IMMIGRATION, ASYLUM AND NATIONALITY BILL
COMMONS CONSIDERATION OF LORDS AMENDMENTS 16 MARCH 2006

ILPA is a professional association with some 1200 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through teaching, provision of high quality resources and information. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups.

ABOUT THIS BRIEFING

To be sure of reaching you in time for Commons Consideration on 16 March, this briefing has been sent before Lords Third Reading (on 14 March), but after sight of government amendments laid for Third Reading. If you would like an update after Lords Third Reading, please email us. Texts of proposed amendments are available on request.

APPEALS

Welcome amendments on appeals against refusal to vary leave

We do not propose any amendments to the government amendments
Assurances to seek
An **assurance** that the amendments do not create any new powers to subject people to restrictions over and above the powers that currently exist toward a person with an in-country appeal against the decision to refuse to vary leave. (This is ILPA's understanding, but it would be good to have to have it on the record)
An **assurance** that the government is considering using its new powers to protect certain groups from certification of their asylum claims as "clearly unfounded" for unaccompanied children, and clarification as to how these powers would be exercised.

ILPA welcomes these amendments, which achieve the government's aim of a one-stop appeal, but meet concerns expressed by members of all parties that an appeal against refusal to vary leave should be in-country and that people's leave should be preserved on the same terms and conditions until that appeal is finally determined.

The amendments mean that variation appeals can be brought in-country, and that the provide for the appellants' leave to be extended on the same terms and conditions for the period during which the person could bring a variation appeal and, if the person appeals, until the appeal has been finally determined. The Secretary of State will be able to make a decision to remove a person at the same time as refusing to vary their leave, so that the decision to refuse to vary leave and the decision to remove can both be considered together at a single appeal "one-stop" appeal. Removal directions cannot however be set until the time for appealing has expired without the person appealing, or until the appeal had been finally decided, and the person had lost. There is no right of appeal against the removal directions themselves.

Appellants with humanitarian protection, or those who are unaccompanied minors, benefit from the changes as does everyone else. As now, human rights and asylum appeals that are certified "clearly unfounded" would be heard out of country (although there would, as now, the possibility of challenging the certificate by judicial review). However the government has also taken new powers, in the new clause *Appeal from within the United Kingdom: certification of unfounded claim* to provide in regulations that claims from certain groups could not be certified

Entry Clearance appeals

On the basis of assurances given at Lords Report, we are working on the assumption that at Third Reading in the Lords the government will accept a Conservative amendment providing for the Secretary of State to lay a report before parliament about the effect of the removal of appeal rights.

Proposed amendment to the amendment
To provide for a report to be laid before parliament *before* the coming into force of subsection (1) of Clause 4, giving details of success rates on initial application and on appeal, broken down by country of application and category of the immigration rules under which the application was made, and setting out the proposed arrangements for review of decisions to refuse entry clearance
Proposed amendment to the amendment
To provide that any report laid under this clause must be approved by both Houses of parliament
Proposed amendment to Clause 4
To provide for the arrangements for further consideration of an application following initial indication to the applicant of an intention to refuse the application (as detailed in the amendment) to be made by statutory instrument
See also the proposed amendment on procedure below.
Assurances to seek
That all those whom it is the intention to refuse a view have a right to a review of that decision
That the review will cover matters of law as well as of fact
That the review will be external to the deciding post .
That the government will consider ensuring that the points system gives overseas domestic workers the right to change employers and a route to settlement, to prevent exploitation through domestic slavery.

At Third Reading, the House of Lords debates the Bill in the light of the Command Paper *A Points-based system: Making Migration work for Britain* (Cm 6741) published on 7 March 2006 and the Commons will do likewise at Commons Consideration. The Conservative Front bench in the House of Lords took the view that they were limited in what they could do on Clause 4 because of the Salisbury Convention, that Her Majesty's opposition in the House of Lords will not a oppose a manifesto commitment, the commitment in question being one line in the Labour Party Manifesto stating that "Appeal rights in non-family immigration cases will be removed". Now that the Bill returns to the House of Commons, where the Conservative Party voted against Clause 4, a broader challenge is possible.

