Immigration Bill House of Lords Third Reading 6 May 2014: Briefing from the Immigration Law Practitioners' Association

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government, including Home Office, and other, consultative and advisory groups.
In this briefing we identify matters to which the House may wish to return on third reading, in line with the rules on what can be discussed on third reading. We have many concerns beyond the matters set out below and should be happy to discuss ways of returning to a wider range of matters at Third Reading. **ILPA will be producing a further briefing to amendments tabled for third reading.**

It has become more and more difficult as the Bill has progressed through the House of Lords to identify what responses have been given to these questions because many are contained in responses to letters. We are most grateful to peers who have drawn our attention to particular letters. It would be enormously helpful, and very much more democratic, if the Bill's home page on the parliament.uk site provided links to all relevant letters.

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Clause 1 Removal of Persons unlawfully in the United Kingdom

PROPOSED AMENDMENT

Clause 74 *Orders and Regulations,* page 59, line 24, at end insert:-
( ) Regulations made under or mentioned in under section 1(10)

Purpose

To ensure that regulations about the removal of family members whether made under clause1 (10) or, in the words of that clause "any other provision of the Immigration Acts" would be subject to the affirmative procedure.

Briefing

The Lord Taylor of Holbeach indicated at Report:

> *Further to the D*[elegated] *P*[owers and] *R*[egulatory] *R*[eform] *C*[ommittee]*'s 24th report… we will make a further amendment at Third Reading to take out the reference to "in particular" from line 27 [now page 3 line 5] so that it will be completely clear that the scope of the regulations cannot extend beyond these two provisions.* (1 Apr 2014: Column 852)

The effect would be that the only matters that could be addressed in regulations on the removal of family members would be the time period (if as now, then subsequent to the removal of the principal) during which a family member could be removed under the section and the service of a notice of removal under the section.
The Committee said in its 24th report

> 10. Despite our recommendation, the powers under section 10(6) of the Immigration and Asylum Act 1999 remain subject to the negative procedure. The Government explain that they have not accepted our recommendation because the tabled amendment will modify the Secretary of State's power to make regulations to limit it to procedural matters. We are not convinced by this description of the effect of the Government's amendment. Its effect is solely to amend the paragraphs which give examples of the kind of provisions which may "in particular" be included in the regulations. It does not alter the broad scope of the powers conferred by section 10(6) which allow the Secretary of State to make further provision about the removal of family members both under section 10 and any other provision of the Immigration Acts. **Accordingly we remain of the view that the delegated powers conferred by section 10(6) should be subject to the affirmative procedure.**[1]

The Lord Rosser asked about this at Report (col 857) but, unless we have missed a letter, received no reply.

Clause 4 and Schedule 1 powers of Immigration Officers

PROPOSED AMENDMENT

New clause after clause 4

> *Independent oversight of use of enforcement powers*
>
> The Secretary of State shall take all reasonable steps to facilitate independent oversight of immigration enforcement powers.

Purpose
Places the Secretary of State under a duty to facilitate independent oversight of immigration enforcement powers. Designed to provide an opportunity to get the Minister's commitment to this as set out in his letter of 5 April 2014[2] to Lord Ramsbotham and Baroness Smith of Basildon on the record and to interrogate it in the light of the barring of the Special Rapporteur on violence against women from Yarl's Wood.

Briefing
The Clause two was the subject of the letter from Lord Taylor of Holbeach to Lord Ramsbotham and Baroness Smith of Basildon subsequent to the debates at Committee stage, concerning the use of a restraining technique which resulted in death. In his letter the Minister writes:

[1] Available at http://www.publications.parliament.uk/pa/ld201314/ldselect/lddelreg/159/15903.htm#a2
[2] Letter of 7 April 2014 available at http://data.parliament.uk/DepositedPapers/Files/DEP2014-0578/050414_L_Ramsbotham_B_Smith_Immigration_Bill_from_Lord_Taylor.pd

> *The Home Office takes its duty of care towards detainees seriously and looks to the findings of bodies and groups providing Independent [*Sic.*] oversight of its facilities to challenge instances where care provisions in centres are found to be wanting.*

