UK BORDERS ACT 2007 (Ch.30)

MINISTERIAL STATEMENTS

Prepared for ILPA by Steve Symonds, Legal Officer.

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FOREWORD

If measured by the number of provisions it contains or the number of pages it spans, this Act is not especially large. However, several of its provisions have profound and far-reaching potential. Some – such as the biometric registration provisions – pave the way for further regulations by which the Government may introduce new powers. Others blur traditional boundaries between immigration and nationality functions and the functions of other executive agencies such as the police and HM Revenue and Customs. Indeed, the provisions on detention at ports plainly cross those boundaries in providing a limited policing function to designated immigration officers. Those who may be affected by certain provisions of the Act include any immigrant to the UK. However, the reach of the Act goes far beyond even this. The detention at ports provisions have the potential to affect any British citizen passing through a UK port; whereas the provisions extending the ambit of trafficking and facilitation offences may affect non-British citizens who have never set foot in the UK.

When introducing the UK Borders Bill at Second Reading in the House of Commons, Liam Byrne MP, Minister for Immigration, Citizenship and Nationality, described it in these terms:

> "*The Bill should not be dismissed as another immigration Bill. It is much more ambitious than that. It is part of an ambitious plan of reform that has been co-authored by many immigration and nationality directorate front-line staff. I do not believe—and nor do our officers and other staff—that we can secure our borders in this world of global migration without three measures: first, greater powers for front-line officers to help them secure the border; secondly, a concerted attack on organised crime, which might account for as much as three quarters of illegal entry into Britain; and, thirdly, a much more robust approach not only to detecting and removing those who are in the country illegally, but to attacking the causes of illegal immigration, which are the exploitation of vulnerable illegal labour by racketeers.*"[1]

In the House of Lords, Baroness Scotland of Asthal, Minister of State at the Home Office, introduced the Bill at Second Reading as follows:

> "*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.*"[2]

Of themselves, these descriptions are inadequate for a Bill, which contained provisions spanning a range of immigration matters including: powers of immigration officers; immigration offences; the introduction of biometric identity cards for immigrants; conditions on limited leave to remain; asylum support; evidence on appeals; exchange of information between the then Border and Immigration Agency (BIA) (previously the Immigration and Nationality Directorate, IND, now the UK Border Agency, UK BA), police, HM Customs and Revenue and other agencies; deportation; and oversight of the BIA. (References in the commentary that follows will be to the UK Border Agency, which has now replaced the BIA; albeit that the UK Border Agency was not established for some sic months after the passing of the Act.) Although little was added to the final enactment – the most significant addition concerns the safety of children affected by immigration control – this remains a fairly disparate range. Nevertheless, these descriptions do reveal much of the general intention behind the Act; and – insofar as themes can be identified – significant themes running through much of the Act.

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[1] *Hansard*, HC 5 Feb 2007 : Col. 590
[2] *Hansard*, HL 13 Jun 2007 : Col. 1749

Firstly, the Act is intended to – and indeed does – provide significantly extended powers to the UK Border Agency. Much of the debate, as the Bill passed through both Houses of Parliament, centred on how to provide adequate supervision and control over the exercise of these powers through such means as independent monitoring, codes of conduct and other published guidance, and reporting and training requirements. To a significant extent the Government was sympathetic and indeed anticipated much of the debate on these matters. Liam Byrne MP stated in his introduction at Second Reading in the House of Commons:

> "*If the IND is to become a stronger agency, it must become more open and accountable not only to this place but to the public.*"[3]

However, inevitably perhaps, such commitment is not explicit anywhere in the Act; and ultimately can only be judged on the basis of executive action in the months ahead as these new powers are rolled-out. Practitioners will be among the first to see whether any new guidance, training or oversight is adequate or effective.

Secondly, the Act is intended as a completion of a legislative framework for immigration law. What is expected to follow is not more scaffolding, but some rationalisation of that framework so that what is there can be better understood by all; including those exercising the powers it provides. That intention has been somewhat undermined from the off, since the Criminal Justice and Immigration Bill commenced its Parliamentary passage before the UK Borders Bill had completed its own. Nevertheless, the former was essentially – so far as immigration law is concerned – a one issue Bill, providing for a new immigration status by which certain individuals, along with their families, whose presence is lawful but undesired, may be reduced to a status that is even more meagre and controlled than temporary admission[4].

Practitioners, who have witnessed a rapid expansion of immigration legislation over the last two decades, will no doubt be somewhat sceptical of Baroness Scotland's claim that the Act constitutes the last part in a jigsaw. Whereas jigsaws begin life in need of construction, their ultimate construction has been fully mapped from the start. The same cannot be said for our immigration legislation, but if the Act does indeed constitute something of a conclusion – even if only for a relatively short period – this will be a welcome relief to many. However, in seeking to fulfil such an aim, the Act necessarily traverses a wide range of matters within the general realm of immigration law; and, in such circumstances, there is no one theme linking all the provisions of the Act or providing an overall statement of intent that can comprehensively define the Act.

Nevertheless, the Act does in several respects meet the Minister's stated commitment to providing greater powers to the UK Border Agency and, in particular, immigration officers. If a single theme within the Act is sought, the theme that emerges most strongly is that of substantial extension of powers in respect of immigration control. The following statement by Liam Byrne MP in one of the early sessions of the Public Bill Committee scrutinising the Bill is only part tongue in cheek:

> "*From the tenor of my remarks over the course of the day, the hon. Gentleman will know that my instinct in much of the Bill has been to seek wide, sweeping powers…*"[5]

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[3] *Hansard*, HC 5 Feb 2007 : Col 591

[4] More information on the special immigration status, which is not yet in force (the Criminal Justice and Immigration Act 2008 was enacted on DATE with the relevant provisions unchanged), may be obtained from the ILPA Information Sheet on *Special Immigration Status* of 1 August 2007, ILPA *Briefing on the Criminal Justice and Immigration Bill* of 3 October 2007 and ILPA *Memorandum of Evidence to the Public Bill Committee* of 19 November 2007; each available on the ILPA website.

[5] *Hansard*, HC UK Borders Bill Committee 6 March 2007: Col. 204

The Minister immediately continued:

> "…*but through a process of deliberation I have been persuaded that actually Parliament would not look kindly on my asking for wide-ranging powers for which there was no purpose*…"

It seems unlikely that the Minister meant to suggest that, had he thought there opportunity, there were more extensive and less purposive powers for which he would have wished to legislate. The Bill's Parliamentary passage was remarkable only for how smoothly it went – with one exception – and did not suggest any serious impediment to the Government. Indeed, the debates on the deportation provisions, which effectively legislate away the Secretary of State's discretion and responsibility to consider individual cases on their individual facts for a wide range of foreign national prisoners, indicated considerable appetite for going further by extending the range of offences and sentences in which that responsibility could be abandoned in favour of a mandated requirement to make a deportation order.

The purposes for which biometric information may be retained and used were left considerably wide. As regards other provisions of the Act – notably the power to impose reporting and residence conditions on any immigrant granted leave to enter or remain for a limited period – whereas Ministers identified fixed and narrow purposes in debates, the provisions themselves remain on their face unencumbered by any purpose.

What the Government sought, therefore, were considerable extensions of powers to enforce immigration control on the promise that these would be exercised in a more transparent and accountable fashion. In the Act, the Government has indeed obtained what it had sought. Whether the promise will be fulfilled remains to be seen; and a partial means towards assessing that question will be to see whether the commitments made in the statements in this compilation are made good.

The one exception to the smooth passage of the Bill concerned the welfare of children affected by immigration control. At Report in the House of Lords, the Government defeated by a mere two votes an opposition amendment, which would have subjected the UK Border Agency to a duty to promote the safety and welfare of children.[6] In recent years, immigration Bills have consistently attracted scrutiny and disapproval of the United Kingdom's continued reservation for immigration purposes to the UN Convention on the Rights of the Child and the exclusion of the Immigration and Nationality Directorate, now UK Border Agency, from the general duty to promote the safety and welfare of children contained in section 11 of the Children Act 2004. On this occasion, the Government gave way a little to the pressure by introducing a commitment, now contained in section 21 of the UK Borders Act 2007, to a code of practice to safeguard those children affected by immigration control. Moreover, the debates on many of the provisions in the Bill – as is reflected by the statements contained in this compilation – often focused upon the potential effect of the particular provision upon children.

ILPA's briefings presented during the passage of the Act can be found at www.ilpa.org.uk in the section Briefings.

[6] The vote was a 104 in favour of the amendment with 105 against the amendment: see *Hansard*, HL 9 Oct 2007: Col. 195

USING THIS PUBLICATION

ILPA has previously published compilations of Ministerial Statements, including on the Asylum and Immigration Act 1996, Human Rights Act 1998, the Race Relations (Amendment) Act 2000, the Nationality, Immigration and Asylum Act 2002, and the Immigration and Asylum Act 2006. As with those previous compilations, this one is primarily aimed at providing assistance to legal practitioners in understanding the intention behind the various provisions upon which statements have been made and to offer some guidance as to what may be considered by the courts to have been Parliament's intention in passing legislation.

This publication has as its aim to provide in one place a list of all relevant Ministerial statements to which reference could usefully be made, either in the practice established in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 by which a court or tribunal may consider a clear statement made in parliament by a promoting minister to clarify an ambiguity on the face of the Act or more generally to clarify the meaning and effects of the new law.

The Ministerial statements in this compendium are collected under the headings that divide up the Act, and where possible under the relevant section or subsection. In view of the frequent focus upon children during debates, and the specific provision for children in s. 21 of the Act, statements relating to other provisions of the Act but which also relate specifically to children are repeated in the section which relates to s. 21. Statements ranging beyond the Act or not pertaining solely to any one part appear in the part of the compendium entitled *Various*.

The Ministers speaking are:

- Liam Byrne MP, Minister for Immigration, Citizenship and Nationality;
- Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department;
- Baroness Scotland of Asthal, Minister of State, Home Office;
- The Lord Bassam of Brighton, Parliamentary Under-Secretary of State Home Office.

Statements made other than by Ministers are clearly prefaced by the name of the speaker. All statements by Ministers are made by one of the four people named above. In the House of Commons, Damian Green MP led for the Conservative party in the Public Bill Committee, with David Davis MP also speaking for the Conservative party in debates on the floor of the House. Paul Rowen MP led for the Liberal Democrats in the Public Bill Committee and spoke for that party in debates on the floor of the House. In the House of Lords, the Baroness Anelay of St Johns and the Baroness Hanham led for the Conservative party and the Lord Avebury for the Liberal Democrats.

Square brackets contain text in italics to provide the writer's commentary or clarification of the context in which the statement was made.

The statements should always be regarded as a gateway to the relevant parts of the debates and those wishing to rely upon them, whether in correspondence with officials, litigation or campaigning, should to go back to the full text of the relevant debate, available on the www.parliament.uk website.

A chronology of the Bill's passage through parliament is provided. This Bill was one of the first to go through the new House of Commons procedure known as a Public Bill Committee. This replaces the previous Standing Committee procedure for Public Bills. The key innovation of the Public Bill Committee is the evidence sessions with which the Committee begins its consideration of the Bill. ILPA, on the invitation of the Committee, provided oral evidence; and in advance of that provided the Committee with a

Memorandum identifying areas of particular concern and expertise in respect of the Bill. All Memorandum received by the Committee, and transcripts of the oral evidence received, are available on the Committee's webpages.

This innovation was immediately mired in controversy when the Government blocked a motion that the Refugee Children's Consortium be invited to provide oral evidence despite the fact of there being a free slot in the programme, in respect of which the Government had no proposal to fill and indeed in the event was not used. Moreover, the evidence sessions at times strayed significantly beyond the provisions of the Bill to the detriment of scrutiny of particular provisions. For this reason, ILPA provided supplementary written evidence to the Committee on the deportation provisions in the Bill.

In the House of Lords, the Bill was committed to a Grand Committee, as opposed to a Committee of the whole House. This procedure, which had also been used for the Immigration, Asylum and Nationality Act 2006, is traditionally used for Bills that are not controversial, and as such its use for immigration legislation is perhaps surprising. However, if one rewrites 'not controversial' to mean, without major differences of principle between the government and Her Majesty's Official Opposition (the Conservative Party) the use of a Grand Committee perhaps becomes less surprising. In Grand Committee matters cannot be passed by a vote, and amendments are made only by agreement: thus it is government amendments that are made.

Using Ministerial statements as an aid to interpretation of the Act

Since the decision in *Pepper v Hart,* lawyers have been allowed to refer to Ministerial statements as an aid to statutory interpretation if they help to clarify an "ambiguity" or "obscurity" or to clarify wording the literal meaning of which leads to an "absurdity". These are significant restrictions on the statements to which reference can be made.

Where practitioners have identified a statement that arguably clarifies a statutory ambiguity and satisfies the other criteria, there are specific procedures to be followed, set out in the *Practice Direction (Hansard extracts) [1995] 1 WLR 92*], at the end of this report. A brief summary of the argument and the extract/s should be served on the court and other parties.

Reference can usefully be made to statements that do not clarify a statutory ambiguity and therefore do not fall within *Pepper v Hart,* but that nonetheless illuminate Parliament's intentions and provide a succinct summary of a provision.

In the prefatory pieces to ILPA's *Ministerial Statements: The Human Rights Act 1998*, the author, Katie Ghose, noted Ministers' "*growing reluctance to make statements which could be used in a Pepper v Hart challenge"*, together with explicit references to *Pepper v Hart* "*when ministers wish actively to encourage interpretation of a provision in a specific manner"* [7]. The trends that she recorded continue to be evident. As a result, careful selection is required to come up with a collection of Ministerial statements that is other than anodyne in the extreme and it is arguable that much Parliamentary time is wasted as Ministers recite into the record general statements that do little to illumine the intentions behind provisions.