A report on progress of the points system after it has been brought into force is useful, but the amendment needs to be strengthened to ensure that parliament can look at improvements in quality of decision-making before appeal rights can be removed, rather than relying on the vague promises it has heard to date, including in the Command paper. Those promises have been particularly vague on the administrative review designed to replace appeals: parliament should be able to scrutinise the detail of those proposals in the form of a statutory instrument.

It is no good Ministers saying that the new system can in no way be judged on standards under the old: UKVisa's ability to deliver sustainable decisions and to try to ensure consistency of quality across posts, through training and support to staff is central to any system, unless the argument is the argument is that the abolition of appeal rights and lack of independent review means no one will know whether decision making is good or bad, so who cares?

Despite having the Command paper, parliament has not yet had is a chance to debate Clause 4 in the light of the most recent report of the Independent Monitor for entry clearance cases with no right of appeal. The outgoing monitor's report has been with Ukvisas since the end of November and with Ministers since the end of January (a lengthy delay) but has yet to be published.

Examined closely, the document Command Paper is extremely thin on detail as to how the new system will work, and parts gainsay what parliament has been told to date.

Quality and Review of decisions
Last year 53% of appeals against refusals of entry clearance were allowed. A sample of

appeals success rates submitted to the Independent Monitor are set out in the House of Commons library research paper on this Bill. These shows consular posts where the success rate for family visitor appeals is over 80%, and even over 90%, and post where student success rates on appeal were between 70 and 90%. Despite recommendations by the Independent Monitor, UKVisas has not documented discrepancies in success rate on appeal between posts. There must be demonstrable, independently verified improvement in quality before parliament is asked to contemplate the removal of appeal rights. As a minimum the government must demonstrate that success rates on appeal have gone down, and that there is consistency in success rates on appeal between posts.

The Baroness Ashton of Upholland said at Lords Report (7 Feb 2006 : Column 537):

> *"…I can tell my noble friend Lady Warwick that the administrative review is available to anyone who is refused."*

The command paper says that decisions will be *"supported by administrative review **where appropriate**"* [Emphasis added, page 12, table at para.26] and that an applicant can request a review where s/he *"believes a **factual** error has been made"* (emphasis added, para. 53). What if the applicant believes that there has been an error of law? Will it be necessary to bring judicial review proceedings to deal with it? Will this not lead to an increase in judicial reviews? What if the applicant wishes to raise human rights? There is still a right of appeal on human rights, but it would be inefficient if such points could not first be considered at the review stage. The Command paper confirms that there will continue to be general grounds of refusal, such as being subject to a deportation order, or presence in the UK not being conducive to the public good (paragraphs 44 and 45). The latter is not a factual error. **Will the Minister confirm that the Baroness Ashton's statement on 7 February was correct and accurate: an administrative review is available to all refused, and will cover legal as well as factual errors?**

The Command paper says review will be conducted by a senior manager. This is precisely what happens now, according to the Diplomatic Service Procedures, which describe review by an Entry Clearance Manager (ECM):

> *"**Chapter 26.2.2 - Review of non-appealable refusals***
> *All non-appealable refusals must be thoroughly reviewed by an ECM within one working day of the decision being taken…*
> *26.3.1 ....Action by ECMs*
> *As with non-appealable refusals, all family visit visa refusals must be reviewed by an ECM within 24 hours…*"

The Command Paper says of the criteria for an application and for the award of points:

> *"the applicant and decision-maker must be using the same interpretations of what the different factors.. mean. To achieve this we intend to write descriptors for each of the criteria…the descriptor needs to be clear and transpartent while providing a framework to allow decision-makers to exercise judgment in the individual case. Drafting these descriptors is a challenge, and will take time to get it right"* (paragraghs 50-51)

This is not a description of a task: it is an expression of a desire for a points system. It does contain an acknowledgement that the decision-paper will exercise judgment, and the limits of "objectivity" are recognised elsewhere in the Command Paper, with its references to "objective criteria where possible" (para 26,emphasis added). We are not in a brave new world of nothing but tick-boxes.

