The Asylum and Immigration Act 1996

A compilation of ministerial statements made on behalf of the government during the Bill's passage through Parliament

Compiled by Katie Ghose

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FOREWORD

Since the decision in Pepper v Hart, lawyers have been allowed to refer in court to clear ministerial statements made during the passage of a Bill where the legislation is ambiguous or obscure or where the literal meaning leads to an absurdity, in order to clarify the meaning and effects of the statute. (Pepper (Inspector of taxes) v Hart [1993] AC 593).

The decision has yet to be used to its full potential, no doubt in part because of the time it takes to trawl through parliamentary debates. The report is therefore designed to be a practical guide and short-cut for lawyers and advisers, bearing in mind that at this early stage (The Act gained Royal Assent on 24 July 1996) it is not possible to identify each and every potentially relevant ministerial statement. As well as statements which are strictly within Pepper v Hart, in places I have also included statements summarising the new provisions and promises by the Government to reconsider certain issues.

The Bill was piloted through the Commons by the Home Secretary the Rt. Hon. Michael Howard MP, Secretary of State for Social Security the Rt. Hon Peter Lilley MP, Minister of State at the Home Office Ann Widdecombe MP and Parliamentary Under Secretary of State at the Home Office Timothy Kirkhope MP. In official opposition were the Shadow Home Secretary Jack Straw MP, the then Shadow Social Security Secretary Chris Smith MP and Shadow Home Office Minister Doug Henderson MP. Ministers responsible for the Bill's passage through the Lords were Minister of State at the Home Office Baroness Blatch and Minister of State at the Department of Social Security Lord Mackay of Ardbrecknish and The Lord Advocate Lord Mackay of Drumadoon. The Bill was opposed by Deputy Leader of the Opposition Lord McIntosh of Haringey, social security spokesperson Baroness Hollis of Heigham and Lord Dubs of Battersea and by Liberal Democrats spokespersons Earl Russell and Baroness Williams of Crosby.

Other MPs and Peers whose statements are included in the report are: David Alton MP (Liberal Democrat), Hartley Booth MP (Conservative), Sir Patrick Cormack MP (Conservative), Maria Fyfe MP (Labour), Neil Gerrard MP (Labour), George Howarth MP (Labour), Edward Leigh MP (Conservative), Max Madden MP (Labour), Ann Winterton MP (Conservative), Lord Avebury (Liberal Democrat), Lord Hylton (Crossbencher) and Lord Winston (Labour).

The chapters follow closely the order of the sections of the Act. Each quotation is followed by a Hansard reference in bold. There are inevitably many statements which relate to several of the new provisions. These have almost all only been listed once only, and cross-referenced where appropriate. The use of italics signifies either a non-ministerial statement, for example by an Opposition MP or peer, or my commentary. Square brackets are used where I have sought to clarify the meaning of a statement or the context in which it was made.

ILPA has a copy of the supplementary comments to the House of Lords Second Reading debate, issued by Baroness Blatch, Minister of State at the Home Office.

My thanks to Susan Rowlands and Chris Randall for their help and guidance at all stages of the report's preparation.

Katie Ghose

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In April 1994 ILPA published a Compilation of Ministerial Statements relating to the Asylum and Immigration Appeal Act 1993.

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1. CHRONOLOGY OF THE BILL'S PASSAGE THROUGH PARLIAMENT

HOUSE OF COMMONS

First Reading	29 November 1995	
Second Reading	11 December 1995	HC Hansard Vol. 268 No.18
Committee	19 December 1995-8 February 1996	
	(H C Standing Committee D 19 December 1995, 9,11, 16, 18, 23, 25, 30 January 1,6, 8 February 1996)	
Report	21 February 1996	HC Hansard Vol. 272 No. 55
	22 February 1996	HC Hansard Vol. 272 No. 56
Third Reading	22 February 1996	HC Hansard Vol. 272 No. 56

HOUSE OF LORDS

First Reading	22 February 1996	
Second Reading	14 March 1996	HL Hansard Vol. 570 No. 62
Committee	23 April 1996	HL Hansard Vol. 571 No. 79
	30 April 1996	HL Hansard Vol. 571 No. 84
	2 May 1996	HL Hansard Vol. 571 No. 86
	9 May 1996	HL Hansard Vol. 572 No. 89
Report	20 June 1996	HL Hansard Vol. 573 No. 110
	24 June 1996	HL Hansard Vol. 573 No. 111
Committee (on Recommitment)	1 July 1996	HL Hansard Vol. 573 No. 116
Third Reading	1 July 1996	HL Hansard Vol. 573 No. 116
	2 July 1996	HL Hansard Vol. 573 No. 117
Consideration of Lords Amendments	15 July 1996	HC Hansard Vol. 281 No. 135
Consideration of Commons Reason and Amendments	22 July 1996	HL Hansard Vol. 574 No. 130
Royal Assent	24 July 1996	

2. THE UK's INTERNATIONAL OBLIGATIONS

2.1 The UK's international obligations: general

2.1.1 We are satisfied that the Bill is consistent with our international obligations, including those under the 1951 United Nations Convention relating to the Status of Refugees, the 1981 Convention on Torture and other Cruel or Inhuman Treatment, and the European Convention on Human Rights. Amending the Bill to ensure it is interpreted in accordance with the 1951 UN Convention on refugees...is unnecessary. Section 2 of the Asylum and Immigration Appeals Act 1993 confirms the primacy of that Convention in dealing with asylum claims, and the Bill does not affect that statement. We do not consider it would be appropriate to put in statute that the Bill should be interpreted in accordance with the European Convention on Human Rights. We are already bound by our obligations under the European Convention, in the asylum field as in other areas. The European Convention already provides an avenue of redress for the individual, through the European Commission and Court of Human Rights. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p3, Supplementary Comments**

2.1.2 I refer now to the European Convention on Human Rights. I know that my noble friend has a view on such things, but the convention is not part of domestic law. However, the Government are satisfied that the Immigration Act 1971 conforms to the provisions of the convention. We are satisfied that the detention of asylum seekers under that Act is compatible both with the European Convention on Human Rights and the United Nations Convention on the Status of Refugees. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 465**

2.2 The 1951 United Nations Convention on the Status of Refugees: general

2.2.1 We are determined to honour this country's well-known tradition of harbouring those who flee here in genuine fear of persecution. We intend to continue complying with our obligations under the 1951 convention. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96, Col 1035**

2.2.2 I am pleased to put it on record that we intend to fulfil completely our obligations under the Geneva convention. We intend to consider every single asylum application put to us on the merits. **Minister of State Home Office Ann Widdecombe MP, HC Committee 9.1.96, Col 46**

For statements on the Convention and the designated list see: 3.10 The Designated list: the merits of individuals' cases Page 22

For statements on Article 31 of the Convention see: 5.11 False passports/travel documents: the meaning of 'without delay' (Article 31 of the 1951 United Nations Convention) Page 31 - in reference to when a person should declare the existence of false travel documents in order to avoid jeopardising their claim

2.3 The 1951 United Nations Convention: agents of persecution

2.3.1 *Lord Dubs: This amendment seeks to make it clear that persecution is either persecution by the state or its agents or by persons acting independently of the state's authority, if the acts are knowingly tolerated by the authorities or if the authorities refuse or prove unable to offer effective protection. Where the state prosecutes individuals, the situation is reasonably clear. The doubts come when people claim to suffer persecution not from the state itself but from other organisations or paramilitary groups that may be acting independently of the state and over which the state has no control*

The purpose of this amendment is to ensure that persecution by both bodies - by the state or by bodies independent of the state - should all be considered as persecution for the purposes of the Bill...

In common-sense terms, it is a very simple proposition and it is easy to understand. The UNHCR understood that very well. Perhaps I may quote from a statement it issued in 1995:
To UNHCR, refusing refugee status to people who have been subjected to, or who fear, persecution by agents other than their own government is contrary to the text and to the spirit of the 1951 convention.

Persecution which does not involve state complicity is still persecution. The Convention applies when the state is unable, as well as unwilling, to protect such people. ***HL Report 20.6.96, Cols. 529-530***

2.3.2 My Lords, there is no universally agreed definition of an agent of persecution. But I hope that those supporting this amendment will be content when they understand our policy on this subject, which follows closely that set out in paragraph 65 of the UNHCR handbook on procedures and criteria for determining refugee status[1]. Persecution is normally related to action by the authorities of a country. However, we also accept that, in some circumstances, agents of persecution may be groups or elements within the applicant's country of nationality, other than the authorities. The noble Baroness has eloquently explained how that can sometimes be covert rather than overt activity. [Lady Williams gave the example of General Galtieri's denial of his government's use of death squads against dissenters during the Falklands War]. As set out in the UNHCR handbook, an applicant may qualify for asylum if the persecution by those other elements is knowingly tolerated by the authorities or if the authorities refuse, or prove unable, to offer effective protection, and the other inclusion criteria of the convention are met. In other words, we agree precisely with the way in which the noble Lord, Lord Dubs, set it out.

I do not consider that a statutory provision is desirable or necessary. It is the convention itself which engages our international obligations and which should be reflected in statute. The interpretation of the term 'persecution' and more widely of the 1951 Convention as a whole, rests ultimately with the higher courts and is best left to case law. ...

The European Union resolution of December 1995 on guidelines for the application of criteria for recognition and admission as a refugee sets out a joint position agreed by all member states of the European Union. But the resolution is not binding on member states. I recognise that the guidelines acknowledge persecution by third parties only if it is encouraged or permitted by the authorities. I can assure the House that we have no plans to depart from our long held broader interpretation, which I have already described and which follows closely that set down in the UNHCR handbook. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 531-532**

2.4 The 1951 United Nations Convention: social groups and persecution on grounds of gender

On whether women who are tortured specifically because of their gender constitute a separate social group:

2.4.1 ...the noble Baroness's intention in tabling the amendment is to prevent us certifying a refused claim under sub-paragraph (4)(a)[s1] if it alleges persecution on grounds of gender. The amendment is unnecessary, and I shall explain why. If a person shows a fear of persecution, including a fear based on gender grounds, that person would normally have done enough to escape certification under indent (a). That would be the case, for example, if the applicant alleges that his or her human rights will be threatened because of gender. ...

That does not mean that a gender-based claim would be exempt from a certificate if it is manifestly fraudulent, or meets one of the other criteria under Clause 1. Nor does it mean that such a claim would always succeed. I can assure the Committee that gender is taken into account in the assessment of individual asylum claims where that is relevant. However, our experience suggests that, in practice, few, if any, asylum applications made in the UK turn solely on the question of gender-based persecution. Applications normally involve claims of persecution on the grounds of race or religion or, for example, that a particular group of women faces persecution. Each case is considered on its merits. Each case that has been mentioned during the debate would be properly considered under even the 1951 convention.

The interpretation of a `social group' convention ground has been raised in debate by the noble Baroness. Our approach is not to define in the abstract whether women or men, or any other set of people, might or

[1]Persecution is normally related to action by authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities or if the authorities refuse, or prove unable, to offer effective protection. Para 65 UNHCR Handbook

might not be regarded as a social group. Each individual claim is considered on its merits to determine whether the applicant can demonstrate, in all the circumstances of the case, that he or she has a well-founded fear of persecution in a particular country for any of the 1951 convention reasons. A range of possibilities exists; for example, from treatment of women generally, which may be discriminatory but may not constitute persecution, to a particular group of men or women who, because of the likelihood of persecution, are protected by the terms of the convention. Each set of circumstances, individual or collective, is addressed on its merits. ...

Rape and other forms of sexual violence clearly amount to persecution in the same way as do other acts of serious physical abuse. Whether less prejudicial acts or threats would amount to persecution will depend on the circumstances of each case. In order to qualify as a refugee, the applicant would need to show that that fear of persecution was well-founded and based on a convention reason.

Women and indeed, men who do not meet the requirements of the 1951 convention may be granted exceptional leave to remain in the UK if there are compelling humanitarian reasons why they should not be required to leave ... sexual abuse is not specific to women or gender; men, too, can be sexually abused. There is a great deal of evidence that they are.

If it is serious abuse, it is persecution or torture. The noble Earl, Lord Russell... asked whether the list of grounds of persecution in sub-paragraph (4) (a) is exhaustive. [The grounds listed are: race, religion, nationality, membership of a particular social group or political opinion]. The answer is that it is. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1485-1486**

2.4.2 *Lord Winston: Does the Minister regard separation from one's children unreasonably as being torture? Would that be regarded as being discrimination on the basis of gender?:*

I should need to know all the circumstances. That is a broad scenario. It would depend upon why they were separated; what were the conditions of separation; and, frankly, whether it was a man separated from his family or a woman separated from her family. If the degree of persecution were such that it came within the convention, then it would be properly considered as a case within the broad parameters of the convention.

The convention refers to social groups, and I have given some indication that there is considerable interpretation of what constitutes a social group. It is a degree of persecution that would be proper in that case. Without more detail, it is impossible for me to answer that question specifically.

To finish on the point as to whether the list is exhaustive, yes it is exhaustive [list of grounds of persecution in s2(4)(a)]. But as I have said, and I hope that I have convinced the Committee, gender can be taken into account where it is relevant to the degree of persecution...

Someone may claim to have been persecuted and may have a well-founded fear of persecution. The example was given of a woman who refused to wear a veil being deemed a prostitute. The consequence of being a prostitute is that she may lose her life on the ground alone. It could be that a group of people who fall into that category could be constituted as a group. It would depend on the particular case, the particular degree of persecution and the social group; whether they are women or men, whether they belong to a particular group of women or men, or to a particular group of men or women who are persecuted and hounded simply because they are who they are or because they hold certain beliefs. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1486-1487**

2.5 The 1951 United Nations Convention: social groups and persecution on grounds of sexual orientation

2.5.1 With reference to amendment No. 58, [Purpose: to bring persecution on grounds of sexual orientation within persecution of a particular social group] it is ultimately the interpretation of the convention for the courts to determine rather than the Government. Sexual orientation is taken into account in the assessment of individual claims where relevant, but our approach is not to make an abstract judgement as to whether homosexuals or any other set of people might or might not be regarded as a social group. Claims are considered on their individual merits in the light of all the circumstances of a particular case, and in Committee my hon. Friend the Minister of State wrote to the hon. Member for Liverpool, Mossley Hill (Mr Alton) on a number of points, including on the question of homosexuals in relation to convention criteria. She set out the Government's position fully. The correspondence was made available to all members of the

Standing Committee and copies were placed in the Vote Office before Report began. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Report 22.2.96, Col 538**

2.6 The 1951 United Nations Convention: victims of rape - general

2.6.1 It may be helpful if I begin by setting out the Government's general approach to claims based on rape. There is no doubt that assaults of this kind are by their nature so serious that, like torture, they are likely to amount to persecution if inflicted for a convention reason. As with torture, whether the applicant meets the criteria of the 1951 Convention in order to qualify for asylum, will depend on the circumstances. Rape, or serious sexual assault imposed by agents of the state, or in circumstances where the state is unwilling or unable to afford protection, is likely to constitute grounds for asylum provided it has been inflicted because of the applicant's race, religion, nationality, political opinion or membership of a social group.

In other cases rape may be inflicted as a random act of violence in a country undergoing civil war. In cases of this kind, which are not systematic, the applicant may not qualify for asylum. But it is our policy to grant exceptional leave to applicants where there are strong compassionate circumstances, and these typically include cases where the state of conflict in a country is such that it would not be safe or humane to return people to it for the time being. For example, there is strong evidence that rape has been inflicted systematically during the war in Bosnia as a means of suppressing and driving out opposing ethnic communities. It has been the case for some time now that we invariably grant asylum or exceptional leave to applicants from Bosnia. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 501**

2.7 The 1951 United Nations Convention: social groups and victims of rape

On whether female victims of rape by an enemy group during a war would constitute a social group within the 1951 United Nations Convention:

2.7.1 I understand that as regards the particular scenario set out by the noble Baroness the answer is yes. [Lady Williams asked whether 'women subjected to repeated rape, in particular women under the age of maturity, by an enemy group' would constitute a social group']. Perhaps I may read from Article 33 of the convention. It states:

`No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom',

which is the whole purpose of applying for asylum,

`would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

Those are the parameters of the convention and all the examples given by the noble Baroness will fall within them. What would fall to be judged is the degree of the fear of persecution. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1486-1488**

2.8 Victims of torture: The United Kingdom's obligations under the 1951 United Nations Convention, The 1981 United Nations Convention on Torture or Other Cruel or Inhuman Treatment and the European Convention on Human Rights

2.8.1 We are determined to honour our obligations under the 1951 United Nations on Refugees and the 1981 Convention on Torture and Cruel or Inhuman Treatment. We do not, and will not, remove people to countries where they have a well-founded fear of persecution or where there are substantial grounds for believing that they would be tortured. Those are the principles underlying this Bill. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96, Col 959**

2.8.2 Torture is almost by definition a form of persecution and a person who has a well-founded fear of torture is very likely to qualify for asylum under the terms of the 1951 convention. If, exceptionally, he does not meet those criteria, he may well engage our obligations under other instruments, such as the European

Convention on Human Rights. In short, a person who has a well-founded fear of torture is granted either asylum or exceptional leave.

... We agree that a person who claims a fear of torture will normally have done enough to avoid a certificate under sub-paragraph 4(a). However, we oppose the amendment [aimed at preventing certification where a claim shows fear of torture/other inhuman or degrading treatment] because it departs from the precise wording of the 1951 convention. It is that convention which has been incorporated into United Kingdom immigration law and which should be reflected in the drafting of the Bill. We do not consider it would be appropriate to import terminology not contained in the 1951 convention.

Much has been said...about people who simply cannot express their claim of torture. If they do not, or will not, express it, it is impossible to consider it. Unless a claim of torture is made, it cannot be properly considered. We are trying to arrive at a situation whereby a genuine claim of torture is properly considered and, if genuine, is well-founded at the first stage of consideration.

...We want to keep the criteria of the Bill totally and absolutely consistent with the 1951 United Nations Convention, so that exceptional leave to remain or other international obligations are invoked if the case does not fit entirely within the asylum procedures. The intention is that genuine victims of torture should be picked up by the system....

One has to say that mistakes have been made in the past and no doubt will be made in future; but we want to minimise the possibility of mistakes being made.
The term:

"torture or other inhuman or degrading treatment"

which the amendment would insert into sub-paragraph 4(a) is taken from the European Convention on Human Rights. We are of course bound by our obligation under the European Convention in the asylum field, as in other areas. If an applicant's case engages our obligations under the European Convention but not the 1951 Convention, then it is our policy to grant exceptional leave to remain. The European Convention already provides an avenue of redress for the individual through the European Commission and Court of Human Rights. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Cols. 1056-58**

2.8.3 It would be equally wrong to suggest that we have tightened up our interpretation of the 1951 United Convention on Refugees which, in any event, is determined ultimately by the courts, not by the Home Office. We also use a discretionary grant of exceptional leave where the convention criteria is not met in individual cases but where there are compelling compassionate circumstances to justify leave to remain outside of the normal immigration rules. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1058**

2.8.4 Our objective is to ensure that victims of torture are identified. The Asylum Directorate takes account of all available evidence, in particular about the individual case, but also about whether there is a consistent pattern of serious human rights violations in the country of origin. Claims are considered against the 1951 convention criteria. That is to say, a well-founded fear of persecution by reason of race, religion, nationality, membership of a particular social group or political opinion. There is no universally agreed definition of persecution and it may take many forms. But the Government have no doubt that torture is one of them and that a person with a well founded fear of torture will qualify for asylum under normal conditions. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1561**

2.8.5 If we did not adopt a particular approach to victims of torture, I should be able to recommend further consideration of the proposals advanced by the hon. Member for Liverpool, Mossley Hill (Mr Alton) [David Alton's new clause 5 aimed to exempt asylum claimants from the accelerated appeal procedure where a doctor had issued a certificate stating in good faith that he was of the opinion that the claimant had been tortured]. However, we are signatories not only to the 1951 United Nations convention - which we apply properly and fairly to asylum applicants - but to article 3 of the UN convention against torture and other cruel, inhuman and degrading treatment or punishment, which was concluded in 1981.

The parts of the convention that we observe include the provision that

'No State Party shall expel, return...or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

For the purpose of determining whether there are grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.' **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Report 21.2.96, Col 420**

2.8.6 Article 3 of the European Convention on Human Rights and Article 3 of the UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment both prohibit removal to a country where there are substantial grounds for believing that the applicant would be tortured. It has been suggested that because these instruments are not incorporated into UK law, they provide insufficient protection for victims of torture. I refute that. First, if an applicant engages our obligations under either the UN Convention on torture or the European Convention on Human Rights but not under the 1951 convention for example, because the reason for the fear of torture is not one specified in the criteria for refugee status -exceptional leave will normally be granted. Secondly, individuals have an avenue of redress under the European Convention by taking their case to the European Commission and the European Court of Human Rights in Strasbourg. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1562**

See also: Chapter 7 VICTIMS OF TORTURE Page 39
5.15 Victims of torture: exemption from the accelerated appeals procedure - general Page 34
and 8.6 Safe third countries: victims of torture Page 48

2.9 The 1951 United Nations Convention: social security entitlement

2.9.1 *Lord Avebury: It [the Court of Appeal on 21.6.96 when it ruled 'ultra vires' the regulations denying benefits to asylum seekers] did not criticise the fact that the Government's proposals were not in primary legislation; it said,*

...'True, no obligation arises under Article 24 of the 1951 Convention until asylum seekers are recognised as refugees. But that is not to say that up to that point their fundamental needs can properly be ignored. ...Rather I would hold it unlawful to alter the benefit regime so drastically as must inevitably not merely prejudice, but on occasion defeat, the statutory right of asylum seekers to claim refugee status.' ***HL Committee (on Recommitment) 1.7.96, Cols. 1242 -1243***

First, perhaps I should make it perfectly clear that the court did not rule that the regulations were 'ultra vires' the United Nations convention. That was not an issue before the court and so it made no ruling on it. Article 23 of the refugee convention applies to recognised refugees. These changes will ensure that genuine refugees will indeed receive their full entitlement.

...As regards the UN Convention, we do not believe in any way that the new clause and schedule offend the UN Convention. The Court of Appeal stated that no obligations arise under the Article 24 of the 1951 convention unless the asylum seekers are recognised as refugees. The important thing is that they are recognised as refugees - **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Col 1254**

Earl Russell: I must ask the Minister to read the judgement of the noble and learned Lord, Lord Nolan, on the Khaboka case, Immigration AR 1993, 489. He stated:

''The term 'refugee' means what it says. It will include someone who is only subsequently established as being a refugee'.

That is the law. ***HL Committee (on Recommitment) 1.7.96, Col 1255***

...I should point out to the noble Earl that the case to which he referred was a third country removal case. I do not believe that it is relevant here [in the context of social security entitlement]. However, that may be a matter about which lawyers will come to argue. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Col 1255**

See also: 12.20 Social security provision: the UK' s international obligations Page 80

2.10 The Dublin Convention

2.10.1 The Dublin convention is important because ... it prescribes rules for deciding which EU State is responsible for a given case. If there is any confusion about that, the convention goes a long way towards sorting it out. It is already more than four years since the convention was signed and two member states - Ireland and the Netherlands - have still to ratify it. There is no certainty, in the meantime therefore, about how much longer it will be before the convention comes into force. I hope that it will be in the near future. ... Even if it is implemented, speedy removal will still be important from the point of view of our immigration controls. **Parliamentary Under-Secretary of State Timothy Kirkhope MP, HC Committee 23.1.96, Col 261**

See also: 8.11 Safe Third Countries and the Dublin Convention Page 53

2.11 The United Nations Convention on the Rights of the Child: child benefit

2.11.1 The hon. Member for Bradford, West (Mr Madden) asked me whether clause 10 was not a breach of our obligations under the 1951 convention and the UN convention on the rights of the child. Our best advice is that it is not. Those who are able to get benefit because they claim at the port of entry and who will be able to get income support would find that child benefit is taken into account anyway in the calculation of income support. Their position is unaffected. We have been very clearly advised that the withdrawal of benefit from those who have entered the country on the specific understanding that they would be self-supporting is not in breach of the convention. I therefore do not believe that what we have done is in breach of the convention. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 581**

2.11.2 *Maria Fyfe: The Minister said earlier in reply to my hon. Friend the Member for Bradford West [Max Madden] that the clause was not in breach of the convention. Did she mean the 1951 convention on refugees, article 27 of the UN Convention on the rights of the child, or both.* ***HC Committee 8.2.96, Col 586***

Both. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 586**

2.11.3 It is worth pointing out that article 26 [of the UN Convention on the Rights of the Child] explicitly recognises that social security rights are dependent on the provisions of national law. Because our current provisions under the Children Act 1989 ensure that children are not left in danger, we are fully entitled to exercise our national rules to determine social security rights. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 583**

2.11.4 As I pointed out, claims that Clause 10 constitutes a breach of the convention on the rights of the child are regarded by a judge as unarguable. As I said earlier, nothing that I have heard this morning persuades me that they have become any more arguable as a result of having the combined minds of the Opposition directed towards them. Article 26 of the convention and the reference to full realisation relate to children who are properly present in the country and fall within national social security rules. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 597**

On children see also: 12.14 Social security provision for asylum seekers/persons subject to immigration control: child benefit - general Page 78 and 13.2-13.8 Unaccompanied children Pages 85-88

2.12 Exceptional leave to remain and temporary protection: general

2.12.1 Exceptional leave is now generally granted only where conditions in a particular country are so difficult that we have taken the view that it would be unreasonable to expect individuals to return there for the time being or where in individual cases there are genuinely compelling humanitarian reasons for not returning someone. ... We have no plans to change the use of exceptional leave. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p11, Supplementary Comments**

2.13 Exceptional leave to remain: the role of special adjudicators

2.13.1 My Lords, the point is that the adjudicator will have decided that the applicant does not fulfil the criteria for refugee status. If the noble Lord [Lord Avebury] wishes to close the door at that point so be it. However, I do not believe that he does, and neither do I. In those circumstances the adjudicator can suggest that the Secretary of State ought further to consider the case before a final conclusion is reached. At that point the Secretary of State may decide, in a very few cases after the appeals circuit has been gone through,

that exceptional leave to remain should be granted. The majority of cases for ELR are decided by the Home Office in the initial decision -making process when it is decided that a person does not qualify as a refugee. Then...the second question is asked; namely, 'Can this person go back to his own country?' In the case of somewhere like Somalia, Afghanistan or even the former Yugoslavia, it might be unreasonable to expect him to do so and, therefore, the person would be granted exceptional leave to remain. That is the way the system works. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Cols. 1343-1344**

2.13.2 The adjudicator's role is to oversee the correct application of immigration and asylum law, as set out in primary legislation and the immigration rules. In other words, the adjudicator is there to apply the rules fairly. Applicants appeal to the adjudicator on the grounds that their rights under the legislation have not been complied with. The exercise of discretion in favour of applicants who do not meet the statutory immigration or asylum requirements is the proper preserve of the Secretary of State. This is because discretion has to be exercised in the context of the Secretary of State' s responsibility for maintaining the effectiveness and integrity of immigration control. Individual compassionate factors always have to be weighed against that wider responsibility. Adjudicators have no such responsibility, and that is why they have the power to issue binding directions only in cases where an appeal is allowed and only for the purpose of ensuring that a determination based on the rules is given effect.

The amendment [Amendment No. 35 - a new clause aiming to give special adjudicators the power to direct that the Secretary of State should grant exceptional leave to remain] is in any case unnecessary. It overlooks the fact that the question of whether exceptional leave should be granted is already built into the initial consideration process. Anyone refused asylum has had the case for exceptional leave fully examined. Moreover, the adjudicator can of course, if he dismisses the appeal, make a recommendation, including a recommendation of exceptional leave. I can assure the House that all such recommendations are carefully considered. Furthermore, it is our current policy that only officials at senior executive officer level or above are normally authorised to decide not to comply with recommendations in asylum cases.

If the adjudicator's recommendation arises from exceptional compassionate circumstances which have not previously been considered and which would genuinely merit the exercise of discretion outside the immigration rules, then we would act upon a recommendation. We believe that that is a perfectly reasonable policy. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 560**

On exceptional leave to remain see also:
2.4 The 1951 United Nations Convention: social groups and persecution on grounds of gender Page 8
2.6 The 1951 United Nations Convention: victims of rape - general Page 10
2.8 Victims of torture: The United Kingdom's obligations under the 1951 United Nations Convention, The 1981 United Nations Convention on Torture or Other Cruel or Inhuman Treatment and the European Convention on Human Rights Page 10
7.2 Victims of torture: exceptional leave to remain Page 39

On special adjudicators' powers see also:
Chapter 6 SPECIAL ADJUDICATORS' POWERS Page 36
8.118.13 Safe third countries: appeals to special adjudicators Page 55
8.14 Abolition of right to bring non-asylum appeal under the 1971 Act until the certificate is set aside by a special adjudicator Page 55

2.14 Entitlement to benefits: the distinction between refugee status and exceptional leave to remain

2.14.1 We do not believe that we are under an obligation to treat both categories [refugees and people granted exceptional leave to remain] in the same way. Refugees are accorded specific rights under the UN Convention and we ensure, as we should, that those rights can be exercised. For that reason, refugees automatically receive benefits. Having read the judgement of the Court of Appeal, we concluded that we should backdate refugees' benefits to the point when they first claimed, if they were in-country applicants and did not initially receive benefits.

The granting of exceptional leave to remain is quite different from the grant of refugee status. It is a discretionary concession made by the United Kingdom Government over and above our obligations under the UN Convention. It is intended to address circumstances not covered by the convention in respect of which

some discretion ought to be exercised. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Cols. 1333-1334**

2.14.2 *Earl Russell: My Lords, the noble Lord has dealt with the distinction between refugee status and exceptional leave to remain. Has the Minister taken any legal advice?*

My Lords, in this field there is plenty of legal advice. It may be that one takes the legal advice which suits one. That is the same in every field. We are certain - this has stood the test of time - that there is a distinction between refugee status and exceptional leave to remain. ...There is a very big distinction and I have tried to explain it clearly. It certainly exists in view of the way that the whole procedure has been run and it set out. Refugee status is the critical test to be applied and that fulfils our international obligations. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1335**

3. THE DESIGNATED LIST

3.1 The Designated list: general

3.1.1 And let me remind the Committee again of two key points. There will be no blanket ban on claims from designated countries. And applicants will still have an appeal to an independent adjudicator. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1541**

3.1.2 Designation will not of course result in automatic refusal of asylum claims, and it will not result in the denial of an appeal right. That is a very important point to be made. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1043**

See also: 13.2 Unaccompanied children: the designated list Page 85

3.2 Designation criteria: general

3.2.1 I intend to apply three criteria to the selection of countries for designation: that there is in general no serious risk of persecution; that they generate significant numbers of asylum claims in the United Kingdom; and that a very high proportion of claims prove to be unfounded. ...designation will not amount to a declaration that we necessarily consider countries to be universally safe, or to have political and judicial institutions that function to western standards. We could not possibly accept an obligation to apply such standards, and no such obligation exists in international law. What we are saying is that a country has functioning institutions, and stability and pluralism in sufficient measure to support an assessment, that, in general, people living there are not at risk. **Secretary of State for the Home Department Rt. Hon Michael Howard MP, HC Second Reading 11.12.95, Col 703**

3.2.2 The designation procedures are confined to streamlining the consideration of asylum claims. There is no question of designating or not designating a country purely for economic or diplomatic reasons which do not meet our stated criteria. **Minister of State Home Office Ann Widdecombe MP, HC Committee 18.1.96, Col 215**

3.2.3 The situation in the countries we intend to designate is one of substantial safety and security. That does not mean that they are entirely without problems or that genuine cases of persecution will never arise. It would be unrealistic to insist on universal safety and, indeed, such a requirement is unnecessary given the safeguards which will continue to apply under the Bill. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1067**

3.3 Designation criteria: 'in general no serious risk of persecution'

3.3.1 We propose to make a judgement as to whether the general level of risk to people living in a country is sufficiently low to warrant designation. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96, Col 961**

3.3.2 I have made clear that the words,

`in general no serious risk',

do not mean that it would be lawful to designate a country where there was a serious level of persecution aimed at minorities. Nazi Germany patently could not have qualified. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1541**

3.3.3 Clause 1 provides for the designation of countries where it appears to the Secretary of State that there is in general no serious risk of persecution. That involves making a judgement as to whether the general risk of persecution in a particular country is sufficiently low to warrant designation. Amendment No. 4 would delete the words `in general'. However, these words are necessary in order to make clear that the assessment being made is of the level of risk in a country rather than the risk to an individual. As the noble Lord, Lord

McIntosh said, there may be individual cases in which a serious risk is established. Indeed, although there is currently a very high refusal rate for the countries we regard as candidates for designation, asylum or exceptional leave have been granted in a small number of cases. It does not follow from this that designation is inappropriate. The words `in general' are needed in order to make that clear.