Parliamentary time is very limited and increasingly Ministers turn to correspondence to respond to questions that they are not in a position to answer on their feet, and to elucidate difficult and technical provisions. Reference, albeit often oblique, is frequently made to these letters in debates. Contents of the letters may be the reason that MPs or peers are content

[7] See also *Beyond the Courtroom: a Lawyers' guide to campaigning* K Ghose, Legal Action Group, 2005, paras. 3.182, 3.192.

not to press amendments to a vote or pursue lines of questioning any further. Letters are often placed in the library of the relevant House, although this cannot be relied upon in every case. Letters are frequently supplemented with informal meetings where the arguments put on both sides leave even less trace on the record. These procedures are an enormous challenge to the *Pepper v Hart* doctrine. We have included in this collection of Ministerial statements those letters, which relate to the Bill and have been shared with ILPA; and are enormously grateful to those who have made them available to us. However, we pause to note that our collection of letters is not comprehensive.

Those wishing to refer to the letters will be bolstered in that approach if they can find a reference to the letter in the debates preceding or following it.

CHRONOLOGY OF THE BILL'S PASSAGE THROUGH PARLIAMENT

All debates available on www.parliament.uk

25 01 07	UK Borders Bill published as Bill 53
25 01 07	House of Commons First Reading
05 02 07	House of Commons Second Reading
27 02 07 (am)	House of Commons Public Bill Committee UK Borders Bill, First sitting
27 02 07 (pm)	House of Commons Public Bill Committee, Second sitting
01 03 07 (am)	House of Commons Public Bill Committee, Third Sitting
01 03 07 (pm)	House of Commons Public Bill Committee, Fourth Sitting
06 03 07 (am)	House of Commons Public Bill Committee, Fifth Sitting
06 03 07 (pm)	House of Commons Public Bill Committee, Sixth Sitting
08 03 07 (am)	House of Commons Public Bill Committee, Seventh Sitting
08 03 07 (pm)	House of Commons Public Bill Committee, Eighth Sitting
13 03 07 (am)	House of Commons Public Bill Committee, Ninth Sitting
13 03 07 (pm)	House of Commons Public Bill Committee, Tenth Sitting
15 03 07 (am)	House of Commons Public Bill Committee, Eleventh Sitting
15 03 07 (pm)	House of Commons Public Bill Committee, Twelfth Sitting
20 03 07 (am)	House of Commons Public Bill Committee, Thirteenth Sitting
20 03 07 (pm)	House of Commons Public Bill Committee, Fourteenth Sitting
09 05 07	House of Commons Report and Third Reading
10 05 07	House of Lords First Reading
13 06 07	House of Lords Second Reading
02 07 07	House of Lords Grand Committee, First Day
05 07 07	House of Lords Grand Committee Second Day
12 07 07	House of Lords Grand Committee Third Day
18 07 07	House of Lords Grand Committee Fourth Day
23 07 07	House of Lords Grand Committee Fifth Day
25 07 07	House of Lords Grand Committee Sixth Day
09 10 07	House of Lords Report Stage First Day
11 10 07	House of Lords Report Stage Second Day
16 10 07	House of Lords Report Stage Third Day
23 10 07	House of Lords Third Reading
29 10 07	Commons Consideration of Lords' Amendments
30 10 07	Royal Assent, the Bill becomes an Act: The UK Borders Act 2007 (Ch.30).

Note that only s.17 came into force on commencement, all other provisions required commencement orders, see s.59, of which there have been two to date:

- The UK Borders Act 2007 (Commencement No, 1 and Transitional Provisions) Order 2008 SI 2008/99
- The UK Borders Act 2007 (Commencement No. 2 and Transitional Provisions) Order 2008 SI 2008/309
- The UK Borders Act 2007 (Commencement No. 3 and Transitional Provisions) Order 2008 SI 2008/1818

OTHER MATERIALS AND RELEVANT PARLIAMENTARY REPORTS

Government and Home Office Materials

See http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/ukborders act/ for access to the Regulatory Impact Assessment and Regulatory Impact Assessments.

Equality Impact Assessments

- Designated immigration officers at a port in England, Wales and Northern Ireland may detain, for up to 3 hours, individuals who may be liable to arrest or who are the subject of an arrest warrant pending attendance by a police constable, March 2007
- Biometric Documents, December 2006
- Conditional Leave, December 2006
- The Border and Immigration Bill – Equality Impact Assessment on support for asylum seekers pursuing appeals, 30 November 2006
- Support for asylum-seekers: enforcement, January 2007
- Policy on consideration of late evidence in applications under points based immigration rules, December 2006
- New enforcement power for immigration officers to seize cash relating to unlawful conduct, December 2006
- Forfeiture and Disposal of Assets, December 2006
- Enhanced powers to tackle facilitation and people trafficking, March 2007
- Automatic deportation of foreign national prisoners who are convicted of a qualifying offence, March 2007
- New powers to permit HMRC officials to disclose HMRC information to IND for immigration purposes, December 2006
- Powers to search for and seize documents relating to nationality, March 2007
- Single Inspectorate for IND / Border and Immigration Agency (BIA), March 2007
- (untitled – but relating to charging), 13 March 2007
- A person who assaults an immigration officer commits an offence and is liable on summary conviction to imprisonment for a period not exceeding 51 weeks, a fine not exceeding level 5 on the standard scale or both. An immigration officer may arrest a person without warrant if he/she reasonably suspects that the person has committed or is about to commit an offence of assaulting an immigration officer, (undated)

Regulatory Impact Assessments

- UK Borders Bill, Regulatory Impact Assessment (revised for introduction in the House of Lords), May 2007

Parliamentary Reports and Papers

Listed below are parliamentary reports and papers on the Bill and related themes. Committee Reports appear under distinct heading, and can be found on the relevant Committee's webpages on www.parliament.uk

The UK Borders Bill (Bill 53 of 2006-07), Research Paper 07/11, 31 January 2007

JOINT COMMITTEES

Joint Committee on Human Rights

The Treatment of Asylum Seekers, Tenth Report of Session 2006-07, HL 81/HC 60, 30 March 2007

Legislative Scrutiny: Sixth Progress Report, Thirteenth Report of Session 2006-07, HL 105/HC 538, 21 May 2007

Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers, Seventeenth Report of Session 2006-07, HL 134/HC 760, 5 July 2007

Highly Skilled Migrants: Changes to the Immigration Rules, Twentieth Report of Session 2006-07, HL 173/HC 993, 9 August 2007

Human Trafficking: Update, Twenty-first Report of Session 2006-07, HL 179/HC 1056, 18 October 2007

Government Response to the Committee's Twenty-first Report of Session 2006-07, Fourth Report of Session 2007-08, HL 31/HC 220, 15 January 2008

LORDS COMMITTEES

European Union

Schengen Information System II (SIS II), Ninth Report of Session 2006-07, HL 49, 2 March 2007

FRONTEX: the EU external borders agency*, Ninth Report of Session 2007-08, HL 60, 5 March 2008*

MINISTERIAL STATEMENTS – LIST OF HEADINGS

VARIOUS

Statements

Asylum decision-making – internal auditing – UNHCR

"…cases are very carefully audited and we seek to ensure compliance through that audit process. That is another very important check, because the quality of decisions taken in the asylum process is very important. Senior caseworkers, who are embedded in the original asylum teams, currently order some 20 per cent of interviews and decisions with their teams, using a decision-quality assessment form jointly designed with the UNHCR, so there is a good deal of audit and quality processing. Those forms are collated by BIA, which looks for trends across the region. We believe that that form of monitoring provides us with valuable intelligence about the quality of caseworker decisions."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Oct 2007 : Column 2007

Asylum support – section 9, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 – use of section 9

"…we do not think that Section 9 is suitable for use on a routine basis. …In any case where a case owner considers that it may be appropriate to use Section 9, a case conference approach involving local stakeholders, such as the local authority, will be followed."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 12 Jul 2007 : Column GC287

"The provision **[section 9]** itself would in future only be applied to cases already managed under the new asylum process. It is not there to be applied to the **[case resolution directorate cases]**"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 18 Jul 2007 : Column GC68

Asylum support – section 9, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 – guidance

"…further guidance will be provided to case owners before Section 9 is used in any new case."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 18 Jul 2007 : Column GC65

"A code of guidance will be made available to case owners dealing with **[section 9]**…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 18 Jul 2007 : Column GC66

Children – detention

See Detention – children - statistics

Detention – children – statistics

"As a snapshot, I can say that, on 31 March, some 50 children were in detention solely under Immigration Act powers. Of those, 40 children had been in detention for less than a months, 10 for between one and two months and the remainder for between three and four months. The noble Lord will have to accept that there may be some slight inaccuracy in that data"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC160

"The agency is currently considering ways to improve the statistical information available on detention of children."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC161

"The noble Earl has an absolute assurance from me that the centres holding families with children keep cumulative totals of time spent in detention, not just the time spent at a particular centre."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC162

Detention – children – time spent

See Detention – children – statistics

Detention – legal advice

"It is important that individuals who have been detained under Immigration Act powers should be able to access competent, independent advice and representation at an early point."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 25 Jul 2007 : Column GC180

Detention – torture victims

"A doctor at a removal centre is required to report any concerns that a detainee may have been a victim of torture. Procedures are in place to ensure that such reports are passed to those at the Border and Immigration Agency responsible for managing a person's detention and properly considering a case. The report must be taken into account in deciding whether continued detention is justifiable and appropriate. …we have recently made improvements to those systems. A standardised reporting form has been introduced and agency staff have been instructed on the need to acknowledge receipt of reports…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 12 Jul 2007 : Columns 274-275

Entry Clearance Monitor – remit – points based system

"The entry clearance monitor plays a valuable role in monitoring the quality of entry clearance refusals where there is no full right of appeal to the Asylum and Immigration Tribunal. The Government therefore agree that it is important that she be able to look at refusals under the points-based system… Section 23(1) of the Asylum and Immigration [sic] Act 1999 will be amended by Section 4(1) of the Immigration, Asylum and Nationality Act

2006 when the latter section is brought into force on the commencement of the points based system…that means that the monitor's jurisdiction will automatically expand to cover each part of the new system as it is launched."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 25 Jul 2007 : Column GC193

Independent Police Complaints Commission

See Independent Police Complaints Commission – jurisdiction – juxtaposed controls
See Section 18 – support offences – safeguards – Independent Police Complaints Commission

Independent Police Complaints Commission – jurisdiction – juxtaposed controls

"I will reflect on the noble Lord's last point **[that IPCC remit should include juxtaposed controls]**. I do not believe that the IPCC could have jurisdiction abroad in this instance, but we need to look at the designation **[clause 1]** of those officers operating from abroad."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC50

Operational Guidance

See Asylum support – section 9, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 – guidance

See Stakeholders – detention at ports – operational guidance

Points based system – Entry Clearance Monitor

See Entry Clearance Monitor – remit – points based system

Serious complaints – Independent Police Complaints' Commission

See Independent Police Complaints' Commission – jurisdiction – juxtaposed controls

Simplification – aims

"…the simplification project is designed to hone existing legislation and eradicate duplication."
Baroness Scotland of Asthal, Minister of State
Hansard, HL Second Reading 13 Jun 2007 : Column 1749

Simplification – aims – medical inspectors

"…we are considering making changes to the legislation concerning the appointment of medical inspectors in the simplification Bill."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 25 Jul 2007 : Column GC196

Stakeholders – detention at ports – operational guidance

"…it is important that operational guidance is discussed at length with stakeholders in order to get what is often very valuable advice… the guidance that we draw up, on the basis of consultation with stakeholders, is and must be publicly available."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Fifth Sitting 6 Mar 2007 : Column 152

UNHCR – asylum decision-making

See Asylum decision-making – internal auditing – UNHCR

DETENTION AT PORTS – SECTIONS 1 TO 4

Commentary:

These provisions empower the Secretary of State to designate certain immigration officers to have the power at a UK port to detain anyone, British or not, for up to three hours on suspicion that the person may be liable to arrest by the police for an offence, including non-immigration offences. The provisions are remarkable because of their explicit extension of the role of immigration officers into the realm of criminal justice and policing. As was made clear in debates on the Bill, these powers add nothing to the pre-existing powers of immigration officers to enforce immigration control, which include considerable police-like powers in relation to immigration control and immigration offences. Rather, these new powers to detain at ports allow certain immigration officers to carry out a policing role in detaining criminal suspects for the purpose of handing them over to the police.

Debates on these provisions in the Bill largely focused upon two issues: firstly, the training and guidance that ought to be available to immigration officers carrying out such functions; and secondly, the exclusion of Scotland from the current reach of these provisions.

The debates on training and guidance largely focused upon the Police and Criminal Evidence Act (PACE) codes of practice and their suitability for regulating immigration officers. These debates were both rewarding and disappointing. The reward can be seen in the statements made by Ministers explaining why the PACE codes were not relevant to the new powers on detention at ports. These clearly define important limits, including that intimate searches may not be carried out under these powers. The disappointment is that the focus upon the new powers tended to obscure the general deficit in terms of regulation or codes of practice as regards the exercise of other immigration officers' powers, in relation to immigration control and immigration offences, where PACE would seem to be plainly relevant.

The debates on the exclusion of Scotland from the reach of these provisions were of some general interest in highlighting the criminal justice as opposed to immigration role of the new power to detain at ports. As was made clear, the exclusion of Scotland from the ambit of these provisions within the Act does not mean that these powers will necessarily be excluded in Scotland. It is a matter for the Scottish Government whether it wishes to adopt such measures in Scotland; and to date it has decided not to do so.