The refusal to give applicants for entry clearance any redress independent of the department, indefensible on its own terms, cannot be reconciled with the DCA White Paper *Transforming Public Services: Complaints, Redress and Tribunals* ((Cm 6243, July 2004), from which the Baroness Ashton of Upholland quoted in a misleading fashion during the debate at Lords Report. We reproduce below what the Baroness Ashton (Lords Hansard 7 Feb 2006, Col. 537) quoted in Roman type, what the Baroness Warwick quoted earlier in the debate (Lords Hansard 7 Feb 2006 Col.528) in italics, and what was not said in bold:

> ***"**Complaints to departments and agencies*
> 3.12 What can an individual do? The first and most direct remedy is to dispute decisions directly with departments and agencies.

> **3.13 But** *in a democracy ruled by law, and under a government committed to high quality and responsive public services, simply appealing to a department's sense of fairness is not, and never has been, enough***. There has to be redress beyond the department**"

A new home for subjectivity

Universitites will make decisions about whether a course is suitable for a particular applicant., employers about whether an applicant is able to do a particular job (paragraph 58). All well and good. But read on.

> *"The job…will need to have passed a test to demonstrate that the applicant is not displacing a worker in the UK labour market"* (para. 91)

Presumably this will the existing test of advertising the job. But is the employer or UKVisas to decide whether the method used for advertising was adequate and satisfactory? Read on.

> *"an appropriate level of English for the job in question will be set by the employer…It will be for the operator and the employer to ensure that the selected migrants meet that requirement**, overseen by the compliance arrangements for sponsorship**"* (para 123).

Pause. What compliance arrangments for sponsorship?

A sponsor will be removed from the list of approved sponsors if there is evidence of large scale fraud or if they are "failing sponsors" (paragraph 67). No indication is given of what consistitutes a failing sponsor. Nor is it stated how failure, or large scale fraud, is detected. What checks will be made on decisions made by the sponsor? For example, if the sponsor says s/he has advertised a job, or confirmed the applicant's skills, will this be cross-checked?

- If sponsors are checked/managed - according to what criteria ?
- What penalties apply if the sponsor is found to have been negligent or acted in bad faith, or if the government otherwise disagrees with their assessments?

Many matters of judgement, or, if you prefer, subjectivity, are being moved from ECOs to sponsors. Will sponsors, like ECOs, simply have to satisfy their senior managers of their decisions? If not, if government is checking whether sponsors have dealt with an individual application accurately, and/ or in good faith, all questions of subjectivity re-enter the system.

Prior to removal from the list of approved sponsors there is an opportunity to make representations, but no indication is given of any form of review or redress available to a sponsor whose decisions are questioned in other circumstances.

The paper describes a sponsor's rating as "an expression of their track record in sponsoring migrants" (before para 55). Full stop. There is no centralised record of compliance of sponsors to date. Yet the government proposes to divide sponsors into sheep and goats (A and B grade sponsors and, it would appear, those not permitted to sponsor at all) *ab initio* (paragraph 66). What redress for a sponsor wishing to challenge his/her grading, with all the commercial disadvantages, from reputational risk to inability to recruit desired staff, that this entails? How will it deal with companies wishing to expand in the UK, or employing their first person from abroad? These companies have no track record. Backlogs, inequalities and legal challenges loom.

A pig in a poke

Some of the complexity of the current system has not so much been eliminated, as been omitted. No mention in the Command paper of a range of significant categories of migrant: retired persons of independent means, sole representatives, domestic workers (save "servants in diplomatic households", para. 155). Sportspeople can enter under tier 2 (paragraph 95) – a tier leading to settlement, but there is no mention of artists (writers, painters etc) save in Tier 5, where the maximum period of leave is 12 months and it is not a category leading to settlement.