We recognise that it would not be usual to return to this matter at Third Reading. However, the contents of the Minister's letter have been called into question by events between now and then. The UN Special Rapporteur on violence against women was on mission to the UK for 15 days in March and April. She asked to visit Yarl's Wood, where Ms Christine Case had died of a massive pulmonary embolism, with secondary causes, on 30 March 2014. The inquest is expected to resume in September. The Special Rapporteur said

> "*I regret that, despite my repeated requests, a visit to Yarl's Wood immigration detention centre was not facilitated by the Government, and that my access to the Centre was denied, when I tried to visit it independently. Due to receiving information from the third sector, I was keen to speak to detainees in this facility to objectively seek information on violations being experienced.*
>
> *As in most countries, the number of incarcerated women in the UK is growing, with black and minority ethnic women being overrepresented within British prisons and immigration detention centres. …A large number of women in detention have a history of being subjected to violence prior to being imprisoned, and this cannot be adequately addressed in custodial settings. The strong links between violence against women and women's incarceration, whether prior to, during or after incarceration, needs to be fully acknowledged."*

To the press, the Special Rapporteur said "…if there was nothing to hide, I should have been given access[3]" To deny a Special Rapporteur access to a place of detention is an extremely grave matter and we suggest that the Minister be asked about this and his letter of 5 April considered in the light of it at Third Reading.

Clause 15 Right of appeal to First-tier Tribunal

PROPOSED AMENDMENT

Clause 15, page 14, line 7 leave out subsection (5)

Purpose

To deny the Secretary of State the power to decide whether the Tribunal can consider a new matter raised for the first time at the appeal and retain this power in the hands of the Tribunal.

Briefing

The Minister, Lord Wallace of Tankerness, promised (1 April 2014, col 893) to reflect on Amendment 10, laid at report in the names of the Baroness Berridge and the Lord Avebury ((1 April 2014, col 881), which gave effect to the recommendation of the Joint Committee on Human Rights in its Eighth report[4]

> 46…. **In our view, the Tribunal itself, not the Secretary of State, should decide whether it is within its jurisdiction to consider a new matter raised on an**

[3] See e.g. http://www.independent.co.uk/news/uk/politics/un-human-rights-investigator-denied-access-to-yarls-wood-immigration-centre-9262941.html

[4] Joint Committee on Human Rights, *Legislative Scrutiny: Immigration Bill* (8th Report, Session 2013-14, HL Paper 102, HC 935), available at http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/102/10206.htm#a9

appeal. We would expect the Tribunal, in the exercise of its inherent power to prevent abuse of its own process, to permit a new matter to be raised only if there were good reasons for not raising the matter before the Secretary of State.

47. **In view of the admitted novelty of new s. 85(5) and (6) of the Nationality, Immigration and Asylum Act 2002, inserted by clause 11 …we recommend that the Government amends the Bill to achieve its purpose in a way which does not appear to make the scope of the tribunal's jurisdiction depend on the consent of one of the parties to the appeal before it, but leaves to the Tribunal the question of whether or not it may consider a new matter.**

The Select Committee on the constitution also criticised the provision in its Sixth Report[5] and the Minister's promise to reflect followed a debate in which powerful speeches were made in support of the amendment:

Baroness Berridge:

The scope of the tribunal's jurisdiction is dependent on the consent of the respondent to the appeal. If I am counsel in the case… I must turn away from the judge towards my opponent and start making submissions, pleading for consent for the new matter to be raised. That would be a most unusual situation. That was conceded by the Government in a response to a question by the Joint Committee, in which they stated,

> *"as far as the Home Office is aware there are no other similar provisions in other statutory contexts".*

This would be new law.