Statements

Section 1

Designated immigration officers – section 1(2) – general – meaning of 'thinks'

"The noble Lord, Lord Hylton, raised a drafting point – what does 'thinks' mean? There is no difference between 'thinks' and 'is satisfied that'. The use of 'thinks' reflects current legislative practice."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 172

Designated immigration officers – section 1(2) – background checks

"…the checks that the Home Secretary must be satisfied about before designating somebody
as a fit and proper person are important. They might include background or health checks. They would certainly include a particular kind of training… We will seek to discuss with both the Association of Chief Police Officers and the policing standards unit the process of designation and the criteria on which an officer must satisfy the Home Secretary before he can be deemed fit and proper. I can give the hon. Gentleman a couple of points of reassurance… once we have had those discussions we will seek to make the criteria public so that it can be subject to scrutiny."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Fifth Sitting 6 Mar 2007 : Column 148

Designated immigration officers – section 1(2) – training

See Designated immigration officers – section 1(2) – background checks
See Designated immigration officers – section 1(2)(b) – hot pursuit – arrest training
See Section 2 – general – children

Designated immigration officers – section 1(2) – public accountability

See Designated immigration officers – section 1(2) – background checks
See Section 2 – general – oversight

Designated immigration officers – section 1(2)(a) – fit and proper – security clearance

"We are developing a fit and proper persons test. It will include appropriate security clearance, a Criminal Records Bureau check and the successful completion of a probationary period of at least a year."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC48

Designated immigration officers – section 1(2)(a) – fit and proper – Criminal Records Bureau

See Designation immigration officers – section 1(2)(a) – fit and proper – security clearance

Designated immigration officers – section 1(2)(a) – fit and proper – probationary period

See Designation immigration officers – section 1(2)(a) – fit and proper – security clearance

Designated immigration officers – section 1(2)(b) – hot pursuit – arrest training

"…those who can undertake hot pursuit, as it were, are those who have arrest training. That is precisely the kind of training that we would see as part and parcel of the designation process…"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Sixth Sitting 6 Mar 2007 : Column 187

Section 2

Section 2 – general – purpose

"The power to detain in the Bill is specifically designed to support the police at the border by detaining individuals of interest pending the arrival of a police constable: that is its primary purpose."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC56

"It will be for the constable to decide whether the person should be arrested. The key point is that designated officers will simply be acting in support of the police, not on behalf of the police. This is an important distinction when comparing these powers to the role of a community support officer who acts on behalf of the police and is consequently subject to PACE codes…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC56

See also Section 2 – section 2(1) – geographical scope of powers

Section 2 – general – extent of powers

"Immigration officers exercising the power will not carry out any of the major substantive functions of a police constable, such as questioning, arrest, investigation or specific evidence collection. They may search the individual only for anything that might be used to assist escape or cause physical injury… They can retain and give to a constable any such item as well as any item they believe to be evidence of the commission of an offence…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC56

See also Section 2 – general – intimate searches

Section 2 – general – operational guidance

"We will need to modernise some of the guidance that is provided for immigration offences, at present set out in chapters 31 and 38 of the instructions **[this refers to the Operational Enforcement Manual, now replaced by the Enforcement Instructions and Guidance]**. We will also have to develop statutory rules for short-term holding facilities, including for holding rooms."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Second Reading 5 Feb 2007 : Column 592

"…it is important that operational guidance is discussed at length with stakeholders in order to get what is often very valuable advice… the guidance that we draw up, on the basis of consultation with stakeholders, is and must be publicly available."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Fifth Sitting 6 Mar 2007 : Column 152

See also – Section 2 – general – children

Section 2 – general – Statutory rules

See Section 2 – general – operational guidance

Section 2 – general – PACE

See Section 2 – general – purpose
See Section 2 – general – requirements for use of powers
See section 2 – general – intimate searches
See section 2 – section 2(3) – three hours limit

Section 2 – general – requirements for use of powers

"…we will seek to reflect certain key safeguards contained within PACE codes A, C and G within the final standard operating procedures. Such safeguards will include requirements to use the power fairly and responsibly…; to provide a clear demonstration of the reason why a designated officer thinks that a person may be liable to arrest; to inform the detainee of the reason for detention and advise that they may be searched… ;…make a record of the detention; to provide detainees with rights such as notification of an interested person of the whereabouts of the detainee, information about how to obtain legal advice and access to telephones; to provide minimum standards of accommodation and hygiene and catering…; and to establish a comprehensive system to record all events…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Columns GC57-8

Section 2 – general – intimate searches

"…there is no power under Clauses 1 to 4 **[now sections 1 to 4]** to undertake intimate searches; so in a sense, as envisaged by PACE, there is no specific meaning to the notion of intimate searches in the way that my noble friend envisaged that they might be applied."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 172

See also Section 2 – general – extent of powers

See also Section 2 – general – requirements for use of powers

Section 2 – general – complaints procedures

See Section 2 – general – oversight

Section 2 – general – oversight

We intend that the oversight arrangements… **[cover]**… administrative arrangements for authorisations and review by senior officers… redress, including transparent and accountable complaints procedures as communicated to passengers at posts, in our formal correspondence and contained on our website… oversight by independent monitoring boards, the Prisons and Probation Ombudsman and Her Majesty's Chief Inspector of Prisons."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Columns GC57-8

Children – detention

"As a snapshot, I can say that, on 31 March, some 50 children were in detention solely under Immigration Act powers. Of those, 40 children had been in detention for less than a months, 10 for between one and two months and the remainder for between three and four months. The noble Lord will have to accept that there may be some slight inaccuracy in that data"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC160

"The agency is currently considering ways to improve the statistical information available on detention of children."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC161

"The noble Earl has an absolute assurance from me that the centres holding families with children keep cumulative totals of time spent in detention, not just the time spent at a particular centre."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC162

Section 2 – general – children

"The detention of children under Clauses 1 to 4 **[now sections 1 to 4]** would occur only in the most exceptional and rare cases… staff are specially trained to deal with minors at ports of entry. Comprehensive children's guidance is issued to all operational staff, and that will continue to be the case. These safeguards will be extended to cover children in detention under these provisions."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC47

Section 2 – section 2(1) – geographical scope of powers

"The provisions in this Bill, in substance, deal with criminal justice matters and not the control of immigration, which is, of course, a reserved matter. The Sewel convention states that the UK Parliament will not legislate in a devolved area without the consent of the Scottish Parliament….
Although immigration is a reserved matter, the detention at ports power will be used by designated immigration officers at port to allow for the detention of people pending the arrival of a constable. I stress again that this is not about border controls; immigration officers in Scotland will continue ot have the full range of powers under immigration and, importantly, terrorism legislation.
Furthermore, these clauses **[now sections 1 to 4]** do not concern the power of immigration officers to arrest individuals for immigration offences, or to arrest a person whom they have reasonably suspected of assaulting an immigration officer. All those powers apply in Scotland as they do in England and Wales. These powers are not for the reserved purposes of immigration or terrorism, but for the purpose of assisting the police for general policing. In Scotland that is a devolved matter. The rationale is that the border is a convenient pinch point for identifying those who may be liable to arrest. This power will assist the police in delivering that objective and will most likely impact on British citizens and EEA nationals as we increasingly merge police databases with immigration watch-lists under our e-borders programme."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 1007-1008

Section 2 – section 2(2)(b) & (c) – searches

See Section 2 – general – intimate searches
See Section 2 – extent of powers

Section 2 – section 2(3) – three hours limit

"…the immigration service and ACPO have both argued that any extension of the power of immigration officers to detain individuals for longer than three hours would be to creep towards a power that is tantamount to the powet of arrest. That would, rightly, trigger calls for PACE-like protection and investment by ports in PACE facilities. On the other hand, it is legitimate to ask whether a constable can be summoned within three hours. On that , I defer to the judgment of colleagues in the police forces… In ACPO's judgment, where immigration officers exercise their powers of detention at the border, three hours is adequate to summon a police constable. In fact, if anything, that is the outer limit."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Sixth Sitting 6 Mar 2007 : Column 183

Section 4

Section 4 – ports

"I can assure him that the question whether to include railway stations and trains was considered in full. They were not included because it was not deemed necessary."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Sixth Sitting 6 Mar 2007 : Column 204

BIOMETRIC REGISTRATION – SECTIONS 5 TO 15

Commentary

Broadly speaking, controversy surrounding these provisions concerned three issues: firstly, general disquiet in relation to identity cards *per se*; secondly, discriminatory impact of the introduction of identity cards for immigrants before British nationals, and for certain classes of immigrants before certain other classes; and thirdly, the nuts and bolts of how the powers in respect of biometric registration might be used in relation to immigrants.

Attention to the first of these controversies did not last long beyond the initial evidential sessions of the Public Bill Committee scrutinising the Bill in the House of Commons. Having passed the Identity Cards Act 2006 the previous year, there was little basis on which such concerns could justifiably be rehearsed. However, given the ongoing – and recently enlarged – political controversy surrounding proposals for identity cards, the longer term irony may yet prove to be that immigrants to the UK are required to be part of an identity card system whereas British nationals are not.

As regards the discriminatory impact of introducing identity cards for immigrants before nationals, there was little debate on this. Of course, should it prove that identity cards are not in due course introduced for British nationals, the issue of discrimination will become more striking as it will then be permanent rather than temporary. Ministerial statements did not address the discriminatory concerns, but simply set out the planned schedule for the staggered roll-out of requirements to register biometric data for different classes of immigrant.

Although the third controversy received more attention in debates, it was always likely that any Ministerial assurances secured would leave the more profound concerns unresolved. And so it proved. Essentially, the biometric registration provisions empower the Secretary of State to make regulations by which a biometric identity card system for immigrants will be introduced. The provisions in the Act indirectly and in very general terms map the means by which such a system may be operated. This system will be governed by the regulations which may establish such things as the uses for which the identity card – called a biometric immigration document (BID) – may be required, the classes of immigrants who may be required to hold such a document, the period for which the document shall remain valid and the circumstances in which it shall be surrendered to, or may be cancelled by, the Secretary of State. The regulations may also establish the information – importantly that includes both biometric and non-biometric information – an immigrant is required to provide. They may establish penalties for non-compliance, which may include the disregard or refusal of an otherwise valid application for leave to enter or remain by the immigrant. Moreover, the regulations may permit the use of the information – both biometric and non-biometric – that has been required of the immigrant for a range of purposes.

The devil will, of course, be in the detail; and the detail will be found in the regulations that are made. However, the provisions in the Act provide leave considerable scope to those regulations because, although the Act lists purposes for which various measures may be in introduced, these lists generally end with a catch-all provision enabling the Secretary of State to make regulations that cover purposes not specified in the Act. In response to general criticism of this approach Ministers prayed in aid human rights and data protection legislation, which they said would provide adequate protection to those individuals required to provide biometric and non-biometric information under the regulations.

Statements

Section 5

Section 5 – Biometric Immigration Documents – who must register

See Section 5 – Biometric Immigration Documents – visitors
See section 5 – section 5(2)(a) – specified class of person
See section 5 – section 5(2)(a) – specified class of person – roll-out of Biometric Immigration Documents

Section 5 – Biometric Immigration Documents – design

"The cards themselves will be the same technical design as we propose for ID cards for British citizens, which is two fingerprints and a facial image on a chip on the card, and 10 fingerprints and a facial image on the national identity register."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Columns 536-537

Section 5 – Biometric Immigration Documents – fees

"The proposed fees payable by foreign nationals for a BID [Biometric Immigration Document] will be set out in secondary legislation and put before Parliament in the usual way when we have finally agreed an appropriate charging structure with HM Treasury. Will the fees recover the full administrative costs to the system? We usually expect to do so. It is not out intention to profit from the implementation of this measure but we are considering very carefully what the appropriate charging structure should look like. The secondary legislation debates will enable us to focus more closely on some of those issues. Consultation is a given. We will endeavour to ensure that cost recovery levels match what is reasonable and appropriate, but they must abide with Treasury rules in recovering the full administrative costs to the system."
Lord Bassam of Brighton
Hansard, HL Report 9 Oct 2007 : Column 226

"…UKvisas will not issue biometric immigration documents. Although UKvisas issues biometric visas, they are issues at posts abroad under existing legislation. Biometric immigration documents, on the other hand, will be issued in the United Kingdom… Fees for in-country services are set by the Secretary of State with the consent of the Treasury…"
Lord Bassam of Brighton
Hansard, HL Grand Committee 5 Jul 2007 : Column GC169

Section 5 – Biometric Immigration Documents – fees – refugees

"When a recognised refugee is granted leave and is issued with a BID for the first time, they will not be charged. They may be charged when that BID is later renewed, when it expires after 10 years."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC171

Section 5 – Biometric Immigration Documents – application form

"…it is likely that a single combined application form will be used both for the application for leave and the application for the biometric immigration document."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC228

Section 5 – Biometric Immigration Documents – Identity Cards Act 2006

"The technical infrastructure on which the cards will be issued is the same infrastructure as will underpin biometric visas, biometric immigration documents and, in turn, ID cards for British citizens, which is why it is difficult to propose shutting down bits of the system without affecting the integrity of some pretty important border controls, including biometric visas, with which Opposition parties profess to agree."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Columns 536-537

Section 5 – Biometric Immigration Documents – Identity Cards Act 2006 – safeguards

"Biometric immigration documents can be designated under the terms of the Identity Cards Act. Obviously, in their original issue they will not be so designated, but that will be possible in future, and cardholders will come under the protections that become available to people under that Act."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Columns 536-537

See also Section 5 – section 5(5) – non-biometric information
See also Section 8 – use and retention of information – general
See also Section 8 – use and retention of information – safeguards – Data Protection Act 1998
See also Section 8 – use and retention of information – safeguards – destruction of biometric information – where information has been shared
See also Section 9 – penalty – Identity Cards Act 2006

Section 5 – Biometric Immigration Documents – Identity Cards Act 2006 – children

"Biometric immigration documents issued to children aged under 16 will not be designated under the Identity Cards Act 2006."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC131

Section 5 – Biometric Immigration Documents – biometric visas

See Section 5 – Biometric Immigration Documents – fees
See Section 5 – Biometric Immigration Document – Identity Cards Act 2006
See Section 5 – Biometric Immigration Document – visitors
See Section 5 – section 5(2)(a) – specified class of person – roll-out of Biometric Immigration Documents

Section 5 – Biometric Immigration Documents – visitors

"Visa nationals coming for a short visit – currently up to six months – would not require a BID; the visa document itself will suffice."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC169-170

