



15 October 2010

Mark Ormerod CB
Chief Executive
Law Commission
Steel House
11 Tothill Street
London SW1H 9LJ

By email: eleventhprogramme@lawcommission.gsi.gov.uk

Dear Mr Ormerod

Re: Consultation on Law Commission's Eleventh Programme of Law Reform

In June 2007, the then Border and Immigration Agency (now the UK Border Agency) launched a consultation on simplifying immigration law. That same month, during the passage of the UK Borders Bill, Baroness Scotland of Asthal, Minister of State at the Home Office, said (*Hansard*, HL 13 Jun 2007 : Col. 1749):

"This Bill is the last part of a jigsaw and, after it is complete, there will be an opportunity for us to look at the issue of simplification. It is for that reason... that last week the Border and Immigration Agency launched a consultation on simplifying the immigration laws, something for which both Houses have been calling for some time... the simplification project is designed to hone existing legislation and eradicate duplication."

The last Government had intended to introduce an immigration simplification Bill, and over the summer 2008 published an incomplete draft of such a Bill entitled the draft (partial) Immigration and Citizenship Bill. Ultimately, however, no simplification Bill was introduced and instead parliament was presented with the Borders, Citizenship and Immigration Bill in January 2009. During the passage of that Bill, Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office, said (*Hansard*, HL Second Reading 11 Feb 2009 : Column 1207):

"The simplification Bill, which is heading rapidly towards 400 clauses—this is a complex and serious Bill on which people are working very hard all the time, so it cannot be rushed forward—will cover all immigration legislation since 1971 and will not cover the ground again on citizenship."

He also announced that later that year, the Government would publish a draft immigration simplification Bill. This it did, though this draft Bill, while building on the

previous year's draft (partial) Bill was also incomplete. Moreover, given the parliamentary timetable and forthcoming election, and perhaps a degree of 'fatigue' at the failure to present a full Bill in 2009 following scrutiny of the 2008 draft Bill (by the Home Affairs Select Committee and the Joint Committee on Human Rights), the 2009 draft Bill received far less parliamentary attention.

UK immigration law is now comprised of a mass of primary and secondary legislation, lengthy Immigration Rules and several policy instructions and guidance interpreted and developed by a substantial body of judicial rulings. Moreover, much of this body of law is intrinsically linked to international instruments and judicial rulings – including the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms, the 1951 UN Convention relating to the Status of Refugees (and 1966 UN Protocol relating to the Status of Refugees), a body of EU Directives and Regulations aiming to secure minimum standards and a common European asylum system and the April 2004 European Parliament and Council Directive 2004/38/EC (frequently referred to as the EU Citizens Directive); together with rulings of the Court of Justice of the European Union and the European Court of Human Rights.

The complexity that has developed in UK domestic law is readily attested to by the presence on the statute book of eleven Acts on immigration law (discounted from this are Acts relating exclusively to nationality law). In each of the last four years, a new immigration Act has been introduced with consequent amendment and addition to those that have gone before.

It is widely accepted that the current situation is, in several respects, complex and difficult for people to understand – including claimants, appellants and officials. It is perhaps not unreasonable to suggest that the situation is also complex for lawyers, judges and parliamentarians.

ILPA has made concerted efforts over the last few years to engage with the Home Office/UK Border Agency simplification project by responding to consultations (including the original consultation in June 2007), providing written submissions to enquiries by the Home Affairs Select Committee and Joint Committee on Human Rights and attending various meetings on discrete aspects of the project and discrete areas of immigration law and practice. A list of ILPA's publicly available written submissions relating to this is appended to this letter with indication of where on our website these may be found.

We note the criteria set out in the letter of 15th September 2010 of The Rt Hon Lord Justice Munby inviting us to respond to the Law Commission's consultation. It appears to us that each of these criteria bears relation to any aim or project of simplifying immigration law. While it is not clear to us where the project, initiated under the previous Government, now sits with the new Government, the need for, at a minimum, consolidation in this area has been pressing for some considerable time and remains so. If the ambition is or will again be to go further than consolidation, to simplify immigration law, we consider that there would be significant value in the Law Commission having considered this aim for itself. A key

reason for that arises from the flawed principles, which have to date under-written this project and which ILPA criticised in responding to the 2007 consultation. We then recommended that an appropriately principled approach to such a project could be founded upon the following statement:

“Immigration law, which encompasses the control of borders and the consequences of such control, should meet the UK's international and human rights obligations, provide for equality and avoid discrimination, be proportionate and avoid arbitrariness, ease the lawful entry and stay of those entitled to be in the UK and provide access to justice and judicial remedy. These are key principles, against which any simplification can and should be assessed.”

If the Law Commission were to undertake work in this area, ILPA would be pleased to provide such assistance as we could if that were to be considered welcome.

Yours faithfully

Sophie Barrett-Brown
Chair
ILPA

Appendix

**ILPA public submissions relating to the UK Border Agency simplification project
(these are all available in the 'Publications' section of
our website at www.ilpa.org.uk)**

UK Border Agency consultation – Simplifying Immigration Law: a new framework for
Immigration Rules

ILPA Response: [2 February 2010](#)

Response on Draft Protection Rules

ILPA Submission: [May 2009](#)

Memorandum of Evidence to the Joint Committee on Human Rights re Draft (Partial)
Immigration and Citizenship Bill

ILPA Memorandum : [October 2008](#)

Appendix : [October 2008](#)

Memorandum of Evidence to Home Affairs Committee Draft (Partial) Immigration
and Citizenship Bill

ILPA Memorandum : [September 2008](#)

Appendix : [September 2008](#)

Consultation on Path to Citizenship Green Paper

ILPA response : [May 2008](#)

Consultation on Simplifying Immigration Law

ILPA Response : [August 2007](#)