...the factors to be considered in determining whether there is in general no serious risk of persecution are fairly clear. They are the stability of the country, the state's adherence to international human rights instruments, democratic institutions, elections and political pluralism, freedom of expression for individuals and the media, and the availability and effectiveness of legal avenues for protection and redress. We shall consider those matters and decide on that basis, and on the basis of other criteria that apply to the actual designation, which states are suitable. Those are the factors that relate to the risk of persecution.

We have made it clear that designation will not require a country to have an unblemished human rights record. That would be unrealistic and would make the designation proposal unworkable. The right standard to apply, given that all claims will still be considered and still attract an appeal, is the one proposed in the clause, namely that there is in general no serious risk. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 166**

3.3.4 I reinforce the point that it will not be a subjective matter for my right honourable friend to make a decision as to whether or not a country is added to the list. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1045**

3.3.5 The term `in general' signifies that an assessment is being made about the level of risk in a whole country, and that designation is not being limited to countries which are universally safe. ... But it is perfectly clear from the wording that we could not designate a country in which persecution was taking place on a significant scale. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p4, Supplementary Comments**

3.4 Designation criteria: large numbers of applications and refusals

3.4.1 There must be a large number of applications and a large number of refusals and the country must be generally safe. If a generally safe country were suddenly to spawn a huge number of applications accompanied by a high refusal rate, a question may arise of whether we want to add that country to the list. Similarly, if a country underwent an upheaval, which led us to query the generally safe criterion, we might wish speedily to remove that country from the list. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 158**

3.4.2 It is entirely right that applicants from countries where conditions are not in general unsafe and which produce large numbers of asylum seekers but very few genuine refugees should be asked to show that there are exceptional circumstances in their case. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1066**

3.4.3 We have made clear also that designation will be restricted to countries that generate many asylum claims, including a large number of unfounded claims. Regularly published asylum statistics ensure complete transparency in meeting that test. **Minister of State Home Office Ann Widdecombe MP, HC Committee 9.1.96, Col 45**

3.4.4 We shall not examine each country in the world, make an assessment of its safety and add it to a list. If a country is not on our designated list, that does not mean that it is not safe or that it is not perfectly valid for another country to designate it as safe. What it means is that that country does not feature largely in our own asylum procedures and, therefore, we have not found it appropriate to take a view. It is perfectly reasonable that our criteria should be that a country must in general be safe - the words 'in general' are crucial - and that it must generate many applications and many refusals. **Minister of State Home Office Ann Widdecombe MP, HC Committee 9.1.96, Col 45**.

3.4.5 We are bound by our European convention and United Nations obligations. But our starting point for a designated list is to select those countries from which we have the greatest number of applications and the highest number of refusals. That may be because there are economic migrants but there will be other reasons too. That is the starting point. I have given one example [Nigeria] of a country where those criteria are met but about which we still take a view that the general level of human rights in the country is not acceptable, and for that reason the country is not on the list.

Having said that, we then go on to consider such factors as the stability of the country, the state's adherence to national and human rights instruments, democratic institutions, elections and political pluralism. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Cols. 1106-1107**

3.4.6 There is no question whatever that, just because a country is on the designated list, an individual will not have his asylum claim thoroughly examined. The purpose of the designated list is to designate countries that are not safe completely, totally or without exception, but are generally considered to be safe. They might generate a large number of applications and a high percentage of refusals. Despite the high percentage of refusals of asylum seekers from Pakistan and Romania, each year a very small percentage receive either asylum or exceptional leave to remain... . There is no good reason to suppose that, merely because a country is designated and therefore recognised as one likely to bring about a large percentage of refusals, a small percentage of acceptances will not continue. **Minister of State Home Office Ann Widdecombe MP, HC Report 21.2.96, Col 439**

3.5 The Designated list: consultation

3.5.1 I gave assurances that we would gather information, canvass views and examine circumstances before the Home Secretary decides which countries to designate. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 158**

3.5.2 We already take account of the opinions of UNHCR and non-governmental organisations, such as the much-quoted Amnesty International, about conditions in countries of origin. Reports by such organisations are used as sources of information in the work of the asylum division. Those reports are also publicly available, and it will be open to Parliament to take them into account when it scrutinises designation proposals. **Minister of State Home Office Ann Widdecombe MP, HC Committee 11.1.96, Col 89**

3.5.3 ...we closely consult the Foreign Office and I can state categorically that the Foreign Secretary has been consulted about the general concept of the designation of countries of origin and about the particular countries that my right hon. and learned Friend the Home Secretary said are currently considered as candidates for designation. Information from the Foreign Office will be an important part of our consideration of the safety of individual countries, as it is already an important part of the consideration of individual claims. **Minister of State Home Office Ann Widdecombe MP, HC Committee 18.1.96, Col 214**

3.6 The Designated list: assessments of conditions in designated countries

3.6.1 Asylum seekers often base their claim, at least partly, on allegations of human rights abuses and persecution in their country. Wherever that is a significant issue in the claim, the letter giving reasons for refusal will respond by setting out the Secretary of State's views. That view can then of course by challenged by the applicant on appeal. In addition, we have made available written country briefs on Nigeria and Ghana setting out our assessment of conditions in those countries. Those briefs are available to applicants, representatives and adjudicators**.**

Furthermore, we have undertaken to provide assessments of all countries we put forward for designation under Clause 1. Those briefs will be provided to Parliament as well as to the appellate authorities and will be available to applicants. Similar briefs on other countries of origin are also planned. …

At present the Secretary of State is under a requirement to consider all matters which are relevant to the asylum claim. In setting out reasons for refusal, he must address any matters which are central to the claim. To the extent that that requires responding to allegations about conditions in the country, the obligation to do so is already here.

But the assumption behind the amendments [which would have imposed a duty on the Secretary of State to make available to applicants his/her assessment of conditions in their country of nationality or of habitual

residence] is that the assessment of general conditions in the country is prescriptive of the decision. That is misguided: each case is considered on its individual merits, taking account of the facts and the circumstances relating to the particular case. An applicant from a country with human rights defects may be at no risk of persecution, and an applicant from a country with a good record may, nevertheless, have a well-founded fear of persecution. In short, the obligation on the Secretary of State should be to give reasons for refusing the application. We see no merit in imposing any requirement beyond that. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1613**

3.7 The Designated list: parliamentary scrutiny of designated orders

3.7.1 I was also asked to provide information about countries of origin. Current Home Office assessments of Nigeria and Ghana are in the public domain and available for use at asylum appeal. Copies are being made available to the Committee. A programme of work is under way to provide disclosable briefs for use at asylum appeals. Those briefs are not yet available. We have, of course, in any case undertaken to make available to the House at the time of laying designation orders our assessments of the candidates for designation. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 159**

3.7.2 Using the expertise, information and intelligence of the Foreign Office, we shall update continually our views on those countries. Therefore, if it is proposed to add a country on to the list following the initial group of countries that Parliament will be invited to agree, it will be important that the Home Secretary puts to Parliament written assessments of those countries which in his opinion are suitable candidates for addition to the list. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1046**

3.7.3 We have already given an undertaking, which can be found, for example, in the Home Office background note on designation. It was suggested that we were working in the dark but the detailed background note on designation throws light on the subject and makes it clear that we will make available to Parliament our assessment of conditions in the countries that we propose to designate. ...Parliament will thus be informed of the basis on which the Home Secretary reaches his view that no serious risk of persecution exists. **Minister of State Home Office Ann Widdecombe MP, HC Committee 9.1.96, Col 45**

3.7.4 I can assure the House that the first designation order will be comprehensive and will contain all the countries considered suitable for designation at that time. To remind the House, the countries we are currently considering as being suitable for designation are Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1042**

3.7.5 We also believe that the designation procedure must be sufficiently flexible to allow us to make amendments quickly - such as when a substantial increase in the number of unfounded applications from a country calls for speedy designation....

If we designate several countries in one order, and Parliament disagrees with our judgement about just one of the countries in it, the whole order will fall. That is unlikely to happen, but if it does, an amended order could be reintroduced quickly. **Minister of State Home Office Ann Widdecombe MP, HC Report 21.2.96, Col 444**

3.7.6 ...the noble Earl, Lord Russell, said that the designated list would be a matter for the opinion of my right honourable friend the Home Secretary. It will not be a matter for his opinion. He may well have a view that a country should be added to the list but whether or not it is added will be a matter for Parliament**.**

I believe the noble Lord, Lord Shepherd, and his committee [Delegated Powers Scrutiny Committee] took into consideration the fact that we intend to put together all those countries which we consider to be potential candidates as the first stage under the affirmative resolution procedure. Therefore, it is highly probable that following that, single countries will come forward for consideration.

If either House has very serious reservations about the case being made for any one of those countries, so serious that there is grave concern about the whole package being allowed to go through, although it is not normal and usual I suggest that the House should think seriously about its power to reject the list until it comes forward in a form which is acceptable to Parliament.
It is open to Parliament to do that. The noble Lord, Lord Shepherd, is right to say that it will not be possible to cherry-pick off the list and say, `We do not like this', or `We do not like that', but it will be possible to say that the list is not acceptable to Parliament until something is done in relation to the country which Parliament

finds is an unacceptable entry on the list. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1045**

3.7.7 The report [of the Delegated Powers Scrutiny Committee] continues:

The House may wish to seek an assurance from the Minister that the first list of countries under each power (which alone will, if our recommendation is adopted, be subject to affirmative resolution) will be as comprehensive as possible, so as to facilitate debate on the principles governing the compilation of the list. Subsequent negative procedure would allow the House to debate the issues again when necessary.'

That is a very important point which I take extremely seriously. When the first list is brought before Parliament, we shall debate all the issues and present information to Parliament to try to persuade it that countries should be added to the list. The criteria and principles which underlie our reasons for compiling the list in the first place will be an important pointer in relation to any subsequent additions to the list. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1046**

See also: 3.8 below The Designated list: countries likely to be included/excluded

3.8 The Designated list: countries likely to be included/excluded

3.8.1 Countries such as Canada, the USA and Switzerland, which have proven safe asylum procedures, would be candidates for designation as safe third countries. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96, Col 962**

3.8.2 My right honourable friend made clear the list of countries that we currently regard as meeting criteria for designation. Kenya, Ethiopia and Tanzania are not on the list. However ... the Bill will allow countries to be added to the designation list if circumstances in the countries improve. Equally, we will not hesitate to remove a country from the list if conditions in it deteriorate. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96, Col 1032**

3.8.3 I want to continue to remind the Committee that we are talking about a country [India] that has an increasing number of applicants to Britain, the majority of which do not qualify under the 1951 convention for asylum status. It is only that qualification, plus the criteria I read out earlier, that will be taken into account. But nothing inhibits or precludes proper consideration of every single case that comes before the Home Office for consideration under the asylum procedures. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Cols. 1097-1098**

3.8.4 That liaison [with the Foreign Office] goes on all the time. Certainly in the course of drawing up the list, we have liaised with the Foreign Office. I have named the current candidates for the list. Earlier candidates which were also considered for the list were Kenya, Tanzania and Ethiopia, all of which have been dropped from it. I should put on the record that Nigeria, Algeria, Sri Lanka and Turkey have never been considered for that list. Using the expertise, information and intelligence of the Foreign Office, we shall update continually our views on those countries. Therefore, if it is proposed to add a country on to the list following the initial group of countries that Parliament will be invited to agree, it will be important that the Home Secretary puts to Parliament written assessments of those countries which in his opinion are suitable candidates for addition to the list. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1046**

3.8.5 We are monitoring the complex situation [in Nigeria] closely with the FCO, but consider that individual Nigerians whose claims have been individually considered and properly determined can be returned under normal immigration procedures. We have no reason to believe that those being returned are facing difficulties. Home Office disclosable brief on Nigeria was updated in December 1995 to take account of more recent developments, including the execution of Ken Saro-Wiwa. Further updates will be delivered as necessary. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1613**

3.8.6 We … heard nothing to dissuade us from our assessment that Pakistan and Romania are at present suitable candidates for designation ... that does not mean that we are saying that anybody in those countries could never, in any circumstances, be in fear of persecution or produce outstanding humanitarian grounds for exceptional leave to remain. **Minister of State Home Office Ann Widdecombe MP, HC Report 21.2.96, Col 440**

3.8.7 I do not accept that Bulgaria is unsuitable for designation. Considerable progress has been made in the establishment of democracy, particularly following the April 1990 Law on Political Groups and Parties. Bulgaria's National Assembly is a democratically elected body and recent elections have been declared free and fair by international observers. Bulgaria is a party to the 1951 UN Convention on Refugees and the European Convention on Human Rights. The Bulgarian Government are committed to obtaining membership of the European Union... . We do not accept that past mistreatment of minorities by the former communist regime justifies a presumption of future mistreatment. We recognise that there is discrimination against some minorities within local communities, including the Roma minority. But the Bulgarian Government have taken steps to address these problems and to prosecute offenders. Last year, 99 per cent of applications for asylum were refused. Although the vast majority of Bulgarian asylum applications are unfounded, each application is considered individually and asylum will be granted when the circumstances warrant it. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1078**. *[See Col 1079 for further comments on conditions in Bulgaria.]*

3.9 The Designated list: unsafe parts of `safe countries' and the persecution of minority groups within designated countries

3.9.1 I was also asked if we had plans to designate territories as well as whole countries. We have no plans to designate parts of countries. If only part of a country is unsafe for a person to live in, it is possible for them to go to a different part of the same country that is safe. There is no question of the Government ruling that part of a country is safe but another part is not. The word `territory' is used to enable us to designate an entity that is not internationally recognised as a country. It is a safeguard, not a mechanism that we intend to use to enable us to rule that part of, for example, India or Pakistan, is unsafe.

...the designation of a country as safe would not necessarily rule out an individual being able to make a case for asylum. The individual concerned might belong to a minority that has suffered persecution, or he might have suffered as a result of problems that were confined to a specific geographical area. If that individual were able to present a case showing why he could not resolve those problems - for example, by moving within the country, which is not inconceivable - his case would be taken on its merits.

...the Bill is not designed to remove the right of every applicant to have his or her case considered on its individual merits. **Minister of State Home Office Ann Widdecombe MP, HC Committee 11.1.96, Cols. 87-88**

3.9.2 If an individual could prove that he has a well-founded fear of persecution because he was a member of a persecuted minority even though he was in a country that was generally safe, he would have grounds for having his claim considered. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 165**

3.9.3 I draw a distinction between fear of persecution by a ruling regime, which would cause us to examine the situation most carefully, and fear of persecution by neighbours in small pockets or particular territories, in which case there is the possibility of movement within the country. Far more important, there is the possibility of an appeal to the authorities in that country to deal with the situation. Nevertheless, I do not rule out individual applicants from such countries, even after designation, making a case for asylum- which, under the terms of the convention we would gladly and willingly honour our obligation to accept. **Minister of State, Home Office Ann Widdecombe MP, HC Report 21.2.96, Col 440**

3.9.4 If an individual could prove that he has a well-founded fear of persecution for which there is a clear understanding under the Geneva convention, that person will have the right to have an application considered fully even though he was in a country that is generally considered to be safe. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 165**

3.9.5 In Romania, we acknowledge that public feeling does exist against the Roma minority, but there is no evidence that this is condoned by the authorities. The UNHCR, while stressing that serious difficulties remain for the Roma minority throughout central Europe, at present consider that for a Roma asylum seeker to be recognised as a refugee, he/she would need to provide particularly strong and credible elements in their individual claims.

We accept that human rights abuses have occurred in Kashmir. Under the internal flight principle, we would expect people fleeing the troubles there to go to other parts of India, where conditions are safe. That is indeed what many Kashmiris have done. Applications from Kashmiris in this country are rare. Moreover,

there are signs of improvement in Kashmir. The Indian Government intends to hold elections in the State, militant leaders have been released from prison, and the International Committee of the Red Cross have now begun their first substantive visit to detention centres. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p5, Supplementary Comments**

3.9.6 Christians enjoy religious freedom under the law and the majority of Christians continue to practice their religion openly. Ahmadis - a minority Moslem sect - are subject to discriminatory religious legislation, but convictions remain rare. Some harassment of both Christians and Ahmadis does occur, but this is not systematic or Government led. Asylum claims from these groups will continue to be carefully considered an on their merits, but it should not be assumed that all are automatically well-founded. The great majority of asylum claims from Pakistan are not by Christians or indeed Ahmadis. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1104**

3.9.7 The majority of Christians in Pakistan are, generally speaking, able to practise their religion openly. The stringency of the blasphemy laws has increased progressively since 1980 and may raise issues in exceptional cases and those are the ones that would be dealt with sympathetically and they are consistent with the United Nations Convention. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1105**

3.9.8 It has been suggested that the words `in general' would allow the Secretary of State to designate a country where a majority of population was not at risk but which was seriously persecuting minority groups within it. That is patently not a tenable interpretation of the Bill. The wording clearly rules out designation of any country where there is a significant level of persecution, even if it is targeted at minorities. Our list of candidates for designation excludes a number of countries which generate large numbers of unfounded asylum claims, but in which there are nevertheless sufficient concerns about human rights that the requirement of the Bill is not met. Nigeria is an obvious example. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1066**

3.9.9 *Baroness Williams of Crosby: …the particular cases I mentioned [Kashmiris in India and Roma in Romania) concern groups which are targeted specifically and individuals who are part of such groups. That is to say, it is not really individuals but a specific minority that is at risk. ...It is not the same as a case of a country which has a generally good record but there may be one or two individuals who have been unfairly treated.* ***HL Committee 23.4.96, Col 1067***

3.9.10 India is an established, pluralist democracy - as the noble Baroness would agree- with well-developed legal institutions ...

So it is the case that generally the country is peaceful, it has democratic institutions in place, but within that great country there are groups of people who, for one reason or another, are subject to human rights abuses. I like to think that the way in which we have approached that question answers, in part, the point raised by the noble Baroness ...

We also recognise the existence of the examples given by the noble Baroness, [Kashmiris/Roma] Lady Williams, But underpinning all of this is the fact that, whatever country they come from- designated or otherwise- cases will be considered individually. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Cols. 1067-69**

3.10 The Designated list: the merits of individuals' cases

3.10.1 Designation under the provision ... will not be a blanket ban on applications from the nationals of designated countries. It will merely create a rebuttable presumption against the application that claims will still be considered on their individual merits. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 158**

3.10.2 Anyone listening to the debate would be forgiven for believing that the Government propose to introduce blanket provisions under which any asylum application is to be ruled inadmissible, without any further consideration, merely because it originates from a particular country. That is not, and never has been , the purpose either of the short procedure ... or of the designated list. He (the hon. Member for Streatham - Keith Hill) said, correctly, that from the proposed designated list, we have accepted claims from applicants from Romania, Ghana, India and Pakistan. That clearly shows that even where there is an exceptionally high refusal rate, we recognise that there are individual circumstances that merit either the granting of full asylum

or, even if the conditions for full asylum are not strictly satisfied, exceptional leave to remain. I say categorically that it is our full intention ... that when the designated list is implemented, we would expect that there would be some individuals from countries on that list who will be able to make an adequate case for asylum or on special humanitarian grounds that we would otherwise allow them to remain. **Minister of State Home Office Ann Widdecombe MP, HC Committee 9.1.96, Col 41**

3.10.3 There is no question whatever that the designated list is contrary to the convention or that it is in any way compromised by paragraph 44[2] of the handbook which refers to blanket decisions. We are not going to take any blanket decisions. ...the Bill renders wholly inapplicable the provisions of paragraph 44. **Minister of State Home Office Ann Widdecombe MP, HC Committee 9.1.96, Col 46**

3.10.4 At the end of the day, all people who apply for asylum will have their cases considered on the basis of the information that they give and of their individual cases.

Even when an applicant comes from a country that has been designated generally safe, his claim will still be considered on its individual merits. Designation relates to the Secretary of State's view of the position in the country overall, not in relation to any individual or group of individuals. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96, Col 1034**

3.10.5 Even when a state is designated, individual applications for asylum will be considered and could well be accepted. There is therefore a clear difference between the assessment that we make of a country and the assessment that may have to be made of an individual case in which the reasonable likelihood of persecution may apply. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 11.1.96, Col 65**

3.10.6 Each case would be determined on individual merits. An individual would have to demonstrate that he had a well-founded fear of persecution. In deciding whether that fear were well founded, asylum caseworkers would rely on information provided by the Foreign and Commonwealth Office, and updated information on conditions prevailing where the man lived, including the country in which he lived and the particular geographical area from which he came. We would then consider his special circumstances. **Minister of State Home Office Ann Widdecombe MP, HC Committee 9.1.96, Col 45**

3.10.7 The Rt. Hon Gentleman [Roy Hattersley MP] asked what is a general fear of persecution. He only has to look at current practice. Some countries have a 99 per cent asylum application rejection rate but 1 per cent are accepted. That conclusively demonstrates that we examine each case on its merits. We will continue to do so. I have no doubt that countries on the designated list will, nevertheless, still produce a small percentage of acceptances - as they do at present, despite their high rate of general rejection. **Minister of State Home Office Ann Widdecombe MP, HC Second Reading 11.12.95, Cols. 793-794**

3.10.8 When considering an applicant's case, we shall take a high note of the subjectivity of the individual's circumstances. The proposed measures, including the nature of a country's designation, will allow us to ensure that our consideration of an individual case remains both subjective and objective. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 11.1.96, Col 64**

3.10.9 The noble Earl, Lord Russell, asked about the UNHCR. The UNHCR has made clear that it does not regard designation as inherently incompatible with the 1951 convention provided that claims are still considered on their merits. We are satisfied that there is no inconsistency with Article 3 which is concerned with the treatment of persons who have been granted refugee status. In the particular case to which I have referred, certification applies only after a refusal has been given to an asylum seeker. That means we are entirely consistent with our obligations under the convention. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1082**

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[2] While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called 'group determination' of refugee status, whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee. Para. 44, p13, UN Handbook on Procedures and Criteria for Determining Refugee Status

3.10.10 Designation will allow us to deal more quickly and effectively with the great majority of applicants who do not qualify for asylum. ...But the procedures used will allow exceptional cases, such as the small number from the seven countries who qualified for asylum last year, to be selected for more detailed consideration. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1067**

3.10.11 It is not and never has been our intention to say in a blanket way that, automatically, both de jure and de facto, we will not consider an application because the applicant comes from India, Pakistan or Poland. **Minister of State Home Office Ann Widdecombe MP, HC Committee 9.1.96, Col 41**

3.10.12 I must say unequivocally that we have never stated that any country is absolutely safe for all its citizens. That is one reason why we have used the words `in general'. We make a presumption that even those countries which are designated will necessarily have well-proven cases of people who have a well-founded fear of persecution. The system is geared to sort out the genuine asylum seekers from those who have come from countries where there is in general no threat to the population. However, we have never claimed that there is any country which is wholly safe for all of its people. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1080**

3.11 The Designated list: procedural issues

3.11.1 ...every single asylum application is considered substantively in exactly the same way, whether the applicant comes from a designated or non-designated country. It is only following the decision resulting from that substantive consideration that there is a distinction in the appeals system. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1069**

3.12 The Designated list and claims by nationals of designated countries: procedures on arrival

3.12.1 We envisage that applications from nationals of designated countries will be considered under the short procedure, and in relation to those who apply on arrival, they will be interviewed on the day of arrival if the applicant is fit and well enough to be interviewed. The applicants then have a month - not a matter of days, but a month - in which to submit additional information before the case is considered. It is not the case that the case will be completed from the start to the end of appeal within 10 days. Cases are unlikely to take anything less than two months, even under this new procedure. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1043**

3.12.2 *Baroness Williams of Crosby: My understanding is that a case has to be prepared and dealt with within 17 days of receiving the Home Office notice of refusal of an application. If that is incorrect, would the noble Baroness tell me on exactly what grounds it is incorrect?* ***HL Committee 23.4.96, Col 1044***

3.12.3 I am saying that the Home Office will be dealing with them. Under the new system, the first substantive appeal will be heard, and people, on arrival, as I have said, will have their cases heard and they will be given a month to provide the information before their cases are properly, fully considered. Then the time table starts, and if they go into the accelerated procedure, then the time table starts to count; and if they go into the other part of the procedure then of course the accelerated time table will not apply. …

The noble Baroness is talking about the appeal stage, and I am talking about the fact that there will be a substantive consideration of the case following arrival and, in preparation of that case, they will be given a month in which to provide information in relation to that case. Then of course it goes, if it is appropriate, into the accelerated appeal procedure. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Cols. 1044-1045**

3.12.4 Does not the hon. Gentleman [Shadow Home Secretary Jack Straw MP] accept that even applicants from countries on the designated list will have their cases considered on their merits? Is there not an analogy to be drawn with the present situation, in which a small number of applicants even from most designated countries still manage to satisfy us of genuine need each year? Is the hon. Gentleman aware that I assured the Standing Committee...that there would be cases where it might be appropriate to remove applicants from the fast-track procedure and would do so? **Minister of State Home Office Ann Widdecombe MP, HC Consideration of Lords Amendments 15.7.96, Col 809**

4. THE SHORT PROCEDURE

4.1 The short procedure: general

4.1.1 With great respect, the hon. Gentleman has misunderstood one vital part of the operation of the short procedure - that it is designed to accommodate straightforward cases. If we believe at substantive interview that a case is not straightforward and that it presents particular considerations, the case can be removed from the short procedure and dealt with under ordinary procedures.

If on substantive interview a case appears to present considerations that we think will make it a likely case for asylum, and if it then also transpires that there is evidence to be obtained or that there is some other reason for a delay in the case, that will be accommodated within our procedures. The point of the designated list is to apply accelerated procedures but also, most importantly, to give full consideration to individual cases. Where it appears necessary or justified, a fuller consideration can be given.

The question of the determination of what is a straightforward case will influence later discussions… . It does not easily lend itself to listing exhaustive grounds and exhaustive criteria. **Minister of State Home Office Ann Widdecombe MP, HC Committee 9.1.96, Col 42**

4.1.2 *Baroness Williams of Crosby: …perhaps I may raise the possibility of the short procedure being extended to other countries. It was announced by the Home Office on, I think, 16th March of this year. Can the Minister tell us whether the safeguards which she told us applied to people who conceivably might be victims of torture would still apply if the short procedure were extended beyond the group of countries on the designated list.* ***HL Committee 30.4.96, Cols. 1565-1566***

4.1.3 I can give the noble Baroness, Lady Williams, an unequivocal yes. The same safeguards would apply to any safe third country added to the list. I have also made clear that the countries we were considering possibly adding to the list were the United States, Canada and Switzerland. It would be difficult to argue that they were not safe third countries. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1569**

4.2 The short procedure: unaccompanied children

4.2.1 ...the short procedure, which is an accelerated determination procedure for the initial consideration of asylum claims by the Home Office, is not applied to claims from unaccompanied children and we have no plans to do so. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 627**

See also: 3.12 The Designated list and claims by nationals of designated countries: procedures on arrival Page 24 on Unaccompanied children see 13.2-13.5 Pages 85-86 and 13.8 Page 88

5. ASYLUM CLAIMS: THE ACCELERATED APPEALS PROCEDURE ('FAST-TRACK')

5.1 The extension of the accelerated appeals procedure: general

5.1.1 Clauses 1 to 3 extend the existing accelerated appeal procedure to a wider range of cases, enable the Home Secretary to designate countries where there is in general no serious risk of persecution, and make the right of asylum seekers to appeal against removal to a European Union member state exercisable only after removal. These are sensible, balanced and fair measures... . They involve no departure from accepted asylum principles. Nor do they conflict with our international obligations. We shall not return asylum seekers to the country where they claim to fear persecution without giving them an opportunity to explain their fears fully and, if asylum is refused, to appeal to an independent adjudicator. **Minister of State Home Office Baroness Blatch, HL Third Reading 2.7.96, Col 1360**

5.1.2 Clause 1 introduces other new criteria for certifying that a claim is without foundation. They include claims the basis for which no longer subsists; those lodged only after the refusal of leave to enter or the commencement of removal action; and those which are manifestly fraudulent. We have made clear in our background note the intended scope of these provisions. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1542**

5.1.3 The certification procedures are designed specifically for cases which are straightforward and manifestly unfounded. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 478**

5.1.4 There is no question of the Bill enabling us to certify every claim we refuse. Examples of cases which would fall within the criteria are claims openly based on poverty or unemployment at home rather than fear of persecution; claims based on events or facts which are shown to be untrue; the large group of Pakistanis who claimed asylum because of membership of the Pakistan People's Party and who appealed against refusal even though that party had since become the Government of Pakistan; or immigration offenders who make no claim for asylum until action is taken to remove them. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96, Col 960**

5.1.5 I remind the Committee of the safeguards that the Bill will leave in place for cases covered by Clause 1. First, asylum claims cannot be certified until after they have been considered substantively in the normal way. All applicants are invited to an interview, and all are given an opportunity to make additional representations afterwards. All claims will still be considered substantively and granted asylum or exceptional leave to remain where warranted. Those refused will still receive a letter setting out the reasons for refusal. And all will still have an appeal to an adjudicator. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1507**

5.1.6 It is worth reminding the Committee that there are two basic procedural safeguards that will not be infringed in any way by this clause. First, all asylum claims will continue to be considered on their merits against the same convention criteria as all other claims. A certificate under Clause 1 cannot be issued until that has been done. And, secondly, before removal to their country of origin all applicants will continue to have the right to appeal to an independent adjudicator against an adverse decision on their claim. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1540**

5.1.7 Let me take the example that I gave of the student who completes a course. He is due to return to another country. He refuses to go at the point of deportation and seeks asylum. The proposition in the Bill is that he should be put through the accelerated procedure. The adjudicator hears the case. If in the case put to the adjudicator there is good reason why he should not have received a certificate in the first place, the adjudicator could set the certificate aside. All I am saying is that those applicants will have their case heard. They will have an appeal right. Therefore, if they have good reason, it will be put before the adjudicator. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1499**

5.1.8 I believe I misled the House in saying that it was the adjudicator who determined the accelerated procedure. It is after substantive consideration that a decision as to whether it should be normal track or fast track is taken and then of course it is for the adjudicator to hear the appeal. But it is nevertheless after substantive consideration of the case. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1509**

5.1.9 It is already the case, in the 1993 Act and in the Bill as drafted, that an asylum seeker can only have his application refused if he does not meet the criteria set out in the 1951 convention. Those criteria have been incorporated into immigration law under Sections 1 and 2 of the 1993 Act. Nothing in the 1993 Act, or in this Bill, detracts from that principle.