"…short-term visitors to the UK, such as tourists, will not be required to apply for a biometric immigration document."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 225

Section 5 – section 5(1)(b) – use of Biometric Immigration Documents – stop and search

"A further point that has been made to me over the past few weeks is whether there is any possibility of the police being able to stop someone in the street and demand to see their biometric immigration document. That is not the case. Clause 5(1) **[now section 5(1)]** limits the powers to take biometric samples and to make checks for immigration purposes and procedures. Regulations will establish the grounds for verification, but there is no intention to give the police the power to stop and search someone whom they believe is a foreign national… Suspecting someone of just being a foreign national and stopping them to ask for their documents is subjective and therefore an arbitrary use of power, which is subject to certain remedies."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Second Reading 5 Feb 2007 : Columns 595-596

Section 5 – section 5(1)(b) – use of Biometric Immigration Documents – production of Biometric Immigration Document – employers

"Employers and benefit providers will be able to check this biometric document and know whether a person is here legally and is entitled to work and/or to access benefits."
Baroness Scotland of Asthal, Minister of State
Hansard, HL Second Reading 13 Jun 2007 : Column 1709

Section 5 – section 5(1)(b) – use of Biometric Immigration Documents – production of Biometric Immigration Document – benefit providers

See Section 5 – section 5(1)(b) – use of Biometric Immigration Documents – production of Biometric Immigration Document – employers

Section 5 – section 5(1)(c) – requirement to provide information

See Section 5 – section 5(5) – non-biometric information

Section 5 – section 5(2)(a) – specified class of person

"…where we seek to extend biometric immigration documents to different groups of foreign nationals, we will come back to the House to seek authorisation to do so."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Second Reading 5 Feb 2007 : Column 597

Section 5 – section 5(2)(a) – specified class of person – roll-out of Biometric Immigration Documents

"From 2008, we will introduce biometric visas for everyone who seeks to come to the country to work or study, or stay for longer than six months."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Second Reading 5 Feb 2007 : Column 597

"First off, it would be best to include students from outside the EU, those seeking to settle in the United Kingdom having completed a five-year qualifying period, those applying to extend their work permits, and those seeking leave to remain on the basis of marriage to a UK citizen… It is… our intention from 2008 to roll out progressively… to qualifying foreign nationals subject to immigration control who are already in the United Kingdom and reapplying to stay here… and it is then our ambition to cover by 2011 all new in-country applications for permission to stay in the United Kingdom."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC17

"We plan to introduce the biometric immigration document to categories of leave where it will have the most benefit and reduce abuse. This has produced the following implementation schedule: in 2008, discretionary leave and humanitarian protection, marriage, long-term relationship and civil partnership categories and student categories; in April 2009, remaining high harm further leave categories, including business, children of settled parents, work permits and visitors; in April 2010, remaining further leave categories; and in April 2011, settlement and refugee status grant categories. There may be further changes to the plan based on the outcome of the evaluation of the pilot and the consultation with the Commission for Equality and Human Rights and the Equality Commission for Northern Ireland.
By focusing initially on applications based on marriage, long-term relationships and civil partnerships, and students, we are adding immigration control to categories that have been subject to some abuse. By selecting these groups first for the BIDs programme, we add a further level of control that will mean applicants will not be able to switch identities."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Columns 216-217

Section 5 – section 5(2)(c) – issue of Biometric Immigration Documents

See Section 5 – Biometric Immigration Documents – fees

Section 5 – section 5(2)(c) – issue of Biometric Immigration Documents – guidance

"We will publish practice guidance to which persons authorised to register biometrics must adhere."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC165

Section 5 – section 5(2)(f) – expiry – children

"The biometric immigration documents issued to children under 16 will expire in no later than five years."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC131

Section 5 – section 5(5) – non-biometric information

"The power to require the provision of information must be read in the context of the purpose of a biometric immigration document; that is, a document which is connected to proper immigration control, providing evidence of immigration status. The provisions do not give a power to collect unlimited information which has no relevance to immigration at all. The noble Lord was citing health details. I cannot think of circumstances where they would be terribly relevant to immigration status; there may be some, but it is not a licence to collect unlimited data. In addition, the processing of personal data must be done compatibly with the Data Protection Act. Together with the Human Rights Act, that of course provides particular and specific safeguards which I am sure noble Lords quite appreciate."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 222

Section 7

Section 7 – sanctions for non-compliance

"The Secretary of State would, of course, have the discretion to decide which sanction it was most appropriate to apply in any particular case. The intention would be to set out the modus operandi for that judgment to be exercised in a code of practice…"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 285

"…it is not our intention that the Secretary of State should be able to use any other sanction **[than listed in clause 7(2)]**…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC173

Section 7 – sanctions for non-compliance – civil sanction

See Section 9 – penalty

Section 7 – sanctions for non-compliance – code of practice

See Section 7 – sanctions for non-compliance
See section 7 – sanctions for non-compliance – section 7(3) – children

Section 7 – sanctions for non-compliance – reasonableness test

"…before the Secretary of State imposes a sanction, he or she – she at present – will, of course, consider all relevant circumstances. That will include reasons why the person did not comply… a test of reasonableness will be in place."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC173

See also Section 7 – sanctions for non-compliance – publicising sanctions regime
See also Section 7 – sanctions for non-compliance – publicising sanctions regime
See also Section 7 – sanctions for non-compliance – section 7(3) – children

Section 7 – sanctions for non-compliance – financial or non-financial penalty

"…the Home Secretary would not impose both **[financial and non financial]** penalties."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 12 Jul 2007 : Column GC234

Section 7 – sanctions for non-compliance – publicising sanctions regime

"We will fully and amply publicise any changes to the circumstances in which a holder of a biometric immigration document is required to notify the Secretary of State so that people are aware… …if someone has missed the announcement of a change in circumstances, we will be sensitive and will think very carefully before imposing any sanction. We have to operate the system reasonably."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Columns GC162-163

Section 7 – sanctions for non-compliance – section 7(3) – children

"It is not a reasonable proposition to introduce the sanctions that we have debated in order to take action against children, and we therefore propose a designated adult as the alternative. We will seek to make the adult aware of that responsibility"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Column 538

"It is possible that parents could be designated, but so could permanent carers, relatives with parental responsibility for children in their care, or guardians. Of course, before we seek to draft the code **[relating to the sanctions regime]** we will consult local authorities and child exploitation and online protection teams, as well as Government and non-Government agencies."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Column 540

Section 7 – sanctions for non-compliance – section 7(3) – parents and guardians

See Section 7 – sanctions for non-compliance – section 7(3) – children

Section 8

Section 8 – use and retention of information – general

"Stewart Hosie (Dundee, East) (SNP): …The previous drafting ***[of what is now section 8(1)]*** *basically allowed the Home Secretary to do anything he or she liked with the information. The new provisions are slightly tighter in relation to immigration, borders and nationality, until we get to paragraph (f), which contains the phrase:*

"for such other purposes...as the regulations may specify."

Can the Minister give us a little comfort by confirming that the initial drafting of the regulations will be tight and that it is not the intention to return to what we had in the original Bill?

Mr. Byrne: That is an important point. I am happy to give the hon. Gentleman that comfort. We were merely conscious of the fact that because identity fraud is a fast-moving area, it is necessary to have a degree of flexibility, subject to the order-making provisions in the Bill, to ensure that we do not have to keep coming back to the House to ask for primary legislation.

Mr. Heath: Although I accept that this is a fast-moving area, the provisions must be related to an offence. If not related to an offence, they must be concerned with national security or one of the other issues laid down in previous provisions. It is a little difficult to understand why the Minister feels the need for such a wide provision in the final subsection.

Mr. Byrne: I suppose that the fault to which I am confessing is that I am not perfectly clear sighted about what the future will bring. Organised crime is at work and the nature and design of crime is changing in this area, which is why we could require further provisions. Rather than having to come back to the House to keep asking for different bits of primary legislation, we may need to preserve the possibility that different functions need to be added subject to the scrutiny arrangements in the Bill."

Liam Byrne MP, Minister for Immigration, Citizenship and Nationality

Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Column 541

"The hon. Member for Somerton and Frome (Mr. Heath) made an important point, and I can give him some comfort, although I am not sure that I can wholly satisfy him. Proposed new paragraph (f) contains the phrase:

"for such other purposes (whether in connection with functions under an enactment or otherwise) as the regulations may specify."

The Secretary of State already has common law powers relating to the way in which information may be shared with other parts of the Government, and they are subject to the safeguards set out in the Human Rights Act 1998 and the Data Protection Act 1998. This area is therefore not protection-free; there are some quite important protections already in place. The provision is designed to ensure that those common law powers are not diminished. The only comfort I can give the hon. Gentleman is to underline the point that it refers to functions

"under an enactment or otherwise".

There is a functional specification in the list, which creates some boundaries, but the principal purpose of the measure is, in effect, to preserve the status quo—namely, the power that the Home Secretary already has to share information with others. I commend the Lords amendments to the House."

Liam Bryne MP, Minister for Immigration, Citizenship and Nationality

Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Columns 544-545

Section 8 – use and retention of information – safeguards – Data Protection Act 1998

"I shall start by clarifying the scope or orbit of the clause **[now section 8]**. It is not about the transfer of the information concerned to other parts of Government or other parts of public service. Parliament has already spoken on that matter, specifically in section 21 of the Immigration and Asylum Act 1999, which quite properly put in place a rigorous gateway through which the Home Office would have to go to share information with others. That

could be done only in line with obligations already on the Secretary of State set out under the Human Rights Act 1998, the Data Protection Act 1998 and other legislation. The subject of the clause **[now section 8]** is how the Home Secretary can share the information with other parts of his business, as it were."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 288

See also Section 5 – Biometric Immigration Documents – Identity Cards Act 2006 – safeguards
See also Section 5 – section 5(5) – non-biometric information
See also Section 8 – use and retention of information – general
See also Section 8 – use and retention of information – safeguards – destruction of biometric information – where information has been shared
See also Section 9 – penalty – Identity Cards Act 2006

Section 8 – use and retention of information – safeguards – section 8(3) – destruction of biometric information – British citizens

"Clause 8(3) **[now section 8(3)]**… means that where a person proves they are a British citizen or a Commonwealth citizen with the right of abode, the biometrics held by the Secretary of State, and any copies of those biometrics, will have to be destroyed as soon as is reasonably practicable. The person to whom the biometrics relate will be entitled to a certificate, on request, to the effect that the Secretary of State has taken all reasonably practicable steps to erase, destroy or prevent access to any biometric information held in electronic form. Clause 8(4) **[now section 8(4)]** is therefore necessary to ensure the Secretary of State can retain biometric information under the Identity Cards Act even where the person becomes a British citizen."
Lord Bassam of Brighton, Minister of State
Letter to Lord Avebury, 19 July 2007

Section 8 – use and retention of information – safeguards – section 8(3) – destruction of biometric information – persons with right of abode

See Section 8 – use and retention of information – safeguards – section 8(3) – destruction of biometric information – British citizens

Section 8 – use and retention of information – safeguards – section 8(3) – destruction of biometric information – where information has been shared

"…clause 8(3) **[now section 8(3)]** does <u>not</u> oblige the Secretary of State to destroy biometric information which has been shared with a third party, for example, the police…"
Lord Bassam of Brighton, Minister of State
Letter to Lord Avebury, 19 July 2007

Section 9

Section 9 – penalty

"We want to ensure that disputes between foreign nationals and the Secretary of State can be resolved at minimum cost… The point I wanted to underline is that the offence of non-compliance with the provisions in the Bill will not be a criminal sanction but a civil offence."

Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 294

"We seek to designate biometric immigration documents once the national identity system is up and running. We are trying to align the civil penalty regime with the penalty regime that was proposed and passed by Parliament under the Identity Cards Act 2006. We did not want a separate scheme in which there would be one kind of civil penalty for non-compliance under the 2006 Act and another that would kick in under the Bill's biometric immigration document provisions."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 291

Section 9 – penalty – right of appeal

"The clause **[now section 9]** will not eliminate any right of appeal."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 294

Section 9 – penalty – Identity Cards Act 2006

"It is designed to act in accordance with existing schemes provided for under the Identity Cards Act."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 294

TREATMENT OF CLAIMANTS - SECTIONS 16 TO 21

Conditional leave to enter or remain – Section 16

Commentary

Early in the Bill passage through Parliament, Damian Green, the Shadow Minister for Immigration, said of these provisions:

> "*It was clear, both in reading the written evidence that was submitted to the Committee and over several sessions of oral evidence that we have taken, that clause 16* [now section 16] *was one of the most difficult and controversial in the Bill.*"[8]

Despite that assessment, clause 16 was one of the provisions of the Bill that passed without any amendment between the Bill's first introduction and its final enactment.

The original Explanatory Notes to the Bill casually recorded that:

> "*This clause simply adds two new conditions under section 3(1)(c)* [of the Immigration Act 1971]…"[9]

This casual reference, as Damian Green indicated, is far from justified. Section 3(1)(c) provides the power to impose conditions on a grant of leave to enter or remain where that grant is for a limited period. The pre-existing conditions that might be imposed essentially relate to conditions under relevant Immigration Rules; so that, where a person may be granted leave to enter or remain only on condition that he or she does not work in the UK[10] or does not work beyond certain limitations[11], leave to enter or remain may be granted on a condition setting out such a restriction on employment[12]. Similarly, where a person may be granted leave to enter or remain in the UK only where he or she can demonstrate a capacity to support himself or herself without access to public funds[13], leave to enter or remain may be granted on condition that he or she does not access public funds[14]. The condition that may be imposed requiring a person to register with the police[15] also directly reflects provisions within the Immigration Rules[16].

The two new conditions bear no relation to conditions of a person's entry under Immigration Rules. They are entirely independent of the Rules, and allow for the imposition of conditions akin to those that may be imposed upon person's granted temporary admission – reporting and residence conditions.

