

**House of Lords Committee Stage  
Crime and Courts Bill (HL Bill 4)****Immigration Officers' Powers  
Clauses 26 & 31****Clause 26****LORD AVEBURY****153A**

Page 27, line 8, at end insert—

“(15) The Borders, Citizenship and Immigration Act 2009 is amended as follows.

(16) In section 23(1) for “the Secretary of State must” substitute “the Secretary of State may”.

(17) After section 23(1)(d), insert—

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

**Purpose:**

To provide a duty on the Secretary of State (as opposed to a power) to apply PACE provisions in respect of investigations and detentions by designated customs officials, immigration officers and private contractors.

**Clause 31****LORD AVEBURY****155F**

Page 31, line 30, at end insert—

“( ) An order to bring section 26 into force shall not be made until—

(a) the Secretary of State has laid before Parliament a report about training, supervision and regulation of immigration officers;

(b) the Secretary of State has confirmed that she is satisfied that the training and supervision provided to immigration officers is adequate to allow them to fulfil their duties; and

ILPA Lindsey House, 40/42 Charterhouse Street London EC1M 6JN Tel: 020 7251 8383 Fax: 020 7251 8384

email: [info@ilpa.org.uk](mailto:info@ilpa.org.uk) website: [www.ilpa.org.uk](http://www.ilpa.org.uk)

(c) the Secretary of State has confirmed that provisions of a code have been specified for the purposes of section 145(1) of the Immigration and Asylum Act 1999 in relation to immigration officers exercising any of the powers to which that section refers.”

## Purpose

To provide a report concerning training, supervision and regulation of immigration officers and to confirm her satisfaction as to these matters prior to the further extension of immigration officers' powers by the commencement of Clause 26 of the Bill.

## BRIEFING

These are complementary amendments.

ILPA continues to oppose the extension of immigration officers' powers, which is taking place in circumstances where there continues to be inadequate provision for training, supervision and regulation in respect of the current powers retained by immigration officers.

The Heathrow Independent Monitoring Board in its annual report for 2011/12 states: “*The conditions under which children are held and that detainees have to endure overnight are degrading and disgraceful.*”<sup>1</sup> The facility at Heathrow is a short-term holding facility, i.e. one of those places in respect of which over many years the UK Border Agency and its predecessors have consistently failed to finalise and adopt rules to regulate the conditions and treatment of those held in the facility. As the Immigration Minister said when in opposition, having emphasised the need for strict training and supervision:<sup>2</sup>

*“There is a very serious underlying principle: it is relatively easy for Ministers to say “My job is to increase security in this area and therefore I will take whatever measures need to be taken to do that.” That always needs to be balanced against the appropriate use of those powers by the appropriate people.”*

The absence of any rules governing conditions and treatment of detainees in short-term holding facilities is longstanding, despite the then Immigration and Nationality Directorate having made available and consulted upon a draft set of rules in early 2006, to which consultation ILPA responded in detail. No rules were published. A further draft was made available and consulted upon in early 2009, to which ILPA again responded in detail. ILPA was asked to provide comment, and did so, upon a further revision a couple of months later. Nonetheless, no rules have ever been published.

The powers of immigration officers are being expanded by this Bill, and in several respects in especially intrusive ways, without any attempt being made to address the inadequate provision for training, supervision and regulation in relation to current powers, which include powers of arrest, search and detention.

Concerns as to the longstanding absence of rules governing short-term holding facilities and the recent findings of the Heathrow Independent Monitoring Board are far from the only causes of concern in relation to the exercise of UK Border Agency and UK Border Force powers at present. For example, the Chief Inspector of Borders and Immigration in his *Inspection of Border Control Operations at Terminal 3 Heathrow Airport, August-November 2011* report of May 2012 said:

<http://icsinspector.independent.gov.uk/chief-inspector-publishes-report-on-heathrow-airport-terminal-3/>

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<sup>1</sup> see Executive Summary, paragraph 2.1 at <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2012/heathrow-2011-2012.pdf>

<sup>2</sup> *Hansard* HC, Borders, Citizenship and Immigration Bill Committee, First Sitting, 9 Jun 2009 : Column 22 (per Damian Green MP)

*...I have significant concerns... Firstly, an examination of search of person records for the secondary detection area showed that, in two thirds of cases, the search was neither justified nor proportionate. A search of a person can be intrusive so the Border Force must be able to show that it is acting with good reason and within the law. Secondly, I found that the UK Border Agency was not systematically recording and analysing data on ethnicity in order to know whether its officers were targeting one group of passengers more than others, thereby fulfilling all its obligations under the Equalities Act 2010...*

He expressed similar concerns in his *Inspection of Gatwick Airport North Terminal, April-September 2011* report of May 2012:

<http://icinspector.independent.gov.uk/chief-inspector-publishes-report-on-gatwick-north-terminal/>

*I am, however, concerned about the use of search of person powers in detecting illicit goods. A review of 108 search of person cases found that searches were neither proportionate nor justified in a high percentage of the sample (71%), including the majority of strip searches undertaken. I also found that passengers were arrested even though person searches had not revealed any illicit goods and some person searches were conducted without authorisation. Less than 4% of the reviewed cases resulted in the detection of any illicit goods.*

*I was also very concerned to learn of discriminatory practice in the conduct of detection activity. Some officers demonstrated poor understanding of appropriate selection indicators and risk profiles in determining which passengers to challenge and in some cases were making judgements based on stereotypes. The extent of any discriminatory practices should be investigated and action taken to ensure officers both understand and comply with the Agency's duties under the Equality Act 2010.*

**For further information please contact:**

Steve Symonds, Legal Officer, (020-7490 1553) [steve.symonds@ilpa.org.uk](mailto:steve.symonds@ilpa.org.uk) or  
Alison Harvey, General Secretary (020-7251 8383) [alison.harvey@ilpa.org.uk](mailto:alison.harvey@ilpa.org.uk).