There has been one other attempt by the Government to have control over the way the court operates when they are party to proceedings. As your Lordships may remember, in the Justice and Security Bill the Government, as party to the proceedings, tried to determine whether a closed material procedure would be used. This Chamber said that that was a matter for the judge to determine, and the Government conceded the point.
That opposing sides require an independent adjudicator in charge of proceedings is a fundamental common law principle. (1 April 2014, cols 883 -884)

and

"…a matter may remain before the tribunal solely because a barrister makes every effort to avoid being at the hearing and cannot get hold of the Home Office to get a fresh decision made, and yet the tribunal is not allowed to take that conduct into account at all …

*I also ask the Minister to consider the resources that will have to be put behind presenting officers and barristers, who are often very junior. If consent has to be given on the day of the hearing you are going to have to get hold of the Home Office to get instructions on whether to give consent there and then, otherwise we can have yet another thing clogging up the system. …" (*cols 894-5)

Lord Avebury

[5] Paragraphs 6 and 7, available at http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/102/10206.htm#a9

It is not suggested that the tribunal has allowed the abuse of its own process in the past, or that it has treated the Secretary of State unfairly, or that the existing process is inefficient. What can happen not infrequently, however, is that the Secretary of State withdraws her decision, saying that she wishes to reconsider the case, and then returns several months later with a new decision very similar to the previous one, wasting the time and money of both the appellant and the tribunal. The Tribunal Procedure Committee is consulting on a rule for the First-tier Tribunal similar to the one that prevents the Secretary of State from putting a stop to an appeal in the Upper Tribunal by withdrawing her decision. The Immigration Law Practitioners' Association suspects that the subsection we seek to amend is designed to thwart such a change. (col 885)

Lord Brown of Eaton-under-Heywood

"I am…strongly against Clause 15(5)…This provision seems to me to represent a bridge too far. The noble Baroness, Lady Berridge, has already clearly explained the basic objections to this provision and has noted that serious reservations have been expressed about it: expressed twice now by the Joint Committee on Human Rights and yet more recently by the Select Committee on the Constitution. …. Suffice it to say that it seems intrinsically objectionable for the Government, one of the parties before the tribunal on the appeal, themselves to have the last word with regard to what the tribunal may or may not consider.

By all means let the Government object to a new ground of appeal or some new reason for the appellant seeking to stay if they are genuinely unable to deal with it or, indeed, if they are genuinely unable to reach and declare their own decision on it by the time it is raised. Indeed, the tribunal may well hold that the Government are entitled to an adjournment if, in truth, they are prejudiced by the point being taken late. However, it is quite another thing to say, as Clause 15(5) does, that the Government can deny the tribunal the right to deal with a new matter on the appeal before it, and thus force the appellant—assuming that he wishes to pursue the point—to start all over again, with all the delay and, as we have heard, the prohibitive expense that that would necessarily involve. That, I respectfully repeat, goes altogether too far. Your Lordships should prefer instead wording which—if not here in perfect formulation—is in some way akin to that here proposed, which, heaven knows, is a modest enough power to confer on the tribunal itself."(col 886)

Lord Pannick

I simply cannot understand why the Secretary of State does not trust the tribunal to decide on the application of the criteria which Parliament sees fit to lay down. (col 887)

Lord Woolf

…the transfer from the tribunal that has jurisdiction to deal with matters of this sort… to one of the parties of the proceedings, is just totally and utterly contrary to principle …. It would be a very undesirable precedent indeed to create a situation where one of the parties to the proceedings has in effect to give its consent to the other party doing something that justice may require. In addition, the suggestion that something should go back to the beginning is just out of accord with what is now the practice in the courts. …for years, in my experience, the courts, when a new point has arisen, have taken the view that it is more practical and more in accord with common sense for the tribunal that is dealing with the matter to continue to deal with the new matter, if it thinks that it is right to do so, rather than to send it back to the Secretary of State… discretion is exercised by the court to save everybody's time and money by dealing with it themselves. (cols 888-9)