Given that the Government's stated purposes specifically identified only two, relatively small groups in respect of whom these conditions were considered necessary, it is striking that section 16 contains no limitation upon the class of immigrant upon whom reporting or

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[8] *Hansard*, HC UK Borders Bill Committee 13 Mar 2007 : Column 299
[9] UK Borders Bill, Explanatory Notes Bill 53-EN 54/2, paragraph 47; the Explanatory Notes accompanying the Bill on its presentation to the House of Lords were similarly phrased
[10] e.g. Immigration Rules (HC 395), paragraph 41 regarding leave to enter as a visitor
[11] e.g. Immigration Rules (HC 395), paragraph 57 regarding leave to enter for a student
[12] section 3(1)(c)(i) of the Immigration Act 1971
[13] e.g. Immigration Rules (HC 395), paragraph 281 regarding leave to enter for a spouse or civil partner with a view to settlement
[14] section 3(1)(c)(ii) of the Immigration Act 1971
[15] section 3(1)(c)(iii) of the Immigration Act 1971
[16] Immigration Rules (HC 395), paragraphs 325-326

residence conditions may be imposed – save that contained in section 3(1)(c) itself which excludes those with settled status from its ambit – nor as to the purposes for which these may be imposed nor as to the extent to which the conditions may be applied. One of the two groups identified was unaccompanied asylum-seeking children; and several of the more useful Ministerial statements relate specifically to children. The other group was foreign national prisoners whose deportation on completion of sentence was prohibited on human rights grounds. Although these purposes are made express in statements set out below, the following statement by Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department, makes plain that the new conditions provided by section 16 may be applied to other immigrants beyond these two groups:

> "*…we have not named students with limited leave as one of the categories that we will apply the provisions to at this stage. However, the power is broad and we do not deny that these measures could cover anybody with limited leave.*"[17]

Statements

Section 16

Section 16 – purpose

"Our aim is to keep in touch with certain individuals whom we have an interest in monitoring more closely. There is no need to amend the clause by including finer details that can be left to the policy guidance that is to be published later."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 304

"We will grant leave with reporting and/or residency conditions only where this is justified by a need for close monitoring of an individual."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 12 Jul 2007 : Column GC252

"We intend to use those powers for categories of people with whom we are particularly keen to stay in close contact, such as unaccompanied asylum-seeking children, so that as they become removable, we can seek to remove them."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Second Reading 5 Feb 2007 : Column 600

Section 16 – purpose – categories of person

"…we have not named students with limited leave as one of the categories that we will apply the provisions to at this stage. However, the power is broad and we do not deny that these measures could cover anybody with limited leave."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 302

Section 16 – purpose – categories of person – former foreign national prisoners

[17] *Hansard*, HC UK Borders Bill Committee 13 Mar 2007 : Column 302

"We want to be able to apply the clause **[now section 16]** to former foreign national prisoners, who have been released from prison but who cannot be removed at present due to legal barriers. The need to monitor all such people with a view to their eventual removal is clearly in the public interest. I should have thought there would be common agreement on that point."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 985

Section 16 – purpose – categories of person – children

"We would seek to work closely with a social worker and with social services and the local authority, to ensure that we could achieve as smoothly as possible, with the minimum possible disruption and maximum possible protection for the child, our aims of protecting the child and subsequently preparing them for removal, on their becoming an adult."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 311

"We will apply reporting and residency conditions to children only when strictly necessary, either for their own welfare or with a view to closer contact management as they approach 18… We will liaise with local authorities when deciding on the application of the conditions to children in care."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 304

"We intend to use those powers for categories of people with whom we are particularly keen to stay in close contact, such as unaccompanied asylum-seeking children, so that as they become removable, we can seek to remove them."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Second Reading 5 Feb 2007 : Column 600

"We also propose to apply the clause to certain young people under the age of 18 where it is considered there is a need to monitor them. Principally we aim to monitor all former unaccompanied asylum seeking children who are granted limited leave to remain in the United Kingdom due to the lack of reception facilities in their home countries, but who nevertheless need to be prepared for return to their countries once they are old enough or the appropriate reception arrangements are in place. There is a clear need there. Conditional leave may also be used to monitor young people given limited leave other than with their parent or legal guardian, who have not identified themselves to the welfare, health and education agencies but with whom we have reasons for wanting to stay in touch until we are satisfied that the child is being cared for properly. The provisions may also be used to monitor those young persons who have been in the care of local authorities but have since opted out of that care."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 985

Section 16 – purpose – categories of person – students

"We have no intention of applying residency conditions to refugees, students or work permit holders as some non-governmental organisations have alleged."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 311

"…we have not named students with limited leave as one of the categories that we will apply the provisions to at this stage. However, the power is broad and we do not deny that these measures could cover anybody with limited leave."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 302

Section 16 – purpose – categories of person – refugees

"We have no intention of applying residency conditions to refugees, students or work permit holders as some non-governmental organisations have alleged."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 311

Section 16 – purpose – categories of person – work permit holders

"We have no intention of applying residency conditions to refugees, students or work permit holders as some non-governmental organisations have alleged."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 311

Section 16 – conditions – written reasons

"There is no general legal duty to provide detailed written reasons in respect of decisions to impose the existing conditions on leave under Section 3(1) (c) of the 1971 Act. To introduce a new duty in these circumstances runs counter to existing practice. It is not necessary and could prove disproportionate.
We would set out in correspondence to the applicant the general principles which are applied when considering whether to place these conditions on leave. Separately, the specific reporting arrangements that are put in place for an individual placed on conditional leave will be looked at on a case-by-case basis. For example, in the case of reporting arrangements involving a former unaccompanied asylum seeking child who was in care we would consider the resource implications to any local authority. We would aim to keep face-to-face reporting to a minimum and would use telephone or video contact where possible and practicable.
In addition, we will continue our discussions on this issue with the Association of Directors of Children's Services during the implementation of this provision, and ensure that its views on frequency and the nature of reporting are taken into account when drawing up advice to BIA caseworkers on handling former unaccompanied asylum seeking children."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 985

Section 16 – conditions – residence conditions – change of address

"If an individual wanted to find work in another location, the residency condition would ensure that they kept us informed of where they were moving and, in some cases, our approval of the new address would be required."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 310

Section 16 – conditions – residence conditions – curfews

"…it is not possible to impose a curfew or, as has been suggested in other places, electronic tagging, because those measures can apply only where we have the right to detain."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 314

Section 16 – conditions – residence conditions – electronic tagging

"…it is not possible to impose a curfew or, as has been suggested in other places, electronic tagging, because those measures can apply only where we have the right to detain."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 314

Section 16 – conditions – reporting conditions – 25 miles radius

"If there is no reporting centre within 25 miles, we will find alternative arrangements – we could, for example, require the person to report to a local police station or other identified location."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 310

Section 16 – conditions – reporting conditions – travel expenses

"Although there is no express power allowing the Secretary of State to pay travel expenses to those with leave to report, we are giving some more consideration to that welfare issue."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 12 Jul 2007 : Column GC254

Section 16 – conditions – reporting conditions – children

"We will not pull children out of school to attend reporting conferences far away; reporting by telephone may be used for children and reporting could be done outside school hours."
Baroness Scotland of Asthal, Minister of State
Hansard, HL Second Reading 13 Jun 2007 : Column 1752

"…the specific reporting arrangements that are put in place for an individual placed on conditional leave will be looked at on a case-by-case basis. For example, in the case of reporting arrangements involving a former unaccompanied asylum seeking child who was in care we would consider the resource implications to any local authority. We would aim to keep face-to-face reporting to a minimum and would use telephone or video contact where possible and practicable.
In addition, we will continue our discussions on this issue with the Association of Directors of Children's Services during the implementation of this provision, and ensure that its views on frequency and the nature of reporting are taken into account when drawing up advice to BIA caseworkers on handling former unaccompanied asylum seeking children."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 985

Section 16 – conditions – reporting conditions – children – children in school

See Section 16 – conditions – reporting conditions – children

Section 16 – conditions – reporting conditions – children – local authority resources

See Section 16 – conditions – reporting conditions – children

Section 16 – conditions – reporting conditions – children – reporting by telephone

See Section 16 – conditions – reporting conditions – children

Section 16 – conditions – reporting conditions – children – reporting by videolink

See Section 16 – conditions – reporting conditions – children

Section 16 – conditions – reporting conditions – children – operational guidance

See Section 16 – conditions – reporting conditions - children

Section 16 – conditions – reporting conditions – children – ADCS

See Section 16 – conditions – reporting conditions - children

Support for failed asylum-seekers; Support for asylum-seekers: enforcement – Sections 17 to 18

Commentary

Although sections 17 and 18 are taken together in this part, the sections are only loosely related in that they both concern asylum support. However, whereas section 17 addresses the circumstances in which an asylum-seeker may continue to be entitled to support, section 18 provides increased powers to immigration officers in connection with asylum support offences.

Section 17 – save in one important respect – is intended to do no more than preserve the status quo concerning when an asylum-seeker may be supported by the Secretary of State under section 95 following a refusal of his or her asylum claim pending any in-country appeal that is or may be brought within the appropriate time limit. In a case still pending before the House of Lords[18], it had been suggested that the previous legislation had left a lacuna because a person ceased to be an asylum-seeker at the point of refusal of his or her asylum claim; and might, therefore, fall outside the section 95 scheme during the time in which no appeal had been brought. This might be problematic in two circumstances: firstly, where an immigration decision had been notified but an in-country appeal not brought even though it might yet be brought within the time limit; secondly, where an immigration decision was yet

[18] *M v Slough* [2006] EWCA Civ 655

to be notified and so any attempt to bring an appeal would be premature. Section 17 is unique among the provisions of the Act in two respects. Firstly, it is the only substantive provision which commenced on the passing of the Act. Secondly, by subsection (6) it is to be treated as always having had effect – thereby negating any complications for pre-existing cases if the House of Lords should rule that the previous legislation did indeed contain the lacuna.

Subsections (4) and (5), however, have greater potential. These empower the Secretary of State to make regulations allowing for support to continue even after the individual has ceased to be an asylum-seeker – whether because no appeal is brought in time or any appeal is finally determined. Although these provisions may be used for no more than preserving the position where an asylum claim is determined yet no immigration decision notified to the claimant, it would be possible to use these provisions to address other concerns of destitution among asylum-seekers whose appeals have been finally determined. Debates on section 17 largely focused on this general issue of destitution among refused asylum-seekers. This is hardly surprising since section 17, in itself, is not in itself controversial.

Section 18 received relatively little attention in the debates on the Bill. The powers it provides – e.g. of arrest without warrant – to immigration officers are not new. However, it is new in extending the use of these powers to asylum support offences. As previously indicated, debate on questions of training, guidance and supervision of immigration officers focused on the new powers of detention at ports, which was something of an irony since those powers – albeit applicable to non-immigration offences – are very limited by comparison to the pre-existing powers granted to immigration officers in respect of immigration offences.

Statements

Section 17

Section 17 – general – purpose

"The hon. Gentleman knows that the clause seeks to maintain the status quo, whereby we can make available asylum support to those individuals who have had an initial decision refused and are awaiting their appeal. Previously, that was always the case, but it has been called into question in the courts and is currently staying in the House of Lords while we are seeking to legislate in order to clarify the position…"
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 321-322

Section 17 – section 17 (4) to (5) – continuation of support following final determination

"Government amendment No. 109 **[what became section 17(4) to (5)]** would mean that at the end of the process, if an appeal is upheld and it is found that a person should be given refugee status, that person will have a 28-day period in which their asylum support will continue to be paid while they move from the National Asylum Support Service to the usual system and seek accommodation and support by other means. Those whose appeals are not granted will have 21 days in which they will still receive asylum support before they either should make arrangements to leave the country voluntarily or, in some cases, qualify for section 4 support."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 322

Section 18

Section 18 – support offences – general enforcement activity

"…we are significantly increasing enforcement activity and that is why, across the board, we want all our enforcement officers to be arrest trained…"
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 338

Section 18 – support offences – enforcement operations – police support

"If not everybody in a team is arrest trained, there must be police support in the team. If all its members have received arrest training, it can operate independently of the police."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 336

Section 18 – support offences – arrest training

"About 40 per cent of enforcement officers are now arrest trained, and a much smaller number percentage of immigration officers at the borders have such training. By 2008, we expect all officers to be arrest trained."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 336

Section 18 – support offences – seizing evidence

"Those exercising the power of seizing evidence would also undergo training with the Assets Recovery Agency."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 336

Section 18 – support offences – safeguards – Independent Police Complaints Commission

"…we are significantly increasing enforcement activity and that is why, across the board, we want all our enforcement officers to be arrest trained… There are a number of safeguards… the powers will be subject to regulation and scrutiny by the Independent Police Complaints Commission… The Immigration (PACE Codes of Practice) Direction 2000 will also apply to the use of the powers… it is important to bear in mind that we are not giving new powers to immigration officers, but simply applying them to a different set of offences."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 338

Points-based applications: no new evidence on appeal – Section 19

Commentary

Section 19 incorporates a recommendation of the Home Affairs Committee that appellants to the Asylum and Immigration Tribunal should not be permitted to rely upon evidence that was not placed before the original decision-maker. Human rights and asylum appeals are expressly excluded from this prohibition.

An initial confusion inspired by the corresponding clause in the Bill arose because of the reference to appeals against refusals of leave to enter. It had long been understood that refusals of applications for leave to enter under the Points Based System would not attract any right of appeal. Instead an applicant would have the opportunity to seek an administrative review – assuming he or she did not prefer to either apply again or simply abandon the application altogether. The reference to leave to enter decisions remains in the Act. Nevertheless, it was confirmed during debate that the Points Based System would not include an appeal right in respect of such decisions.