It follows, therefore, that the application has to be considered against the convention criteria before a decision can be taken on whether the applicant is or is not a refugee. The certification procedure ... comes into play only after the Secretary of State has concluded in the light of such an assessment - that is, against the convention criteria - that the applicant is not a refugee. It is at that point that the 1993 Act provides a mechanism for assigning manifestly unfounded applications into an accelerated appeal procedure.

Therefore the Secretary of State first examines the application against the convention criteria. Only if it fails those criteria does he go on to consider whether it falls under any of the criteria for certification set out in the expanded version of paragraph 5 which Clause 1 of the Bill will insert into the 1993 Act. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1048**

5.2 False passports/travel documents/ failure to produce passport (without reasonable explanation)/ failure to indicate invalidity of passport

5.2.1 *The Act provides for the accelerated appeals procedure to apply to claims where a person fails to produce a passport without giving a reasonable explanation for failing to do so and where a person produces an invalid passport without informing the immigration officer of that fact [s1(3)(a)].*

The Bill as originally drafted however, did not include specific provision for undocumented passengers or for people who fail to declare false travel documents at the port of entry and most of the discussions on these topics took place in the context of debate on manifestly fraudulent claims/claims supported by any manifestly false evidence [s1(4)(d)], with ministers drawing a firm line between people who declare invalid documents at port and those who do not. I have therefore listed all statements on false passports/travel documents in the following sections: 5.6 Manifestly fraudulent claims/manifestly false evidence: general Page 29, 5.7 Manifestly fraudulent claims/manifestly false supporting evidence: general Page 29, 12.23 Social security provision: procedures at the port of entry - general Page 81

5.3 Claims not `showing' a fear of persecution

Clarifying why claims which fail to 'show' rather than 'raise' (as contained in the 1993 Act) a fear of persecution by reason of the appellant's race, religion, nationality, membership of a particular social group, or political opinion, are certified as cases to be fast-tracked:

5.3.1 We believe that it is appropriate for the consideration of a certificate that in sub-paragraph (a) for instance, an applicant should be required to show rather than merely incidentally to raise a matter of that kind. In other words, there must be a clear indication by the applicant.

We can consider for the certificate only cases which fall under the 1951 convention. The hon. Gentleman is unnecessarily concerned because in obliging the matter to be raised and thereby considering it for our certificate we are fitting it within the 1951 convention rules. Merely to use the word 'raise' leaves an enormous amount of uncertainty as to whether the grounds are within the 1951 convention.

The hon. Gentleman will also be aware that even in those cases where a without foundation certificate is rendered - and they are comparatively few and far between - it is a matter after that for the adjudicator to determine whether the certificate was granted on the right basis. Our legal advice on sub-paragraph (a) [now s1(4)(a)] is fairly clear. It would not allow us to certificate a refused asylum claim just because we had decided that it was unfounded. To put it succinctly, in order for a claim of this kind to get off the ground it must show that it has a convention basis. That is why we have chosen the word `show' rather than a word like

`raise'. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 11.1.96, Cols. 92-93**

5.3.2 The new `without foundation category in sub-paragraph (a) has a narrow scope. [s1(4)(a) refers to claims not showing a fear of persecution by reason of the appellant's race, religion, nationality, membership of a particular social group, or political opinion]. It is not our intention to use the provision to certify all refused applications and our legal advice is clear that it would not allow us to do so. Sub-paragraph (a) has been introduced to allow us to certify claims where the grounds cited manifestly do not amount to persecution - claims based, for example, on a fear of prosecution for a non-political crime or on solely economic considerations. **Minister of State Home Office Ann Widdecombe, HC Committee 11.1.96, Col 99**

5.4 Manifestly unfounded fears

5.4.1 There may be some people... who are refused asylum or exceptional leave, but there will always be good reason for that. It may be, for example, that there are changed circumstances in their country of origin and that, indeed, the party they support has come to power. Now, if you come to this country and said,' I am being persecuted because 'x' party is in power and they don't like my party' and subsequently 'x' party loses power and your party wins, it does not seem to me that you can actually continue to pursue your asylum application. …

Perhaps I can tell your Lordships that there are some applicants from Pakistan who find themselves in exactly that position. I find it interesting to know how you can continue to say that you may be persecuted for your political beliefs if your party has actually gained over the opposition, and that in a free election too in the country I have just given as an example - not that I think there would be any examples of torture from Pakistan. However, I instance it as a case where people continue their asylum application after their own party has gained power. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Cols. 1324-1325**

5.5 People refused leave to enter/facing deportation or removal

5.5.1 ...the late claims provision will not apply to people merely because they do not apply at the point of entry. It will apply only to people who apply for asylum to stave off removal action - that is, after they have been refused leave to enter, have been notified of the intention to deport or of liability to removal as an illegal immigrant. The late claims provision is designed to cover cases in which people claim asylum at that stage, without prior warning. It is not designed to cover the chap who enters the country and who does not apply for asylum immediately at the port of entry, but who then makes a full and proper claim. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 172**

5.5.2 ...the [late claims] provision is not about people who do not claim at the first possible opportunity - that is, at ports - but about those claim only at the last opportunity, when they have exhausted everything else and are facing removal. ...no claim made during the currency of valid leave would be certified a late claim. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 173**

5.5.3 The same point [that overstayers and illegal entrants should not be afforded the opportunity to give a reasonable explanation for the timing of their asylum application] applies to overstayers and illegal entrants who claim asylum to fend off removal. In our view it is wholly unacceptable to insert an open invitation to late applicants to provide an excuse for their failure to claim earlier. Of course the Bill does not compel the Secretary of State to certify the claim and we would not do so if, exceptionally, we were satisfied that the lateness of the claim resulted from a genuine change of circumstances , such as news from the country of origin that the applicant was wanted by the authorities. But it would have to be a pretty extraordinary and convenient coincidence if such news happened to arrive just when the illegal entrant was about to be removed after he had been here for perhaps several years. And if we were satisfied that such news had indeed arrived coincidentally, we would be likely to grant asylum or exceptional leave to stay. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 527**

5.5.4 First, under the Bill as drafted, a certificate will be available only where the claim has been fully considered and rejected. If it is found to be a valid claim, asylum or exceptional leave will be granted despite the circumstances in which the claim was submitted. But, if the claim is not well-founded, the fact that it was submitted only after refusal of leave to enter or after a court has recommended deportation will almost invariably justify a certificate. As I have already said, we expect that a genuine refugee would apply for

asylum at the earliest opportunity. We need to send a clear signal that abuse of the asylum procedures in order to frustrate enforcement of our immigration laws will be met robustly. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 508**

5.6 Manifestly fraudulent claims/manifestly false evidence: general

The Bill states:

5.6.1 My Lords, sub-paragraph (5)(d) [s1(4)(d)] enables the certification of a claim in which manifestly false evidence has been submitted. … The amendment does not affect the first leg of sub-paragraph (5)(d), which would enable us to certify a claim where, for example, it was established the alleged events forming the basis of the claim have not taken place. The amendment would remove the ability to certify refused applications where part of the evidence is found to be false. It is not unusual for applicants to submit forged evidence, such as a forged arrest warrant purporting to show that the applicant was detained by the authorities in his own country.

A deliberate attempt to deceive the Home Office by the submission of false evidence cannot be condoned. The Immigration Rules already provide that the submission of false evidence may damage credibility. We will not necessarily certify where part of the evidence is found to be false. The key test will be that the false evidence relates to the main basis of the claim. Even where this is the case, the claim will still have to be considered in the usual way, of course. If the claim qualifies for asylum despite the forging of part of the evidence, asylum will be granted. Where such claims are found to meet the criteria for refugee status, it is entirely right that the false evidence submitted purely to bolster the unfounded claim should result in a refusal and also attract a certificate.

If the adjudicator considers that the evidence is not manifestly false he can set the certificate aside at the appeal hearing, even if he goes on to uphold the refusal of asylum, and in such circumstances the appellant's avenue of appeal to the tribunal would be reinstated. The fact that an applicant has travelled to this country using false papers could not in itself trigger certification under sub-paragraph (5) (d). The Bill clearly refers to evidence adduced in support of a claim and therefore if the applicant claims asylum in his true identity, sub-paragraph (5)(d) could not possibly come into play. However, it could apply if the applicant maintained the false identity or nationality shown on the false travel document for the purposes of pursuing his asylum claim. In that case, if asylum was refused we would want to certify the case... .

To answer a particular point raised by the noble Baroness, Lady Williams, … this particular measure would only apply to evidence adduced by the applicant and not by a third party.

Perhaps I might repeat to the noble Earl, Lord Russell, that this amendment is concerned with false evidence and not with illegal entry. A claim itself may not be fraudulent but the evidence adduced to support it could be fraudulent, and that is why one has to take one with the other. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 512-513**

5.7 Manifestly fraudulent claims/manifestly false supporting evidence: general

The Bill states:

5.7.1 'This sub-paragraph applies to a claim if...(d) it is manifestly fraudulent or any of the evidence adduced in its support is manifestly false.'

That is to say, it applies if the claim or evidence adduced in support of the claim is false. If the claim for asylum is false, or the evidence adduced - not to obtain a passage out of a country but to support the claim for asylum - is false, the sub-paragraph will apply. It is hardly necessary to do more than point that out. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 132**

5.8 Undocumented passengers

5.8.1 There is no question of the Bill's enabling us to certify every claim we refuse. …

Growing numbers of asylum applicants arrive undocumented, having destroyed or disposed of the passports on which they travelled. That makes it more difficult to assess their claims, to identify those who have travelled via a safe third country and to effect removal if asylum is refused. ...Clause 1 will enable such claims to be certified unless a reasonable explanation has been offered. Those who travel on fake papers will not be adversely affected provided they declare them on arrival, but failure to do so would attract a certificate. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96, Col 960**

5.8.2 There is a huge difference ... between certification of a claim on the ground that it is false and the history that may apply to illegal entry. Illegal entry can be dealt with on its own merits. If someone entered the UK on false pretences and subsequently claimed asylum, the claim would not be certified unless the claimant insisted at the point of claim on the truth of the documents that were used to support the claim. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 134**

5.8.3 Let us be specific about what would count towards a claim being certified. Assume that someone called X enters the UK on a document that proclaims him to be Y. He has entered illegally - there is no argument about that. At a later stage, he claims asylum. If he does so as Y, and insists on the validity of the documents with which he entered the country, we would be able to certify his claim. If he said at that point that he had come to the country illegally and was not Y but X, he would not be using manifestly false evidence to support his claim. He would have used false evidence to enter the country but not to support his asylum claim. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 135**

5.9 Declaring false travel documents at port of entry

5.9.1 Of course we accept in principle that occasions will arise on which, for example, people use false documentation to escape from a country. It happens rarely, statistically, but it will happen on occasion. That will not invalidate a claim for asylum, because it will not render the claim for asylum false and it will not make the evidence supporting the asylum claim false. It will mean only that an individual has used false documents to escape from a country.

As my hon. Friend the Member for Gillingham [James Couchman MP] pointed out, if someone arrives at a port and explains that his or her documents are false and admits to having come to Britain not as a visitor, as the documents claim, but to claim asylum, and to having a different name from the one on the document, the claim would not be prejudiced in any way. It would not fall within the relevant sub-paragraph [s1(4)(d)]. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Cols. 132-133**

5.9.2 Like the rest of Clause 1, sub-paragraph 4 will not prejudice the consideration of the asylum claim on its merits. If the claim is valid, asylum or exceptional leave will be granted regardless of document deception used on arrival. And the Bill will not penalise the genuine asylum seeker who has to travel on false papers, provided that he is honest and declares the false papers on arrival. **Minister of State Home Office Baroness Blatch, HL Committee 9.5.96, Col 290**

5.9.3 As I have said during consideration of the Bill, we recognise that asylum seekers may have to practise deception in order to leave their own country and travel to this country. I say again that what we do not accept is that having arrived in the United Kingdom, the deception, such as reliance on false travel documents, is maintained in an effort to secure entry in a capacity other than a refugee. An asylum seeker who has employed deception in order to reach the United Kingdom but then presents himself at the control and seeks asylum will have absolutely nothing to fear from the offence in Clause 4. …

It is difficult to imagine any circumstances where an asylum seeker would need to employ deception in order to secure leave to remain as a refugee or on an exceptional basis unless he actually had no claim to such status and his asylum claim was a work of fiction or deception. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Cols. 1272-1273**

5.10 Failure to declare false travel documents at the port of entry

5.10.1 We have consistently made it clear that we expect asylum seekers to be candid with our immigration authorities on arrival. We accept in principle that there might be circumstances where a genuine refugee would need to use false papers in order to flee a country in which he had had a genuine fear of persecution.

Under the Bill, no adverse consequences arise for the asylum seeker merely because he presents an invalid passport provided that he informs the immigration officer of that fact. But what is unacceptable and casts doubt on his credibility is an attempt to pass off a false passport as genuine. It is the dishonesty inherent in that attempt which triggers the accelerated appeal procedure if, after proper consideration, the claim is refused. I do not accept that the Bill should anticipate there being a 'reasonable explanation' for such conduct. After all, those presenting false papers to immigration officers are not doing so out of necessity, but, by definition, they have already fled the country in which they claim to fear persecution and have arrived at their chosen place of safety. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 527**

5.11 False passports/travel documents: the meaning of 'without delay' (Article 31 of the 1951 United Nations Convention)

5.11.1 Article 31 of the 1951 convention says that we must not penalise refugees who enter unlawfully provided that they present themselves without delay. Clause 1 does not in fact penalise them. There is a crucial distinction between using false papers to flee the country of origin and using them to gain entry into this country. Sub-paragraph (3) is aimed at those who seek to frustrate our asylum procedures - not somebody else's- by withholding passports or passing off false documents. ...

Asylum seekers who present themselves properly as required by Article 3 and who are honest with our immigration officials will not be adversely affected. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1120**

5.11.2 The noble Lord, Lord Dubs, prayed in aid Article 31 and our reference to it in a previous debate. I reject the argument that sub-paragraph 4(b) as currently drafted is contrary to the terms of Article 31 of the 1951 UN Convention. Article 31 states that refugees shall not be penalised on account of their illegal entry provided they present themselves without delay to the authorities and show good cause for their illegal entry and presence.

First, the issue of a certificate comes into play only after the claim has been considered fully and on merit and has been found to be invalid. By definition, therefore, the Secretary of State has concluded that the applicant is not a refugee under the terms of the convention.

But, secondly, applying a certificate to a refused asylum claim, thereby triggering an accelerated appeal procedure, cannot be construed as imposing a penalty in terms of Article 31. As I have said on many occasions, all claims will still be considered on merit in the usual way. And all applicants will still have an appeal to an independent adjudicator if the claim is refused. This is a perfectly adequate procedure in such cases and cannot be termed a penalty. Moreover, those who enter or attempt to gain entry using false papers would have had ample opportunity to present themselves to the UK authorities to apply for asylum when examined by an immigration officer on arrival. It is the dishonesty inherent in deceiving the immigration officer that triggers the certificate if the claim is refused. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 506-507**

5.11.3 *Earl Russell: Without delay does not mean at the point of entry; it means without delay after entry.* ***HL Committee 23.4.96, Col 1121***

5.11.4 We have added two conditions for people to present themselves at the point of entry because we believe that is the fairest thing. It qualifies them to receive benefit and their cases will be considered substantively anyway. We believe that it is easier for them to be honest at the point of entry, having fled from danger in their own country, if that is what they have done. If they come here without documentation there should be some reason for it. That reason should be given at the point of entry. If they come with documentation that is not in order that should also be admitted at the point of entry and reasons given; otherwise, they have to resort to deception. In those circumstances, there is no way that they can pass through immigration unless they resort to deception. We are simply saying that they should not resort to deception. ...

We have consistently made clear that we expect asylum seekers to be completely honest and frank with our immigration authorities on arrival in this country. Dishonesty and concealment damages credibility. Above all, it damages their credibility. Parliament has endorsed that principle, since it is already present in the immigration rules. Paragraph 341 makes clear that destroying, damaging or disposing of a passport, other document or ticket relevant to an asylum claim may damage credibility if no reasonable explanation is given. We accept in principle that there will be circumstances where a genuine refugee needs to use false papers in

order to flee a country in which he has a genuine fear of persecution. Under the Bill no adverse consequences arise for the asylum seeker merely because he presents an invalid or forged passport, provided that the applicant declares the forgery to the immigration officer. But what is unacceptable, and casts doubt on credibility, is an attempt to pass off a fake identity or forged passport as genuine. It is the dishonesty inherent in such an attempt which triggers the accelerated appeal procedure. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1122**

5.11.5 The Opposition are trying to say that someone who is vulnerable, uncertain and does not know his way around can arrive at a port of entry and, according to the hon. Gentleman, find it easier to sustain a deception, maintain an identity that is not his and answer questions untruthfully than simply to say at the port of entry, 'Help, I claim asylum'. I do not understand that. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Col 130**

5.12 False passports/travel documents: the issue of warning asylum seekers to disclose false documents at port

In response to Baroness Seear's enquiry as to whether notices would be posted at ports warning asylum seekers to be honest:

5.12.1 It is quite incredible to believe that there should be notices telling people not to lie as they pass that point. If somebody arrives at immigration or passport control he or she will be asked questions. The person either has documentation or does not have it. If not, it is important that the person gives the reason for not having it. If the person has false documentation and that fact is picked up at the point of entry it is important that the person should say so. We hope that as immigration officials ask these questions they will remind people that it is better to answer them honestly rather than that there should be notices that they should tell the truth as they pass through the gates. But people look immigration officials in the eye and pass themselves off in this way either by telling lies or by having false documentation that goes undetected. …

The most difficult part of the whole project for people fleeing persecution is to flee the country and to find a way to obtain some kind of document to get out of that country. ...When they come to the port of entry the immigration officials will of course tell them that it is better to tell the truth. ...When the immigration officials are questioning somebody who has documentation that is not correct, ... it is actually better that you tell the truth rather than be dishonest with them. You do not have notices up simply saying: `Tell the truth when you are asked the question.'

It is an extraordinary thing, but immigration officials will clearly remind people that when they are being asked a question it is better for them, particularly if they are seeking asylum, to tell the truth at the point of entry. That is better than having notices up in the many different languages which would be needed at Heathrow Airport, Gatwick Airport or Stansted Airport...There is an expectation that people should be honest as they come through the ports of entry. ...

If somebody is genuinely fleeing persecution as in the case described by the right reverend Prelate - and that was a very serious case - [a Nigerian woman, whose two children and husband, also a Nigerian and a Moslem, had been killed in Lagos, entered the UK with a false passport which she failed to declare at port] there are two factors to take into consideration. It would actually be better to give an explanation at the port of entry. I just wonder about the person who has to deceive his way through the port of entry. Where does he go then? At some point he has to say: `I wish to have asylum'. At some point he has to go to authorities to do that. …

We are trying to say that people should have an explanation why they either have no documentation or documentation which is not in order. We are simply asking people to tell the truth in their own interests. ...

In this Bill, no adverse consequences arise for asylum seekers merely because they present an invalid or forged passport, provided that the applicant declares the forgery to the immigration officer. What is not acceptable is to pass off false documents as genuine. It is the inherent dishonesty which is the problem.

Those presenting false papers to our immigration officers are not doing so out of necessity. By definition, they have already fled the country in which they claim to fear persecution and such deception cannot be condoned. It is difficult to imagine a scenario in which an applicant would have a reasonable explanation for attempting to deceive our immigration authorities in such a blatant manner. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Cols. 1122-1125**

5.12.2 In the new procedures we are saying that it is preferable not to continue to lie through immigration control, which those people must do if they are not going to admit that they have no documentation or forged or improper documentation. But even if they do not do that, as was the case mentioned by the right reverend Prelate, [a Nigerian woman, whose two children and husband, also a Nigerian and a Moslem, had been killed in Lagos, entered the UK with a false passport which she failed to declare at port] their case is still considered and they still have an opportunity to give the reasons why they did not do that. We are simply saying that in the new procedures, it is preferable for them to make that declaration at the port of entry. It seems extraordinary, as I say, that you need more courage to be deceitful than you do to be honest. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1125**

In response to Lord Russell's enquiry as to whether a wish to seek legal advice was a proper reason for delaying an application until after entry:

5.12.3 I simply make the point that they have clearly travelled great distances, having used great ingenuity, both to escape in the first place and to come round the world. England is where they want to come. ... Having arrived here, we do not expect them to understand immigration law, but we do expect them to tell the truth. When they are asked why their documentation is not in order, it is actually more difficult - especially if there is a language problem, or if they are nervous or traumatised - to be deceitful about that than it is to be honest. They have arrived at the country they want to come to. That does not prevent them from receiving advice. They can of course take advice, but it is important that they are honest with the officials whom they have to meet at the airport or the port of entry. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1127**

5.13 The wider category of frivolous or vexatious claims

5.13.1 By reintroducing the [frivolous and vexatious] category here, we intend - and I am quite open about this - to allow it wider scope than hitherto. ...we intend it to cover repeat and multiple applications which are important. …

The term frivolous would apply to a claim that was based on facts that differ from and are wholly incompatible with those cited by the applicant, whether in a previous claim, in contact with the authorities, or, indeed, in the same application. It would apply to claims from manifestly safe countries, such as other European Union states.

The term `vexatious' would apply when a failed asylum seeker made a repeat claim which did not differ significantly from one which had already been rejected and to multiple claims in several identities. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 16.1.96, Col 139**

5.14 Claims remaining outside the accelerated appeals procedure: general

5.14.1 Applications that raise a convention issue that are not clearly made to stave off enforcement action, are not manifestly fraudulent or where the convention issue has not fallen away - most applications, for example, from Iran, Iraq, Bosnia and so forth - are relevant examples [of cases that would fall outside the 'without foundation' category]. Applications from a designated country requiring more detailed examination - for example, exceptional applications from high-profile figures from such countries or others - provide further instances. **Minister of State Home Office Ann Widdecombe MP, HC Committee 11.1.96, Col 100**

5.14.2 Each of the new criteria has a specific application. The clause will not allow us to certify all refused claims. A substantial proportion of cases will continue to fall outside the scope of the certification procedure and will therefore attract the standard appeal rather than the accelerated one. The role of the Immigration Tribunal in developing immigration case law will therefore remain. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 542**

5.14.3 I would remind your Lordships that many or most refused applications will not attract a certificate. I have also made clear that certification will not be automatic. We will not, for example, certify a claim if, despite meeting the certification criteria, it raises particularly novel and complex legal arguments on which there is no clear case law. I should also stress that the Home Office currently operates a sensible policy in terms of when to appeal to the tribunal. For example, we do not normally appeal to the Tribunal purely on the

grounds that the adjudicator had found the appellant credible whereas the Home Office did not, providing the adjudicator had considered all the evidence fully and carefully. Indeed, in 1995, the statistics record the Home Office as having made only 40 applications for leave to appeal to the tribunal. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 524-525**

5.15 Victims of torture: exemption from the accelerated appeals procedure - general

5.15.1 If the Home Office, in assessing an asylum claim, finds that there is a reasonable likelihood that the applicant has been tortured, then in the great majority of cases it will, of course, grant asylum or exceptional leave to remain. It may be that an applicant has been tortured on account of his race, religion, nationality or membership of a particular social group, or political opinion. In that case he would almost certainly be recognised as a refugee. A person who has been tortured but does not have a well-founded fear of persecution for a reason specified in the 1951 convention would normally be granted exceptional leave to remain. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1323**

5.15.2 The noble Baroness, Lady Williams, has proposed that, in addition to an exemption for victims of torture, asylum applicants should be excluded from the accelerated appeal procedure if their country of origin has a consistent pattern of human rights abuses or an extensive record of torture. …

First, the conditions in the country of origin will of course have to be taken into account in any case in assessing an asylum claim based on torture. We have only recently discussed China where we all know and have an understanding that terrible acts of torture take place. I made it absolutely clear that if asylum applicants meeting those conditions applied, they would be seriously considered for asylum purposes. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 490**

5.16 Victims of torture: exemption from the accelerated appeals procedure - evidence

5.16.1 If somebody needs to find medical evidence to support his claim, then time for that evidence to be found is given. That has nothing whatever to do with the three-day amendment that we passed earlier. The three days relate to making the claim for asylum, not to providing substantive evidence that the person has been tortured. The same explanation applies to establishing a likelihood. The point at which an applicant needs to establish the likelihood of having been tortured will be at the adjudication point. Where the adjudicator has given time for the applicant to amass his evidence, he will consider it and then make one of three judgements. First, he may dismiss the case because it is manifestly unfounded; secondly, he may take the view that the evidence is so overwhelming and what has been said in support of the claim is such that he believes that torture has taken place - in which case Clause 1 would be disapplied; or, thirdly, he may believe that a likelihood has been established, in which case again Clause 1 would not apply. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Cols. 1277-1278**

5.16.2 The problem the noble Baroness introduces in regard to time to provide the evidence is taken into account. [Lady Williams asked how much time the fast track procedure would allow for evidence to be produced]. However, as a caveat to that, judgements will have to be made about somebody who takes an unreasonable amount of time and clearly is not showing signs of producing or securing evidence. All reasonable accommodation is made at the adjudication point. I believe that there is confusion between applying for asylum at the point of entry and having to prove or establish a likelihood that an applicant has been tortured. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Cols. 1278-1279**

5.16.3 If someone applies at the port of entry for asylum and the grounds are that they have been tortured, then, as noble Baroness, Lady Hollis, told us in the last amendment, it will be some months before their case comes to be decided. I would have thought that there is more than enough time for them to obtain any necessary medical evidence in order to substantiate the claim they made on arrival. …

Once they apply for asylum they will have that amount of time between that day and the time their case is examined to put together the medical evidence.

Under amendments (d) and (e), asylum applicants would be excluded from the accelerated appeal procedure if their country of origin is reported by certain UN bodies to have an extensive practice of torture. Let me say right away that I entirely share the House's concern about giving adequate protection to victims of torture. I state categorically that if anyone were to establish that he or she were in danger of torture, that person would have clear grounds for asylum. That has always been the Government's position and that remains our position. **Minister of State Home Office Ann Widdecombe MP, Commons Consideration of Lords Amendments 15.7.96, Col 820**

5.16.4 Other reference was made to time constraints. [The Lord Bishop of Ripon raised concerns about whether the accelerated appeals procedure allowed sufficient time for victims of torture to produce relevant evidence]. The time constraints only come into play after there has been substantive consideration of the claim when time is given to gather evidence and to collect evidence such as medical certificates. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1059**

See also: Chapter 7 VICTIMS OF TORTURE Page 39
2.8 Victims of torture: The United Kingdom's obligations under the 1951 United Nations Convention, The 1981 United Nations Convention on Torture or Other Cruel or Inhuman Treatment and the European Convention on Human Rights Page 10
8.6 Safe third countries: victims of torture Page 48

6. SPECIAL ADJUDICATORS' POWERS

6.1 Accelerated appeals procedure: existing procedure for 'without foundation' cases

6.1.1 I said that, in many cases, the position would remain as it is now. ...Under the existing without foundation procedure, the appellant cannot appeal to the tribunal if the adjudicator upholds the Secretary of State's certificate. That is justified: if two authorities - the Secretary of State and the adjudicator decide that the case is without foundation, there should be no further redress. The purpose of the accelerated appeal is to complete the appeal quickly so that removal can take place, but if the adjudicator disagrees with the certificate, whoever loses - the appellant, if the adjudicator dismisses the appeal - has an avenue to the tribunal.

Let us suppose, for example, that the Secretary of State refuses asylum and issues a certificate under new sub-paragraph (3A) (e) [frivolous/vexatious claims, now s1(4)(e)] on the grounds that the application is a repeat of an unsuccessful asylum claim made during a previous visit to the United Kingdom. However, the adjudicator disagrees with the certificate because he believes that the grounds for the claim are significantly different from those of the previous application. He might nevertheless uphold the refusal of asylum. The appellant could then seek leave to appeal to the tribunal. **Minister of State Home Office Ann Widdecombe MP, HC Committee 16.1.96, Cols. 176-177**

6.2 Removal of special adjudicators' powers to refer claims to the Secretary of State

6.2.1 At present, without foundation appeals include cases where asylum has been refused on safe third country grounds, but under the Bill third country appeals will be dealt with under a separate procedure provided by Clause 3. All without foundation appeals will therefore have been substantively considered by the Secretary of State. In allowing the appeal the adjudicator will be overturning the refusal of asylum, just as in a normal (uncertificated) asylum appeal. There will therefore be no question of the case being left in limbo. …

The adjudicator will have before him the evidence which was submitted to the Secretary of State, the Secretary of State's reasons for refusal, any additional evidence advanced by the appellant subsequently and any response to that evidence by the presenting officer on the Secretary of State's behalf. That should provide a sufficient basis for determination. If, exceptionally, the adjudicator feels that he needs further comment, advice or information from the Secretary of State, it is open to him to adjourn for this to be provided. The Bill will not change that. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p23, Supplementary Comments**

6.2.2 The Government believe that adjudicators should in future in all cases either allow or dismiss the appeal. ... The Bill would therefore abolish the option of referral to the Secretary of State which is currently available in certain circumstances because, as I have said, the adjudicator would either allow or dismiss the appeal. ...

Referral back to the Secretary of State is entirely unnecessary. It has to be remembered that all cases covered by Clause 1 will have been substantively considered by the Secretary of State. ... It is true that Clause 1 will extend the circumstances in which the Secretary of State can issue a certificate if he refuses an asylum claim. But that does not mean that the Secretary of State is excused from the obligation to consider the asylum claim substantively. He cannot issue a certificate until he has done so. So the applicant will still be interviewed. The grounds for his claim will still be assessed. If asylum is refused, the reasons for refusal will still need to be set out in a letter.

It follows, therefore, that the adjudicator should have before him the information he requires to decide whether the applicant qualifies for asylum. He will have the interview notes, the Secretary of State's letter of refusal, any additional grounds subsequently submitted with the appeal and the presenting officer's response to those additional grounds at the hearing. In some cases, the grounds for appeal, if introducing significantly new issues, will have elicited a further written response from the Secretary of State. All of that material will be before the adjudicator in Clause 1 cases. If, exceptionally, the adjudicator requires further comment or

information from the Secretary of State, it is open to him to adjourn for that to be provided. The Bill will not change that.