Lord Hope of Craighead

> **…** *[*Baroness Berridge*] made a very valuable point when she referred to the issue as raising an issue of constitutional principle, because it goes right back to the formation and foundations of the rule of law, where one of the two basic principles is that no man should be a judge in his own court. … it is absolutely basic rule of law teaching, and it acquires particular force as a principle when the party that one is talking about is the Executive. One is taught that there should be a separation of powers between the judiciary and the Executive, and one can think of many countries that one would not wish to live in where the Executive are able to dictate to the courts whether or not they will entertain an argument. …*
>
> *As for practice in the courts… it is quite common in judicial review for fresh grounds to call for a fresh decision in the course of the same process. The courts do not as a matter of practice send the whole thing back to the beginning...*
>
> *The way of doing it to fit in with the constitutional principle, which surely a Government who believe in the rule of law would wish to uphold, is to put the test that the Secretary of State would wish the tribunals to apply into the Bill at the appropriate standard and then, of course, the Secretary of State can be represented and present the argument to the effect that that test is not being satisfied. So I respectfully suggest that it would be dangerous to create what is plainly a precedent, and the wrong kind of precedent to set" (cols 889-890)*

Baroness Smith of Basildon

> *"the idea that the scope of the tribunal's jurisdiction should depend on the consent of one of the parties to the appeal is something that offends a great many noble Lords and their sense of justice and fairness* (col 891)

The Lord Wallace said in response **"**the principal reason why the Government have proposed this measure is that we do not believe it is right for the tribunal to be the primary decision-maker" (col 891). But no one has argued with that. They have simply asked that when a new matter is raised it should be for the Tribunal, rather than the Secretary of State, to determine that it is necessary for the matter to go back with the Secretary of State. The Secretary of State if free to address the tribunal on the matter and it seems unlikely that her reasonable request for an adjournment would be refused. She has not produced evidence to suggest that reasonable requests have been refused in the past. The person who would be consenting would be the presenting officer and the less experienced Presenting Officers, whether incentivised by Waitrose vouchers or not, are in our experience generally wary of making anything that might be regarded as a concession and of not standing on any power that the Secretary of State has. We are aware of no letters on the point. It seems appropriate that the matter be raised again, as was indicated would be proper (col 894) at Third Reading.

Domestic Violence (Part 2)

Proposed amendment

> After Clause 18, insert the following new Clause—
> "Residence permit: domestic violence
> (1) A person (P) shall be entitled to a residence permit for three months for rest and reflection where—

(a) P is married, in a civil partnership, or in a durable relationship with someone who is lawfully in the United Kingdom; and
(b) P is in the United Kingdom as a dependant of that other person; and
(c) the relationship breaks down as a result of domestic violence.

(2) The residence permit shall be available to P and any dependants already in the United Kingdom with entitlement to work."

Purpose

To provide for a residence permit for three months rest and reflection for a person whose relationship breaks down as a result of domestic violence against him/her while s/he is in the UK. Replicates amendment 22 moved by the Baroness Smith of Basildon at report (1 April 2014 col 947).

Briefing

Baroness Smith of Basildon raised domestic violence both in the Part 2 and Part 3 chapter 1 (residential tenancies). She was concerned to ensure a reflection period for persons whose leave to be in the UK was dependent on that of a violent spouse or partner and also that those fleeing domestic violence would be able to access accommodation. There was confusion at report on 1 April 2014 because a letter had failed to go from the Minister following the debate at Committee (col 950). A letter was sent on 7 April[6]. This points to existing government policies on curtailment on leave. However in the case of *R on the application of Balakoohi v Secretary of State for the Home Department* [2012] EWHC 1439 (Admin) (01 June 2012)[7] the leave of a survivor of domestic violence was curtailed and when this was challenged, three separate refusals of a domestic violence application were made, despite the threat of judicial review. The judge said

> *57. The curtailment decision should never have been made because it had been based solely on the inadequate information provided in EM's statement without HB having been given an opportunity to comment. Moreover, HB had not been served with notification of the curtailment decision through no fault of her own and she was unaware that her L[eave to]R[emain] had been curtailed …. She had therefore been unable to appeal the decision or respond to the one-stop notice.*
>
> *58. It is too late for HB now to serve a notice of appeal in relation to the curtailment decision or seek to a judicial review of it. However, if I set aside the third refusal decision, HB's paragraph 289A application will have to be considered for the fourth time. Thus, HB will be exposed to the risk of the injustice of a future decision-maker again unfairly relying on the facts found by or contents of the curtailment decision. …*
>
> *59. I can, therefore, at the same time as quashing the third refusal decision, prevent the risk of any future misuse of the curtailment decision by granting a declaration.*