The failure to address domestic workers runs wholly counter to the Home Office position in Tackling Human Trafficking - Consultation on Proposals for a UK Action Plan and to past Home Office provisions to offer protection to domestic workers, culminating in the introduction of a category in the Immigration Rules in 2002. The important point of the reforms was to break cycles of abuse by allowing overseas domestic workers to change employers.

NGOs working to protect the safety and rights of those exploited through domestic slavery have now been told by officials working on the points system that domestic workers must either qualify as part of Tier 2 (which few will do, since this requires that you have an NVQ Level 3 or equivalent) or will be given a maximum of 6 months leave, which cannot be extended. The idea is that the employer will recruit a replacement domestic worker from the UK or EU, and send the original worker home, or leave with their domestic worker. In practice, the proposal would mean that domestic workers go underground. There will be no incentive for employers to treat their employees properly. Nor is it clear that there is a pool of EEA Nationals wishing to undertake domestic work.

Domestic slavery is an abuse that takes place behind closed doors: victims are hidden, isolated and exploited. Without rights to change employer, and a route to settlement, the government proposals will put domestic workers at even greater risk of such exploitation.

Parliament must be able to scrutinise the detail of the points system before it comes into force, and have that information as a basis for taking a decision on the abolition of appeal rights, hence the proposed amendments.

EMPLOYMENT

We do not propose any amendments to the government amendments
Assurances to seek
That the **assurance** given to Neil Gerrard MP by the Minister of State (Commons Committee, 4th Session, 20 10 05 Col 149) that a person who makes an in-time application for a variation (including an extension) is not a person whose leave has ceased to have effect for the purposes of these clauses remains true under the new wording of the provisions as set out in the amendments

Two government amendments replace reference, in the provisions on the civil penalty and the criminal offence, to a person's leave having expired with reference to leave having ceased to have effect "whether by reason of curtailment, cancellation, passage of time or otherwise". A further government amendment provides that regulations prescribing the maximum amount of a civil penalty will be subject to the affirmative procedure, following a recommendation of the House of Lords Select Committee on Delegated Powers and Regulatory Reform in their 10th Report (7 December 2005).

INFORMATION

We do not propose any amendments to the government amendments

The government amendment makes provision for the distinction between reserved and devolved matters.

CLAIMANTS AND APPLICANTS

More support for failed asylum seekers – but vouchers are back

Proposed amendment
To remove the word "not" from new subsection 11(b) of s.4 of Immigration and Asylum Act 1999 inserted by the amendment, where the subsection in the amendment states that the Secretary of State may not provide support in cash.

The good news is that the government has brought forward an amendment to the Clause on *Accommodation* to clarify that those supported by the Home Office (or, under this Bill, Local Authorities) under s.4 of the Immigration and Asylum Act 1999 can receive "facilities or services" (e.g. toothpaste, soap, nappies) which they have had difficulty obtaining to date. The very bad news is that the clause expressly provides that this support will be in the form of a voucher, not cash.

The people affected are, broadly, failed asylum seekers cooperating in their proposed return but unable to leave the UK (at the moment many Zimbabweans, because there is no safe route home and the Home Office

has not given them temporary leave; the pregnant or very sick, who cannot travel, and those who cannot be documented). MPs will recall the indignities and inefficiencies of the voucher-system for people seeking asylum, which led to its abolition as demeaning and dangerous. Vouchers lead to administrative chaos whoever is the recipient. One reason for extending power to provide s.4 support to local authorities is that the number of people receiving it is now so large, that the complexities of scale under the original voucher scheme are being reproduced. Humiliation, degradation and stigmatising have no place in a system of immigration support, nor one of control, whether the people at risk are seeking protection or simply cooperating in efforts to deal with their case after an application ahs failed.