The Government's rationale for introducing the prohibition contained in section 19 is that – as the Home Affairs Committee had said – it is appropriate to expect applicants to put forward all relevant evidence at the time of the application; and to allow new evidence to be submitted on an appeal merely encourages inadequate applications and leads to unnecessary and expensive appeals. However, the Committee also recommended of a minded to refuse stage. This would at least have allowed an applicant the opportunity to reflect upon any potential inadequacy in his or her application before being presented with the refusal. The Government expressly rejected this recommendation in debates on the Act. Its position was that the Points Based System would be so straightforward that applicants would simply have no excuse for not providing all relevant information from the start. Practitioners may well be sceptical.

Of course, there may be circumstances where the applicant could not have envisaged that further evidence was needed. Section 19 makes some allowance for this. Thus, if an application is refused because it is said that a piece of evidence that has been submitted is invalid or not genuine, new evidence may be relied upon in the appeal to rebut that assertion. Similarly, if the application is refused for reasons not relating to the points required under the system (e.g. because it is said that the applicant is undesirable by reason of a criminal record), new evidence may be relied upon in order to address those reasons.

Nevertheless, there remains a serious lacuna in the exceptions allowed for by the Government. If a document from a third party is submitted with the application as evidence in respect of points under the system (e.g. a letter from an employer or educational establishment) and the third party makes an error on the face of the document, it would appear on the face of the provisions that nothing from the third party correcting the error it had made will be admissible on any appeal. Repeated attempts to raise this concern in debate were simply batted away by Lord Bassam of Brighton, who merely insisted that the exception relating to evidence for showing a document to be valid or genuine would suffice.

Statements

Section 19

Section 19 – rationale

"Under the PBS, applicants will be told in clear terms exactly what evidence they need to submit to qualify for points. It is therefore perfectly fair to expect them to submit that evidence with their applications. There is no reason why they should be able to submit it later in the process with their appeals, as the amendments propose.
Our processes for handling PBS applications provide for one decision to be made. If applicants want to provide further evidence and consequently expect us to make a second decision, they must pay our administrative costs in remaking that decision. The appropriate channel to do that is by making a new application, not by relying on the appeals system."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 11 Oct 2007 : Column 413

"…in cases where an applicant is refused for not having submitted the required evidence but then obtains it later, they should make a fresh application."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 18 Jul 2007 : Column GC73

Section 19 – scope

"…we are talking only about in-country appeals under the points based system. Under that system, there will be no appeal in relation to out-of-country applications, because if one of those applications is refused a new application will be made."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 350

Section 19 – new evidence – forgery allegations

"New evidence will also be allowed in cases in which the Home Office alleges that a document that has been provided with an application is forged or not genuine. The applicant might not be aware that that is an issue until the allegation is made, so it gives him or her a chance to clear his or her name."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 350

See also Section 19 – new evidence – non-points related reasons for refusal

Section 19 – new evidence – non-points related reasons for refusal

"…for the same reason that applies to the forged documents the clause will also allow an appellant to submit new evidence in order to contest a reason for refusal that does not relate to his or her entitlement to points under the points-based system. That is designed to avoid injustice, for example in a case in which the appellant has enough points to qualify for leave but is refused because, according to the immigration and nationality directorate's records, he has a criminal conviction that makes his presence here undersirable."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 351

Section 19 -Points based system – no appeal for out of country applications

See Section 19 – scope

Section19 - Points based system – late in-country applications

"A 28-day grace period will be included in the Immigration Rules as part of the tier 1 process in March 2008. I am sure that the noble Lord will welcome that. This will allow those who send their applications within 28 days of their leave expiring to continue with their application."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 16 Oct 2007 : Column 661

"Lord Bassam of Brighton: Concerns have been raised that the applicant will not be able to make a second application if they make an innocent mistake. It has been suggested that, by the time the mistake has been identified, they will not have any leave and their applications will be out of time. If a person applies to extend their stay and they are applying after their leave has expired, it is correct that they would normally be refused. However, where their leave expired less than 28 days previously, the Immigration Rules will provide a grace period. By that I mean that a migrant who does not have leave to be here will still be able to have his or her application considered provided that his or her previous leave expires 28 or fewer days before they make the second application.
Lord Avebury: My Lords, this is the vital point. If the applicant had previously submitted a document that contained a clerical error and he has already been refused, is he, having had that application rejected, then entitled to submit a new application enclosing the correct documentation or correcting the error made in the form within 28 days after the expiry of his existing leave to remain?
Lord Bassam of Brighton: Yes, my Lords, that is what I am saying."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 996

Children – Section 21

Commentary

The Government faced concerted pressure during the passage of the Bill in respect of one issue – the treatment of children affected by immigration control.

For some years, debates on successive immigration Bills have highlighted two legal standards – one international and one domestic – from which immigration functions have enjoyed a unique freedom. The UK maintains a reservation to the UN Convention on the Rights of the Child in respect of immigration control. The UK Border Agency – and its predecessors, the BIA and IND – has also always been free of the statutory duty contained in section 11 of the Children Act 2004 whereby listed agencies are required to promote the safety and welfare of children.

Section 21 requires the Secretary of State to issue a code of practice to ensure that children affected by immigration control are safe from harm. No such provision appeared in the Bill as originally drafted. However, the pressure from opposition parties – particularly for the inclusion of the UK Border Agency within the scope of the section 11 duty – finally told; and during the later stages of the Bill's progress, the Government tabled a new clause to provide for the code. Section 21 is the final result – amended in response to continued pressure – so as to extend the reach of the code to the activities of private contractors carrying out immigration functions. Despite this addition to the Bill, the Government came very close to

losing a vote in the Lords that would have introduced a statutory duty similar to that the section 11 duty, including to promote children's welfare as well as keeping them safe. The Government defeated a Conservative amendment by a mere two votes. However, – and despite the fact that section 21 remains on its face solely concerned with safety – the Government offered the assurance that matters of children's welfare would also be addressed by the code.

Although section 21 does no more than require the issue of the code of practice, the ambit of the code necessarily reaches across the range of immigration functions. Having regard to that, and to the fact that section 21 is the only child-specific provision in the Act, it is convenient to include within the compilation of Ministerial statements in this part a range of child-specific statements that relate to other provisions of the Act or indeed to matters not specifically addressed by the Act.

Statements

Section 21

Section 21 – purpose and scope of code of practice

"The proposed code of practice commits the Border and Immigration Agency to doing the following things. We will identify specifically those situations where we come into contact with children, whether face to face or on paper, and we will ensure that we handle those situations in ways responsive to the needs of those children. We will keep staff informed of the professionally accepted signs and indicators that help to identify when a child may be at risk of harm and give them the confidence to take action. We will take action where relevant by referring a child to the appropriate agency—that with the principal statutory responsibility, usually the local authority."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 194

Section 21 – purpose and scope of code of practice – change of culture

"We will identify and train a children's adviser in each business unit to act as a point of reference when an issue involving a child arises, such as whether to refer to another agency or not. We see the creation of this role as an important part of embedding a change of culture and approach to children within the agency."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 194

Section 21 – purpose and scope of code of practice – children's welfare

"The code will also set out the issues relating to the welfare of a child which must be taken into account."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC76

See also Section 21 – purpose and scope of code of practice – detention

Section 21 – purpose and scope of code of practice – identifying children at risk of harm

See Section 21 – purpose and scope of code of practice

Section 21 – purpose and scope of code of practice – referrals

See Section 21 – purpose and scope of code of practice

Section 21 – purpose and scope of code of practice – information sharing

"We will take part in appropriate information sharing with other agencies that have responsibilities for safeguarding children."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 194

Section 21 – purpose and scope of code of practice – detention

"The code of practice… will include specific references to the arrangements for taking decisions to detain, and to the assessment of children's welfare while there are in detention…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column CG161

"We will consider and evaluate alternatives to detention."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 194

See also Section 21 – chief inspector

Section 21 – purpose and scope of code of practice – training

"In addition to the specific operational instruction, the code will define how Border and Immigration Agency staff who come into regular contact with children in their work are to be trained, and how such staff are safely recruited with appropriate vetting procedures…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC76

"We will require all staff to undertake an introductory training course in how to identify and be responsive to children and their needs. That training has of course been prepared with input from groups outside the agency, and is ready to be introduced."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 194

See also Section 21 – purpose and scope of code of practice – change of culture

Section 21 – purpose and scope of code of practice – children's advisers

See Section 21 – purpose and scope of code of practice – change of culture

Section 21 – purpose and scope of code of practice – recruitment

"In addition to the specific operational instruction, the code will define how Border and Immigration Agency staff who come into regular contact with children in their work are to be trained, and how such staff are safely recruited with appropriate vetting procedures…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC76

Section 21 – failure to follow code of practice

"I must emphasise that the Border and Immigration Agency will expect staff to follow the code of practice or, if they cannot, to have very clear reasons indeed for not doing so. Those instances must be very few."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 11 Oct 2007 : Column 2007

Section 21 – private contractors

"…the code must apply to BIA contractors—a point put to me forcefully by children's charities. I am happy to accept that principle, which is important because the BIA works with contractors to provide both detention and escorting facilities. I can be clearer than my noble Friend, Lord Bassam: the code will apply to BIA contractors currently on the books and it will apply to BIA contractors in the future."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Column 553

"The amendment tabled by the noble Baroness, Lady Hanham, required that contractors providing services for the Border and Immigration Agency should have to follow the same code of practice on keeping children safe from harm as the BIA. I said at the time that the Government sympathised with the amendment and that they had inserted a section to that effect in the code of practice. We have now considered the amendment put forward by the noble Baroness, and the two amendments to Clause 21 **[these amendments introduced what is now section 21(2)(b)]** tabled by the Government have the same effect. Importantly, they also make the Border and Immigration Agency responsible for ensuring that those with whom it makes arrangements to provide services follow the code of practice. This is in contrast to it being simply the responsibility of the contractor alone. This now puts it beyond all doubt that those providing contracted services on behalf of the BIA have exactly the same responsibilities towards children as the Border and Immigration Agency's own staff."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 1000

Section 21 – private contractors – UKBA responsibility

"We intend to ensure that the Border and Immigration Agency has a system of monitoring contractors' performance by measuring them against a set of standards devised for the specific activities that they carry out for the agency. There is already a set of standards for activities involving families, but we will also consider whether new standards for children are needed when the code is formally introduced."

Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 1002

See also Section 21 – private contractors

Section 21 – private contractors – pre-existing contracts

"As regards whether the code of practice can apply retrospectively, the advice that we have received is that it can be applied to existing contracts through the notice of change procedures already in place."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 1002

Section 21 – chief inspector

"While we cannot anticipate fully the areas of work of the independent Border and Immigration Agency inspectorate, we can and will encourage the chief inspector to look at the reasons for detaining families with children, the way in which they contribute to the outcome of the immigration process, and the nature and quality of the recorded information about detention."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 194

Section 21 – local safeguarding children's boards

"We will increase our participation in the local safeguarding children's boards and will develop and keep up to date a protocol with the family courts on how to approach cases where a child subject to immigration control is likely to be made the subject of a care order. We will take part in appropriate information sharing with other agencies that have responsibilities for safeguarding children."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 9 Oct 2007 : Column 194

Section 21 – family court – protocol

See section 21 – local safeguarding children's boards

Children – general

Asylum support – section 9, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 – use of section 9

"…we do not think that Section 9 is suitable for use on a routine basis. …In any case where a case owner considers that it may be appropriate to use Section 9, a case conference approach involving local stakeholders, such as the local authority, will be followed."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 12 Jul 2007 : Column GC287

"The provision **[section 9]** itself would in future only be applied to cases already managed under the new asylum process. It is not there to be applied to the **[case resolution directorate cases]**"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 18 Jul 2007 : Column GC68

Asylum support – section 9, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 – guidance

"…further guidance will be provided to case owners before Section 9 is used in any new case."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 18 Jul 2007 : Column GC65

"A code of guidance will be made available to case owners dealing with **[section 9]**…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 18 Jul 2007 : Column GC66

Section 2 (children)

Section 2 – general – children

"The detention of children under Clauses 1 to 4 **[now sections 1 to 4]** would occur only in the most exceptional and rare cases… staff are specially trained to deal with minors at ports of entry. Comprehensive children's guidance is issued to all operational staff, and that will continue to be the case. These safeguards will be extended to cover children in detention under these provisions."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 2 Jul 2007 : Column GC47

Section 5 (children)

Section 5 – Biometric Immigration Documents – Identity Cards Act 2006 – children

"Biometric immigration documents issued to children aged under 16 will not be designated under the Identity Cards Act 2006."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC131

Section 5 – section 5(2)(f) – expiry – children

"The biometric immigration documents issued to children under 16 will expire in no later than five years."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 5 Jul 2007 : Column GC131

Section 7 (children)

Section 7 – sanctions for non-compliance – section 7(3) – children

"It is not a reasonable proposition to introduce the sanctions that we have debated in order to take action against children, and we therefore propose a designated adult as the alternative. We will seek to make the adult aware of that responsibility"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Column 538

"It is possible that parents could be designated, but so could permanent carers, relatives with parental responsibility for children in their care, or guardians. Of course, before we seek to draft the code **[relating to the sanctions regime]** we will consult local authorities and child exploitation and online protection teams, as well as Government and non-Government agencies."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Commons Consideration of Lords' Amendments 29 Oct 2007 : Column 540

Section 16 (children)

Section 16 – purpose – categories of person – children

"We would seek to work closely with a social worker and with social services and the local authority, to ensure that we could achieve as smoothly as possible, with the minimum possible disruption and maximum possible protection for the child, our aims of protecting the child and subsequently preparing them for removal, on their becoming an adult."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 311

"We will apply reporting and residency conditions to children only when strictly necessary, either for their own welfare or with a view to closer contact management as they approach 18… We will liaise with local authorities when deciding on the application of the conditions to children in care."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Ninth Sitting 13 Mar 2007 : Column 304

"We intend to use those powers for categories of people with whom we are particularly keen to stay in close contact, such as unaccompanied asylum-seeking children, so that as they become removable, we can seek to remove them."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC Second Reading 5 Feb 2007 : Column 600