[6] See http://data.parliament.uk/DepositedPapers/Files/DEP2014-0579/070414_-_Baroness_Smth_-_domestic_violence_-_letter_from_Lord_Taylor.pdf

[7] http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2012/1439.html&query=title+(+Balakoohi+)&method=boolean

Reliance on discretion not having proved a way to protect survivors, the statutory obligations called for by Baroness Smith are needed. See further re the proposed amendment to clause 21 below.

PROPOSED AMENDMENT

Clause 21 *Persons disqualified by immigration status or with a limited right to rent*

Clause 21, page 21, line 4 at end insert after
or
( ) P's need for accommodation arises in whole or in part because P has been subject to any incident, or pattern of incidents,
of—

(a) controlling, coercive or threatening behaviour,
(b) physical violence,
(c) abuse of any other description (whether physical or mental in nature), or
(d)threats of any such violence or abuse.

Purpose
Provides for those whose need for accommodation arises in whole or in part as a result of abuse as defined (the definition is taken from the definition of a refuge in Schedule 3) to be treated as having a right to rent. It thus helps to ensure that survivors of abuse are not left homeless, although evidential requirements are not detailed.

In his letter of 7 April to Baroness Smith of Basildon about domestic violence, discussed above, the Minister addressed and the situation of survivors, whether British citizens, EEA nationals or persons under immigration control, when faced with the residential tenancies checks, the Minister said "The landlords' scheme will only apply to those paying rent and occupying premises as their main or only home. A person who seeks temporary emergency support from family or friends is unlikely to fall into this group." This is far too sanguine. Survivors of domestic violence may be assisted by friends and family of very limited means who may be forced to accept a small contribution towards the costs of the property. As was discussed at Committee (12 Mar 2014 : Column 1790), once rent is paid, the obligations come into play no matter how small the sum. A survivor of violence who flees the family home may well regard the friend or family member's house where s/he is staying as their main or only home.

The Minister also suggests that those seeking emergency support from a local authority will benefit from the exclusions in Schedule 3. However, as we have indicated in previous briefings, those exclusions are not sufficiently widely drawn. While provision is made in paragraph 7 of Schedule 3 for accommodation from or involving local authorities it is drafted in terms of homeless legislation and will not cover other accommodation e.g. that provided under the Children Act 1989. The definition of a refuge in paragraph 6(5) of the Schedule requires it to be used "wholly or mainly" for survivors whereas some survivors and their families will be accommodated in accommodation used for mixed provision.

Drafting this amendment caused us to consider the position of a British citizen who cannot prove their status. They are not a person with limited right to rent, because they are a relevant national, and that is what they will be asserting, even though they cannot prove it. The provisions that refer to a person's not being a relevant national should, to provide comprehensive protection, refer to their not being a relevant national or not being able to prove that they are a relevant national. This is yet another example of how difficult it is to ensure that all problems that will arise have been envisaged in the drafting of Part 3, chapter 1 and of Sch*edule 3*.

Part 6 *Miscellaneous*

Clause 65 Child trafficking guardians for all potential child victims of trafficking in human beings

We shall provide a briefing if the Government tables any amendment on this new clause.

New clause: illegitimacy

The Government has promised an amendment (see e.g. 7April 2014, col 1205)to provide a route to registration for those born to British fathers not married to their mothers before 1 July 2006 when the law changed to recognise such children as British by birth once paternity was proven. We shall provide a briefing when an amendment is laid in its final form.

Clause 66 Deprivation if conduct seriously prejudicial to vital interests of the UK

We wait to see whether the Government will produce an amendment on this matter or whether it will attempted any related changes, such as changes to the title of the Bill. If they do, we shall produce a briefing.