It has been suggested that the option of referral back to the Secretary of State is needed to cater for cases where the adjudicator finds that the Secretary of State's initial decision was legally flawed or failed to comply with the Immigration Rules. That argument reflects a fundamental misunderstanding of the adjudicator's role. Unlike, for example, the Court of Appeal, his role is not limited to reviewing the validity of the initial decision. And he is not restricted to the information which was available at the time that decision was taken. On the contrary, his task is to form his own view of the validity of the asylum claim, taking account of all the available information, including any which has come to light since the initial decision was taken. That is a well-established principle, and it would be damaging to change it now. So if the adjudicator finds that the initial decision was technically or legally flawed, he should nevertheless go on to form his own view of the validity of the asylum claim and either allow or dismiss the appeal accordingly.

Some may think that cases will be left in limbo if they cannot be referred back to the Secretary of State. There is no such risk. As I have already said, the issue before the adjudicator in all Clause 1 cases will be whether the appellant qualifies for asylum. If the adjudicator allows the appeal, he will be overturning the refusal of asylum. If he dismisses the appeal, he will be upholding the refusal of asylum. Either way, therefore, there will be no question of the case being left in limbo. The third option of referral to the Secretary of State will therefore be unnecessary. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1520-1521**

6.2.3 I have made it clear ... that adjudicators can set the certificate aside and can take a different view from the Secretary of State on issuing certificates. But I have addressed quite directly, in the course of speaking to this amendment and a similar amendment earlier, [amendments aimed at giving adjudicators the power to set aside a certificate where in his/her opinion the claimant has a reasonable explanation for failing to declare false travel documents at port] that we do not wish to put on the face of the Bill the fact that a reasonable excuse is a key reason for setting the certificate aside. The adjudicator will make up his or her own mind as to what reason he or she produces for setting a certificate aside. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 528**

6.2.4 In all the cases cited by the noble Lord [Lord McIntosh: where the adjudicator concludes that the decision rejecting the claim has not been taken in accordance with the law or any relevant rules] we are suggesting that the adjudicator has the widest possible powers. He does not consider only procedural matters but he has the powers to determine. In order to make a determination he may continue to seek additional information from the Home Secretary, the Home Office and the applicant. He may seek any additional or relevant information that he believes is important to give a judgement either to allow or to dismiss the appeal. His powers allow him either to dismiss or to allow the appeal, and he can continue to keep a case before him until he is absolutely satisfied that he has taken into account all the information he needs to reach that view. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1522-23**

6.3 Special adjudicators' powers: the new procedural rules

6.3.1 Among a number of important improvements to the rules, our proposals [The Asylum Appeals (Procedure) Rules 1996] include an extension of the existing powers to resolve the case without a hearing. The draft rules would extend the adjudicator's existing discretion to determine the appeal on the papers in certain circumstances. …

They [the new procedural rules] include greater powers for adjudicators to make directions to the parties for the preparation of cases; a presumption against adjournments unless the adjudicator is satisfied that it is necessary for the just disposal of the appeal, and a stronger presumption against the admission of appeals if notice is not given in time, unless given late, because of circumstances beyond the appellant's control.

Powers to give directions are of no use without sanctions against non-compliance by either party. Therefore, we propose that the adjudicator will be able to proceed without a hearing or to treat the appeal as abandoned, if that is appropriate. In addition, we propose that the existing power to determine the appeal without a hearing may be appropriate in other circumstances. We believe that there may be cases where it would be both sensible and compatible with justice to proceed in that way. There are cases when, for example, it is plain from the papers that the appellant cannot, or has not, tried to dispute the incontrovertible nature of the

decision. Where it is plainly unnecessary to hold a hearing, doing so merely adds to the burden on the appeal system.

Perhaps I may stress three points. First, there is already provision for determining appeals without a hearing in certain circumstances. Secondly, we are emphatically not renewing the right to an oral hearing in all certified appeals, as suggested in the Peat Marwick report. All that is proposed is to extend the adjudicator's existing discretion to determine on the papers, if he considers that appropriate in an individual case. It will be entirely up to the adjudicator how far, if at all, he uses such a discretion. We believe that it is an option that should be available to the adjudicator. Thirdly, if an adjudicator uses that discretion unreasonably, the ultimate safety net of judicial review is always available. We do not think that will happen very often. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1512-1513**

6.3.2 The proposal is that the special adjudicator should be satisfied, having regard to the material before him, the nature of the issues raised, and the extent to which any directions given under rule 23 have been complied with, that the appeal could be so disposed of justly. It is the adjudicator who must make that consideration. It is the judgement of the adjudicator that it should be appropriate. As I have already said, if the adjudicator acted unreasonably, that would be subject to judicial review. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1514**

6.3.3 We believe that it is right that an oral hearing should be considered, but the decision as to whether there should be an oral hearing should belong to the adjudicator, not the appellant. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1514**

6.4 Time limits: special adjudicators' discretion

6.4.1 The present wording of the asylum appeals procedure rules is too wide ranging. Almost all out-of time appeals are currently being accepted. The Home Office background note on possible changes to the rules makes our view clear that greater emphasis should be placed on appeals being made in time. However, the discretion for adjudicators to accept out-of-time appeals when compelling reasons are given as to why the appeal could not be made in the statutory time limits will remain for all asylum appeals, whatever the applicant's immigration status. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 8.2.96, Col 635**

On the role of special adjudicators,
see also: 5.1 The extension of the accelerated appeals procedure: general Page 26
8.13 Safe third countries: appeals to special adjudicators Page 55
8.14 Abolition of right to bring non-asylum appeal under the 1971 Act until the certificate is set aside by a special adjudicator Page 55

7. VICTIMS OF TORTURE

7.1 Victims of torture: general

7.1.1 Torture, whether physical or psychological, is by its nature likely to be sufficiently serious to constitute persecution. Our aim is to ensure that genuine victims of torture are identified and protected. Information about country of origin, including consistent patterns of serious violations of human rights, is always taken into account. **Minister of State Home Office Baroness Blatch, HL Report, 20.6.96, Col 492**

7.1.2 I have made clear that the term `torture' can indeed apply to any severe form of physical and indeed psychological abuse deliberately inflicted to cause suffering. I have also made clear that forcible abortion or sterilisation could indeed constitute torture and therefore fall within the scope of the exemption proposed in the amendments I have tabled [exemption from certification if evidence established reasonable likelihood that the person has been tortured in country or territory to which he is to be sent]. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 494-495**

In response to an amendment seeking to base an exemption from the accelerated appeals procedure on human rights violations in the country of origin:

7.1.3 We already take full account of our extensive information about conditions in countries. The fact that we are granting asylum or exceptional leave to remain at a much higher rate than average to nationals of countries such Afghanistan, Iran, Iraq , Somalia and former Yugoslavia shows that that is so. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 491**

7.1.4 All those sources of information [country reports on torture by the UN special rapporteur] are available to those charged with having to make judgements about individual applications. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 493**

See also: 8.6 Safe third countries: victims of torture Page 48
4.1 The short procedure: general Page 25
5.15 Victims of torture: exemption from the accelerated appeals procedure - general Page 34
5.16 Victims of torture: exemption from the accelerated appeals procedure - evidence Page 34

7.2 Victims of torture: exceptional leave to remain

7.2.1 There may be circumstances in which a person would face torture if returned to his country of origin, but would not have a well-founded fear of persecution on grounds of race, religion, nationality, membership of a social group or a political opinion. In those circumstances, the United Kingdom meets its international obligations by granting exceptional leave to remain. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Report 21.2.96, Col 420**

Emma Nicholson MP: I understand that those with exceptional leave to remain will be at risk if the Bill is passed unchanged, under a number of clauses ...

7.2.2 I can state categorically that that is not the case. I am proud that this country is able to provide such leave... . Let me give a clear undertaking ... that we will not send people back when there is a reasonable belief that they will face torture. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Report 21.2.96, Col 420**

See also: 2.8 Victims of torture: The United Kingdom's obligations under the 1951 United Nations Convention, The 1981 United Nations Convention on Torture or Other Cruel or Inhuman Treatment and the European Convention on Human Rights Page 10

7.3 Victims of torture: evidence

7.3.1 Under our present procedures we attach very great weight to evidence of torture, particularly if supported by a medical certificate. ...

We are not persuaded at present that any additional arrangements for those claiming to be victims of torture are necessary. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p8, Supplementary comments**

7.3.2 In my written response to the Second Reading debate I referred to the very great importance and weight which is attached to any evidence of torture, especially when supported by a medical certificate. Caseworkers already have access to the guidelines for the examination of survivors of torture which have been prepared by the Medical Foundation for the Care of Victims of Torture. But we want to be absolutely sure that our arrangements are as effective as we can make them and that they attract confidence.

That is why, following a meeting between my honourable Friend the Minister of State at the Home Office and a cross-party group of parliamentarians, we asked officials to meet the Medical Foundation to discuss ways in which our procedures may be further improved. The meeting which took place recently was constructive. We are following up a number of suggestions made by the foundation, and I hope that we shall be able to report more fruitfully at a later date. **Minister of State Home Office Baroness Blatch, HL Committee 23.4.96, Col 1058**

7.3.3 Very great weight is attached to any medical evidence. If an applicant claims to have been tortured, the case worker will ask whether an examination has been carried out and request a copy of the report if it has not been submitted. Case workers also have access to the guidelines for the examination of survivors of torture which has been prepared by the medical foundation. We are considering some suggestions by the foundation for structuring the interview in such a way as to create an environment which encourages applicants even further to disclose fully the details of their claim; for example, through the greater use of open-ended questions. It is already our policy to seek to provide an interviewer of the same sex as the applicant as cases identified as sensitive. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1562**

7.3.4 Requests for an extension in individual cases so that medical evidence can be prepared are very carefully considered. We have issued an instruction that the refusal of such a request by the medical foundation must not be taken at a lower level than senior executive officer. Medical evidence submitted after an initial refusal will be fully considered. If the refusal is maintained, reasons for doing so would normally be given in writing. …

It is open to an adjudicator to grant an adjournment to enable the applicant to provide further evidence... . Again, neither the proposed new procedural rules nor the Bill itself will remove the possibility of adjournment where it is justified. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1563**

7.3.5 Medical evidence supporting a claim of torture is always given very careful consideration. I shall return in due course to the specific case referred to a moment ago. [Mr Igbinidu's case: an asylum seeker who is making a claim of torture and who has been in detention for over a year]. Staff receive detailed and comprehensive training in how to interview asylum seekers and on how to assess claims. The training raises awareness of the barriers that genuine refugees may face in describing their experiences to officials. We all know that this is a particularly sensitive area. The United Nations High Commissioner for Refugees and other independent bodies contribute to the Asylum Directorate's training. Caseworkers work closely to the United Nations High Commission for Refugee's handbook.

We are anxious that our procedure should attract confidence. That is why we asked officials earlier this year to hold discussions with the Medical Foundation for the Care of Victims of Torture... . As a result of that, if the medical foundation asks for an extension of time to enable a medical report to be prepared, we have undertaken to consider that carefully. Such a request will not be refused except at senior executive level and for very good reason. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 493**

7.4 Victims of torture: claimants tortured in a country other than the one to which they are to be sent

7.4.1 The noble Lord, Lord Avebury, and the noble Viscount, Lord Bledisloe, said that the government amendment did not protect people who had not yet been tortured but would be tortured if they returned to their country of origin or the country where they believed they had been persecuted. If we were satisfied that a person would be tortured if returned to the country of origin and that the torture would constitute persecution for a convention reason, we would grant asylum. If an applicant faced torture but not for a convention reason he would of course be granted exceptional leave to remain. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 495**

7.4.2 Sub-paragraph (5) exempts applicants from having their appeal accelerated if it is reasonably likely that they have been tortured in the country to which they are to be sent. ...

The case for sub-paragraph (5) is that where torture has occurred there is likely to exist a sufficiently strong prima facie case that the appeal ought not to be accelerated. But that argument cannot be advanced if the torture has occurred in a different country. The fact that the applicant has been tortured elsewhere has no bearing on whether he is at risk in his own country.

I return to the example I gave at Report. If we are returning an Indian national to India, the fact that he may have been tortured in a third country - say Iraq - is irrelevant to whether he is at risk in India. In other words, if after examination an asylum claim is refused and meets one of the criteria in Clause 1 - for example, because it is manifestly unfounded - the accelerated appeal procedure should normally be available. The fact that the applicant may have been tortured in a country other than the one to which he is to be sent ought not to prevent us from applying it.

The noble Baroness [Lady Williams] raised the case of an applicant who has been tortured in his own country but whom we are sending elsewhere. Might not the country to which we are sending him return him to his own country where he was indeed tortured.? The answer to that is that we are discussing Clause 1 and Clause 1 is concerned only with removing people to their country of origin. Removals to third countries are governed by Clause 2. The Secretary of State has to certify that the third country will not itself remove the applicant elsewhere otherwise than in accordance with the 1951 Convention. The great majority of such removals would be to other European Union countries or to other designated safe third countries with highly developed legal and asylum systems. Where the third country has not been designated and is not a member state of the European Union, the applicant will have a non-accelerated in-country appeal. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Cols. 1277-1278**

7.5 Victims of torture: procedures on entry to the UK

7.5.1 Applicants do not have to prove on entry that they have been tortured. On entry they are making their claim for asylum. That is important. If they make their claim for asylum on entry that claim must be considered. If, however, as part of that claim, part of their case is that they have been or are in fear of being tortured, it is important that they establish that at the first hearing. It is not until after that first hearing that the certification process applies. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Col 1278**

7.6 Victims of torture: entitlement to benefits

7.6.1 *Lord McIntosh of Haringey: With this amendment we seek ... to ensure that at whatever stage an applicant produces evidence which establishes reasonable likelihood that he has been tortured, that stage will trigger the restoration of benefits. It is not necessarily the case that the person established such a claim at the very beginning of his application and it may well be that he has been denied benefits. But at the stage when he substantiates such a claim, it is not by any means clear to me that the Government will immediately grant asylum or exceptional leave to remain.* ***HL Third Reading 2.7.96, Col 1326***

7.6.2 Perhaps I should say with regard to the evidence that the effect of the amendment differs from the torture exemption in Clause 1. Under Clause 1 it is open to the adjudicator to disagree with the Home Office and decide that there is a reasonable likelihood that the appellant has been tortured. That reinstates the right

of appeal to the tribunal and provides the appellant with a further opportunity to put his case. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1326**

7.6.3 I tried to make it perfectly clear that a claim of torture is rightly and properly to be considered at the time of the asylum application claim. That is the right and proper place. As I indicated in my intervention ... the concession that we have made ought to allow people who have a claim a route to reconsideration if the adjudicator thinks that that is right and disagrees with the Home Office on the basis of the evidence that he has in front of him on the claim of torture.

But I do not believe that a claim of torture - just a claim - should be sufficient to reinstate entitlement to benefit. Where applicants adduce evidence of a reasonable likelihood that torture has taken place, then the pressure point, if I may so call it, is the pressure point of changing the decision and ensuring that he obtains status as a refugee or exceptional leave. Then he obtains both. He gets refugee status or exceptional leave and the benefit. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1327**

7.7 Forcible abortion/sterilisation: general

7.7.1 The first point to make is that forcible abortion or sterilisation would in most circumstances constitute cruel and inhuman treatment. Obviously each case has to be considered on its merits. But subject to that, I can confirm that we would not remove a pregnant woman in circumstances where there was a likelihood that she would be subject to forcible abortion, until after the birth of the child.

Nor would we remove an asylum seeker if it was likely that he or she would be subject to forcible sterilisation. In such cases, we would be likely to grant either asylum or, if it was not entirely consistent with the United Nations Convention, exceptional leave, depending on whether the fear was based on one of the reasons specified in the 1951 Convention, and thus amount to persecution; that is, for reason of race, religion, nationality, membership of a particular social group or political opinion.

Secondly, treatment inflicted on an asylum seeker in the past would obviously be an important clue to what might happen to them in the future. So if there was convincing evidence that a woman who was now pregnant had previously been subjected to forcible abortion, that might well tend to lend credence to her claim that this would happen to her again if she returned to her country.

Thirdly, forcible abortion or sterilisation might well be regarded as amounting to torture. So if it was likely that an asylum seeker had been treated in this way they would be very likely to qualify for the exemption from the accelerated appeal procedure, under the terms of the safeguard on torture which the House will be debating today.

Fourthly, the 1993 Act makes clear that a well-founded fear of persecution on grounds of political opinion qualifies an applicant for asylum. Opposition or resistance to a population control policy may qualify as a political opinion depending on the circumstances although this may not be so in a case of purely personal non - compliance.

We must of course consider each case on its individual merits. ...

Having said all that, however, I must make clear that cases of the kind I have just discussed are at present not often encountered. What is more common is for people to claim asylum on the grounds that their country has a strict population control policy; that they wish to have another child; and that they would face difficulties in doing so if they returned home. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 476-477**

7.7.2 If people resist the policy [a coercive population control programme] simply because they argue against it, I would regard that as possibly not grounds for asylum in this country. On the other hand, if their resistance took the form of somebody who was pregnant saying, `I don't want an abortion', it is a very different matter if that abortion is then forced upon them.

It is also my understanding that there are financial incentives for a family producing only one child and of course there may be financial disincentives for having more than one child; one can object to that . However, if having become pregnant and taken the consequences of having a fiscal policy work against them in the

case of a second or subsequent child then I do not believe they should lose their human rights simply because they have suffered the consequences of whatever the fiscal policy might be.

However, claims of this nature - and by that I mean the kinds of case I had been talking about before the diversion -are nearly always made by men and by a number of applicants who are not married. In such cases we would look at the claim in the light of the totality of evidence. We would not, of course, grant asylum if the fear of prosecution is not a credible one, and when we do decide to refuse a claim of this nature our decisions are upheld on appeal in the great majority of cases. However, claims of this nature are considered carefully on their individual merits, and where there is a real threat that the person or spouse would be at significant risk of forcible abortion, asylum or exceptional leave would be granted.

Nevertheless we must distinguish between such meritorious claims and others. Much will depend on the pressures or sanctions that might be faced in each individual circumstance. For example, we would be unlikely to accept a claim as valid merely because of the applicant's claimed wish to have another baby and the fear of facing difficulties in doing so, such as those I have mentioned already: fiscal penalties or disincentives. It [amendment to exempt from certification people forced to undergo abortion or sterilisation or persecuted for failure or refusal to undergo such a procedure] is unnecessary because cases of the kind referred to in the amendment would be unlikely to be certified. The first part of the amendment refers to forcible abortion or sterilisation. As I have indicated, if that genuinely had been forcibly inflicted it could well be regarded as torture and could therefore attract the exemption from the accelerated procedure which the House has already adopted.

The second part of the amendment refers to the point raised by the noble Lord, Lord McIntosh, namely, the case of someone who has been persecuted for refusing to undergo such treatment and resisting a coercive population programme. However, in cases where it is established that persecution has taken place, as defined in the 1951 convention, asylum is unlikely to be withheld. Moreover, if asylum or exceptional leave is not granted such a case would be unlikely to be certified. The certification procedures are designed specifically for cases which are straightforward and manifestly unfounded. ...

Those who have a well-founded fear of persecution owing to their country's population control practices should be considered in exactly the same way as those claiming fear of persecution on any other grounds. If we make specific provision for each of the circumstances which may lead to persecution, we may end up with unwieldy and, I believe, unmanageable legislation. That is why the 1993 Act is based firmly on the general principles set out in the 1951 convention. It is the convention which defines the country's international obligations towards refugees and which the legislation is designed to implement. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 477-479**

7.7.3 The United States State Department report of March 1996 stated that the Chinese Government do not authorise the use of physical compulsion to submit to abortion. However, Chinese officials of course admit that instances of forcible abortion or sterilisation do occur and that is why we continue to look at each case carefully on its individual merits because, whether or not the government officially condone it, we consider it important to do so. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 479**

7.8 Forcible abortion: pregnant women facing removal

7.8.1 *Ann Winterton MP: I was gratified to read the comments of my noble Friend the Minister of State, who said that the Government would not remove a pregnant woman in circumstances where there was a likelihood that she would be subject to enforced abortion, until after the birth of the child. What would happen after the child was born? Would that woman then be deported? If so, she would face a great many dangers. If she were deported to China, she would be charged - and most likely convicted - with having an illegal child. She would then be forcibly sterilised and fined three or four times the annual wage in China. If she were unable to pay, her house would be demolished.* ***HC Consideration of Lords Amendments 15.7.96, Col 814***

7.8.2 When considering whether to return anybody, of course we would consider the predicament that such an individual would face. If the danger were limited purely to forcible abortion - and that was the only danger - there would be no impediment to returning the woman after the birth of her child. But if she were to face further dangers of the sort outlined by my hon. Friend, that would create a different set of merits under which the case would be considered. We would not return someone to those dangers. **Minister of State Home Office Ann Widdecombe MP, HC Consideration of Lords Amendments 15.7.96, Cols. 814-815**

7.9 Forcible abortion/sterilisation/genital mutilation: forms of torture

7.9.1 However, I stress that both personally and as a Minister I utterly accept that forcible abortion, sterilisation, genital mutilation and allied practices would almost always constitute torture. In fact, they would probably always constitute torture. There is no doubt in my mind that anyone making a case to us on those grounds would have an extremely good case for asylum.

So, in rejecting the amendment, [amendment to include in the definition of torture (on the face of the Bill) the inflicting of involuntary abortion or involuntary sterilisation] I am not rejecting the argument. I assure my hon. Friend the Member for South Staffordshire (Sir Patrick Cormack), the hon. Member for Mossley Hill and the hon. Member for Bradford, West (Mr Madden) that it would be our intention to move in the spirit of the amendment, even if we cannot accept it.

7.9.2 *Sir Patrick Cormack: I accept that there is something in my hon. Friend's point about the difference between `forcible' and `involuntary'. [The Minister objected to the use of the word involuntary rather than forcible on the grounds that it was too wide and encompassed pressure not only from the state but also from the woman's partner or family.] Is she prepared to issue not guidance but clear instructions to those who adjudicate on these matters that anyone who has suffered in that way should be construed to be a victim of torture.* ***HC Consideration of Lords Amendments 15.7.96, Col 822***

7.9.3 I have no difficulty whatever in issuing guidance. I am afraid that it would have to be guidance, but it would be clear guidance on that subject. Despite my hon. Friend's fears and anxieties, it is not our practice to turn away people in that circumstance. We certainly have no intention of making it our practice. **Minister of State Home Office Ann Widdecombe MP, HC Consideration of Lords Amendments 15.7.96, Col 822**

Mr Edward Leigh: Is she saying that there is general agreement that torture obviously includes enforced abortion by the state?

7.9.4 We would regard enforced abortion as torture, as we would enforced mutilation or sterilisation. I can undertake to put the guidance in instructions to caseworkers and to make that guidance available to the House. **Minister of State Home Office Ann Widdecombe MP, HC Consideration of Lords Amendments 15.7.96, Col 823**

...I have tried throughout the debate to assure the House that anyone who comes here and makes a case on the ground of enforced abortion would be considered to have a claim for political asylum.

Dr Norman A. Godman [Greenock and Port Glasgow]: Does the hon. Lady's ministerial sympathy extend to women seeking to avoid genital mutilation? Does she regard that form of mutilation as torture?

Yes. **Minister of State Home Office Ann Widdecombe MP, HC Consideration of Lords Amendments 15.7.96, Col 824**

7.9.5 ... we cannot sensibly seek to legislate for each of the different ways in which people may be mistreated or persecuted. ...Special cases make, as we all know, bad legislation and that is why we believe that the right approach is to continue to use the general principles set out in the 1952 United Nations Convention. I have assured the House how we would treat applications based on forcible abortion, forcible sterilisation and forcible mutilation. **Minister of State Home Office Ann Widdecombe MP, HC Consideration of Lords Amendments 15.7.96, Cols. 824-825**

7.10 Persons seeking to claim asylum at an embassy

Mr David Alton: Will she answer the point that was made earlier about what happens if a woman presents herself to the embassy in Beijing and says that under the one-child policy she is about to be forced to have an abortion? Would our officials there grant her political asylum?

7.10.1 In response to the hon. Member for Mossley Hill, (David Alton) if someone presents at an embassy we will take into account two things. The first is the merits of the case. I think that I have said already that we would consider such reasons to make a meritorious case. However, where people present at embassies rather than on arrival in Britain, we would also consider ties with the United Kingdom and reasons for preferring it to other countries. I cannot give a blanket welcome to absolutely everyone who presents at an embassy with that particular case, but I can say that the merits of that case will have established themselves.

As the hon. Gentleman well knows, when people present at embassies abroad there are other issues to be considered. I could not possibly say that every Chinese woman who presented herself to an embassy abroad would automatically be accepted. ...

Mr Neil Gerrard: The Minister has made an important point in suggesting that if someone went to an embassy and asked to be granted asylum the embassy would consider the merits of the case and ties with the United Kingdom. That is a much wider point than the question about someone who turns up at the embassy in Beijing suggesting that she might be about to have an enforced abortion.

Neither ties to the United Kingdom on their own nor merits on their own would be sufficient when applicants present from abroad, but I cannot be more specific. **Minister of State Home Office Ann Widdecombe MP, HC Consideration of Lords Amendments 15.7.96, Col 824**

8. SAFE THIRD COUNTRIES

8.1 Safe Third Countries: general

8.1.1 I had contended that it was an internationally accepted principle that asylum seekers should apply for asylum in the first safe country that they reach. We also believe that the first safe country an applicant reaches is the state responsible for examining the asylum application. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 23.1.96, Col 256**

8.1.2 ... on airside transits and the Hon Gentleman's reference [`Staff should be aware that where we are satisfied that an applicant had remained airside during any transit period in a third country, we would not normally seek removal to that country', Home Office circular, 13.1.94] that is how the situation stands. ... Thirdly, the amount of time that someone must spend in a third country [for the purposes of being regarded as a potential safe third country referral] does not matter, to be frank - the principle remains. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 23.1.96, Col 260**

8.2 Certification: overturning a certificate in exceptional compassionate circumstances

8.2.1 ... despite the strictness of the regulations, it is still open for a certificate to be turned down in compelling exceptional circumstances of the type to which he referred [Somalis sent to Italy from UK being returned to Somalia]. There is no reason why that could not happen in such extremely unlikely circumstances. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 23.1.96, Col 262**

8.3 Safe third countries: the safety of specific countries (Belgium)

8.3.1 Finally, the noble Earl [the Earl Russell] referred to the position of Zairians in Belgium. We do not consider that the judgement of the High Court in the case of *Bostam and others* establishes that Belgium is unsafe as a third country. In that case the judge was concerned with the way that the adjudicators in those cases had considered evidence of the Belgian eight-day rule. The Belgian interior ministry has explained to us how the eight-day rule operates in practice, and I do not believe that it poses a barrier to asylum seekers who wish to claim asylum when they return to Belgium. I emphasise that the eight-day rule will no longer be an issue for most Belgian cases once appeals in third country cases cease to have a suspensive effect. The majority of applicants who transit Belgium do so in less than three days. We anticipate that most applicants will be returned within eight days of originally entering Belgium.

With regard to the allegations of malpractice in respect of Belgium's removals to Zaire, we are not aware of any substantial evidence to the effect that Belgium is failing to comply with its obligations under the convention in respect of asylum seekers from Zaire, or indeed of any other nationality. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 502**

8.4 Safe third countries: the close ties concession

8.4.1 I am happy to give an assurance that the close ties concession, which is mentioned in the document of January 1994 to which the hon. Gentleman referred, [Home Office circular to staff, on the use of discretion in third country cases, 13.1.94] applies now and will continue to apply after enactment of the Bill. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 23.1.96, Col 263**

8.4.2 … the concession - I emphasise the fact that it is a concession - will remain, but there is no reason to include it in the Bill, because that would take away discretion. ...The concession has some legal force and can be referred to in proceedings, but I am not prepared to accept that it should become an obligatory extra

item in the list. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 23.1.96, Col 282**

8.4.3 The Government believe that it is appropriate, in considering potential third countries, to take into account any evidence of substantial links with the United Kingdom which would make it reasonable for the applicant's claim for asylum to be considered here on an exceptional basis. But for reasons which I will set out, we do not consider that provision in primary legislation covering ties is either appropriate or necessary

As has just been said, we already operate a concession under which asylum seekers are not normally removed to a safe third country, but are instead admitted into our own asylum procedures if they have close ties here. The concession and the details of what are regarded as close ties have been published in Butterworths Encyclopaedia of Immigration Law and we have no plans to alter it. It may assist the Committee if I set out details of that concession.

Cases are normally considered substantively in the United Kingdom, despite the applicant's arrival via a safe third country, if the applicant's spouse is in the United Kingdom; if the applicant is an unmarried minor and is a parent in the United Kingdom; or the applicant has an unmarried minor child in the United Kingdom. I am glad to reaffirm that. The term 'in the United Kingdom' extends beyond people who are present here with leave to enter or to remain. It also covers a person who applied for asylum at the port of entry and who has been granted temporary admission to the United Kingdom while their asylum application is being considered.

Our policy that we do not normally remove an applicant on third country grounds if he or she has a parent, spouse, dependent minor child present in the United Kingdom, either with valid leave or as an asylum seeker, is fully consistent with the principle of family unity and we exercise our discretion in the applicant's favour in the great majority of cases covered by the concession.

There is a further category of cases where the removal to a third country may be waived according to the merits of the individual case. Cases which fall into that category are as follows: where the applicant is a married minor with a parent in the United Kingdom; the applicant is an elderly or otherwise dependent parent; or, finally, the family link is not one which would normally be considered but there is clear evidence that the applicant is wholly or mainly dependent on a relative in the United Kingdom and there is an absence of any similar support elsewhere.

Factors which may influence the exercise of discretion in all those cases include language skills - if the applicant is fluent in English but not in the language of the third country - and cultural links with the United Kingdom and the third country. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1587-1588**

8.4.4 … the cases where removal to a third country may be waived, depending on the merits of the case, are where the applicant is an elderly or otherwise dependent parent, and where the family link is one which would not normally be considered but where there is clear evidence that the applicant is wholly or mainly dependent on a relative in the United Kingdom and there is an absence of any similar support elsewhere. In such cases, linguistic or cultural links with the United Kingdom and the third country could be taken into account. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 545**

8.5 Removal to a safe third country despite the existence of close ties with the UK

8.5.1 The Secretary of State must, however, retain the flexibility to decide whether the circumstances of a particular case justify the exercise of discretion in the applicant's favour. In exceptional cases, there may be circumstances where it would be entirely appropriate to remove an applicant to a safe third country, even though they may have close ties or connections with the United Kingdom.