"We also propose to apply the clause to certain young people under the age of 18 where it is considered there is a need to monitor them. Principally we aim to monitor all former unaccompanied asylum seeking children who are granted limited leave to remain in the United Kingdom due to the lack of reception facilities in their home countries, but who nevertheless need to be prepared for return to their countries once they are old enough or the appropriate reception arrangements are in place. There is a clear need there. Conditional leave may also be used to monitor young people given limited leave other than with their parent or legal guardian, who have not identified themselves to the welfare, health and education agencies but with whom we have reasons for wanting to stay in touch until we are satisfied that the child is being cared for properly. The provisions may also be used to monitor those young persons who have been in the care of local authorities but have since opted out of that care."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 985

Section 16 – conditions – reporting conditions – children

"We will not pull children out of school to attend reporting conferences far away; reporting by telephone may be used for children and reporting could be done outside school hours."
Baroness Scotland of Asthal, Minister of State
Hansard, HL Second Reading 13 Jun 2007 : Column 1752

"…the specific reporting arrangements that are put in place for an individual placed on conditional leave will be looked at on a case-by-case basis. For example, in the case of reporting arrangements involving a former unaccompanied asylum seeking child who was in care we would consider the resource implications to any local authority. We would aim to keep face-to-face reporting to a minimum and would use telephone or video contact where possible and practicable.
In addition, we will continue our discussions on this issue with the Association of Directors of Children's Services during the implementation of this provision, and ensure that its views on frequency and the nature of reporting are taken into account when drawing up advice to BIA caseworkers on handling former unaccompanied asylum seeking children."
Lord Bassam of Brighton, Minister of State
Hansard, HL Third Reading 23 Oct 2007 : Column 985

Section 16 – conditions – reporting conditions – children – children in school

See Section 16 – conditions – reporting conditions – children

Section 16 – conditions – reporting conditions – children – local authority resources

See Section 16 – conditions – reporting conditions – children

Section 16 – conditions – reporting conditions – children – reporting by telephone

See Section 16 – conditions – reporting conditions – children

Section 16 – conditions – reporting conditions – children – reporting by videolink

See Section 16 – conditions – reporting conditions – children

Section 16 – conditions – reporting conditions – children – operational guidance

See Section 16 – conditions – reporting conditions - children

Section 16 – conditions – reporting conditions – children – ADCS

See Section 16 – conditions – reporting conditions - children

Section 33 – Exceptions – section 33(3) – children

"We are not taking young people or children outside the ambit of deportation. We are maintaining the sanction of deportation; all we are doing is retaining the ability to consider that case by case. That does not diminish our ambition or intention to deport young people who have committed a serious breach of the law of this country."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 446

Seizure of cash; Forfeiture of detained property; Disposal of property – Sections 24 to 26

Commentary

This provision of the Act extends powers available to the police and to HM Revenue and Customs under the Proceeds of Crime Act 2002 to immigration officers. The specific powers that are extended are to seize cash that is thought to have be the proceeds of an offence or to be intended to be used for the commission of an offence. It must be noted that – in contrast to the powers to detain at ports contained in this Act – the new powers extended to immigration officers are solely for the purpose of immigration functions and hence may only be exercised in respect of immigration offences. Nevertheless, with the ongoing drive against illegal working there appears to be considerable scope for the exercise of these powers.

Debates on the Bill were largely uncontentious.

Statements

Section 24

Section 24 – seizure of cash – safeguards

"The legal machinery that we seek to put in place effectively puts a gloss on the Proceeds of Crime Act; it adjusts existing legislation so that it works for immigration officers. Five important protections remain in place: prior judicial approvals, or the approval of senior officers before a search that is made explicitly for cash; a code of practice applies to the use of search powers that we propose to extend to encompass immigration officers; seizure can be for only 48 hours, then magistrates must approve it and the money must be paid into a higher interest account; and request to detain or retain the cash means that magistrates have to be satisfied and anybody with an interest can apply to the court at any time; and, of course, if forfeiture is required, we have to convince magistrates that that is the right thing to do."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Twelfth Sitting 15 Mar 2007 : Column 384

See also Section 24 – seizure of cash – safeguards – forfeiture – appeals

Section 24 – seizure of cash – safeguards – prior approval – judicial

See Section 24 – seizure of cash – safeguards

Section 24 – seizure of cash – safeguards – prior approval – senior officer

See Section 24 – seizure of cash – safeguards

Section 24 – seizure of cash – safeguards – code of practice

See Section 24 – seizure of cash – safeguards

Section 24 – seizure of cash – safeguards – time limit – 48 hours

See Section 24 – seizure of cash – safeguards

Section 24 – seizure of cash – safeguards – time limit – extension – magistrates' approval

See Section 24 – seizure of cash – safeguards

Section 24 – seizure of cash – safeguards – time limit – extension – higher interest rate

See Section 24 – seizure of cash – safeguards

Section 24 – seizure of cash – safeguards – applications to the court

See Section 24 – seizure of cash – safeguards

Section 24 – seizure of cash – safeguards – forfeiture – magistrates' approval

See Section 24 – seizure of cash – safeguards

Section 24 – seizure of cash – safeguards – forfeiture – appeals

"There are also appeal lines to a Crown court. So, a number of protections are already set out in POCA and we are going to adjust them so that they apply here."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Twelfth Sitting 15 Mar 2007 : Column 384

Section 24 – seizure of cash – training

"Cash seizure training is very important. We are asking HMRC and the Assets Recovery Agency to develop it with us, and we hope to have it up and running by the end of the month."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Twelfth Sitting 15 Mar 2007 : Column 384

Section 25

Section 25 – general

"…the Bill gives the courts new, extra powers to cause property used by convicted offenders to commit immigration-related crime to be forfeited to the Secretary of State. At present the immigration and nationality directorate lacks the necessary powers to dispose of property that comes into its possession."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Twelfth Sitting 15 Mar 2007 : Column 386

Section 26

Section 26 – general

See Section 25 – general

Section 26 – section 26(3) – reclaiming property

"Where we are talking about forfeited property, there will already have been court proceedings, during which the court decided to make the forfeiture order. As part of those proceedings, a claimed owner would be able to make representations…Once property has been forfeited, a person claiming the property will have a further six months to apply to the court for the return of the property… If property is seized from a vulnerable person, the owner will be ascertained and in that situation the court can only order that the property is returned to the owner. So, the property has been forfeited because it has been used to commit a crime; the property will only be returned to that person, as I said, if they show that they had nothing to do with the crime. Therefore, there is protection for a vulnerable person."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Twelfth Sitting 15 Mar 2007 : Column 387

Section 26 – section 26(3) – property seized from vulnerable person

See section 26 – section 26(3) – reclaiming property

Section 26 – section 26(5) – disposal of property

"…in cases where regulations enable disposal of property because the owner cannot be ascertained, the Secretary of State must act reasonably under usual principles of administrative law… the Secretary of State must take reasonable steps to ensure that the owner cannot be ascertained before disposal and they would be expected to demonstrate that that was the case."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Twelfth Sitting 15 Mar 2007 : Column 388

Section 26 – section 26(5) – duty to act reasonably

See section 26 – section 26(5) – disposal of property

Employment: arrest; Employment: search for personnel records – Sections 27 to 28

Commentary

The Government prepared the way for a major crackdown on illegal working by introducing new measures in section 21 of the Immigration, Asylum and Nationality Act 2006 to replace section 8 of the Asylum and Immigration Act 1996. Since the passing of the UK Borders Act 2007, the UK Borders Agency has produced a range of guidance and information relating to illegal working measures. Rather than reproducing a list of these materials, the following link is provided to that part of the UK Border Agency website where these materials can be found:
http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/

Sections 27 and 28 of the UK Borders Act 2007 are little more than tidying provisions ensuring that powers available to immigration officers in respect of the section 8 offence will be available when the section 21 offence is brought into force.

Statements

Section 27

Section 27 – purpose

"The clause **[now section 27]** is a minor technical amendment to ensure that there continues to be a power of arrest for the new offence of knowingly employing an illegal worker when the existing similar offence under section 8 of the Asylum and Immigration Act 2006 is repealed."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Twelfth Sitting 15 Mar 2007 : Column 389-90

Facilitation: arrival and entry; Facilitation: territorial application; People trafficking – Sections 29 to 31

Commentary

These provisions were not considered controversial, merely making technical amendments to pre-existing offences of unlawfully assisting or facilitating immigration and people trafficking. The amendment to section 25A of the Immigration Act 1971 contained in section 29 of the UK Borders Act 2007 is designed to address a lacuna in the pre-existing offence. Section 30 extends the offences in sections 25 and 25A of the Immigration Act 1971 so that the offences may be committed by acts outside of the UK fall within the scope of the offences whether committed by British or foreign nationals. The technical amendments made to the facilitation offences are effectively repeated for the people trafficking offence by section 31.

Statements

Section 29

Section 29 – purpose

"A person is said to have arrived in the United Kingdom at disembarkation. That is distinct from his or her entry into the United Kingdom, which takes place at border control. At some ports there can be a considerable distance between [the point of disembarkation and border control]… That physical and legal gap is exploited by facilitators, who use the opportunity to carry out acts such as the destruction or disposal of false passports. Even though such acts are often captured on CCTV or witnessed by surveillance officers, they cannot currently be taken into account as evidence of facilitation because they have occurred after a person has disembarked or arrived… Last year, 42 convictions were secured by immigration officers, but they estimate that 30 per cent of those suspected of facilitating go unpunished because of the gap."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Twelfth Sitting 15 Mar 2007 : Column 393

Section 31 – section 31(3) – purpose

See Section 29 – purpose

DEPORTATION OF CRIMINALS – SECTIONS 32 TO 39

Commentary

Although the deportation provisions contained in the UK Borders Act 2007 rank among the most significant – and arguably least justifiable – provisions in the Act, debate on these provisions was largely trouble-free for the Government. The provisions essentially abandon Ministerial discretion in favour of a statutorily mandated requirement of deportation in certain cases, whatever the particular circumstances of the individual.

The Act refers to "automatic" deportation, which is plainly a misnomer although one no doubt deliberately chosen to foster the impression that the legislation will provide a cure for administrative failures that led to the foreign national prisoner furore in early 2006. The need to administer decisions on deportation will inevitably remain, but what the provisions do is attempt to make the task of the UK Border Agency in doing that more straightforward in three ways. Firstly, by mandating deportation in certain circumstances, and thereby removing the need (indeed, the possibility) to consider individual circumstances before deciding upon deportation in the individual case. Second, by authorising ongoing detention on completion of a prison sentence for such time as it may take for the UK Border Agency to get round to considering the case, and thereby lessening the prospect of a further fiasco arising out of the release of foreign national prisoners on completion of sentence because the question of deportation has been forgotten or delayed. Thirdly, by precluding in-country appeals that may delay deportation.

There appear to be considerable flaws in the analysis behind these provisions. Firstly, the provisions are inevitably subject to human rights considerations. It can be expected, therefore, that those cases where significant personal circumstances may have been material to pre-existing deportation considerations will simply demand consideration on Article 8 (private and family life) grounds; as indeed is likely how similar cases are presented now in any case. Secondly, no matter how tough the provisions, the responsibility on the UK Border Agency to manage the system will remain; and if cases are overlooked as has been the case in the past, there will be further crises. Thirdly, the detention provisions singularly fail to encourage administrative efficiency since these promote a false perspective that the consequences of inefficiency can be mitigated by a general power to continue to hold individuals in prison or in Removal Centres well beyond the completion of their sentence. In addition to risking further problems in relation to managing the prison population and detention centre estate, such an approach also risks increasing litigation as those left languishing in prison for an indefinite period beyond sentence justifiably seek judicial review of their ongoing detention. The prospect of increased litigation before the Administrative Court is also heightened by the attempt to exclude effective access to the Asylum and Immigration Tribunal.

Some of these concerns were highlighted in debates, but generally speaking there was no political will – particularly from Conservative benches – to seriously challenge the Government on these provisions.

Statements

Section 32

Section 32 – automatic deportation – relevant offences – section 32(3)(a)

"The list of crimes on the order made under Section 72 of the Nationality, Immigration and Asylum Act 2002, which will be revised ahead of commencement, contains offences of a

violent, sexual, terrorist, acquisitive or drug-related nature, along with other miscellaneous but no less serious offences."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC133

Section 32 – automatic deportation – relevant offences – Particularly Serious Crimes Order 2004

See section 32 – automatic deportation – relevant offences – section 32(3)(a)

Section 32 – automatic deportation – relevant offences – illegal working – refused asylum-seekers

"…whether failed asylum seekers found to be working in breach of conditions would be detained for deportation as foreigner criminals. The answer is no… It is therefore probable that the individual… would be detained for administrative removal…"
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC135

Section 32 – automatic deportation – section 32(6) – purpose

"The existing certification powers apply to a claim only before the notice of appeal is lodged with the tribunal. To use the powers we want to create in the Bill, we need to be able to stop the appeal temporarily by withdrawing the decision automatically to deport, so that we can consider the claim, certify it as unfounded and remake the decision automatically to deport."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 429

Section 33

Section 33 – Exceptions – section 33(3) – children

"We are not taking young people or children outside the ambit of deportation. We are maintaining the sanction of deportation; all we are doing is retaining the ability to consider that case by case. That does not diminish our ambition or intention to deport young people who have committed a serious breach of the law of this country."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 446

Section 33 – Exceptions – section 33(6) – mental health

"The exception **[Exception 5]** is there to protect those who have been suffering from some mental ill health at the time when the offence was alleged to have been committed."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC144

Section 33 – Exceptions – section 33(7) – general

"The point about the foreign national population in this country is that it includes individuals who might have arrived here moments after they were born. Indeed, there may well be foreign nationals in this country who were born in Britain after 1981… Those individuals might have spent all their lives in this country, so we need to inject a degree of balance into cases in which we take into account people's personal circumstances. That is why I think that it is not necessarily appropriate to remove all discretion for all offences that carry a sentence. Some individuals, such as those born here… have grown up in Britain and are to all intents and purposes British, but are not British citizens. If one of them committed an offence that was subject to a sentence of imprisonment, he would automatically be deported. Having reflected long and hard on that, I think that that would be disproportionate. We have therefore sought to structure in a supporting mechanism, and that is recourse to section 72… Almost all the examples that have been given by hon. Members this afternoon, whether of… picking pockets… concern offences that appear on the section 72 list…We wanted to avoid the situation in which somebody who was born in this country after 1981 is convicted of the non-payment of a fine and sentenced to a period of imprisonment and is then automatically deported. That is not the same as saying that he should not face deportation; provisions that are already in place mean that he would do so. However, the outcome would be at the discretion of the court or of the Secretary of State."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Twelfth Sitting 15 Mar 2007 : Column 417-418

Section 34

Section 34 – timing of deportation decision

"It is perfectly reasonable to expect the Home Office to undertake the issue of deportation orders in advance and substantially in advance of somebody being released from custody."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 438

"At present, the Criminal Casework Directorate considers most new deportation cases eight months before the earliest date of release. That is the practice. It aims, wherever possible, to make the deportation order before the end of the sentence to ensure that the foreign national can be deported at the point at which the sentence ends. Under the Bill, the Secretary of State will, in most cases, make a deportation order within three months of the end of a foreign criminal's sentence. The caveat is that this will not always be straightforward… If, for example, a foreign criminal has an outstanding asylum claim…
…
…or **[he]** might refuse to co-operate in establishing his nationality."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC147-150

See also Section 36 – detention – general
See also Section 36 – detention – open-ended power to detain
See also Section 36 – detention – bail
See also Section 36 – detention – redocumentation

Section 36

Section 36 – detention - general

"Detention will be limited to the period needed for the Secretary of State to consider whether the individual concerned meets the criteria for automatic deportation."

Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC150

See also section 34 – timing of deportation decision

Section 36 – detention – open-ended power to detain

"I fully realise that noble Lords feel queasy about what they view as an open-ended power to detain. Who would not? It is an understandable reaction, and I am no different in that regard. I can provide some reassurance that the provision is not designed to allow the Secretary of State to detain people indefinitely; that is not its objective. Deportation action will, whenever possible, be commenced while the criminal sentence is being served. In those circumstances, it will not be necessary to use these powers.
My guess is that that will cover the majority of circumstances. However, there will be cases where, for example, a person who appears to meet the criteria for automatic deportation is eligible for immediate release by the sentencing court because he has already served the sentence while on remand. That happens from time to time. In such circumstances, it is vital to have a power to detain while the Secretary of State considers whether automatic deportation applies. I am sure that noble Lords will understand why that might be the case. This will help to remove the risk of the offender absconding, thereby affording an extra level of public protection from potential harm. I am sure that we can imagine the sorts of cases where that would be especially important."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 16 Oct 2007 : Column 661-662

See also section 34 – timing of deportation decision
See also section 36 – detention – general

Section 36 – detention – bail

"Noble Lords might also note that Clause 36 applies the existing provisions on bail, arrest and restriction orders to automatic deportation cases. As such, it will be open to foreign nationals detained under these powers to apply for bail should they wish to."
Lord Bassam of Brighton, Minister of State
Hansard, HL Report 16 Oct 2007 : Column 661-662

Section 36 – detention – redocumentation

"One of the key things that we need in our system is incentives to encourage people to co-operate with the redocumentation process so that we can work effectively with foreign Governments and emergency travel documents can be issued to individuals. If someone knew that they would be released on bail if they strung the process out for six months, we would not strengthen but rather diminish the incentives for foreign national prisoners to co-operate with the documentation process."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 451

INFORMATION – SECTIONS 40 TO 47

Supply of Revenue and Customs information; Confidentiality; Wrongful Disclosure – Sections 40 to 42

Commentary

These provisions build on the steadily expanding powers of information sharing between a variety of Government agencies and departments. The provisions did not receive much attention during debates.

Statements

Confidential tax information

"I can reassure the House that the data-sharing gateway will not allow for the unchecked exchange of confidential tax information."
Baroness Scotland of Asthal, Minister of State
Hansard, HL Second Reading 13 Jun 2007 : Column 1709

Search for evidence of nationality; Search for evidence of nationality: other premises; Seizure of nationality documents – Sections 44 to 47

Commentary

These provisions give immigration officers and the police the power to enter and search for "nationality documents" where the police have arrested a person and they or immigration suspect that person may not be British. Premises that may be searched include the place at which the person was arrested, the residence of the person or indeed any other property on which it is suspected such documents may be found.

During the passage of the Bill, there were many who raised serious concerns about the potential effect upon community relations and potential for race discrimination contained in these provisions. However, the Government was determined that the provisions would play a significant part in preparing the way for deportations – despite the fact that at the time these powers would likely be exercised the individual would likely not have been charged, let alone prosecuted, convicted or sentenced.

Statements

Sections 44 to 47 – purpose

"This power will assist us in ascertaining or confirming the nationality of persons in order to consider cases liable for deportation… it will affect persons arrested for criminal offences, so that their nationality can be established at an earlier stage."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 453

Sections 44 – 47 – safeguards

"Safeguards will be put in place to ensure that that power is not applied disproportionately, and inquiries are made to see whether the individual is already known to the IND before a search is instigated. Searches will be necessary only where an individual fails to co-operate in establishing his or her identity, or the officer has reasonable grounds to believe that he is not telling the truth… We are proposing a pilot in one or two police areas to test operation details. Any disproportionate impact will be identified by the pilot and addressed."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 453

BORDER AND IMMIGRATION INSPECTORATE – SECTIONS 48 TO 56

Commentary

These provisions were introduced early in the Bill's passage, and from the start the Government had stated its intention to bring such provisions as providing the key contribution to greater transparency and oversight of the UK Border Agency and the substantially enhanced powers in the Bill.

A point of controversy was, and remains, the relationship between the powers and role of the Chief Inspector and the powers and role of other inspectorates. Whereas the Chief Inspector is to replace a number of inspectorate bodies, several significant inspectorates are to remain. However, what are now sections 52 and 53 appear to offer the Chief Inspector considerable discretion and power when considering whether to cooperate with other inspectorates or indeed to prohibit an inspection of the UK Border Agency by another inspectorate.

Statements

Section 48

Section 48 – chief inspector – purpose

"It is not possible for the immigration service to implement the radical reform that the Home Secretary announced last year unless there is much stronger oversight. I believe that the oversight should be independent and include the opportunity for communities to understand how the immigration service is performing in their area. I will be seeking to table Government amendments **[those amendments became sections 48 to 56]** that provide for much stronger independent inspection arrangements. I envisage that they will apply to the enforcement functions that we are asking the immigration service to perform, under powers available already and those proposed in this Bill."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, FiFth Sitting 6 Mar 2007 : Column 142

"The introduction of that inspectorate will ensure that Parliament can scrutinise the work of the new agency."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 313

Section 48 – chief inspector – remit

"The introduction of that inspectorate will ensure that Parliament can scrutinise the work of the new agency. The remit of the independent inspectorate will include a number of key themes relevant to the operation of the border and immigration agency, including practice and procedure in making decisions, consistency of approach, the information it provides and the treatment of those that use its services."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 313

Section 48 – chief inspector – remit – section 48(4) – individual cases

"…the chief inspector will be able to consider and draw conclusions from individual cases for the purpose of, or in the context of, considering a general issue… But as a matter of course, the chief inspector will not set out to investigate individual cases beyond that."
Lord Bassam of Brighton, Minister of State
Hansard, HL Grand Committee 23 Jul 2007 : Column GC169

See also Chief inspector – role of other inspectorates – sections 52-53

Section 48 – chief inspector – remit – excluded areas

See Chief inspector – role of other inspectorates – sections 52-53

Section 48 – chief inspector – duties – efficiency and effectiveness of UKBA

"…we are asking the new inspectorate to take on a general duty to monitor and report on the efficiency and the effectiveness of what will become the new border and immigration agency."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard MP, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 458-459

Section 48 – chief inspector – duties – UKBA treatment of claimants

"It will review the treatment of claimants and applicants across the board…"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 458-459

Section 48 – chief inspector – duties – UKBA enforcement powers

"It will **[provide]**… comprehensive inspection of the use of enforcement powers by immigration officers…"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 458-459

See also Section 48 – chief inspector – purpose

Section 48 – chief inspector – duties – information provided by UKBA

"It will **[provide]**… comprehensive inspection of… information that is provided to applicants by the border and immigration agency… and all information that is provided to the general public…"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteen Sitting 20 Mar 2007 : Column 458-459

Section 48 – chief inspector – duties – UKBA complaints procedures

"It will… inspect the processes by which the agencies handle complaints…"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality

Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 458-459

Section 48 – chief inspector – duties – certification

"It will… inspect… the way the Home Secretary exercises his power of certification under section 94 of the Nationality, Immigration and Asylum Act 2002…"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteen Sitting 20 Mar 2007 : Column 458-459

Section 48 – chief inspector – duties – country of origin information

"It will… inspect…the quality of inspection and country of origin reports that are provided and used by the border and immigration agency…"
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteen Sitting 20 Mar 2007 : Column 458-459

Section 48 – chief inspector – duties – race discrimination

"It will… inspect… the way in which the IND complies… with the ambitions and the spirit of that Act **[Race Relations]** and the letter of the law."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 458-459

Section 48 – chief inspector – duties – UKBA legal obligations

See Section 48 – chief inspector – duties – race discrimination

Section 48 – chief inspector – duties – annual report

"The inspectorate will report annually to the Secretary of State, who will have to lay that report before Parliament."
Joan Ryan MP, Parliamentary Under-Secretary of State for the Home Department
Hansard, HC UK Borders Bill Committee, Tenth Sitting 13 Mar 2007 : Column 313

Sections 52-53

Chief inspector – role of other inspectorates – sections 52-53

"There are, however, a number of fields of operation which we propose to exclude from the work of the inspectorate simply because we already have effective, well established arrangements in place… In particular I mean detention, where we propose to preserve the role of Her Majesty's chief inspector of prisons, where we intend to preserve the role of the prison and probation ombudsman and where we intend to preserve the role of independent monitoring boards."
Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 457

"We also intend to preserve the advisory board on nationality and immigration. This is the group of individuals who advise on the way in which we conduct our work in the field of

citizenship and nationality. For the time being at least we intend to preserve the work of the entry clearance monitor… we propose **[]** the exclusion of consideration of individual cases **[from the inspectorate]**… The parliamentary and health service ombudsman provides a way of looking at individual cases and the way in which the IND conducted review of them."

Liam Byrne MP, Minister for Immigration, Citizenship and Nationality
Hansard, HC UK Borders Bill Committee, Thirteenth Sitting 20 Mar 2007 : Column 458

INDEX TO LETTERS AND TEXT OF LETTERS

The following letters are included as pdf attachments:

Practice direction

Hansard extracts

The following practice direction was issued by the Lord Chief Justice on December 20. 1994 [1995] 1 WLR 192; [1995] 1 All ER 234

17A–69/1 1. **Authority** – The Practice Direction was issued with the concurrence of the Lord Chancellor by the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor. It applied throughout the Supreme Court, including the crown court and the county courts.

17A–69/2 2. **Application** – The Practice Direction concerned both final and interlocutory hearings in which any party intended to refer to the reports of parliamentary proceedings as reported in the official reports of either House of Parliament, *Hansard*. No other report of parliamentary proceedings was to be cited.

17A–69/3 3. **Documents to be served** – Any party intending to refer to any extract from Hansard in support of any such argument as was permitted by the decisions in *Pepper v. Hart* [1993] A.C. 593; [1992] 3 W.L.R. 1032, and *Pickstone v. Freemans plc* [1989] A.C. 66; [1988] 3 C.M.L.R. 221, HL., or otherwise, must unless the judge otherwise directed, serve upon all other parties and the court copies of any such extract together with a brief summary of the argument intended to be based upon such report.

17A–69/4 4. **Time for service** – Unless the judge otherwise directed, service upon other parties to the proceedings and the court of the extract and summary of arguments referred to in paragraph 3 was to be effected not less than five clear working days before the first day of the hearing. That applied whether or not there was a fixed date. Solicitors had to keep themselves informed as to the state of the lists where no fixed date had been given.

17A–69/5 5. **Methods of service** – A service on the court was to be effected in accordance with Order 65, rule 5 of the Rules of the Supreme Court appropriately addressed as the circumstances might demand to:

(i) In the Court of Appeal, Civil Division, three copies to the Registrar, Room E325, Royal Courts of Justice, Strand, London WC2A 2LL;

(ii) In the Court of Appeal, Criminal Division, three copies to the Registrar of Criminal Appeals, Room C212, Royal Courts of Justice;

(iii) In the Crown Office list, two copies to the Head of the Crown Office, Room C312, Royal Courts of Justice;

(iv) In the Queen's Bench Division in cases to be heard in London, the Clerk of the Lists, Room W16, Royal Courts of Justice. In the Queen's Bench Division cases to be heard out of London, the chief clerk of the relevant district registry;

(v) In the Chancery Division in cases to be heard in London, the Clerk of the Lists, Room TM 8.13, Thomas More Building, Royal Courts of Justice. In the Chancery Division in cases to be heard out of London, the chief clerk of the relevant district registry;

(vi) In the Family Division in cases to be heard in London, the Clerk of the Rules, Room WC4, Royal Courts of Justice. In cases to be heard out of London, the chief clerk of the relevant district registry;

(vii) In the Principal Registry of the Family Division, the assistant secretary, Somerset House, London SW1R 1LP;

(viii) In the crown court, the chief clerk of the relevant crown court centre;

(ix) In the county court, the chief clerk of the relevant county court.

N.B. Service upon other parties was to be effected in accordance with Order 65, rule 5 of the Rules of the Supreme Court, or otherwise as might be agreed between the parties.

17A–69/6 6. **Failure to serve** – If any party failed to comply with this Practice Direction the court might make such order, relating to costs and otherwise, as was in all the circumstances appropriate.