to remain.

21 year old Ms. NK claims she was slapped in the face and that her wrists were injured by handcuffing while she and her young daughter were being removed from Yarl's Wood IRC to an airport on the March 17th 2006. Ms. NK further claims that she was assaulted again on the 22nd March 2006, during an attempt to remove her from Yarl's Wood IRC; she claims she was held down on the plane with an immigration escort's knee in her back and that her legs were trapped under the metal of a seat.

Dr. Charmian Goldwyn (independent doctor) noted that Ms. NK wrists, ankles and back were injured, resulting in severe sciatica, that some of her hair had been pulled out. Also, that she had scars on her elbows, arms and wrists.

Ms. NK claims that the assault on her was witnessed by her young daughter who became very distressed and subsequently started wetting the bed.

Case D5**Mr. EI (Nigeria) - hit with an extended baton in front of his wife and two small children**

40 year old Nigerian, Mr. EI claims that eight officers were involved in a "dawn raid" on 18th April 2007 to take him, his wife and two small children into detention. Mr. EI's wife suffers serious mental illness and became very distressed. Mr. EI says that both he and his wife were handcuffed and that one officer hit him with an extended baton on his left shin after he was handcuffed. He says he was bleeding from his shin which led to scarring and that the alleged assault was witnessed by both his small children. The family were taken to Yarl's Wood IRC. Mr. EI's injuries were noted in the Yarl's Wood healthcare centre medical notes. A psychiatric report and a social work report were written, mostly relating to the impact of long detention on the family. The family were detained at Yarl's Wood for almost two months despite concerns raised by the social worker that detention was causing harm to the family.

The allegation was referred to the relevant Home Office department by Home Office lawyers when they received a legal document regarding the commencement of civil action proceedings by Mr. EI. The Home Office is yet to respond.