We recall the exchange that took place in Commons Committee

> ***"Mr. Neil Gerrard*** *(Walthamstow) (Lab): …I hope that the Minister might consider whether, in extending the powers to local authorities, he will also move away from the voucher-only support that we have now ...*
> *It used to be that people who were supported under section 4 were given cash, or some cash, but cash support has now been completely withdrawn. There is no question but that that causes problems. I recently saw someone who is being supported under section 4, whose circumstances indicate that she is likely to be on such support for some time before there is any possibility of returning her to her country of origin. She is being issued with luncheon vouchers, and so can buy food and drink, but it is virtually impossible for her to buy anything else with them. As with the previous voucher system, that situation generates a trade in which people sell their luncheon vouchers for a bit of cash to buy things that they cannot buy with the vouchers or to get on a bus to go somewhere…. I know that there is a claim that the Home Office has had legal advice that cash cannot be provided, but the citizens advice bureau has had legal advice to the opposite effect… I hope that before we get to Report stage, the Minister will reconsider the provision of cash rather than voucher-only support.*
> ***Mr. McNulty:*** *Of course I will consider my hon. Friend's point. I do not know if we can address the matter in the Bill, as it is more about practicalities than any point of statutory substance or import, but I am happy to consider it further (Standing Committee E 6th sitting 25 October 2005 Column Number: 233)."*

The matter has been addressed, but by prescribing that vouchers be used. The removal of the word "not" that we propose is modest, it would not even force the government to provide cash, simply allow them to do so.

Power to repeal s.9 of the Asylum and Immigration (Treatment of Claimants etc.,) Act 2004: denial of support to families

No amendment proposed to the government amendment **Information and assurances to seek** Information on the evaluation of s.9 and confirmation that the government does not consider the pilots to have been a success. Assurances that, at the very least, the government is at this stage minded to repeal

The government assisted in the drafting of the amendment, which was laid by Lord Avebury and accepted by the government at Lords Report. The amendment gives the Secretary of State power to repeal s.9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 Act by order. Section 9 allows the government to deprive parents with children of support. It has been piloted and fiercely criticised, including by the local authorities in whose areas the pilot took place and by the Association of Directors of Social Services (ADSS). In accepting the amendment in the Lords, the government made no promises to use the power of repeal, but the taking of the power is itself a welcome step. The evaluation of the pilot is awaited.

Procedure

Leave out subsection 2(b)

The clause on procedure was amended in the Commons to set out that the consequences of failure to comply with prescribed procedures must be set out in the immigration rules. The Home Office Explanatory

Memorandum to the House of Lords Committee on Delegated Powers and Regulatory Reform (Appendix 1 to the 10th Report of 07 12 05) states *"Consequences for non-compliance must be set out in the Immigration Rules, and may not be prescribed administratively*". This was not enough to satisfy the Delegated Powers Committee who stated in their 10th Report

> *"We draw this to the attention of the House, not least because the memorandum makes an inadequate case about the procedures to be followed and information and documents to be submitted. Parliament may wish to retain an element of control over such aspects of immigration claims, even if the form in which the information is presented can be prescribed administratively*. (para. 13)

The government responded to the Committee saying

> *The Government, therefore, intends to introduce an amendment at Report Stage making clear that any specified procedures required of applicants will be set out in the Immigration Rules and may not be prescribed administratively.* (See Appendix 1 to the 12th Report of the Delegated Powers and Regulatory Reform Committee, 18 01 06)

They declined however to make give effect to the recommendation on documents and information. Yet, this is likely to be very important: for example objectivity and consistency between posts disappears from the proposed points system if the information and documents required to submitted in support of a visa application differ from post to post without good reason or are inadequately described or are the subject of instructions not readily available to applicants.

This is not fanciful: a comparison of documentation required by posts for entry clearance for a work permit holder on an intra-company transfer basis in February 2006 revealed 15 posts, on whose procedures information was obtained, which required different documentation. UKVisas sets out that "Supporting documents relating to the application" are required.