An example would be a non-European Union national who commits a criminal offence in another European Union country and who attempts to gain entry to the United Kingdom on asylum grounds to avoid prosecution. Even if the applicant could demonstrate close ties with the United Kingdom, it might well be appropriate to return him to the EU country rather than consider the asylum claim here. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 546**

8.5.2 It is not hard to imagine circumstances in which it would be entirely appropriate to remove an applicant to a safe third country even though the applicant may have close ties or connections with the United Kingdom. The Secretary of State must therefore retain the discretion to consider the individual circumstances

of each case to determine whether substantive consideration of a claim in the United Kingdom is satisfied. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1587-1588**

8.6 Safe third countries: victims of torture

8.6.1 *Baroness Williams of Crosby: Will the Minister tell the House what is the position in relation to those found to have a reasonable claim to have been tortured in a country with regard to their return to a third country other than the one in which they were tortured? ... How will such a person be treated in respect of being returned to a third country, especially in a situation where that third country has not given an undertaking that the processes will be carried through to their conclusion in that third country?* ***HL Report 20.6.96, Col 548***

8.6.2 Clause 2 is not affected by the torture amendments. In third country cases we do not consider the substance of the claim; we rely on that country to do so. However, we will not return a person who is medically unfit to travel, so a judgement will be made about the specific medical state of a person who is seeking asylum. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 549**

8.6.3 ... I can give no assurance that we will reconsider our position in relation to sending applicants back to safe countries with which they have no connection. In the case about which there has been some reference already this evening,[Dr al-Mas'ari's case] Judge Pearl acknowledged that such an approach was compatible with the convention and therefore no assurance is appropriate with regard to that. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Col 1571**

See also: Chapter 7 VICTIMS OF TORTURE Page 39
2.8 Victims of torture: The United Kingdom's obligations under the 1951 United Nations Convention, The 1981 United Nations Convention on Torture or Other Cruel or Inhuman Treatment and the European Convention on Human Rights Page 10
5.15 Victims of torture: exemption from the accelerated appeals procedure - general Page 34
5.16 Victims of torture: exemption from the accelerated appeals procedure - evidence Page 34

8.7 Safe Third Countries: the removal of in-country appeal rights - general

During the Commons Committee stage, the Government conceded that non-suspensive appeals against removal to a third country would be limited to cases where the third country was a member of the European Union or another state to be designated by order.

8.7.1 We will use the designation power under Clause 2 sparingly. We may wish to extend non-suspensive appeals to a country such as Australia ... if we begin to receive asylum applicants who have travelled via that country. But we would not want to use the power under Clause 2 to extend non-suspensive appeals to countries which did not have proven asylum procedures. We do not envisage that we will make frequent additions to the list of countries to which applicants may be removed without a suspensive right of appeal. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1593**

8.7.2 I assure the House that the initial order that we shall lay before it in draft will be as comprehensive as possible. The candidates that we have identified as possible candidates for designation under this clause are the United States, Canada, Switzerland and Norway. We envisage that the order-making power will be used sparingly.

Mr Doug Henderson: I hope that the Government will not use the amendments to extend the list way beyond the European Union in a way that would reinstate their original proposition. Perhaps the Minister could give me an assurance on that.
Perhaps the hon. Gentleman was not listening. My final remark was that we intended to use the power sparingly, and that is what we shall do. Moreover, as I said, the first list, which will be subject to affirmative resolution, will be as comprehensive as possible, thus allowing the House as much opportunity as possible to discuss it. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Consideration of Lords Amendments 15.7.96, Col 834**

Max Madden: Will my Hon Friend clarify whether ... the definition will include European Union member states only, or associate states also?

8.7.3 The hon. Gentleman asked whether we will be including European Union countries only, and the answer is yes. **Minister of State Home Office Ann Widdecombe MP, HC Committee 23.1.96, Col 273**

8.8 Safe third countries: non-European Union countries to be designated by order

8.8.1 Government amendment No 37 provides an order-making power that will enable us at a later stage to extend non-suspensive third-country appeals to selected non-EU countries. Those would be countries with proven safe asylum procedures, such as Switzerland, Canada and the United States of America. **Minister of State Home Office Ann Widdecombe MP, HC Report 21.2.96, Col 445**

8.8.2 The power given here is simply to make non-suspensive the right of appeal against return to safe third countries. We are not writing a list of such countries into the Bill. If the Secretary of State decided that, for example, the Netherlands are no longer safe, although I can no conceive of no circumstances in which that would happen, we would simply not exercise our rights with respect to the Netherlands. While we are taking the power to add to the list, we do so in a spirit of not wishing to exclude for ever the possibility of adding to it, say, Switzerland, the United States, Canada or Australia. We have tried to accord with the spirit of some of the concerns that have been conveyed, by saying that we will limit it in the first instance to the European Union. **Minister of State Home Office Ann Widdecombe MP, HC Committee 23.1.96, Col 272**

8.8.3 There are some countries outside the European Union which have proven and highly developed asylum procedures. It is not sensible that an asylum seeker should be able to delay removal by disputing the safety of Switzerland, for example, any more than it is sensible for an applicant to be able to delay removal by disputing the safety of a European Union member state. The Government believe that an out-of-country appeal is an adequate safeguard for asylum seekers who are to be returned to countries with highly developed and proven asylum procedures. That will be the key criterion for designation under Clause 2. The United States, Switzerland, Norway and Canada meet that condition. Those four countries are candidates for designation under Clause 2.

We are minded to limit non-suspensive appeals to EU countries in the first instance, but we have also said that we may later want to extend them to Switzerland, the USA or some like country. The Secretary of State could not certify that a non-EU state, such as Switzerland, would act in accordance with the terms of the Dublin convention, to which it is not a signatory, but that would not be to say that Switzerland is not a safe country. **Minister of State Home Office Ann Widdecombe MP, HC Committee 23.1.96, Col 277**

8.8.4 We wish however, to leave open the possibility of extending the clause later to selected non-EU countries that also satisfy us that they have high standards in their asylum procedures. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 23.1.96, Col 257**

8.8.5 First, I made it clear in another part of the Bill ... that Turkey is not a country we were considering adding to the list, for some of the reasons given by the noble Lord. In 1995, 50 applicants were recognised as refugees; 35 were granted exceptional leave to remain; and 910 were refused. But I am not in a position to say on what basis those refusals were founded. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1569.**

8.8.6 I have to return to what is being said glibly in the debate; references to the Home Secretary having a wide open power to use as he wishes. He does not. But of course the power in the Bill to add additional countries continues. It will be, if my amendments are accepted, for Parliament to take a view. We have no plans to add Dominica to the list. I have given the number of countries that we consider, but I cannot say that Dominica would not at some future time be a candidate for the list. We have no plans to add Dominica to the list. I have given the number of countries that we envisage. I have said also that we would not wish to add to the list frequently. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1594**

8.8.7 Equally, with regard to increasing the number of countries that the Secretary of State may have in mind to designate in an order, as set out in subsection (4) of Clause 2, again it would not be appropriate to give any categorical assurance at this stage that they will not be increased. Likewise, restricting the sending of applicants to countries - Canada, the United States and Switzerland - merely if there are family ties, is not an assurance that I am in a position to give. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Col 1571**

8.8.8 Subsection (1) [of Clause 2] provides that the Secretary of State has to certify that in his opinion certain conditions are fulfilled - those conditions being set out in subsection (3). … It is not sufficient for the Secretary of State just to pluck an opinion out of the top of his head. He has to be satisfied that it is reasonable for him to hold that opinion, and any opinion that is then incorporated in a certificate is of course susceptible to judicial review by a process which is well known to the Committee. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Col 1577**

8.9 Safe Third Countries: the removal of in-country appeal rights - access to legal advice and assistance before and after removal

8.9.1 Not only will such persons receive a written note explaining how they may pursue an appeal from overseas, they will also be sure of receiving from our immigration officers a full explanation, in their own language when necessary, of the reasons why they have been refused entry to this country and how they should go about their appeal. The appeal form will not only give the addresses I referred to earlier [Refugee Legal Centre and Immigration Advisory Service]; it will also give information on how people may obtain free advice and assistance and on how long they might have to pursue their appeal. **Parliamentary Under-Secretary of State Timothy Kirkhope MP, HC Committee 25.1.96, Col 344**

8.9.2 Nor is the amendment [Amendment No 32, aimed at giving appellants sent to a safe third country the right to return to the UK to attend the appeal hearing] necessary. The arrangements for legal advice and representation from abroad are perfectly satisfactory. Asylum applicants removed on third country grounds will be provided with forms which will give a full explanation, in a language they understand, of the reasons why they have been refused and how they should go about pursuing their appeal.

The Immigration Advisory Service and Refugee Legal Centre are funded to provide representation at immigration and asylum appeals under Section 23 of the Immigration Act 1971. The Immigration Advisory Service is already accustomed to representing people pursuing immigration appeals from abroad. Section 23 funding will likewise be available for representing asylum seekers appealing from abroad against removal to a third country.

In addition, advice under the green form legal aid scheme will be available, subject to normal financial eligibility requirements. The scheme is available for advice on any matter of English law, regardless of whether the person seeking advice is in the country or outside it. There is no problem about the client having to sign a form in the presence of the solicitor whose advice is sought. Solicitors who have been franchised by the Legal Aid Board have delegated authority to accept postal applications under the green form scheme (including faxed applications). There is also provision for a friend or relative of the client to attend the solicitor in order to apply for legal advice on the client's behalf.

A third country appeal is significantly different from a substantive asylum appeal. The issue in a third country case is not whether the appellant's account of any ill-treatment he has suffered in his country of origin and of his reasons for claiming to fear persecution is credible. The issue is whether the third country is safe, and the certification conditions contained in Clause 2 are satisfied.

The case usually revolves around a discussion about the country's asylum procedures and its legal system. The amendment would underline the objective of Clauses 2 and 3 which is to enable us to make quick removals to third countries while those countries are still prepared to take back the asylum applicant. If the applicant were subsequently allowed to come back to the United Kingdom a second time it is highly unlikely that the third country would take him back again. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 552-553**

8.9.3 The noble Lord, Lord Hylton, asked about the ability to conduct appeals from safe third countries. The Government are satisfied that that is a reasonable assumption to make. As may arise in detail on a later amendment, it is perfectly possible for legal advice to be obtained from this country in connection with such appeals where appropriate legal aid is available to people who are not resident in this country. The countries concerned are, in accordance with Clause 2(4), member states of the European Union. The intention is to include three other countries; Canada, the United States and Switzerland. I find it difficult to believe that in these days of communication by fax, telephone and post it is impossible to make appropriate arrangements for such appeals to be properly put forward. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Cols. 1578-1579**

8.9.4 But the certificate, as set out in Clause 2, is currently designed to cover the safety of the country to which the applicant is to be removed. Access to legal advice and representation is not a matter which ought to be covered by the certificate. ...

However, I am happy to give an assurance that asylum seekers, in respect of whom a certificate has been granted in terms of Clause 2, will be given access to a telephone before removal and will be provided with the telephone numbers of the Immigration Advisory Service and the Refugee Legal Centre, both of which are funded in terms of Section 23 of the 1971 Act to provide advice and assistance in connection with appeals. That is current Immigration Service practice and I am happy to give an assurance that that will continue.

As I explained earlier ... there is no practical reason why legal aid cannot be made available to applicants who are abroad nor is there any good practical reason why they cannot receive such legal advice and assistance as is necessary to bring forward an appeal. Clearly, it may be more difficult to do so if one is resident in London and has the opportunity of going backwards and forwards to a solicitor's office or to a legal centre as often as one wishes. But the Government are satisfied that it can be done from these countries… .

I am not excluding the possibility that when access is given to the telephone it can be used to telephone the solicitor or counsel or whoever the applicant is already in touch with. What I am objecting to and the reason why these amendments are opposed, is the proposal that that should become part of the certification procedure. I venture to suggest that that is a different matter from giving access to the telephone. Once one has that, one can ring whoever one wishes, but, for people who have no legal advice already, the telephone numbers of the two quangos which have been referred to will be provided. I hope that that will be accepted as a reasonable means of making contact between the applicant who has been made subject to a condition and whose removal is imminent. ...

I am in a position to say ... that if it is clear that an application for judicial review is imminent, some delay will be allowed to allow the application for leave to be made. If that is granted, then in practical terms that has the effect of staying removal until the case has been heard by the High Court.

As regards guaranteeing that there will be sufficient delay to allow a lawyer of an applicant's choice to attend on the applicant, and although I can understand why the point has been made, at present I am not in a position to give such an assurance, but I shall take instructions on it. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Cols. 1589-1591**

8.9.5 I wanted to move on and talk about the nature of the appeal that would take place from outside this country. People who are returned to a safe third country are given full information on how they may pursue their appeal. They are given details of contacts in this country, such as the Refugee Legal Centre and the Immigration Advisory Service. ... They are also able to avail themselves of legal aid for advice. If, in due course, they want access to judicial review, they might also receive legal aid.

Mr Neil Gerrard: Is the Minister saying that someone who has been removed to a safe third country will be able to obtain legal aid from that country?

8.9.6 For advice, yes. (Hon Members: How?) I can assure the Committee that I am advised that that is the position. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 25.1.96, Cols. 341-342**

8.9.7 If a non-suspensive appeal from a safe third country is successful, we should, of course ... be prepared to re-admit a person so that they could pursue a substantive claim. …

He [Bernie Grant MP] must know that in the normal course of events notification of the success of the appeal will be provided to the applicant as quickly as humanly possible. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 25.1.96, Cols. 351-352**

8.9.8 In the process of answering the hon. Lady, [Maria Fyfe MP] let me confirm that legal aid for judicial review is available in such cases. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 25.1.96, Col 342**

8.10 Obtaining undertakings from third countries prior to removal

8.10.1 The certificate which the Secretary of State requires to pronounce is to the effect that in his opinion, which is already subject to judicial review, the government of that country or territory would not send the asylum seeker to another country or territory other than in accordance with the convention. The Government consider that is an adequate reassurance. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Col 1577**

8.10.2 Obtaining undertakings [from countries to which removal is proposed] takes time, and speed is of the essence, especially if there is an absence of bilateral or multilateral agreements. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 23.1.96, Col 260**

8.10.3 We are firmly of the view that third country removals should not be limited to cases where undertakings might be obtained. ...

In many cases, the UK appeal will be completed before the third country removes the asylum seeker. I accept that there might be cases in which an asylum seeker's application in France, for example, is processed, and the applicant removed elsewhere before the UK appeal is over, but it does not follow that France will have acted contrary to the 1951 convention. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 23.1.96, Col 262**

8.10.4 The requirement which the amendment would impose [a written undertaking from the third country to consider the claim before removal is effected] is in any case unnecessary. I remind the House that we are talking about removals to a country within the European Union or a non-European Union country with highly developed asylum procedures, not to the country in which the asylum seeker claims to fear persecution. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 539-540**

8.10.5 If there were any serious concern about what was happening in a particular country, I venture to suggest that it would be very difficult for the Secretary of State to grant a certificate in terms of subsection (3) (c) of Clause 2; namely, that it was his opinion that the Government would act in accordance with the convention. If there were such serious weaknesses, it is unlikely that the convention would be followed. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Col 1579**

8.10.6 *Lord Russell: I refer to a hypothetical asylum seeker from Chad who wishes to apply for asylum in France because he speaks the language. He escapes overland through Nigeria, catches a plane to London - because he is much more likely to catch a plane if it is going to London than Paris - makes his way to France and is referred back by France to the UK under the third country rule.* ***HL Committee 30.4.96, Col 1576***

8.10.7 I turn to the somewhat hypothetical case raised by the noble Earl, Lord Russell, involving Chad, Nigeria and France. If the hypothetical situation be as described by the noble Earl and the route followed was from Nigeria to the United Kingdom I understand that the claim would be considered substantively and would not be dealt with in any other way. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Col 1579**

8.10.8 It may help if I give Members of the Committee certain examples of what might happen in the event that there is the shuttling backwards and forwards about which so much concern has been expressed. ...

Let us suppose that an applicant was removed to France and that that country immediately granted the asylum seeker leave to remain but was not prepared to consider his asylum application. The applicant might, for example, secure leave on the basis of a marriage to a French national or on some other sympathetic basis. In such circumstances, the applicant would be perfectly safe in France. In that case, I venture to suggest that there is no reason why we should have required an undertaking [by the potential third country] of the nature sought by the amendment that the application would be dealt with by implication on a substantive basis.

Another alternative is that we remove an asylum seeker to France and the latter has evidence that the applicant had originally travelled to France via Germany. Again, I venture to suggest that Members of the Committee would not object to the French authorities acting in accordance with the terms of the convention - and, no doubt, their own domestic legislation - and coming to the conclusion that it was a matter for Germany to address the substantive application in terms of the convention, thereby passing the asylum seeker back to that country. That is a second clear example of a case which would not pass the test set out in the amendment.

A third example is that France, having had the applicant sent back to them, might then return the applicant to this country. As I have already indicated, one would suspect - and, indeed, one would certainly hope - that such cases would not occur very often. However, if they do, it is important to bear in mind the fact that there is no obligation on the Secretary of State to issue such a certificate, nor is there any obligation on this country to keep the game of shuttlecock going backwards and forwards. Indeed, if recent experience is anything to go by, one would hope that noble Lords would draw that to the Government's attention and seek to ensure that such cases were dealt with on a reasonably sensible and perfectly humane basis. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Cols. 1580-1581**

8.11 Safe Third Countries and the Dublin Convention

8.11.1 We are certainly not opposed to bilateral or multilateral agreements where they can be negotiated. The Dublin Convention will provide a mechanism for determining which member state is responsible for determining an asylum application lodged within the European Union.

Perhaps I may refer to the quotation used by the noble Baroness regarding the Dublin Convention. [extract from Article 11: 'If the request that charge be taken is not made within the six-month time limit, responsibility for examining the application for asylum shall be made with the State in which the application was lodged']. It means that the UK must within six months approach the third country which it believes is responsible for considering the claim. The Dublin Convention provides a mechanism for considering disputes between member states about which state is responsible for considering a claim. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 537-538**

8.11.2 The noble Baroness [Lady Williams] continues to cite the Dublin Convention. My understanding is that failure to respond within three months makes the third country responsible, not the United Kingdom. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 540**

8.11.3 This country ratified that convention [the Dublin convention] some five years ago. We look forward to it coming into force. In the meantime, removals to France are covered on a case-by-case basis by a bilateral agreement which we have negotiated separately. We have a similar, although not identical, agreement with the Spanish authorities. We do not accept that third-country removals should be held up in the absence of such agreement, and the Immigration Rules which apply in this country make that clear. Paragraph 345 of those rules provides that, so long as the applicant had the opportunity to claim asylum in the third country, or there is other clear evidence that he is returnable there, the Secretary of State is under no obligation to consult the authorities of the third country before the removal of the asylum applicant. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Cols. 1577-1578**

8.11.4 The indications now are that Ireland and the Netherlands appear to be on course to ratify the Dublin Convention during the forthcoming Irish presidency of the European Union. ... In the meantime removals to France are covered on a case-by-case basis by a bilateral agreement which we have negotiated separately.

The Government do not, however, accept that third country removals should not proceed in the absence of an agreement with the third country.
Amendment No. 26 would prevent the removal of an asylum seeker to a safe third country unless that country had given an undertaking that it would consider his asylum claim [substantively].

We do not see that as a necessary condition in third country cases. If the third country refuses to consider the claim substantively, it does not follow that there has been a breach of the 1951 convention or that the asylum seeker has been placed at risk. There are circumstances where the third country to which we had removed an asylum seeker might refuse to consider that person's asylum claim substantively, but the asylum seeker would not be at risk.

Let me give three examples. First, suppose we removed an applicant to France, and France immediately granted the asylum seeker leave to remain, but did not consider his asylum application. The applicant might, for instance, secure leave on the basis of marriage to a French national. In those circumstances, the applicant would be perfectly safe in France. There is no reason why we should obtain an undertaking from a third country that it will consider the asylum claim rather than grant leave on a different basis.

Secondly, suppose we removed an asylum seeker to France, and France had evidence that the applicant had originally travelled to France via Germany. It would be perfectly proper for the French authorities to conclude that it was Germany's responsibility to consider the application, and send the asylum seeker back to

Germany. That is a second clear example of a case where the third country would have refused to consider the applicant's asylum claim, without in any way putting the applicant at risk.

The third example would be a case where the third country refused to admit the applicant and returned him to us. We hope that such cases would not occur too often. But the asylum seeker would not have to be exposed to danger and no breach of the convention would have occurred. These examples illustrate that there are a number of situations where the third country would not consider the asylum claim substantively but there would be no risk to the applicant. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 538-539**

8.11.5 There are circumstances where it would be quite reasonable and proper for the third country to remove the applicant under its asylum procedures. As I said, it also has obligations under international law. If a safe third country had evidence that a fourth country was in fact responsible for considering the asylum claim, it would be entirely proper for it to remove the applicant to that fourth country. Alternatively, if it considered an asylum application substantively under its own accelerated procedures, established that the applicant was not a refugee and refused asylum, it would be perfectly proper for it to initiate removal action. The third country would have established that the applicant was not in fact a genuine refugee, so there could be no breach of the non-requirement obligations under Article 33 of the convention. In both these examples the third country would have acted lawfully and responsibly. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 540**

Lord Dubs: What will be the position, when the Dublin convention is ratified and comes into force, for individuals whom we send from Britain to one of the EU countries? Will the provisions be under the Dublin Convention or under Clause 2?

8.11.6 We do not believe that they are incompatible. Under the provisions of the Dublin Convention the United Kingdom would consult with the authorities of the member state that was responsible for considering a particular asylum claim. The United Kingdom would provide the third country with evidence which suggested that that country was responsible for considering the asylum claim: for example, travel tickets indicating that the applicant had indeed been in that country before arriving in the United Kingdom. The third country would indicate whether or not it agreed with the United Kingdom's claim and assessment that it was responsible for considering the claim. If the third country then agreed that it was the state responsible for considering the claim, it would be obliged under the Dublin Convention to take the applicant back. The process will not always be as smooth-running as that. There may be occasions when that is disputed. Then, under the Dublin Convention, common arrangements would be agreed for the resolution of disputes. ...

When it [the Dublin Convention] is fully ratified, the signatories to it will agree the procedures commonly between them. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1584-1585**

8.11.7 I give the noble Baroness an absolute assurance that we are anxious that the two final countries ratify the agreement. I hope that the two final countries ratify the agreement. ... The difficulty in regard to Ireland coincided with the change of government, and therefore it is our understanding that the convention may be signed quite quickly by Ireland.

In regard to the Netherlands the situation is more difficult. It is looking for more centrality of the European Court of Justice, and that is not agreed by the other member states. The issue between the Netherlands and other states is more fundamental and may take longer to resolve. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1585**

See also: 2.10 The Dublin Convention Page 12

8.12 The position of applicants with cases referred to the European Court of Human Rights

8.12.1 Again, the noble Lord, Lord Dubs, referred to the ECHR. His point was absolutely taken about the length of time. But however long the process, we shall not remove a person until Strasbourg has made a determination and completed the work in considering that case. ...

If the asylum seeker is quickly removed - and I believe that I have already made the point, and I hope very clearly, that we would not send someone who was medically unfit to travel - and was returned to a third safe country, exhausted the appeal system and wished to take his case to the European Court (and equally if

someone was returned to this country), under our international obligations under the ECHR we would honour his right to petition and that person would not be removed while that took place. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1569.**

8.13 Safe third countries: appeals to special adjudicators

8.13.1 The noble Lord, Lord McIntosh, touched briefly on the third country cases. ...It is quite wrong to suggest that allowing the appeal will leave the case in limbo. If the asylum seeker is still in this country, the asylum claim will automatically be referred back to the Secretary of State. The claim will still be outstanding and the Secretary of State will have to deal with it. In most cases, however, the successful appellant will already have been removed to the third country. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1521**

8.14 Abolition of right to bring non-asylum appeal under the 1971 Act until the certificate is set aside by a special adjudicator

8.14.1 At present, the Bill provides that, while an applicant can appeal against a third country certificate under Clause 3 of the Bill, he cannot bring an asylum appeal under Section 8 of the 1993 Act unless or until the third country certificate has been set aside by a special adjudicator. These government amendments adjust the Bill slightly so that an applicant cannot bring either an asylum appeal under Section 8 of the 1993 Act or a non-asylum appeal under the 1971 Act unless or until the third country certificate has been set aside by a special adjudicator.

The right of appeal under the 1971 Act on non-asylum grounds which would otherwise be available in third country cases would not generally be exercisable until after removal. But there would be a few cases where the asylum applicant could appeal on non-asylum grounds before removal, and this would represent an obstacle to quick removals. In practice, this would normally arise only where the applicant had an entry clearance for the United Kingdom. If the applicant had obtained that entry clearance while he was in his country of origin, it is most unlikely that we would seek to remove him on third country grounds. But if the applicant had obtained an entry clearance for the United Kingdom while he was in a third country then we would seek to make a third country removal.

It may assist the House if I give an example of the type of case we have in mind. Let us suppose that a Ghanaian national had been in France for a while and had a French residence permit which was valid for another year; while in France, he obtained an entry clearance to come to the united Kingdom as a visitor; when he arrived in the United Kingdom he was refused leave to enter; and he immediately claimed asylum. We believe that France should be responsible for considering the applicant's asylum claim. Indeed, under the Dublin Convention, France would be the state responsible for considering the asylum claim. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 533-534**

8.15 Safe Third Countries: successful appeals

8.15.1 The noble Lord, Lord Dubs, said that he would like to know whether the adjudicator has powers to recommend. I can give him an absolute assurance that he does have powers to recommend, but what he does not have are powers to direct... .

I appreciate the intention behind limb(a) of the amendment [to give adjudicators power to direct that entry clearance be granted]. If the successful appellant was a national of a country for which a visa requirement was in force, a carrier would be liable to a penalty under carriers' liability legislation if it brought the applicant to the United Kingdom without some form of waiver. We have made it absolutely clear that successful appellants will be allowed to return and if necessary a visa waiver would be issued. The adjudicator could require this under Section 19. In practice, it will often be possible for the applicant to return to the United Kingdom without assistance; for example, if he is a visa national. ...

However, it would not be appropriate to issue an entry clearance to a successful appellant...The holder of an entry clearance would normally be granted leave to enter, but a successful appellant would not be granted leave to enter unless he qualified under the immigration rules. We would expect him to lodge a fresh asylum

claim at the port of entry when he arrived there. He would normally then be granted temporary admission while his asylum claim was considered. ...

As I have just indicated, we will issue a travel document where necessary and the adjudicator will have powers to issue a direction to this effect. ...

In the great majority of cases, it should be possible for the individual concerned to make his own way back to the United Kingdom. We accept that there might be wholly exceptional cases where an adjudicator believed that a successful appellant had no funds and no means of returning to the United Kingdom. If so, the adjudicator could direct the Secretary of State under Section 19 of the 1971 Act to make the necessary arrangements, including the financial arrangements, which were required to give full effect to his decision to allow the appeal. No further legislative provision is required to clarify the point. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Cols. 555-557**

The Government's justification given for removing the adjudicator's power to refer cases back to the Secretary of State was twofold: (a) it was the adjudicator's role to dispose of appeals and allowing the power to remain would send the wrong message about their role and (b) the power had become unnecessary now that the new legislation drew a distinction between substantive and third country appeals.

The issue before the adjudicator will be whether the certification criteria are met, i.e. in effect whether the third country is safe. In allowing the appeal the adjudicator will be overturning the third country certificate. This will not leave the asylum claim 'in limbo' because:

a) if the appellant is abroad (as he will be in most cases) there will be no asylum claim outstanding. It will however be open to the appellant to return to the UK to resubmit his claim, and the adjudicator will have power under section 19 of the 1971 Immigration Act to make any directions necessary to give effect to his ruling (e.g. requiring the Secretary of State to exempt the appellant from the need to obtain a visa);

b)if the appellant is in the UK, the fact that the adjudicator has allowed the appeal, thereby overturning the third country certificate, will mean that his asylum claim is outstanding. The Secretary of State will have to deal with it.

If, exceptionally, the adjudicator requires more evidence in order to reach a decision ... he should if necessary adjourn... **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: pp. 23-24, Supplementary Comments**

See also: Chapter 6 SPECIAL ADJUDICATORS' POWERS Page 36

9. IMMIGRATION OFFENCES

9.1 Immigration offences: obtaining /seeking to obtain leave to enter or remain by deception

9.1.1 Decided cases have established that a person who gains entry on the basis of deception practised by a third party may be removed as an illegal entrant. That will continue to be the case. However, it is not our intention that people who enter in such circumstances should be caught by the offence which would be created by Clause 4. For an offence to have been committed, the person who obtained leave to enter or remain would himself have to have practised deception. To have any effect, the deception would also have to have been material.

It is not the Government's intention to criminalise those who have unwittingly gained entry by deception. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1633**

9.1.2 ... those who unwittingly practise deception - in other words, those whose intention was not to be deceitful - are covered. Moreover, as I said, the third party would not be caught. I repeat, those who obtained leave to enter or remain would have had to practise deception and, for the provision to have any effect, the deception would have to be material. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1634**

9.2 Obtaining leave to remain by deception: restricted appeal rights

9.2.1 We have never said that there is not often a very good reason why somebody should, by deception, leave their own country and even travel en route to this country. It may be the only way that such person can escape from his country of origin.

We are talking about deception at the port of entry into this country; that is to say, deceiving the immigration officials at the port of entry. Some people who come in by deception continue that deception in the country. Those are the people who enter by deception and who would be caught by these amendments [Government amendments applying restricted appeal rights to the new offence of obtaining leave to remain by deception] and would therefore have only a restricted right of appeal against any decision to deport them, like those who have breached conditions of leave to enter. **Minister of State Home Office Baroness Blatch, HL Committee 9.5.96, Col 290**

9.3 Immigration offences: facilitating entry/obtaining of leave to remain by deception

9.3.1 It is no more our intention to penalise a genuine supplier of education than it is to penalise a genuine employer who happens to have made mistake by employing an illegal immigrant. It is not our intention to penalise anybody and everybody who happen to have made a mistake by employing an illegal immigrant. It is not our intention to penalise anybody or everybody when something goes wrong. We are targeting organised bogus education suppliers - and they would have to be truly bogus. The Hon Lady is absolutely right. We know of the filing cabinet syndrome - of educational establishments that provide no teaching. Let me assure the Hon Lady that we have no intention of penalising genuine suppliers of education. [Diane Abbott had expressed concern that genuine educational establishments with large number of people on their books who are not genuine refugees might be penalised] **Minister of State Home Office Ann Widdecombe MP, HC Committee 30.1.96, Col 401**

9.4 Immigration offences: facilitating entry/obtaining of leave to remain by deception - general

9.4.1 I am saying that helping someone to pass through by deception is illegal. I shall repeat what I said. Section 25(1) of the 1971 Act has always made it an offence for a person to facilitate the entry of illegal

entrants to the United Kingdom. The case law is clear. If a person assists another person to pass through the immigration control using deception, or bypassing the control completely, that person is an illegal entrant, and the person who facilitates the entry is guilty of an offence under Section 25(1). This is irrespective of whether the facilitator acts for personal gain, or if the illegal entrant so assisted goes on to make a claim for asylum. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 570**

9.4.2 The noble Earl, Lord Russell, referred to an illegal entrant as defined in Schedule 1. It is our intention to reverse Naillie because that case held that a person could avoid prosecution for facilitation if that person assisted claimed asylum on arrival. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 574**

9.5 Facilitating entry/obtaining of leave to remain by deception: reasonable cause to believe the person is an illegal entrant

9.5.1 Section 25(1) of the Immigration Act contains ... an offence of facilitating the entry of an illegal entrant. The offence is committed where a person facilitates the entry of someone.

'whom he knows or has reasonable cause for believing to be an illegal entrant.'

The words 'knows or has reasonable cause for believing' have not caused any problems since the 1971 Act was passed, and have been incorporated into the two new offences which would be created by Clause 5(1) of this Bill.

These amendments would delete 'reasonable cause for believing' from the three offences, the existing illegal entry offence and the two new offences. ...