We have had sight of the Minister's letter of 17 April 2014[8] to Baroness Smith of Basildon. It is a disappointing document. Its opening

> *"the Government is currently considering how to protect the security of its citizens following the vote on the deprivation of citizenship provisions in the Immigration Bill, on Monday 7 April"*

is pompous and does scant justice to the concern for national security expressed by those who participated in the debate or to the carefully reasoned arguments they put forward for considering that the clause would not contribute to national security.

The majority did not accept that deprivation of citizenship resulting in statelessness would make the citizens of the UK, or indeed of other countries, safer. It conceived of security not as a national, but as a global, affair. A person who threatens security is the responsibility of all States, in the spirit of, as Lord Macdonald of River Glaven put it, "the comity of nations" and "solidarity between free countries in the face of terrorism." He said

[8] Available at http://data.parliament.uk/DepositedPapers/Files/DEP2014-0641/170414_-_Baroness_Smith_-_Deprivation_-_Letter_from_Lord_Taylor.pdf

> *"… statelessness deprives people of the "right to have rights". It brings about a bleak, hopeless status, or rather a complete lack of status, that the British Government should have no role in encouraging, first, because of the positively terminal impact that the imposition of statelessness is bound to have on the ability of the rightless to function in a way that is even remotely human in the modern world and, secondly, because it is clear that such an imposition as a policy measure can have no sensible part in a co-ordinated international effort to combat security threats. …"* (17 March 2014, col 53)

The Lord Brown of Eaton-under-Heywood, having indicated that he was in any event unimpressed by the national security arguments, said firmly *"…it is very unlikely that any advantage to national security could begin to compensate for the indisputable reputational damage that such a measure would occasion"* ((17 March 2014, col 54).

Baroness Kennedy of the Shaws asked**…** Where is the rule of law of which we are so proud? …Deprivation of citizenship is potentially inconsistent with obligations accepted by the United Kingdom under many different treaties dealing with terrorist acts, in particular, the obligations of investigation and prosecution in the fulfilment of which every other state party has a legal interest." (10 February 2014, col 484). A*ut dedere aut judicare* is to be preferred to offshoring[9] those who threaten the vital interests of the UK.

The letter in many respects appears lazy, rehashing arguments that were demonstrated to be fallacious at earlier stages. Thus, the letter advances argument that deprivation of citizenship allows the Government to stop people travelling although it has all the powers it could want or need to deprive citizens a passport on national security grounds as was pointed out by Lord Pannick in the debate at (7 Apr 2014: Column 1169) with reference to the Minister's statement of 25 March 2013.

Another example, the letter again makes reference to the possibility of the immigration rules (Part 14, paragraph 400ff[10]) being used to give a person remaining in the UK after having been deprived of their citizenship on the grounds that they had done something seriously prejudicial to the vital interests of the UK, being given leave under the UK's statelessness determination procedure. Baroness Hamwee raised the rules on who can be given leave under that procedure in the debates (7 Apr 2014: Column 1177), this is not going to happen. Those rules state

> 402. A person is excluded from recognition as a stateless person if there are serious reasons for considering that they:
>
> …
>
> (c) have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
>
> (d) have committed a serious non-political crime outside the UK prior to their arrival in the UK;
>
> (e) have been guilty of acts contrary to the purposes and principles of the United Nations.

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[9] See *Offshoring,* John Urry, Polity Press, April 2014.

[10] See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279697/Immigration_Rules_-_Part_14.pdf

That paragraph does not give a discretion; it sets down a rule. Then

404. An applicant will be refused leave to remain in the United Kingdom as stateless person if:
(a) they do not meet the requirements of paragraph 403;
(b) there are reasonable grounds for considering that they are:
(i) a danger to the security of the United Kingdom;
(ii) a danger to the public order of the United Kingdom; or

(c) their application would fall to be refused under any of the grounds set out in paragraph 322 of these Rules.