The website of the post in Mumbai, India, states "Each application is left to the discretion of the officer. You are free to submit any documents you feel may satisfy the officer. The post in Nairobi Kenya, says on its website that all documents must be originals, that an original contract and original educational and work experience certificates must be submitted. The website for the post in China requires an employment offer letter, contract of employment, current employment letter, current educational qualifications, evidence of English ability, evidence of funds and their history, history and source of funds for a minimum of the last 6 months and a family book. The website for Canada requires original Canadian immigration documents, a supporter letter from the employer and evidence of work and experience in the field for which the work permit was issued. This wide variation in requirements bodes ill for the chances of realising the desire that there be an objective system

MISCELLANEOUS

Refugee Convention and national security

Proposed amendments to the amendments and clauses
To leave out the definition of "contrary to the principles and purposes of the United Nations" and thus to ensure that the Refugee Convention is not (mis-)construed in statute but remains a matter for the jurisprudence of the courts in the UK and internationally, and with guidance from UNHCR.
To omit all references to the AIT so that the proposed procedure applies only to cases before the Special Immigration Appeals Commission

The provisions concern exclusion from protection of the Refugee Convention for those deemed to pose a threat to national security. The amendments split the original clause into two clauses *Refugee Convention: Construction* and *Refugee Convention: Certification* The amendments were not designed to, and do not, meet the concerns expressed about this clause, including by UNHCR, which subsist unchanged.

The government explained that the amendments were made because they had identified an overlap between the original clause and s.33 of the Anti-Terrorism Crime and Security Act 2001. The Bill repeals s.33, which applied only to procedures before the Special Immigration Appeals Commission (SIAC) and make a new

procedure applicable to both appeals before SIAC and those before the Asylum and Immigration Tribunal (AIT).

As a result of the amendments the Bill now:

- uses a certification procedure as did s.33 of ACTSA 2001
- covers the whole of Article 1F of the Refugee Convention, not only 1F(c) as did s.33 of ACTSA 2001
- also covers Article 33(2) of the Convention, not only Article 1F. Article 33 prohibits the *refoulement* of a refugee to the frontiers of territories where his life or freedom would be threatened for one of the Convention reasons (race, religion, political opinion etc.). Article 33(2) states that a refugee shall not benefit from this protection where there are reasonable grounds for regarding as a danger to the security of the country where s/he is a refugee or who, following conviction for a particularly serious crime, constitutes a danger to the community of that country.

It is explicit in the Bill as amended that the certificate can be issued even if Secretary of State does not accept that the person would be a refugee save for exclusion – e.g. the primary case could be that the appellant is not telling the truth; but in the alternative that Article 1F applies.

The new clauses make an improvement to the situation in SIAC cases by removing the ouster provisions of s.33 of ACTSA 2001. However, they worsen the position of those appearing before the Asylum and Immigration Tribunal (AIT). Procedures formerly reserved for those cases to be heard before SIAC, because of the serious national security concerns they raise, will now be applied to cases that have been held not to meet that threshold of seriousness; those that remain with the AIT.

Under s.97 of the Nationality, Immigration and Asylum Act 2002, cases are sent to SIAC if the Secretary of State acting in person certifies that the decision appealed against:

- was taken wholly or partly on the basis that the person's exclusion or removal from the UK would be in the interests of national security, in the interests of the relationship between the United Kingdom and another country;
- was taken on the basis of information that, in the opinion of the Secretary of State should not be made public, in the interests of national security, the relationship between the UK and another country, or otherwise in the public interest.

One might have expected that the reasons for exclusion from protection of the Convention in cases not meeting this risk threshold would be less stringent. Instead, they are more so. SIAC had not only to be satisfied that the appellant fell to be excluded from the Convention under Article 1F, or from the prohibition on *refoulement* (return to face persecution) in Article 33, but in addition that such removal would be conducive to the public good. There is no such additional test in the Bill as amended. The government has sought to justify the new procedures on the basis that the cases raise national security concerns. It should therefore confine them to cases before SIAC.