I would make two points. The first seems to be fundamental. It would be necessary to prove that the adviser knew or had reasonable cause for believing that deception was involved in order to secure a conviction. That is rather a different matter to the adviser disproving knowledge or belief of deception. I am afraid that the noble Lord [Lord McIntosh of Haringey] got that point wrong. Evidence would have to be assembled to prove the case. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 565**

9.6 Facilitating entry/leave to remain: the provision of legal advice and assistance

9.6.1 While it was never intended that the proposed offences limit lawyers' ability to provide advice and assistance in immigration cases, it was also never intended that lawyers should be exempted from prosecution for these new offences in appropriate circumstances. Any lawyer who knowingly assists the acquisition or attempted acquisition of leave to remain in the United Kingdom by deception will be liable to prosecution. ...

Therefore, in theory the offence could apply in the case of a partner in a legal firm. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p16, Supplementary comments**

9.6.2 We do not believe that the lawyer abroad would be in danger because his activities would be too remote from the entry of an asylum seeker here. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 571**

9.6.3 The noble Baroness Lady Williams referred to Hong Kong. The giving of advice to a person who is abroad is too remote from the entry of the asylum seeker to fall foul of the clause. ... If the noble Baroness will forgive me, I shall write to her on the Hong Kong point [where a Hong Kong resident takes advice from a friend or colleague in a law firm about seeking asylum in the UK]. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 571**

9.6.4 I should say at the outset that it has always been the intention that this offence should be firmly targeted at the activities of immigration racketeers. It has never been the intention that the introduction of the new offence should have an adverse effect on the provision of lawful and legitimate advice and assistance to those seeking asylum in the United Kingdom. ...

The amendment [Amendment No. 46] is the consequence of the recognition of the lacuna in the defences available to the new offence following consideration of the points previously raised about the scope of the offence. It provides that where a person has been detained under paragraph 16 of Schedule 2 to the 1971 Act or has been granted temporary admission under paragraph 21 of that schedule, assistance, advice or representation provided to that person will fall outside the scope of the new offence. This will mean that there will be no prospect of a prosecution for the new offence being considered where a lawyer provided his services to an asylum seeker who has been temporarily admitted pending the resolution of his port asylum application.

The acceptance of this amendment targets the new offence even more firmly at immigration racketeers, and clearly exempts those who have a legitimate interest in assisting asylum seekers who have arrived in the United Kingdom. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 567**

9.7 Facilitating entry/leave to remain: safeguards for a person acting 'otherwise than for gain' or 'in the course of employment by a bona fide organisation whose purpose it is to assist refugees'

9.7.1 It is the Government's firm belief that, with the addition of the government amendment [Amendment 46], anyone acting lawfully in providing advice or assistance to asylum claimants who have arrived in the United Kingdom, will be able to avail themselves of one of the defences set out in Clause 5(2), thus avoiding any prospect of prosecution. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 570**

9.8 The meaning of ' Bona fide' organisations

9.8.1 We do not intend to specify a list of bona fide refugee organisations under clause 5(2). But some examples of genuine bodies are the Refugee Legal Centre, the Refugee Council, Asylum Aid, the Refugee Asylum Project and the Immigration Advisory Service. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p16, Supplementary comments**

Lord Dubs: I wonder whether the use of the word 'refugees' is significant and whether it is meant colloquially to cover asylum seekers or whether technically we might not be running into difficulties by talking about organisations that assist refugees and thereby excluding organisations that assist asylum seekers - those being the main people about whom we are talking, given that we are talking about claims for asylum.

9.8.2 The noble Lord, Lord Dubs referred to refugees. There is no special significance in this. As he said, the colloquial reference is 'intended', as most organisations are called refugee organisations. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 574**

Baroness Williams of Crosby: Will the Minister let us know whether a bona fide organisation with several purposes, one of which is to help refugees, would meet the meaning behind this part of the clause? ... there are a number of organisations whose main purpose may be, for example, to discover whether human rights are being breached in other countries but whose secondary purpose is to assist refugees.

9.8.3 ... I am advised that bona fide organisations with several purposes would qualify, if they were indeed bona fide. That has to be the assumption; but that was the point made by the noble Baroness. Again, there is no need to deceive immigration control in this country because it is not an offence to claim asylum. One can deceive to get out of the country but not to get in. So we are talking about deliberate deceit. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1638**

9.8.4 I was asked for a definition of bona fides. It is found in the word ‘honestly’. ... I think that it is perfectly clear whether organisations have bona fides in terms of the advice and guidance that they give to refugees and asylum seekers. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 30.1.96, Col 390**

9.9 Assistance provided by churches

Earl Russell: ...Would a church be counted as falling within the words:

'a bona fide organisation whose purpose it is to assist refugees' ?

9.9.1 My Lords, I am not sure that it is a church. What matters are the people in the church and the relationship between the activities of those people and the asylum seeker. If they are volunteers acting in a wholly lawful way they will not be caught by the measures in Clause 5. We know that some church activity is engaged in harbouring illegal entrants, which is a very different matter. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 571**

9.9.2 The noble Earl [Lord Russell] also made reference to sanctuary in churches. Their actions are protected by this amendment because it applies to asylum seekers who have arrived and presented themselves to the authorities in the first instance. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 572**

9.9.3 Of course we do not intend to catch the other organisations that the hon. Gentleman suggested [church; charitable organisation]. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 30.1.96, Col 392**

9.10 Assistance provided by Members of Parliament/peers

9.10.1 Finally, a number of hon. Members have expressed the view that in seeking to persuade Ministers to exercise discretion outside the immigration rules, they could be caught by the provisions of section 25(1) (c) of the 1971 Act as amended by clause 5(1)(c). I wish to make it absolutely clear and to put it on the record that there is no intention that hon. Members acting in that way in pursuance of their duties should be caught under clause 5. **Minister of State Home Office Ann Widdecombe MP, HC Committee 1.2.96, Cols. 436-37**

Earl Russell: If one of us should assist a person to come through the port on papers which do not show any intention to claim asylum, and he immediately claims asylum in country, would we commit an offence in doing so?

9.10.2 If the noble Earl does that for gain, the answer is yes, he would have committed an offence. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1635-1636**

9.10.3 If a Member of Parliament advises people in the normal course of his duties, first, I do not make the assumption that he is doing it for electoral purposes, since it is the duty of a Member of Parliament to offer advice. If he is doing it as Member of Parliament in those circumstances and not for gain - that is, taking some payment, whether in kind or in money - then he will be entirely free from being caught by these provisions. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1638**

9.10.4 The noble Earl, Lord Russell, expresses a genuine concern. However, if he wants to advise and help somebody who may fall under the United Nations Convention 1951 he has absolutely nothing to fear if he is not exploiting these people if he is advising them and helping; if he is not doing it for gain and he is not deceiving the authorities. At the point of entry the noble Earl would want, in their best interests, to make sure that asylum was properly sought under the rules. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1640**

9.11 The meaning of 'gain'

9.11.1 My Lords, Amendment No. 47 [Purpose: to replace the word 'gain' with 'remuneration' in order to include organisations where people do not get direct financial benefit from their work with asylum seekers] adds nothing to the understanding of Clause 5(2). 'Remuneration' means wages or salary and 'gain' not only includes those meanings but could also include payment in kind or property. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 570**

9.11.2 It appears that Amendment No. 48 is intended to widen yet further the defence set out in Clause 5(2) of the Bill, which would become Section 25(1A)(b) of the 1971 Act, to include the activities of voluntary workers as well as the employees of bona fide refugee organisations. That is unnecessary because voluntary workers who do not derive any gain from their activities are already covered by the defence which would become Section 25(1A)(a). **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 570**

9.11.3 ... we are clearly interested only in those who are making a gain as a result of their activities at the expense of the asylum seeker. We are not arguing about the legality or illegality of the asylum seeker's status. The offence is concerned with those who are using and abusing the position of an asylum seeker to make a gain. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 30.1.96, Col 378**

9.11.4 I want to ensure that clause 5 has a strong effect on the right people. I want to ensure that it tackles the big business people - even the little business people - who are gaining by the difficulties and pressures that asylum seekers experience.

We are concerned with people who obtain an advantage from what they do. Often the advantage is financial, but the clause should not be restricted to dealing with such advantage. After all, someone might give someone a motor car, for instance, as a form of payment, instead of giving cash. Other things might be available to someone involved in such a business that would represent money, money's worth or some gain.

Of course, the clause does not affect a person who provides such help on a voluntary basis. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 30.1.96, Cols. 379-80**

9.11.5 Gain would be for money or money's worth. It would not include some of the more garish possibilities suggested by the hon. Member for Tottenham and others. The term is restricted. However, to have talked merely of remuneration would have failed to cover a lot of cases in which gain of one kind or another is being obtained by racketeers. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 30.1.96, Col 391**

9.12 Informers

9.12.1 ... the hon. Member for Bradford West (Max Madden MP) asked me to give an idea of immigration service practice on informers. The immigration service acts on information offered to it. That information is valuable as it enables operations to be specifically targeted. However, it is also our policy not to use paid informers. **Minister of State Home Office Ann Widdecombe MP, HC Committee 30.1.96, Col 412**

9.13 Immigration offences: increased penalties

9.13.1 [Clause 6] is a minor technical clause which addresses an inconsistency between financial and custodial sentences available for certain offences under the Act. It does no more and no less. Currently, a magistrate can impose a sentence of six months, the longest sentence which can be handed down by a magistrate, for the offences listed in Clause 6, but he can only impose a level 4 fine up to £2500. Level 5, that is, £5,000 is the maximum fine that can be imposed by a magistrate, and it is normal for a magistrate to be able to impose equivalent custodial and financial penalties. That is all that Clause 6 does. ... It would have to be a matter for the courts to reflect the seriousness of the offence by imposing a fine within the range of nought to £5,000. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 582**

10. POWERS OF ARREST

10.1 Powers of arrest and search powers : general

10.1.1 The general purpose of the clause is to set out, by adopting provisions in the 1984 Act and the 1989 order, a procedure for the seizure of evidence. Clause 7(2) sets out a procedure for seeking and obtaining a warrant for the purposes of searching for and arresting a person. The clause is concerned with the procedure for searching for and seizing evidence. As Members of the Committee have discussed in recent months, it is important for the police, either before or after arresting an individual, if they have reasonable grounds for suspecting that he has committed an offence, to search for evidence which can help the police and the courts to establish one way or another whether the person accused is guilty of the offence for which he has been arrested and is brought before the court. On that basis alone, the offences fall to be treated as serious arrestable offences under Section 8 of the 1984 Act. There is no intention to incorporate them for the purposes of the procedure under which such persons should be prosecuted or, more important, for the penalties which are appropriate if guilt is established. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 2.5.96, Col 1769**

10.1.2 It is a matter of regret that various parties outside your Lordship's House and some Members of the Committee who have spoken have sought to suggest that the Government are treating offences under the 1971 Act as equivalent to the more serious offences of murder, rape, and other crimes which are also covered by Section 8 [Police and Criminal Evidence Act 1984]. There is no intention to do that. The intention is quite straightforward. It is to set out a laid down procedure which is already known to the police, in which they have already been trained and which the courts understand. We do that in the hope that it is the best way forward rather than involving a different procedure which would give rise to confusion and misunderstanding.

From what Members of the Committee have said, I know that they have concerns that individual police officers may abuse the powers. I am happy to give the Committee an assurance that the Government will keep on reminding chief constables and those responsible for training police officers of the importance of applying the law in the manner intended. They should remember the importance of discretion in exercising the powers open to police officers. I readily accept that the sensible use of discretion by police officers is a valuable aid to good race relations in the same way as the sensible use of discretion by prosecutors. Among my other duties, I have responsibility for prosecutions in Scotland. Discretion is an important part of the role of a prosecutor. Whether we are dealing with these statutory provisions or with prosecutions, there is no reason to believe that discretion will not be used as appropriate. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 2.5.96, Cols. 1770-1771**

10.2 The meaning of `reasonable grounds'

Lord Renton: Would my noble and learned friend care to set at rest the mind of the right reverend Prelate by confirming that when we use the expression `reasonable grounds' in our statute law we scarcely ever define or qualify them because they must depend on the circumstances of each case?

10.2.1 I am happy to confirm that and to say in addition that it is a serious mistake to seek to define them because then one becomes involved in obtuse arguments in court as to whether a particular specificity set out has been met. The courts are well used to dealing with situations in which reasonable grounds fall to be construed. The noble Lord, Lord Renton, reminded the Committee that that construction requires to be applied to the particular facts of the particular case. It is my submission to the Committee that the courts would have no difficulty whatever in deciding whether any invoking of the power by a constable was well founded. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 2.5.96, Col 1758**

10.2.2 I do not accept that merely looking at someone would provide reasonable grounds. There would need to be something about a person's background, information that had come to hand, and other knowledge. It may well be that some aspect of the circumstances in which the constable came front to front with the individual had some bearing with it. If the individual immediately turned and ran away that might be an adminicle of evidence which linked with other adminicles of evidence to justify forming the view that there were reasonable grounds for suspecting that the particular individual had committed a particular offence to

which the section applies. I suggest that merely looking at someone would not be enough. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 2.5.96, Col 1758**

10.2.3 I assure the hon. Gentleman that the purpose of the clause is not to enable the police and immigration service to organise fishing trips... . Police and immigration officers will act only where there is sound evidence that an immigration offender may be apprehended, and justices of the peace will issue warrants only where they are satisfied with the evidence presented to them. Clause 7 states clearly that there must be reasonable grounds - simple denunciation is not a reasonable ground - for suspecting that an offence has been committed or that someone is within premises in respect of which a warrant is sought. **Minister of State Home Office Ann Widdecombe MP, HC Committee 1.2.96, Col 434**

10.3 Powers of arrest: with a search warrant - general

10.3.1 Clause 7(3) provides justices with a power to grant warrants to constables to enter and search premises to search for evidence relevant to the offences listed in Clause 7(4). A justice needs to be satisfied on five separate matters before he can issue a warrant.

It appears that these amendments seek to limit justices' ability to grant warrants for fear that without that limit, warrants will be handed out indiscriminately allowing constables to undertake 'fishing expeditions' on the off chance that they might find something. Clearly, that will not happen, because, as I mentioned before, the justice has to be satisfied on five separate matters before granting a warrant.

One of the matters as to which the justice has to be satisfied before granting a warrant is that an offence to which Clause 7 applies has been committed. The power to search for evidence provided by Clause 7(3) is essentially an investigative aid; the justice will have to be persuaded that an offence has been committed in order to issue the warrant, but it may be essential to obtain further evidence, through the execution of the warrant, in order to secure the arrest of the immigration offenders. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 584**

10.3.2 Amendment No. 72 would unnecessarily restrict matters in so far as it would make it absolutely necessary to have the correct and full name of the individual. As I am sure the noble Lord will recognise, although it may be understood who the individual is and some part of his name may be known, his full details may not be available at the time at which the warrant is sought, either from the justice of the peace or, in Scotland, from the sheriff.

I am happy to give the Committee the assurance that it is not intended that search warrants will be sought on a speculative basis; for example, searching premises for any body who might be there, whether or not he is known in any sense to the immigration authorities. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 2.5.96, Cols. 1759-1760**

10.3.3 Written information on oath, and the requirement to be reasonably satisfied, means that the offence, who the person is, where he or she is and the grounds for believing that he or she is there, will be taken into account. **Minister of State Home Office Ann Widdecombe MP, HC Committee 1.2.96, Col 435**

10.3.4 I can assure the hon. Gentleman that private security firms will never be used in visits to private premises. I can also assure him that a separate warrant will be obtained for each visit to premises. **Minister of State Home Office Ann Widdecombe MP, HC Committee 1.2.96, Col 436**

10.3.5 The Hon Member for Bradford West [Max Madden] voiced his concerns about how the clause would work in practice. The numbers of visits to premises are not recorded centrally so I cannot give him some of the information that he sought, but I can confirm that local records are and will be maintained and I am prepared to look at the feasibility of recording statistics centrally. I cannot give an undertaking but I shall examine the feasibility and I will let the Hon Gentleman know my conclusions in due course, which does not mean in the course of the Committee. **Minister of State Home Office Ann Widdecombe MP, HC Committee 1.2.96, Col 436**

10.4 Powers of arrest with a search warrant: whether force used to enter premises must be `reasonable'

10.4.1 In relation to Amendment No. 73 [highlighting the common law requirement that force used to enter premises should be reasonable and consistent with the needs of the occasion], again I am happy to give an assurance that no change to the application of the common law is intended. Again, the style used is that used on numerous other occasions. Officers, whether police officers or immigration officers, will be expected to behave reasonably having regard to the particular circumstances which they confront when they seek to execute the warrant. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 2.5.96, Col 1760**

10.4.2 Clause 7 would give powers to enter a church by force. That is different to expecting that that power will be exercised. I cannot guarantee that there will never be circumstances in which we would enter a religious building by force, although that certainly will not be my preferred course of action ... . However, we should open up a licence for abuse if I told the Committee that illegal immigrants, overstayers and other offenders could enter a certain class of building knowing that we should never enter it by force. I cannot make that general commitment. **Minister of State Home Office Ann Widdecombe MP, HC Committee 1.2.96, Col 433**

10.4.3 As with all the provisions of the Bill, the police will have to exercise their powers with moderation. There have been cases where they have not and the courts have required chief constables to pay the price for that. During the Division the right reverend Prelate who mentioned the case of A informed me that A had successfully sued for damages. There is no reason to believe that chief constables would allow, let alone encourage, their officers in any sense to misuse, abuse or recklessly employ the powers which the Bill seeks to give them. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 2.5.96, Cols. 1777-1778**

11. RESTRICTIONS ON EMPLOYMENT

11.1 Employment offences: the definition of `employ'

11.1.1 The term [`employ'] is, of course, defined in other legislation affecting employment. The most common definition, and the one which seems to us most appropriate to use in the context of this new offence, relates to employment under a contract of service or apprenticeship. This is a well-established term and there is a considerable body of case law which explores the circumstances in which such a contract will be taken to exist. A person who is self-employed works under a contract for services and would quite properly not be covered by the terms of Clause 8. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1850**

11.1.2 … engaging a self-employed person will not involve an offence because there cannot be a contract of service with a person who is genuinely self-employed. ... The legal point is that the contract that exists between a person and a plumber is not a contract of service but a contract for services. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 6.2.96, Col 536**

11.2 Employment offences: the employment of young persons

11.2.1 It is not an offence under the Bill to employ someone in this category under the age of 16 per se, but the employer is the responsible person rather than the person under 16. Other pieces of legislation deal with the employment of young people and they are general and not specific to immigrants.

He [a 15 year old illegal immigrant employed by a newsagent] would not be prosecuted under this Bill. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 1.2.96, Col 452**

11.2.2 The immigration rules make specific provision for young people from certain countries to come to the United Kingdom as au pairs for a period of up to two years. That is a special category... . Nothing in the clause should affect the current position. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 6.2.96, Col 536**

11.3 Employment offences: consultation

11.3.1 Consultation will take place where it will be helpful. As part of the consultation on the guidance that the Home Office will be providing for employers - and which we made abundantly clear in our consultation document would take place - I would expect that we will circulate a copy of any draft statutory instrument then available.

If any substantive comments were to be made at that stage then we would consider amending the statutory instrument. But given the purpose and likely content of the statutory instrument, we would anticipate that such comments would be unlikely. It is for Parliament to decide which documents should provide a defence for employers under this provision.

The key will, in our view, be keeping employers and others informed about government policy in this area - and giving employers time to prepare for any changes. These will clearly be the essential ingredients.

The same applies to the second of these amendments [Amendment No. 94: requiring the Secretary of State before making an order under subsection (3), to provide employers with details of the provisions of the order and facsimile representations of any documents to be produced by an employee]. Indeed, it is because we have already made clear our commitment to providing all necessary guidance to employers that this amendment is not necessary. It simply seeks to require us to do something that we have already made abundantly clear will be provided.
Employers would certainly have reason to complain if we had not made every effort to make available to them information which will enable them to be certain of what they need to do to ensure that they are not liable to

prosecution. This would include information about immigration stamps and what they mean about a person's entitlement to work; it would include a list of EEA countries; it would include advice on how employers could ensure that they did not breach the Race Relations Act; and it would also include any other information that we established, through consultation, would be helpful to employers. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1846**

11.4 Employers' statutory defence: General

11.4.1 Already in their everyday practices most [businesses] have a defence against this offence and will have no problems with it at all. We will operate a light touch and we will be serious in that. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 679**

11.4.2 Some hon. Members drew attention to the fact that the statutory defences will provide defences only against conviction rather than prosecution. I can confirm that. However, in practice, if an employer has provided himself with one of the defences and is able to demonstrate that he has done so at an early stage in the investigation, which should always be the case, there will clearly be no incentive to bring a prosecution because it would be self-evident that no conviction could result. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 6.2.96, Col 544**

11.4.3 I turn to the example of the noble Earl's plumber [Lord Russell had said that the requirement of checking documents might prevent someone like his plumber from employing an assistant]. If the noble Earl wished to employ somebody, I hope that he would pay his taxes and pay national insurance on behalf of his new employee. Then, his plumber would have nothing whatever to worry about. If he merely pays his taxes and pays national insurance on behalf of his employee, he has a defence under this clause because he will have that kind of contact and information about his employee that it will be necessary to have as a defence. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 698.**

11.4.4 ... we have an expectation that the provision will be applied fairly and universally because that is the best possible defence for any employer. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1842**

11.5 Employment offences: Relevant documents for employers to establish a defence

11.5.1 In most cases employers will in fact need to do no more than check that new employees have documented National Insurance Numbers. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p17, Supplementary comments**

11.5.2 Under this Act an employer does absolutely no more than is required of him with or without this amendment. He needs to secure one of the specified documents from a potential employee. That document is both seen and recorded and that is an end to it. It is an absolute defence for the employer. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Cols. 1810-1811**

11.5.3 My understanding is that we shall be setting them [the relevant documents to found a statutory defence] out in an order. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1793**

11.5.4 Employers will not need to concern themselves with whether a National Insurance Number is genuine. They will have a defence if they can show that they kept evidence that a documented number was produced to them. If it transpires subsequently that a person has proffered a false National Insurance Number the employer will be protected and only the individual worker will be culpable. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96: p.20 Supplementary Comments**

11.5.5 If someone produces a fraudulent document, the offence is not that of the employer; the offence is that of the employee. If the employer has assured himself that a P45, a national insurance number, a birth certificate or a P46 certificate has been submitted and makes a record of that fact, he has availed himself of the defence in Clause 8. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 672**

11.5.6 Amendment 45 will ensure that no more is expected of employers than is outlined in the consultation document. They will be able to assume that a document belongs to and relates to the person proffering it unless there is a good reason to suggest that that is not the case. ...

In some cases ... we would expect employers to take a copy of the document to establish a defence. In the case of a P45 defence, an employer would simply need to have retained ... part of the form ... amendment no. 46 will enable us to leave employers and the courts in no doubt as to what is required.

It is our clear intention that employers should not have to make elaborate efforts to establish the true identity of potential employees. They should be able to assume that a document belongs to and relates to the person proffering it unless there is a good reason to suppose otherwise. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 6.2.96, Col 545**

11.5.7 At present there is no need for a person to carry certain documentation when going for an interview unless it has specifically been asked for.

Our expectation is that such documentation will be readily available in many more cases in the future because it will be understood that the offer of employment may be dependent on its production. This will tend to concentrate the minds of those seeking employment. It will be a matter for employers when they choose to request the documentation. But it would be satisfactory for the purposes of this clause if the documentation was presented when the new employee turned up on the first day. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 678**

11.5.8 Of course, under this legislation it is open to an employer to carry out no checks, and not to avail himself of a defence. He can take the risk that someone may be picked up because he is so sure that his employment policies and recruitment policies are such that he does not have to do anything more. Many employers will have to do nothing more because what they do more than covers the requirements under this legislation. My own view is that if employers, simply as a routine measure, ask for national insurance numbers, P45 numbers and some documentation that is specified they have an absolute defence, with the exception of knowing that the people concerned were acting illegally in the first place. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1825**

11.5.9 I further believe that most small businesses, in their normal recruitment practices, look for a national insurance number or a P45 and they will not be caught by this measure. I also believe that, even if those small businesses accept those documents in good faith and they then turn out to be forged ... they will not be caught by this provision. They will have a proper defence, because they will have looked at the document. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 680**

11.5.10 Under the Bill … we do not even make a criminal of an employer who secures one of the authorised documents, even if that document subsequently turns out not to be in order. We would regard such an offence to be that of the person who submitted and proffered the documentation. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Col 1294**

11.5.11 If somebody comes along to whom an employer is prepared to offer a job and he or she produces a P45, P46, a birth certificate or a national insurance number, we expect the employer to take it in good faith unless he has good reason for believing that it may not be genuine, in which case he can ring the help line and make inquiries about that. We are not putting the onus on the employer to worry about it being a fraudulent document. The breach would be on the part of the employee who proffered a fraudulent document. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 684**

11.5.12 The two pieces of documentation that the noble Baroness mentioned [national insurance card or birth certificate] would be an absolute defence for the employer. Once an employer has noted and recorded a national insurance number, or any of the documents specified, which include a birth certificate, then of course the employer would avail himself of the defence and there would be no offence committed. It is for people who do not avail themselves of a defence who would be guilty of an offence. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1839**

11.5.13 If someone comes forward for a job and the employer asks for documentation and the person says, `Well, I do not have it with me but I can produce it', on producing it , that is an end to it. The person may then take up the job. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1821**

11.5.14 Lords amendment No 13 removes from subsection (3) the requirement that an employer must prove that the document he inspected to provide himself with a defence was produced to establish that the employment would not constitute an offence. On consideration, we took the view that that was not a necessary requirement. The important elements are that the document was produced and, when necessary, copied. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Consideration of Lords Amendments 15.7.96, Col 841**

11.6 The role of Employment Service staff

11.6.1 Essentially, job centre staff will in future consider the issue of entitlement to take work in cases where it is clear from information given by the jobseeker that his arrival in the UK is comparatively recent. ... We also think that the Employment Centre might have a role in ensuring that those being sent for job interviews are aware of the types of documentation which an employer will want to see. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 6.2.96, Col 545**

11.7 Employment offences: assistance for employers in clarifying a potential employee's eligibility to work

11.7.1 It will be a straightforward matter for all employers to make any necessary checks of documents in the future because the Government will be providing employers with written guidance and a help line facility, neither of which exists at present. The sorts of misunderstandings about eligibility to work which sometimes occur at the moment without such advice should not be taken to mean that employers will not be able to understand passport endorsements, where this is necessary, when clear guidance is available to them.

I find it difficult to envisage that employers will in the future refuse jobs to people who have provided them with one of the specified documents because of Clause 8. Clause 8 will provide a reason for asking for some documentation from all potential employees. And failure to provide any of the specified documents will provide a reasonable justification for refusing to take on a potential employee. But, when relevant documentation has been produced, there is no reason to refuse employment because of Clause 8. The guidance and help line facility should guarantee this. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Col 1291**

11.7.2 We want to keep the burden on employers as light as possible. We also want to be as helpful to them as possible and to explain in the simplest possible way how they can avail themselves of the defence against committing an offence under the Bill. We shall certainly do all that we can in that respect. ... With regard to the information that goes out to new employers - that is, people who become employers - we shall certainly find ways and means of ensuring that they understand their obligations under the legislation. ... I am not sure that we intend to employ new people at the Home Office to tackle the task. But clearly we do not want to make the process so complicated that employers would feel the need to keep telephoning us on a regular basis. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1843**

11.7.3 We have made clear all along that employers will need to treat all new employees in the same way. Indeed, this was set out in our consultation document. ... we intend to issue guidance. ... we believe that the best way to inform employers in particular smaller employers, of their responsibilities under this Act is to put it in proper guidance in plain English. We intend to do that.

This does not mean that employers will be required to make checks in all cases. Employers will be free to take the risk that they may be employing people not entitled to work if they choose not to make checks. However, given the straightforwardness of the checks we expect that most employers will choose to make them. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1841**

11.8 Employment offences: the position of British citizens

11.8.1 Even those who are British need to be prepared to produce one of the specified documents to back up their claim to be able to work. A documented National Insurance number, a British passport, a British birth certificate or a certificate of registration or naturalisation would all be satisfactory documents to establish that no offence would be committed in relation to the holder of the document concerned. It would be entirely unreasonable to render employers liable to a criminal offence if they are not prepared to offer employment to

British people who do not produce one of the specified documents and who cite Clause 8 as the reason. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Col 1291**

11.9 Employment offences: racial discrimination

11.9.1 I appreciate that the noble Earl [Lord Russell] is concerned that people from the ethnic minority communities will be unduly affected by Clause 8. As I have made clear before, employers will need to treat all new employees in the same way. I have made equally clear that this legislation is positively not a licence to discriminate. Employers will need to check all new employees - if they choose to check any - if they are to comply with the Race Relations Act. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Col 1292**

11.9.2 Of course, that is absolutely true. [that a job applicant wearing Asian clothing, speaking broken English and obviously bewildered might be either an illegal immigrant or a person with born, brought up and with legal rights of residence in the U.K]. That is why the securing of a document would actually make that fact obvious and would be a defence for the employer. In our guidance to employers we intend to suggest that, whatever their recruitment policy, they apply it right across all employees. It is also fair to say that about 90 per cent of companies in this country ... employ five or fewer employees. ...

Therefore we can say that employers should apply the policy fairly. Further. - and I shall not use my noble friend's example for the purpose of what I have to say - if an employer was simply applying the policy to someone with a black face, or someone with an accent, or indeed, someone whom he thought fell into the ethnic minority mould, then the Race Relations Act would apply. That would be a clear case of discrimination and would be caught by the race relations legislation; and quite rightly so. We believe that that should be fairly applied. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1825**

11.9.3 We have also made clear all along that this legislation is positively not a licence to discriminate. Indeed it has been clear to us that in practice employers will need to check all employees - if they choose to check any - in order to comply with the Race Relations Act. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1841**

11.10 Employers' statutory defence: knowledge rendering the defence invalid

11.10.1 I stress that the amendment [to prevent employers from relying on the production of one of the specified documents as a defence where they knew that the employee was not entitled to work] will not in any way increase the burden on legitimate employers. Employers will be additionally liable only if they have specific knowledge which renders the defence invalid. It would be for the prosecution to prove that the employer had such knowledge. Those attempting to comply with the legislation in good faith will never have that knowledge and so will be able to have complete confidence that they have established a satisfactory defence. We will make sure that the guidance we issue makes that abundantly clear. ...

First, we believe that the concern about a potential additional burden on employers is unfounded. The defence is only disapplied if the employer can be shown by the prosecution to have known that the employee was not entitled to work. It does not therefore involve any additional duty to check.