Paragraph 322 provides, inter alia,

322. In addition to the grounds for refusal of extension of stay set out in Parts 2-8 of these Rules, the following provisions apply in relation to the refusal of an application for leave to remain, variation of leave to enter or remain or, where appropriate, the curtailment of leave:
Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused
…
(1B) the applicant is, at the date of application, the subject of a deportation order or a decision to make a deportation order;
(1C) where the person is seeking indefinite leave to enter or remain:
(i) they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years; or
(ii) they have been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months but less than 4 years, unless a period of 15 years has passed since the end of the sentence; or
(iii) they have been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months, unless a period of 7 years has passed since the end of the sentence; or
(iv) they have, within the 24 months prior to the date on which the application is decided, been convicted of or admitted an offence for which they have received a non-custodial sentence or other out of court disposal that is recorded on their criminal record.
…
Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused
…
(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security;
(5A) it is undesirable to permit the person concerned to enter or remain in the United Kingdom because, in the view of the Secretary of State:
(a) their offending has caused serious harm; or
(b) they are a persistent offender who shows a particular disregard for the law;

Again, a rule. Again, put to the Minister in the debates. How could a person who has done something seriously prejudicial to the vital interests of the UK meet the requirements of these rules? The Minister acknowledges in his letter that there are exclusion provisions. So why mention the stateless determination procedure at all, when it is irrelevant?

The letter is silent on the question posed by the Joint Committee on Human Rights and in the debates of how many of the 25 persons deprived of their British citizenship since 2006 had been outside the UK at the time. Yet in 2010 the Government responded to freedom of information requests on this very point. The Bureau of Investigative Journalism has identified 18 of the people, 15 of whom were deprived of their citizenship while outside the UK[11]. What could answering the question tell us that we do not know already?

In the face of silence, it was taken as read during the debates at Committee that most persons would be outside the UK when deprived of their nationality. The letter says

> *"…we would expect any individual…to seek to resolve their nationality issues at the earliest opportunity"*

Quite how a person such as Madhi Hashi, rendered to the United States and there imprisoned, is supposed to set about "resolving his nationality issues" is wholly unclear. The letter goes on to say

> *"In cases where this is not possible, the individual would be able to avail themselves of whatever protection that country provides"*

The seemingly casual use of "whatever" says it all. Madhi Hashi sought to avail himself of "whatever" protection Djibouti could provide.

We have yet to see the full response to Professor Goodwin Gill's paper and in parliament his exegesis of the international law obliging states to readmit their nationals. We can only state that we have yet to find an international lawyer who does not find Professor Goodwin Gill's arguments on the point persuasive. Given the poor quality of the arguments in the Minister's letters, we are not holding our breath for the full response to Professor Goodwin Gill.

By the amendment made to the Bill the House asks for further and better argument before it takes a step, the gravity of which and the consequences of which for the persons concerned and the UK's international reputation, it took extremely seriously:

The Lord Avebury invited the House to consider "**…** the appalling example we are setting…the rest of the world. Britain was in the forefront in promoting the 1961 UN Convention on the Reduction of Statelessness, and has since worked to reduce the pockets of statelessness that still exist all over the world, such as the Bidoon in the Gulf states, the Rohingya and the Palestinians. How can we now pretend to a share in the leadership of the UNHCR's continuing effort to eliminate statelessness when, at the same time, we are enacting domestic legislation to create more stateless people?" (19 March 2014, col 212). The Lord Roberts of Llandudno reminded the House "Let us not forget the judgment of Chief Justice Warren ruling in the United States Supreme Court case of *Trop v Dulles* in 1958. He said that, "use of denationalization as a punishment", means, "the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture." (17 Mar 2014 : Column 53**)** The Lord Deben said "… the exemplars are not ones that are easily taken to the heart of the broad mass of the British people. That means that those people should be particularly able to call upon this House… We live in a world in which statelessness is one of the most terrible things that can befall anyone." (19 March 2014 col 213) The Lord Brown of Eaton-under-Heywood recalled that "…Lord Wilson, in giving the Al-Jedda judgment, referred

[11] See http://www.thebureauinvestigates.com/2013/02/27/graphic-detail-how-uk-government-has-used-its-powers-of-banishment/

in paragraph 12 to "The evil of statelessness" and spoke of the "terrible practical consequences" that flow from it" (17 March 2014, col 54).

The Minister's letter is evidence that more serious consideration, such as that inserted into the bill by the amendment, is needed, if the letter is nothing else.