Acquisition of nationality

Proposed amendment to the clause and to the amendments
ILPA proposes **amendments** to exempt those with a form of British nationality other than British citizenship, and no other citizenship or nationality, from the good character test and thus retain their right to register by entitlement.
ILPA proposes **amendments** to extend the exemption for children to cover all under-18s.
Assurances to seek
That the Secretary of State will use his discretion to register all children born to recognised refugees.

Registration and naturalisation are the only two ways in which a person can become British. At the moment the "good character" requirement applies only to those seeking naturalisation as a British Citizen and not to those seeking to register as British. Registration may be discretionary or by entitlement. The clause as originally drafted applied the "good character" requirement to all registration, as well as naturalisation, applications, save those where British Citizenship is granted because of the UK's ratification of the UN

Convention on the Reduction of Statelessness. It would thus have ended the concept of registration by entitlement.

The amendments first remove British Overseas Citizens, British Protected Persons and British Subjects with no other nationality, from the list of those who must pass a "good character" test, thus preserving their right to register by entitlement. Introducing the government amendment, the Baroness Ashton of Upholland said:

> *"such people frequently have no right of abode in any country… we owe a moral obligation towards them as holders of British passports.." (7 Feb 2006., Col 623)*

The amendments also provide that children under the age of 10 should not be subject to the good character test ((Chris - At the time of writing one query remains outstanding as to whether they have removed all children under 10. I should have clarification before this gets sent out). This represents some progress. But what of older children? To refuse a child registration as British for something that they have done while a child seems far too harsh penalty. A failure to understand the importance and value of the right to register by entitlement to those who possess it seems to have led to confused thinking on this matter. Debates in the Lords, on this clause and on the provisions for deprivation of nationality, illustrated the confusion, which at times had an ugly flavour. Speaking on the deprivation provisions, the Baroness Ashton of Upholland made comments such as:

> *"…One might argue that they* [people who should not have British Citizenship] *were not necessarily a great danger in this country but that their behaviours were, in our view, completely unacceptable.""*. (19 Jan 2006 : Column GC274).

We assert the contrary view: that it remains the right of the citizenry to change their government, not of the government to change the composition of the citizenry by banishment or exclusion of those it does not like.

We should also like to take this opportunity to seek **assurances** on the treatment of **children born to those recognised as refugees.** When refugees got indefinite leave to remain as a result of recognition, their children were British because they were born to parents settled (i.e. with indefinite leave to remain) in the UK. One consequence of the decision to give refugees 5 years limited leave in the first instance (introduced in September 2005), is that their children will not be born British and will not be entitled to register until their parents get indefinite leave to remain at the end of five years. This places refugee children in a situation of particular difficulty – as refugees are not expected, for good reason, to approach the embassies or government of their own country. We recall how, in the more distant past, when refugees used to get four years limited leave before getting ILR, children born to them in those years would be in limbo. If parents had Refugee Convention travel documents it was sometimes possible to get the child put on it, but often families did not travel during that period. **We seek an assurance from the government that it will exercise its discretion to register the children of recognized refugees who are not yet able to register by entitlement.**

The Baroness Ashton of Upholland said at Lords Report:

> *"when we consider groups such as the wives and widows of those who fought ine the defence of Hong Kong, we believe that we have brought them all into the system in one way or another. We do not believe that anyone remains outside. However, I am sure that the noble Lord and others listening to or reading our debate will let me know if that is not the case."* (7 Feburary 2006, col 621)

If the government think there are no such cases, why apply a good character test to them? In any event, we have checked with ILPA members and this understanding is not correct. Members have seen such cases. For example, members have dealt with cases of British Nationals (Overseas), people from Hong Kong. who would be subject to a good character test because of subsection (2)(d) of the clause. These people have to show not only that they have no nationality other than that of British Nationals Overseas but also ordinary residence in Hong Kong at the date of handover to China.

As a minimum the government should make provision to protect those with a form of British nationality other than British Citizenship and no other nationality or citizenship, who thus have no right of abode in any country.

ILPA 13 March 2006.