One of the worries was that if an employee comes along and presents either a national insurance number or one of the specified documents, somehow or other that document must be checked in order to prove it is bona fide. That is not the case. If a national insurance number is proffered by a potential employee or if one of the specified documents is proffered and recorded by the employer, the employer's liability and duty under this part of the Bill ends. If the employer knows that the employee is illegal and is colluding with him and they are between them party to this racket, that is what the amendment is about. But if the employer takes in good faith one of the specified documents, it is not incumbent on him to check with the national insurance office or with the passport office. But he will record it either by photocopying it or putting it on computer. If subsequently the national insurance number is found to be wrong, or if subsequently the document is found to be incorrect in some way, the culpability will be on the individual who proffered the incorrect information, the incorrect number, the fraudulent passport or whatever it may be. But the employer will have a complete defence if he sought to secure one of those documents and record that he had seen it. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Cols. 1808-1809**

11.10.2 I hope that it will help if I confirm to the noble Lord that if an employer claims that he has done what he is supposed to do under the provisions - that is, that he has secured one of the specified documents - it is for the prosecution to prove that an offence has been committed. The burden of proof lies on the prosecution. The prosecution must prove that when the employer employed the person concerned he knew that that person had no right to work there. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1812**

11.10.3 We are saying that when a potential employee comes along, the employer must ask for evidence of one of a specified range of documents. The employer will take that document in good faith. The noble Lord gave an example of an employer who knows that a document being presented to him is fraudulent in some way. One hopes that any good employer would then ask for another of the specified documents. The noble Lord used the word `know'. If an employer knows that a document is fraudulent, he should say, `We know that that is a fraudulent document. You must bring us other proof that you have a bona fide right to be here.

We are operating on the basis that the employer takes the specified document in good faith and at face value. We are not requiring employers to carry out all sorts of checks to ascertain whether documents are genuine. The assumption and the presumption is that the document is one of the specified documents and that it is genuine. If that subsequently turns out not to be the case and the employer has performed his duty under the Bill, culpability will rest with the individual who proffered the false national insurance number, the fraudulent passport or any other fraudulent specified document. However, if the employer accepted such a fraudulent document knowingly, he would be guilty of giving that person work knowing that the information which was provided to him did not prove that that person had a bona fide right to be here. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1813**

11.10.4 The employer has to know that he has colluded with an illegal entrant to employ him. If the employer simply sees a potential employee, seeks one of these specified documents and simply records having seen it, either by photocopying it or putting it into the company records, or however he wishes to do it - and we shall give guidance on that - the employer has a total and complete defence under this Act.

But where an employer knows - and I use that word precisely in this context for the benefit of my noble friend Lord Renton because earlier we talked about `knowing' or `suspects' - that the employee before him has no right to work in this country, then the employer knowingly employs that person. As I have said, there are a very few unscrupulous employers who are taking on employees knowing that they are illegal entrants... . All other employers need not worry because there is no extra burden on them whatsoever. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1811**

11.10.5 If an employer knows that the person before him is here illegally, it is incumbent on the employer not to employ that person. We are saying that it is an offence to employ somebody illegally - and certainly to do so knowingly.

However, we do not want to turn employers into immigration officers. We do not want our employers to feel that it is incumbent on them to check national insurance numbers and passports to ascertain whether they are correct. If an employer has been proffered a passport that looks like a passport or a national insurance numbers that looks genuine, we are not requiring that employer to check whether that document is correct -

... If the employee is known to be an illegal immigrant, the employer has a duty not to employ him. If the employer does so knowingly, he would be caught by the amendment. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1814**

11.10.6 Amendments Nos. 12 and 15 will make it clear that an employer will not have a defence if he knows that an employee does not have permission to work in the United Kingdom. I gave notice of our intention to consider whether it would be appropriate to table an amendment to that effect before the Bill left the House. That consideration led us to the conclusion that we could not allow an employer to rely on one of the specified documents to provide him with a statutory defence if he knew that an employee was not entitled to work in the United Kingdom. …

Those attempting to comply with the legislation in good faith will never have such knowledge, [specific actual knowledge that renders the statutory defence invalid] and so will be able to have complete confidence that they have established a satisfactory defence. We shall of course ensure that the guidance that we issue makes the position abundantly clear. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Consideration of Lords Amendments 15.7.96, Col 840**

11.10.7 It will be an offence ... to employ an illegal immigrant. We have provided a defence for employers, which they are free to avail themselves of, or not to avail themselves of. We believe that whatever practice they adopt, that should certainly be a fair practice. We also believe that, in practice, it would be better to apply it universally so that any new people entering a company should be checked according to these rules. We are saying that if an employer believes that his recruitment policies are such that he does not wish to avail himself of the defence, he is free to do that. But I have to say that, if subsequently he is found to be employing an illegal immigrant, he will not have a defence against the offence of employing one. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1844**

11.11 Employment offences: enforcement

11.11.1 On the issue of enforcement, our intention is to deal particularly severely with the worst cases, not penalise small employers who may transgress on one occasion. ...Our purpose is to give guidance and assistance to small employers. It would be unlikely - I cannot rule it out, because it would depend on the gravity of the offence - that they would be prosecuted for a first, small offence. They would, instead, be given guidance and assistance to avoid future transgression. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 6.2.96, Col 537**

11.11.2 In the main, we would expect that cases will come to light as a result of activities routinely undertaken by the police or the immigration service... .

I assure my hon. Friend that the immigration service does not intend to undertake so-called fishing trips. Employers should not be worried about unannounced visits from Immigration Officers simply to inspect their paperwork. That will not happen. Enforcement activity will be based on information that has come to light from a variety of sources. That could in some cases include information passed on by staff from the Inland Revenue or Customs or Excise. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 6.2.96, Col 534**

11.12 Potential liability of a company's officials

11.12.1 The liability will lie with the employer. If the employer is a company, the company is liable - but officials of the company may also be personally liable if they are at fault.

In all cases where the employer is a company it will be possible to prosecute the company. The Crown Prosecution Service will also be able to prosecute a senior official of the company if he was at fault in consenting to or conniving at the offence or being negligent in relation to it. The fact that such prosecutions will be possible does not, of course, mean that they will be appropriate in every case. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 6.2.96, Col 536**

11.13 Employment offences: penalties

11.13.1 *Baroness Williams of Crosby: I think that a penalty as heavy as level 5 - that is of up to £5,000 or up to six months' imprisonment - is a substantial penalty to impose on an employer who may well be unclear about exactly what he is supposed to do and about whether he has been through all the proper documents. The noble Viscount, Lord Addison, has just given an example of how difficult it is for employers in some industries to get the necessary documents.* ***HL Committee 2.5.96, Col 1835***

11.13.2 In setting the maximum penalty for the new offence, the most important consideration is, as always, to ensure that the courts will be able to sentence appropriately the most serious examples of the offence. Within that maximum penalty, it is then for the courts to set the penalty in individual cases taking account of the seriousness of the particular offence and the financial circumstances of the offender.

We do not believe that a maximum penalty of just £1,000 would allow the courts adequately to deal with, for example, the deliberately exploitative employer who employs people he knows, or suspects, to be working illegally simply because he can pay them lower wages. We believe that a maximum penalty of £5,000 would allow the courts to deal with such offenders in an appropriate fashion. We are setting a level within which there can be proper reflection of the seriousness or otherwise of the offence. Obviously, in the examples given by the noble Baroness it will operate at the lower end of the level 5 fine of £5,000, and for the most

serious offences that I have referred to a fine of up to £5,000 can be imposed on an employer. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Cols. 1836-1837**

11.13.3 There should therefore be no danger that an employer of good will will find himself without a defence. Even if he does, it is unlikely in practice that the Immigration Service, the police or the Crown Prosecution Service would think it appropriate to take forward a prosecution in the case of a first offence, except in particularly serious cases involving large numbers of people working illegally. Final decisions will, of course, be for the CPS. But, as far as the Immigration Service is concerned, the target will be repeated for major abuses. In the majority of cases it will probably be sufficient to caution first offenders, particularly where it is clear that the offence was committed unknowingly. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Cols. 686-687**

11.13.4 The maximum penalty will be available in respect of each offence with which an employer has been charged. If five individuals were being employed illegally, five offences would be committed. If the prosecutor chose to charge in the case of all five separately, the maximum penalty available to the court would be £25,000. ... However, it is possible that the prosecution might prefer to bring forward a single specimen charge rather than five separate charges, in which case the maximum penalty would then be £5,000. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 687**

11.13.5 For the more serious exploitative examples of employing illegal immigrants, we take the view that £1,000 is too low and that a fine of up to £5,000 will allow the seriousness of the offence to be reflected in the fine. Of course, for less serious cases we expect it to operate at a much lower level than £5,000 but within that range. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1837**

11.13.6 My understanding is that if the police are concerned about a particular employer whose workforce is made up entirely of illegal immigrants the employer will be prosecuted for employing illegal entrants. I am not sure that the fine would be £5,000 times the number of persons employed. I would need to take advice on that. I do not know. ...

If they are separate offences the fine may be £1,000 in each case, as long as it is within the £5,000. The fine may be £500 in each case. It is a matter for the court to determine the right fine to impose on the employer who is guilty of that particular offence. ... If an employer employs a person without availing himself of a defence, he will be guilty of an offence and it will be for the court to determine the matter. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Cols. 1837-1838**

11.14 Domestic workers: general

In response to Baroness Seear's query as to whether the provision [s8 offence] applies to domestic employees:

11.14.1 We have said that people must be careful that they are not employing illegal immigrants. ... It is the responsibility of employers to assure themselves that the potential employee is not an illegal immigrant. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1842**

11.14.2 ... housewives are already, as are husbands, subject to massive statutory obligations ... But the Act will be given publicity. Employers will be informed of their obligations under the Act, just as they are under another Act...They lay obligations on people and as much publicity is given to them as possible. As the noble Baroness knows, ignorance is no defence under the law. People who employ cleaning ladies, domestic servants, waiters, home helps, whatever they are, will know that they have an obligation as an employer. One of the new obligations will be that they should not employ an illegal immigrant. **Minister of State Home Office Baroness Blatch, HL Committee 2.5.96, Col 1847**

11.15 The domestic workers concession

11.15.1 I have explained on previous occasions the measures we take to ensure that those who do accompany their employers to this country do so of their own free will and only when proper maintenance and accommodation are available for them. We also take steps to ensure that those domestic servants who seek an extension of stay are protected. Extensions are granted only when we are satisfied that satisfactory arrangements continue. Servants also receive a further copy of the leaflet they received with their passport

before entry - addressed to them personally - to remind them of their rights and of the protection given by the law in this country.

We keep these arrangements under close review in conjunction with other government departments. ...

The concession for domestic workers was introduced in 1980 when the Department of Employment ceased to issue work permits to unskilled workers. It was felt that such workers would be disadvantaged if unable to come to the United Kingdom with their employers and might lose their jobs and, as a result, the concession outside the rules was created. Such domestics are admitted only if they meet strict criteria and are not permitted to change employers or escape enforcement action, except in the most exceptional compassionate circumstances. We are talking about 12,000 entry clearances issued to overseas domestic workers last year. If the noble Lord is looking for a real answer, perhaps I may suggest that it is to abandon the concession. ...

The concession works well, but since it was introduced there have been several highly publicised cases of domestics being abused. ... These types of cases are few and far between, but the operation of the concession is kept under close review to ensure that the existing employer/employee relationship stays on the right lines when they are in the United Kingdom. ...

I have said before, and I repeat, that they [abused domestic workers] have the full protection of the law, as does any citizen of this land. The only answer to address the noble Lord's concern would be to abandon the scheme. I do not make the case for abandoning the scheme.

Lord Hylton: My Lords, before the Minister sits down, will she make it clear whether she is making an offer, on behalf of the Government, to abolish the concession.?

My Lords, no, I am certainly not doing that. We considered the concession carefully. We believe that it is right. Where young people have been continually in the employment of someone in a foreign country and but for the concession would be left without a job in their country and they are willingly working for their employer - when I spoke earlier, I made the point that these are young people who come of their own free will rather than lose their job - this is an important concession. We stand by it. **Minister of State Home Office Baroness Blatch, HL Third Reading 1.7.96, Cols. 1286-1287**

11.15.2 The arrangement is that the domestic worker, who must be at least 18 years old, must hold an entry clearance for that purpose on arrival here. When the entry clearance is applied for, the entry clearance officer will interview the domestic worker, with the employer excluded, and try to establish that the domestic worker is satisfied with the terms of employment. He will also ensure that the domestic worker receives and understands a leaflet explaining his or her rights in the UK, especially where to go for help or advice, should abuse of employment follow. The leaflet is available in English, Arabic, Tagalog, Hindi, Urdu, Punjabi, Bengali, Tamil, Thai, and Spanish.

Additionally, the employer must give a written undertaking to provide adequate maintenance and accommodation, including a separate bedroom for the domestic worker. He must also set out in writing the main terms and conditions of the employment, a copy of which goes to the domestic worker, who is asked to confirm that he or she agrees to them. **Minister of State Home Office Ann Widdecombe MP, HC Consideration of Lords Amendments 15.7.96, Col 835**

11.16 The domestic workers concession: procedures before entry

11.16.1 The right way to minimise the risk of abuse occurring in the first place is to sift out those cases where the arrangements falls short of the criteria which have been established for entry clearance in this capacity before they even come here. The Government have said, and I repeat it, that we will gladly consider any suggestions for further refinements to these pre-entry arrangements which might help to weed out unsatisfactory cases. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Consideration of Commons Reason and Amendments 22.7.96, Col 1178**

11.16.2 Under no circumstances do we allow domestic workers to be recruited from overseas by employers already here. They must have been employed by the person they are accompanying for at least one year, and for two years if anything more than a short visit is intended. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 748**

12. SOCIAL SECURITY AND HOUSING ASSISTANCE

12.1 Entitlement to housing and homelessness assistance: General

12.1.1 The amendments [Government amendments to Clause 9 in response to the Court of Appeal's decision] would bring the construction of Clause 9 into line with the construction of Clause 10. The effect would be to make clear on the face of the Bill that persons subject to immigration control are not entitled to council tenancies or eligible for assistance under the homelessness legislation unless they fall within certain classes of such persons specified by order. That would make clear in primary legislation the policy intention that persons subject to immigration control do not have entitlement to housing assistance except where that is warranted. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Cols. 1218-1219**

12.2 Groups to be entitled to housing/homelessness assistance

12.2.1 The Government could not have been clearer about the use they intend to make of the order-making powers provided by Clauses 9 and 10. We have made available to the House background notes setting out the details. The background notes make clear the groups from which entitlement is to be removed. In broad terms, they comprise those who are present without valid leave or who have been granted leave on the basis they will have no recourse to public funds. We have made clear that our intention is to align the entitlement of people who are subject to immigration control under the homelessness legislation with their social security entitlement. Indeed, enabling us to do so is the purpose of Clause 9. It follows from this that concerns that the Bill will change the immigration status or housing entitlement of people who have been settled in this country for many years are entirely groundless. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 707**

12.2.2 As regards an order under Clause 9(2), we intend that the classes of person subject to immigration control who would be entitled to assistance under the homelessness legislation would be refugees, persons granted exceptional leave to remained persons who sought asylum on arrival, for as long as their claim is being determined by the Home Office. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Col 1219**

12.2.3 The classes of person we intend to exclude from entitlement to council tenancies or to homelessness assistance remain unchanged. The policy is unchanged. It is the means of delivering the policy which is turned about. Under Clause 9 as drafted we would specify by order those classes of person subject to immigration control who are excluded from entitlement. Under the clause as amended we would specify by order those who are entitled. We intend that an order under Clause 9(1) would specify that the only classes of person entitled to be allocated a council tenancy would be refugees, persons granted exceptional leave to remain, and persons with indefinite leave to remain. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Col 1219**

12.2.4 We are concerned that such housing should go to those with a clearly established long-term need - people who have the right to remain indefinitely in this country. Those are the groups of people to whom we propose to give entitlement under the homelessness legislation. Perhaps I may remind your Lordships that those are the classes of persons who will be eligible to be considered on the housing list along with all the other British citizens.

Such groups will be refugees; in other words, those who have been granted refugee status. ... Persons granted exceptional leave to remain will also be in those groups... . Finally the other group of persons, quite aside from asylum seekers, are those with indefinite leave to remain. Under the Immigration Rules, those people will actually be allowed to apply for and obtain long term council housing. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1309**

12.3 Groups not to be entitled to housing/homelessness assistance

12.3.1 Those who will not be entitled to council accommodation are illegal entrants and overstayers and a person who has leave to enter or remain on the understanding that he will not have recourse to public funds and asylum seekers. Those who will not be entitled to homelessness assistance are, again, illegal entrants and overstayers; a person who has leave to enter or remain on the understanding that he will not have recourse to public funds; asylum seekers who sought asylum after entering the UK, except those who claim within three months of a declaration by the Secretary of State that their country of origin has undergone an upheaval; and asylum seekers on whose claim an adverse decision has already been made by the Home Office. **Minister of State Home Office Ann Widdecombe MP, HC Committee 6.2.96, Col 553**

12.4 Local authority accommodation: exemption from restriction on leases of surplus accommodation to students/women's refuges

12.4.1 The order [under s9(2)(b)] would also specify that persons subject to immigration control who are students attending a full-time course at a UK college or university may be granted a tenancy of surplus accommodation leased by a local authority to the college or university where they are studying. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Col 1219**

12.5 Women's refuges run by local authorities

12.5.1 We will shortly be considering a Government amendment [subsequently agreed] that will allow us to place specified accommodation leased to third parties outside the scope of an order restricting the use of such accommodation by persons subject to immigration control. That is very much the thinking about universities, but I believe that that provision can be applied to women's refuges when we make that order. To be fair to the noble Earl, perhaps his question goes a little further and envisages the local authority, not the voluntary body, running the refuge. If he knows any such organisations, perhaps he will write to me and I shall consider the matter. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Report 24.6.96, Col 716**

12.6 The Housing Bill and The Asylum and Immigration Act 1996

12.6.1 I should point out to the noble Earl that we shall certainly not commence the provisions in the clause until the order is in place, which will be about three weeks later. The Bill will not leap-frog the Housing Bill which will not be commenced until well into the autumn; whereas, as long as Parliament is willing ... we hope to put the legislation now before the House into effect as soon as possible. As I said, there will be no leap-frogging. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1310**

12.6.2 We will not repeal everything regarding Clauses 9 and 10 in this Bill and when the homelessness Bill comes in there are probably one or two provisions that we will not repeal in that. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Report 24.6.96, Col 716**

12.7 Housing, homelessness and local authorities: general

12.7.1 As far as concerns negotiations with local authorities, with the Court of Appeal decision there is no need for grant on homelessness costs because, as I indicated previously, those people who were denied benefit from February, and those who did not apply but can show that they would have done so if the rules had not been changed by this House and the other place, will be eligible for housing benefit again. Therefore the question of homelessness costs would not arise. However, we still intend to pay grant in respect of costs under the Children Act. We shall be laying a special grant report about that in the autumn. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1310**

12.7.2 As the House knows, we made arrangements for a special grant to help local authorities with unavoidable extra costs arising as a result of benefit changes. If new arrangements of any sort are made, we

will consider what sort of provision may be needed. As I indicated yesterday, their responsibilities under the Children Act, unaffected by this legislation, would be considered. However it is not appropriate to specify a particular form of help for this one area and suggest expenditure on asylum seekers via the local authorities. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1353**

12.7.3 The Department of the Environment is currently considering whether the definition of 'priority need' should be reviewed in the light of the second Appeal Court decision. I refer to the decision made last week rather than the one of Friday 21st June. However, I do not wish to say anything in that respect because I understand that the authorities are still considering whether to appeal to the Appellate Committee of your Lordships' House. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1311**

12.8 Local authorities' duties under the Children Act

12.8.1 As regards the duty to take children into care, I should point out to the House that there is no duty as such. However, a local authority has the option of supporting a whole family in a house. It is within the local authority's discretion to do so, if it feels that that is the best way to honour its obligations under the Children Act. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1310**

12.8.2 I made it clear last time that the local authority, in furtherance of its duty under the Children's Act, may decide that housing the family is the best solution to the children's problems. They do not necessarily have to decide that the children must go into care. There are other options, including the one I have just mentioned, [using a voluntary organisation] open to them. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Report 24.6.96, Col 715**

12.9 Local authorities and community care

12.9.1 My Lords ... the costs under the community care Act that we have at the moment as regards asylum seekers ... will not be affected one way or another by the asylum seekers' regulations. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Report 24.6.96, Col 726**

12.10 The homelessness provisions: the position of British citizens

12.10.1 I was asked if Clause 9(2)(b) disentitles British citizens. It does not. A UK citizen with an asylum-seeking wife and UK-born children will be entitled to assistance under the legislation. As a single person he would not be, but the children and the wife, despite the fact that they may be asylum seeking, will entitle him to be considered under the homelessness legislation. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Report 24.6.96, Col 716**

12.11 Aligning housing benefit with entitlement to homelessness assistance

12.11.1 We are being asked to consider two cases. First, there are people who sought assistance under the homelessness legislation before Clause 9(2) had effect, and who then find that they are outside the scope of an order continuing their entitlement under the homelessness legislation. We are also asked to consider the case of people who initially have entitlement under the homelessness legislation but who subsequently lose that entitlement when their immigration status changes.

I wish to make the Government's position absolutely clear on these points. We intend to align entitlement under the homelessness legislation with entitlement to housing benefit. For so long as someone is entitled to housing benefit by virtue of his immigration status - for example, by being a person who sought asylum at the time he arrived in this country - or, if he retains an entitlement to benefit as part of the transitional package associated with the benefit changes that will flow from what is now Clause 11 of the Bill, he will retain entitlement to assistance under the homelessness legislation. That is what an order under Clause 9(2) will

provide for. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Cols. 1314-1315**

12.11.2 The noble Earl [Lord Russell] also raised the question of what happens to someone being accommodated under the homelessness legislation when his entitlement ceases as a result of an adverse decision on his application for asylum. The answer is that his entitlement under the homelessness legislation ... will match his entitlement under social security benefits. They will cease at the same time. If that person wishes to remain in this country pending the outcome of an appeal - I need not remind your Lordships that only three out of every 100 appeals actually succeeds - it is for him to make his own arrangements for his continuing financial support; or, as many of them do, he may look to his own ethnic community for assistance. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1316**

Earl Russell: Am I to understand that the alignment with housing benefit means that those who have entered the country and claimed asylum before 5th February will not be subject to this clause? [Clause 9]

12.11.3 My Lords, those who entered the country and claimed asylum before 5th February are protected by the transitional arrangements which we agreed. If they claimed asylum properly, until the next decision is made they will continue to receive housing benefit and to be subject to the homelessness legislation. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1316**

12.11.4 The main effect of clause 9 (2) will be to prevent people on limited leave availing themselves of assistance that was never intended for them. There may also be instances where a household currently being accommodated under the homelessness legislation loses its entitlement; for example, when a person who sought asylum at the port of entry has his application refused. The local housing authority will then cease to be responsible for providing accommodation. If the household chooses to remain in the country pending the outcome of an appeal, there are a number of ways in which it might find continued accommodation. It might look to the social services department for assistance under the Children Act 1989 or it might look to the voluntary sector. **Minister of State Home Office Ann Widdecombe MP, HC Committee 6.2.96, Col 573**

12.12 The position of persons currently in local authority housing

12.12.1 The provisions are not intended to encourage local authorities to evict people, who are, under current rules, in council housing. People who, under the homeless provisions, are in temporary accommodation because they qualified for it at an earlier stage and who then ceased to qualify for full council housing would not be able to translate from that temporary accommodation to full council housing. However, we shall be issuing guidance that suggests that it would not be entirely sensitive to evict those people from their temporary accommodation as soon as their circumstances change.

Neil Gerrard: The Minister should clarify the position of asylum applicants who are currently accommodated by a local authority and whose asylum case has not been determined. What happens when their case is determined? …

I did not say that people would retain a right to temporary accommodation for ever. I said that when a determination changed their circumstances, they would not be able to move from temporary accommodation into full council housing, as they might originally have anticipated. Then I said that I did not think it entirely sensitive for entitlement to cease there and then - that is, that day or overnight. **Minister of State Home Office Ann Widdecombe MP, HC Committee 6.2.96, Col 566**

12.12.2 I was asked ... what would happen to people if they had no housing benefit or homelessness entitlement. I ... should say that whereas there is no power in the Bill to evict and no ground for possession is created, it is entirely possible ... that someone who loses entitlement to housing benefit could then run up arrears and that the arrears could become ground for possession. However, we are not seeking to use the provision as a cause for immediate eviction. **Minister of State Home Office Ann Widdecombe MP, HC Committee 6.2.96, Col 574**

12.12.3 The Secretaries of State will specify that any person who is in this country on limited leave will not be entitled to be offered the tenancy of a council house. Persons granted refugee status or exceptional leave to remain will not be caught by that provision. It is a gateway provision that governs entry to council house tenancies, but it will have no effect on existing tenancies. It will not affect an existing tenant who might fall within the description of the specified class. ...

By definition, it should not affect an existing joint tenant. **Minister of State Home Office Ann Widdecombe MP, HC Committee 6.2.96, Col 572**

12.13 The position of asylum seekers pending an appeal against a refusal of asylum

12.13.1 ... they would cease to be eligible under the homelessness accommodation and therefore, if they decided against the odds that I have just indicated to remain here and appeal, then they would have to look for other accommodation. For example, they might look to the local ethnic community with which they are associated, or to the voluntary sector. If they have children then they can look to the Social Services Department for assistance under the Children Act.

Frankly, unless their case is extraordinarily strong, my advice would be that they should consider returning home. ... If they were either an in-country applicant or an appeal applicant, they would be able to receive the benefit due to them back to the date of their original claim. A voluntary organisation, therefore, which thought there was a particularly strong case could see that, if its judgement was correct, it would receive some of the money back it had used to help the applicant. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Report 24.6.96, Col 715**

12.14 Social security provision for asylum seekers/persons subject to immigration control: child benefit - general

12.14.1 Asylum seekers who make applications at the port of entry will not receive child benefit. As I have already explained, if they claim general benefits and income support, that fact will already be taken into account. People who apply once they are already in the country will not receive child benefit. Neither will those whose home country is declared to be in a state of upheaval or who are granted conditional entry. That is a broad-brush run-through of the categories affected. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 595**

12.15 Child benefit: the position of people with indefinite leave to remain

12.15.1 The Government explained in their memorandum to the Committee that, while it is possible to limit access to most benefits through secondary legislation, primary legislation would be needed to curtail entitlement to child benefit. Clause 10 introduces a regulation-making power to make that possible. Let me make it clear that there is no intention of our applying restrictions under clauses 9 and 10 to people who are settled here - in other words those who have been given indefinite leave to enter or remain. **Secretary of State for the Home Department Rt. Hon Michael Howard MP, HC Second Reading 11.12.95, Col 709**

12.15.2 The right Hon. Gentleman [Gerald Kaufman MP] overlooks the fact that a prescribed condition under clause 10 can be that the person has no restriction or condition placed on his leave to remain. That is precisely the way in which we intend to exercise this power. **Secretary of State for the Home Department Rt. Hon Michael Howard MP, HC Second Reading 11.12.95, Col 710**

12.15.3 People who have unlimited leave to remain in or to enter the United Kingdom will continue to receive child benefit. The same applies to anyone accepted as a refugee, anyone granted exceptional leave to remain, anyone within EC-associated agreements and reciprocal agreements and to European economic area nationals and their family members.

It [s10 of the Act] provides powers to make regulations, and I want to make it clear straight away that my right Hon Friend the Secretary of State for Social Security intends to exercise those powers to do for child benefit what the House has already approved for other benefits. There is no intention to go further. ...

My right hon. Friend the Secretary of State for Social Security has written to members of the Committee offering an outline of the regulations likely to be made under the clause. I hope that this will reassure hon. Members that the powers will be used to exclude from child benefit only people who are already excluded from other benefits.

We have been asked why we do not prescribe conditions in the Bill. The reason is that we would like to keep the conditions under which child benefit is paid to persons from abroad in line with those applying to the other non-contributory benefits. It would not be compatible with this aim to have the detailed conditions for access to child benefit set out in primary legislation when they are in secondary legislation for other benefits. ...

People who have been granted settled status will not be affected by the clause. Their right to reside here is unconditional. We do not wish to treat them differently from UK nationals. ...

First I can confirm that the definition of those who are settled here will apply to those who have been given indefinite leave, either at the point of entry or subsequently, and who are therefore regarded as settled there. As for the number of people affected - I assume that the Hon Gentleman [Max Madden] means adversely affected - we estimate that it will be about 12,000 a year. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Cols. 579-581**

12.15.4 *George Howarth: In the debate on the previous clause [child benefit entitlement], the Minister of State read out a list of exclusions. There is no reference to them in the Bill or in any other legislation. Leaving aside clauses 9 and 10, to which we object in principle, we are genuinely concerned that any ambiguity resulting from the fact that that list is not in statute or in the Bill will lead to arguments about how people will demonstrate that they are excluded. Examples have been cited, and there are others - the situation of settled people causes concern.* ***HC Committee 8.2.96, Col 600***

12.15.5 ... I understand what the hon. Gentleman is saying and we may be able to clarify the position if that is what is needed. ...I know that he is concerned about the position of settled persons. ...In any event , we believe that what, in this case, is applicable to United Kingdom or European Union nationals, should be applicable generally. We could not have accepted the creation of an exception. I fully understand the point and I or my Hon Friend the Minister of State will happily provide further clarification. We do not intend adversely to affect settled persons' circumstances. **Parliamentary Under-Secretary of State Timothy Kirkhope MP, HC Committee 8.2.96, Cols. 600-601**

12.16 Local authorities and the Children Act 1989.

12.16.1 A local authority's decision on whether a child needs care under the Act [Children Act 1989] will arise from the other benefit changes that have already been approved on the Floor of the House. Child benefit, which is £10.50 a week for the first child, is not by itself sufficient, and was never deemed to be sufficient, to maintain a child. If a child is taken into local authority residential care, there will be no entitlement to child benefit, even under existing rules. It is for local authorities to decide whether they respond to their duty of care by taking a child into care or supporting that child in the community in other ways. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Cols. 597-598**

12.17 Families where one parent only is subject to immigration control

12.17.1 It may be helpful to make clear our intentions where only one parent in a couple is subject to restrictions on his or her right to remain in the UK. Although child benefit is normally claimed by the mother, it can be claimed by either partner. Where only one partner is subject to restrictions, child benefit will be payable under existing rules to the other partner if he or she is a UK national, or from a group excepted by the proposed regulations. The clause will therefore act to restrict child benefit only where both partners in a couple are immigrants and have restrictions on their right to remain here. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 581**
Max Madden: What is the position of a married couple if the husband, who has been given permission to enter the United Kingdom temporarily leaves the country for more than eight weeks, leaving behind his wife, who is not a British citizen, and who has not obtained indefinite leave to remain? Am I right to assume that the wife' s entitlement to child benefit could, if the clause were enacted, be challenged?

12.17.2 The hon. Gentleman is probably right. The law, as I explained, is straightforward. Either one of the couple can claim, but if the hon. Gentleman is saying that one partner of the couple could not have claimed

anyway and the other partner disqualified himself by falling within one of the groups exempted under our law, obviously the effect identified by the hon. Gentleman is likely - unless I have reason to amend that advice in the course of my reply, which I do not expect. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 596**

See 12.17.4 below

Max Madden: In that case, do the Government propose to launch an extensive information campaign to make the British public, especially those who are nationals of overseas countries without indefinite leave to remain endorsements in their passports, aware of the dire importance of obtaining such endorsements? ...

12.17.3 I am sure that my Department and the Department of Social Security will take reasonable steps to ensure that people understand the proposed changes. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 596**

12.17.4 I return to the tricky point raised by the hon. Member for Bradford West about the position of a claiming parent leaving the country for more than the prescribed period. We will be sending a letter to the hon. Gentleman at a later stage because we think that the position might be affected by whether the child leaves or stays in this country during that absence. I qualify my earlier reply to him with those remarks and the admission that we need to explain the position in more detail. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 599**

12.17.5 I have also been asked about the position of people from abroad who will already be in receipt of child benefit when the law changes. Someone who is already receiving child benefit when the Bill's regulations come into force will continue to receive child benefit until the claim is reviewed. If the claim is reviewed and the effect is adverse, that person will be subject to restrictions. That is in line with the arrangements for other benefits which my right hon. Friend the Secretary of State for Social Security has already announced. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Col 596**

12.18 Child benefit applications: procedural issues

12.18.1 Our administrative procedures for dealing with child benefit applications will establish people's nationality and filter down to people who have spent time abroad in the last few years. Only these people will be asked further questions about their immigration status. This avoids any need for enquiry into an applicant's immigration status based solely on potentially misleading factors such as his ethnic origin or style of his name. This is the same procedure as that applied in the case of other non-contributory benefits... . **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Cols. 692-693.**

12.19 Social security provision for asylum seekers: General

12.19.1 As I have said, the court's ruling was on the narrow legal question of whether our policy on benefits for asylum seekers could be achieved by secondary legislation. The Government's amendment is designed to address that specific issue. It means that regulations specifying the circumstances when asylum seekers should and should not qualify for benefits are protected from challenge on the grounds that they conflict with other enactments. That covers asylum and immigration Acts and could also apply to other legislation and to general rules of law.

The noble Lord, Lord Lester, suggested that the power given by the clause was very wide. However, noble Lords should remember that its purpose is a very specific group of regulations made for a very specific purpose. We do not intend going beyond that and certainly have always made perfectly clear our intentions of applying social security legislation on a fair and non-discriminatory basis. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Cols. 1253-1255**

12.20 Social security provision: the UK' s international obligations

12.20.1 My Lords, the position on international treaty obligations is that none of the changes we make has or will have any effect on them. There is no conflict between what we are doing in the benefit system and our

international treaty obligations ... It is a question of the UK's benefits system and how many people receive benefit ... who are found not to have a legitimate call on those benefits. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Report 24.6.96, Col 605**

12.20.2 I underline that the issue before us does not actually concern asylum. Whether someone makes an application on arrival or after he has been here for three days, three weeks, three months or even longer, or whether he has entered legally or illegally, his claim for asylum will be treated fairly and judged according to this country's international obligations. I can assure my noble friend Lord Wolfson that there is nothing in what we are discussing today that will send back someone who is a genuine asylum seeker. We are discussing solely access to the benefits system. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Consideration of Commons Reason and Amendments 22.7.96, Col 1206**

12.21 The use of primary legislation to amend the rules on entitlement to benefits for asylum seekers

12.21.1 Subsection (1) of the new clause [now Section 11] specifically provides in primary legislation for the power to withhold benefit entirely from certain asylum seekers. It therefore directly meets the appeal court's concerns. Having provided for the powers that the court said were missing the second task is to reinstate as from Royal Assent those regulations which the court found to be 'ultra vires'. This is done in the schedule. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Col 1223**

12.22 Unforeseen entitlements and transitional protection for asylum seekers

12.22.1 The third task is to deal with the unforeseen entitlements that have arisen because of the return to the rules which existed before 5th February [1996]. Anyone who obtains benefit because of the court's judgement, will have that stopped once this Bill becomes law. And anyone who comes along after Royal Assent and claims benefit for the period between 5th February and this Bill becoming law, solely on the basis of the court's judgement will not be entitled. Those who have obtained money during the period will keep it.

Perhaps I should say a word about those people who were transitionally protected. The provisions of 5th February regarding them still stand as the court did not find against them. ...

I announced last Monday that once someone is accepted as a refugee he will be able to ask for his entitlements to benefit to be backdated at the asylum seeker rate to the start of his application for asylum. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Col 1223**

12.22.2 ...I think the noble Lord [Lord McIntosh] is asking about people who did not make a claim but can make a claim today. They could ask for it to be back-dated to an earlier period. Under the normal rules, such back-dating can be done only if the claimant shows good cause for not having claimed earlier. In this case, the existence of the regulations, now deemed *ultra vires*, which excluded the person from claiming would constitute good cause.

12.23 Social security provision: procedures at the port of entry - general

12.23.1 If someone applies to a customs officer instead of the immigration officer, it could be proved and an adjudicator would be likely to accept that it was an application on arrival. I am clear that that would be the case relating to arrival. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Report 2.7.96, Col 1351**

12.23.2 The hon. Members for Linlithgow (Mr Dalyell), for Perth and Kinross (Ms Cunningham) and for Rochdale (Ms Lynne) suggested that someone arriving in this country seeking asylum is required to give details at the port of the suffering that they have undergone or their reasons for seeking asylum. All we ask is that, when such people are asked why they have come to this country, they should say that it is to seek asylum, not something totally different. There is no question of their being required to give details then and there. Of course it is right to be considerate to them if they have suffered in the ways that some hon.

Members have rightly expressed concern about. **Secretary of State for Social Security Rt. Hon Peter Lilley MP, HC Consideration of Lords Amendments 15.7.96, Col 881**

12.23.3 The hon. Lady [Emma Nicholson MP] misunderstands what happens at ports. We do not expect people to know about our benefit regulations or understand the minutiae of bureaucratic detail as has been suggested. They are simply asked why they are coming to Britain. If they are seeking asylum, they simply have to say so. **Secretary of State for Social Security Rt. Hon Peter Lilley MP, HC Consideration of Lords Amendments 15.7.96, Col 850**

12.23.4 The idea that asylum seekers have to address the complex application procedure and reveal their full details of their circumstances on arrival is, quite simply, false. All they need to do is to say that they want to claim asylum. It is wrong to suggest, as John McCarthy does in his letter, that they will not have the opportunity to put their case later. I can assure your Lordships that they will be able to discuss their case after seeking the support and advice of friends or support agencies. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Consideration of Commons Reason and Amendments 22.7.96, Col 1183**

12.23.5 However, be that as it may, we have once again heard this picture painted about asylum seekers. There is one simple way that asylum seekers can obtain benefit when they arrive in this country: it is to be honest when they arrive here, and to say,' I have come seeking asylum'. That is the way that they will gain entry into the benefit system until the first decision is made. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Third Reading 2.7.96, Col 1351**

12.23.6 Our proposal creates a clear and distinct borderline as far as concerns the benefits system. It says clearly that those who apply for asylum when they arrive here do not have to go into detail; they do not have to give a great story; they just need to say, 'I am applying for asylum', and they will be allowed in. Their story will come at a later stage. That is all they need to do. That gives a clear-cut borderline for people getting into the benefit system.

As I have explained from the evidence of my own eyes, there is nothing to prevent an asylum seeker at the immigration desk on his arrival in this country, saying, 'I have arrived in a safe country. I have planned and schemed to get here. Here I am. I am here for asylum.' There is no reason at all. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Consideration of Commons Reason and Amendments 22.7.96, Cols. 1208-1209**

12.23.7 Passports and landing cards are asked for. While the officer checks the passport and the name against his computer he asks two basic questions. He may ask other questions but he asks two basic questions: 'How long are you here for?' and 'What is the purpose of your visit?' He listens to the answers, and perhaps asks some more questions. It was for this reason that I intervened in the speech of the noble Baroness, Lady Williams. I asked what the young man had said in reply to those two questions and any others that he might have been asked. [Lord Mackay had asked Lady Williams what an Angolan man who applied for asylum two days after entering the UK had told immigration officers on entry]. Clearly, if he was in a poor physical state he would be asked other questions. What did he say? That is the point at which the individual says that he is here to claim asylum. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Consideration of Commons Reason and Amendments 22.7.96, Cols. 1204-1205**

12.23.8 Again, to listen to the debate one would think that hardly anyone applied at the port of entry. That is not true. A considerable number apply at the port of entry. The majority of those who apply at the port of entry come from those countries which I believe noble Lords and right reverend Prelates can easily quote as examples of where they are liable to persecution. They appear to be not so traumatised, not so out of their wits, that they do not realise, 'At long last I have got to safety. I will say to these British officials, 'Please, I am here as an asylum seeker' - because they have to say something to the British officials. It is not as if they can slip through quietly without a word.

Such people have either to say, 'I am an asylum seeker', or, 'I am here for six months, and I will not be a burden on the public purse'. They have to say one or the other. It does not seem to me to present any difficulty that they are asked to say clearly at that point, 'I am an asylum seeker'.

My noble friend's [Lord Elton's] suggestion ... that we should perhaps place warnings on landing cards merits further consideration, but landing cards are not issued to people claiming, as some do, to be EU nationals and who walk through the blue channel. Of course they are not issued to clandestine illegal entrants. The

people who receive landing cards are those who come to the desk, as I have explained, and have a conversation with the immigration officer. It is at that point that they should claim asylum. My noble friend has made an interesting suggestion, and we should give it consideration. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Consideration of Commons Reason and Amendments 22.7.96, Col 1208.**

See also: 5.8 Undocumented passengers Page 29
5.9 Declaring false travel documents at port of entry Page 30
5.10 Failure to declare false travel documents at the port of entry Page 30
5.11 False passports/travel documents: the meaning of 'without delay' (Article 31 of the 1951 United Nations Convention) Page 31
5.12 False passports/travel documents: the issue of warning asylum seekers to disclose false documents at port Page 32

12.24 Social security provision for asylum seekers: access to interpreters at the port of entry

Mr Hartley Booth (Finchley): Therefore, will he assure the House that all immigrants or asylum seekers are made aware of their rights in their own language at the airport or port?

12.24.1 Of course people must have access to an interpreter so that they can deal with the immigration authorities. There are interpreting facilities in scores of languages to cope with people arriving from various countries.

The most telling point in the archbishop's letter referred to the difficulties that might be experienced by asylum seekers who cannot speak English. However, there is a degree of flexibility, as was suggested by my hon. Friend the Member for Eltham. People who arrive at an airport or other port of entry with no interpretation facility are told to come back and complete the formalities in a few days' time. They are then treated as if they had just arrived and were making an in-port claim, although such a claim is made two or three days later. That flexibility will continue when the measure is in force. **Secretary of State for Social Security Rt. Hon Peter Lilley MP, HC Consideration of Lords Amendments 15.7.96, Col 850**

12.24.2 On his second point, about the problems of languages, Heathrow is well equipped with a vast array of interpretation facilities. However, other ports that cater for smaller numbers of people do not have facilities for every language. If someone arrives with an unusual linguistic requirement, such arrangements as I suggested might be necessary should apply. **Secretary of State for Social Security Rt. Hon Peter Lilley MP, HC Consideration of Lords Amendments 15.7.96, Col 851**

12.24.3 Another point that arises is the language difficulty. If an individual cannot speak English and there is no one immediately available in the line who can speak the relevant language the individual is taken to a special suite with a waiting room and a series of interview rooms. I can tell the noble Baroness Lady Williams, that there is a well-oiled machine for finding an interpreter. Sometimes one is not immediately available, because immigration authorities know those areas in the world from which people most commonly need the services of an interpreter. Sometimes it takes a few hours and the individual waits in the waiting room with a cup of coffee or whatever it may be, until an interpreter arrives. In a very few cases an interpreter cannot be found that day. In those circumstances, the person may be given temporary admission with an appointment to return to complete the formalities perhaps the next day. When the interview takes place, whether a few hours later or even the next day, with the interpreter present, the immigration officer can establish through the questions that I have already mentioned the length of say and the reason for the visit. If the person is looking for asylum he or she can say so and the application is treated as an on-arrival application for benefit purposes. Even if the individual has to go away and return the next day because he does not speak English, or there is no one available who can speak his language, at that point it is still considered to be an at-port application and benefit will be granted. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Consideration of Commons Reason and Amendments 22.7.96, Cols. 1205-1206**

12.24.4 I do not see why people cannot apply at the port of entry. There is no reason for not doing so on arrival into this country. We have plenty of interpreters on hand to help them if they do not understand English. If we do not have an interpreter for the particular language because they come from a country from which very few come, their application is taken then and the interpreter is arranged as quickly as possible thereafter. They are still considered to be on-arrival applicants. There is no problem about that. Those people who come here as genuine refugees can have the benefits system come to their aid by merely applying at the

port of entry. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Col 1253**

13. FAMILIES

13.1 Common law spouses

13.1.1 The rules do not provide for the admission of foreign nationals who are partners in common-law relationships. In the light of the figures to which I have referred [increase in number of this group seeking to remain in UK from about 400 in 1991 to about 900 in 1996], my right Hon and learned Friend the Home Secretary has decided that the requirements of the immigration rules should be henceforth strictly applied.

A foreign national who wishes to join or remain here with a person settled here must be married to that person, except for those who qualify under the immigration rules as fiancés or fiancees. Foreign nationals who apply to enter or remain on the basis of a common law relationship can, with immediate effect, expect to have their applications refused.

It is not our intention to apply these new requirements retrospectively. But any foreign national refused leave to remain on the basis of a common-law relationship who does not leave the United Kingdom voluntarily may normally expect deportation action to be taken against him. In deciding whether deportation is the appropriate course, consideration will be given to any compassionate factors that may be present. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Third Reading 22.2.96, Col 539**

13.2 Unaccompanied children: the designated list

13.2.1 The Bill does not exempt categories of people such as children from the effects of designation. However, designation will not change our special arrangements for unaccompanied children... . We shall not change the requirement in immigration rules to give those cases special priority and care. **Minister of State Home Office Ann Widdecombe MP, HC Committee 18.1.96, Col 217**

13.3 Unaccompanied children: the accelerated appeals procedure

13.3.1 Our proposals to extend the accelerated appeals procedure do not change the special arrangements for considering asylum applications from unaccompanied children. Their cases will continue to be given special priority and care, and will, as now, be considered by specially trained caseworkers. ...

The Government recognise that applications from unaccompanied children raise sensitive issues and for this reason we do not propose to certify particularly complex or compassionate cases. Each case would be considered on its merits. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1532-1533**

13.3.2 Children are not exempt from the current provisions for accelerated appeals, although the number of certified cases is very small. We expect the number to remain small.

The appropriateness of using the accelerated procedures would be given careful scrutiny in the light of the circumstances of each individual case. We would take into account a child's individual circumstances, including his ability to understand his situation and to take responsibility for his actions. It would not be reasonable, for example, to expect a young child to know whether the passport he had been given was valid. But the same might not be true in the case of a young person of 17. It is right that the Secretary of State should make these judgements on the merits of the individual case. I must stress that the specialist caseworkers who consider claims from unaccompanied children would only certify a refused claim when that was clearly appropriate in the individual case. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 628**

13.3.3 We do not accelerate the initial decision. That is where the time is material. I am referring to difficult cases where a child does not and cannot understand, and where the time that is needed to support the claim may need to be prolonged. That is allowed for. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 629**

Children are given as much time as they need to prove their case. It is only when they have been found not to merit asylum that the specialist unit will consider applying a certificate. That certificate will only be applied and justified, given the maturity of the child. So all that will be taken into account. ...

Children are always given sufficient time to provide evidence to support their clam before an initial decision is made. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 627**

13.4 Removal of unaccompanied children to their country of origin/safe third country - general

13.4.1 The Government's view is that unaccompanied children whose asylum applications have failed - after the special procedures consideration - should wherever possible be returned to the care of their family in the country of origin. That is in line with the principle of family unity which is contained in the United Nations on the Rights of the Child. The United Nations General Assembly Resolution No. 49/172 of 1994 reaffirmed the importance of family reunification. If that was not possible, consideration might be given to whether it would be possible to return the child to other suitable carers. The Government consider that it is better for children who have no basis of stay in the United Kingdom to return home voluntarily as that is the least stressful arrangement. The Home Office encourages that option. Only where voluntary departure cannot be agreed are steps taken to enforce return. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 630**

13.5 Unaccompanied children: removal to their country of origin/safe third country - reception arrangements

13.5.1 The Government made it clear during the passage of the 1993 Act that they will not seek to remove a child who is under 18 years of age unless it is possible to put in place acceptable reception arrangements in the country of origin. The Government remain firmly committed to that policy on humanitarian grounds. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Col 630**

13.5.2 Amendment No 45 would prevent any child under 18 who claimed asylum in his own right, whether accompanied or unaccompanied, from being removed to a safe third country. ... This would make it impossible to reunite a child with his own family if the family were in a safe third country. We would not take such a step unless we had confirmation that suitable reception arrangements were in place in the third country. It is nevertheless right that we should have the option to remove children under 18 to safe third countries in appropriate cases in order to preserve family unity. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1534**

13.5.3 As I set out in great detail earlier, we recognise the potential vulnerability of an unaccompanied asylum seeking child. That is why we have special provisions in the Immigration Rules for handling their cases. Last year we set up a special case working unit to ensure that their applications were given priority and were considered by specialist case workers. That development has been widely welcomed.

During the passage of the Asylum Immigration Appeals Act 1993, my right honourable friend the then Parliamentary Under-Secretary of State said in another place that the Government would not send an unaccompanied child to another country, whether or not that child had claimed asylum, unless they were satisfied that safe and adequate reception arrangements had been made. I am happy to repeat that commitment today. Any return of an unaccompanied child is arranged by negotiation with those responsible for his or her care.

The Government's view is that where a child has no claim to refugee status it is normally right that he or she should be returned to their own family, community and culture. That is consistent with UNHCR guidelines which emphasise the importance of family unity.

If a child has no claim to refugee status but we cannot be satisfied about reception arrangements, then we grant the child exceptional leave to remain. But the decision whether to return a child must be made after the child's asylum application has been considered. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1603-1604**

13.6 Procedures for determining the age of young asylum seekers -the burden of proof

13.6.1 As I explained in Committee, where satisfactory evidence of age is provided we will accept an applicant as a minor. My noble friend Lord Renton said on that occasion that the burden or proof must lie on whoever has or is most likely to have the necessary information as to the applicant's age. That proof could take the form of documentary evidence such as a bona fide birth certificate which the child or his carers may be able to obtain but which the Secretary of State clearly cannot. I entirely agree with my noble friend. …

Some children may arrive in the country without documents or with obviously forged documents. Each case would be considered according to its individual circumstances. We have made absolutely clear that we understand that it may have been necessary for young people or persons of any age who arrive in this country to have travelled across the world with forged documents or documentation that is not in order. They are given a proper opportunity to admit that their documents are forged and then to prove the authenticity of their age and case for asylum.

The Government consider that the burden of proof must rest with the applicants seeking entry to the United Kingdom to satisfy our immigration officials of their age. If the authorities believe and have come to the view that they are under 18, of course they will accept under 18 as the age, but where they have doubts about that, the whole issue is in contention. The Government do not think it unreasonable in most cases to expect a 16 or 17 year -old, for example, to take steps to obtain documents, such as birth certificates or other material, to establish their age. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Cols. 651-652**

13.6.2 It cannot be right to allow a person to make an unsubstantiated claim to be a child in order to circumvent normal immigration controls. If there is a dispute over the age of an asylum seeker, it is open to him to provide documentary or medical evidence to support his claim. Where that evidence is satisfactory we will accept the applicant as a minor, as we have done in a number of cases. But it is entirely right that the burden of proof should remain with the applicant. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1533**

13.7 Procedures for determining the age of young asylum seekers - medical evidence/ use of X-rays

13.7.1 The right reverend Prelate asked me a particular question. [whether the minister would consider establishing a panel of paediatricians to determine the age of a young asylum seeker] We are prepared to look at any evidence submitted on behalf of the applicant as to the applicant's age. That can include medical evidence and indeed any evidence that would substantiate the age that is claimed. But we see no need for setting up a new mechanism for that purpose. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1604**

13.7.2 My Lords ... where there is a dispute about whether an asylum claimant is under 18 years of age, the burden of proof must lie with the applicant.

One option for the applicant is to seek an independent age assessment by medical experts. If such a report is obtained, it will be given full and careful consideration. The Home Office does not normally commission such reports and I can confirm to the House that we do not employ X-rays for age assessment. Entry clearance officers at British diplomatic posts abroad do not employ this technique either. But it is not for the Home Office to say what methods should or should not be employed by an applicant's doctor.

On the methods used, my noble friend [Lord Avebury] is right. It must be a matter for the applicant and his legal representatives to discuss with their chosen medical adviser. Most importantly, it is for the doctor involved to adhere to current best practice and to abide by the latest guidelines and instructions. If x-rays are being used inappropriately, that is a problem which needs to be addressed in a wider context rather than solely in relation to immigration. ...

I am not persuaded that this Bill is the appropriate vehicle for dealing with those concerns. However, I would be happy to consult with my honourable friend John Horam, the Parliamentary Under-Secretary of State for Health, as to whether further guidance is required. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 563**

13.8 Unaccompanied children: detention and bail

13.8.1 It is the Government's stated policy that unaccompanied children under the age of 18 are detained only as a very last resort. Detention is authorised only where there are good grounds for believing that the minor would not comply with the terms of temporary admission or to facilitate removal. Moreover, when it is considered necessary to detain a child who is under 18, whether accompanied or not, authority at a minimum of inspector level is required for the initial decision to detain, and this must be reviewed by an assistant director within 24 hours. …

There is general guidance on detention under the Immigration Act which applies to all those detained, including children. Detention is always regarded as a last resort and factors which are taken into account include risk of absconding; previous failure to abide by terms of admission; whether the applicant has close ties within the United Kingdom; and, indeed, criminal conduct or other matters which may make detention appropriate in a particular case. Children are not detained unless they fall within the existing guidance, and only then as a last resort. ...

... children are detained only in exceptional circumstances and as a last resort and almost always because there is a serious risk of absconding. The Government have no plans to change that approach. **Minister of State Home Office Baroness Blatch, HL Report 24.6.96, Cols. 639-640**

13.9 Curtailing leave to remain

13.9.1 ... we do not use curtailment automatically or punitively. ...we cannot at the moment use the power of curtailment effectively in cases where the asylum seeker has family members with valid leave to remain. ... The cases should be brought into line, so that dependants are in the same position as the main applicant.

The student [who is legitimately studying in the UK but whose parents leave to remain has been curtailed] could be removed but, as I have explained, that is not automatic. Although we may curtail the dependant's leave, we do not have to do so. Each case will be considered carefully on its merits. In a case such as the hon. Gentleman refers to, circumstances would militate strongly in the student's favour. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 8.2.96, Col 632**

14. JUDICIAL REVIEW

14.1 Judicial review: general

14.1.1 The hon. Member for Bradford West [Max Madden MP] commented on the increase in judicial review. The abolition of the rights of appeal in the 1993 Act did not lead to a significant increase in judicial review. **Minister of State Home Office Ann Widdecombe MP, HC Committee 23.1.96, Col 272**

14.1.2 The provisions in Clause 1 do not deny a right of appeal. They simply provide that people falling into certain categories have no appeal to the tribunal from the adjudicator. Appeal to the tribunal is already `only with leave, so it is not automatic. Most cases are refused leave and already seek judicial review of their refusal. So there is no reason to think that these proposals will result in a significant increase in judicial review applications. **Minister of State Home Office Baroness Blatch, HL Second Reading 14.3.96, Col 1034**

14.2 Third country removals

14.2.1 I am in a position to say ... that if it is clear that an application for judicial review is imminent ... some delay will be allowed to allow the application for leave to be made. If that is granted, then in practical terms that has the effect of staying removal until the case has been heard by the High Court. **The Lord Advocate Lord Mackay of Drumadoon, HL Committee 30.4.96, Col 1591**

14.2.2 Perhaps I may stress three points. First, there is already provision for determining appeals without a hearing in certain circumstances. Secondly, we are emphatically not renewing the right to an oral hearing in all certified appeals, as suggested in the Peat Marwick report. All that is proposed is to extend the adjudicator's existing discretion to determine on the papers, if he considers that appropriate in an individual case. It will be entirely up to the adjudicator how far, if at all, he uses such a discretion. We believe that it is an option that should be available to the adjudicator. Thirdly, if an adjudicator uses that discretion unreasonably, the ultimate safety net of judicial review is always available. We do not think that will happen very often. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Cols. 1512-1513**

Max Madden: Will she give an undertaking that the Home Office will in future observe existing practice, whereby persons who seek leave for judicial review in the High Court are allowed to remain here until the application has been determined, and are, moreover, allowed to remain until the judicial review hearing?

14.2.3 The second question was whether someone seeking judicial review could stay in this country while going through that process. ... The answer was yes on that occasion and I have no reason to alter it. **Minister of State Home Office Ann Widdecombe MP, HC Committee 23.1.96, Col 273**

14.2.4 In the process of answering the hon. Lady, [Maria Fyfe MP] let me confirm that legal aid for judicial review is available in such cases [third country removals]. **Parliamentary Under-Secretary of State for the Home Department Timothy Kirkhope MP, HC Committee 25.1.96, Col 342**

14.3 Social security provisions

14.3.1 In addition, the provision [s11] does not seek to restrict the jurisdiction of the court in entertaining judicial review challenges. ...

Lord Lester of Herne Hill: I believe that I heard him say that it was not intended to oust judicial review. Does that mean that the Government do not intend that future regulations will be in any way immune from challenge on the basis of illegality, irrationality or lack of fairness?

I believe that I made it perfectly clear that the provision does not seek to restrict the jurisdiction of the courts in entertaining judicial review challenges. I do not believe that I can qualify that or add to it in any way. **Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Committee (on Recommitment) 1.7.96, Cols. 1255-1256**

15. MISCELLANEOUS

15.1 Carriers Liability: General

15.1.1 If the airline knowingly colluded, assisted or facilitated - I think that that is the legal jargon - an illegal immigrant or entry into this country, it would be caught by Clause 5(1)(b), [assisting a person's entry into the UK with knowledge/reasonable cause to believe that person is an asylum claimant] but we are not talking about airlines knowingly carrying passengers for the purpose of illegal entry. Indeed, even with passengers who travel with or without documentation which is in order, the airlines are still not aware that, on arrival, they will seek entry into the country - **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1626**

15.1.2 He [Lord Russell] asked me specifically about Clause (5)(1)(b). The airline would not be caught by Clause 5(1)(b). **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1627**

15.1.3 As I have already said to the noble Earl, Lord Russell, Clause 5(1)(b)does not create a new carrier liability, because airlines would have no reason to know that a properly documented passenger intended to claim asylum. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1629**

15.1.4 *Earl Russell: The noble Baroness gave me an assurance at Committee stage which I much welcomed, that those who work for airlines who assist anyone intending to claim asylum would not be guilty under this clause. Since then I have received advice from the Immigration Law Practitioners Association which, in noting the noble Baroness's assurance, nevertheless say that the courts may think otherwise.* ***HL Report 20.6.96, Col 568***

15.1.5 The noble Earl referred to airline employees. I am fairly confident about what we said earlier, but I should like to consider further what I said originally and to confirm that that was correct. If I have to modify it I shall do so. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 571**

15.1.6 I know that my noble friend is concerned also that a charge could be levied when the passenger is admitted by an immigration officer and subsequently detained and removed as an illegal entrant. Such circumstances are rare, although liability would exist under the 1987 Act and the Immigration Act 1971. I am sure that we would want to be practical. If the documentation was good enough to have deceived an immigration officer, it would be unfair to have expected airline staff to have picked it up. **Minister of State Home Office Baroness Blatch, HL Committee 30.4.96, Col 1629**

15.1.7 I am sympathetic to the difficulties experienced by carriers where substantial delays have been caused either by administrative action or where the person concerned attempts to exhaust every avenue of appeal. In those circumstances I sympathise with the view that it does not seem fair to expect carriers to continue to carry liability on an `open-ended' basis. The Government are already keen to look closely at this to see how we might effectively reduce this burden by simple administrative means. **Minister of State Home Office Baroness Blatch, HL Committee 9.5.96, Col 309**

15.2 Commencement

15.2.1 Subsection (3) [of s13 of the Act] makes provision for commencement orders. We intend to bring a number of the provisions into force at the earliest opportunity. The measures on asylum in clauses 1 to 3 for example, are pressing because of the continuing high level of applications. We also want to ensure that the enabling powers of clauses 9 and 10 can be introduced quickly. The duties of local authorities in providing housing and accommodation need to be aligned as quickly as possible with the recently restricted income support and housing benefit. Subsection (3) also allows us to bring different clauses into force at different times. It is a standard provision, with sensible options for the staged implementation of the Bill, if necessary. We would, for example, want to ensure, before implementing clause 8, that there was an adequate opportunity for the guidance that we said we would make available to employers to be published and distributed widely. **Minister of State Home Office Ann Widdecombe MP, HC Committee 8.2.96, Cols. 599-600**

15.3 Detention and Bail

15.3.1 A decision to detain a passenger is not taken lightly. Temporary admission is granted readily if the individual appears likely to comply with its terms. It is not our policy, for both humanitarian and financial reasons, to keep passengers in detention for any longer than required. Cases are kept under constant review at senior levels to ensure that detention does not continue unnecessarily and removal is effected as soon as is practical. Some delays are inevitable; for example, where representations have been made, asylum has been sought or where there are documentation problems. But passengers are not detained where there is no impediment to their removal. **Minister of State Home Office Baroness Blatch, HL Committee 9.5.96, Col 308**

15.3.2 The noble Lord [Lord Dubs] focused on the second of those guidelines [UNHCR guidelines on the detention of asylum seekers] and I hope he will bear with me while I quote it. It refers to:

`the right to challenge the lawfulness of the deprivation of liberty promptly before a competent, independent and impartial authority, where the individual may present his arguments either personally or through a representative'

I believe that that describes the bail system which will be in place if the additional rights to apply for bail which are contained in this Bill are accepted in full. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 465**

15.3.3 I refer now to the European Convention on Human Rights. I know that my noble friend has a view on such things, but the convention is not part of domestic law. However, the Government are satisfied that the Immigration Act 1971 conforms to the provisions of the convention. We are satisfied that the detention of asylum seekers under that Act is compatible both with the European Convention on Human Rights and the United Nations Convention on the Status of Refugees. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 465**

See also: 13.8 Unaccompanied children: detention and bail Page 88

15.4 Deportation and Removals

15.4.1 The Home Secretary's power to deport is used sparingly and decisions are taken only after careful scrutiny of all the circumstances of an individual's case. A person subject to deportation at the personal discretion of the Home Secretary is already entitled to make representations to the independent panel of advisers. That provides a full opportunity for the person concerned to state his case. No deportation order is signed until the panel's advice has been received and properly considered. **Minister of State Home Office Ann Widdecombe MP, HC Report 21.2.96, Col 429**

15.5 Registration of advisers

15.5.1 Discussions have taken place with the Law Society, the Immigration Law Practitioners Association, and the appellate authorities. These discussions have identified a number of issues which would benefit from greater attention, to see if any abuses or excesses can be curbed from within the system rather than by intervention by the Government... . The Chief Immigration Adjudicator Judge Pearl, has kindly agreed to convene at regular intervals a meeting of those concerned in the recent discussions to pursue the points which have been identified. We think it right to await the outcome of this work before considering whether any further steps are necessary. **Minister of State Home Office Baroness Blatch, HL Report 20.6.96, Col 580**