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ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

BRIEFING ON THE 1999 IMMIGRATION & ASYLUM BILL
FROM THE
IMMIGRATION LAW PRACTITIONERS' ASSOCIATION

for Second Reading debate, Monday 22 February 1999

INTRODUCTION

The Immigration Law Practitioners' Association is a professional organisation, established in 1984, representing over 800 organisations, solicitors, barristers and other individuals working in the immigration and asylum fields. It is concerned that this Bill will not achieve the government's objectives of a fairer, faster and firmer system. The basis of current problems is the long delay in almost all aspects of the system. If this is not adequately addressed, this Bill, like the two introduced by the previous Government, might also fail.

ILPA believes that this Bill is a wasted opportunity. The government has promised a 'comprehensive strategy for modernising our immigration control', an Act that will last, unlike the 1993 and 1996 Acts. But, this Bill is not it. It is still based on the 1971 Immigration Act, nearly 30 years old, and fails to recognise changes since then. It follows on a White Paper entitled *Fairer, faster and firmer* but it contains little to suggest that any of these objectives will be met.

The Bill is predicated on the assumption that the administrative measures planned to make the Home Office a more efficient and effective machine will work. ILPA has no confidence that they will. The present situation in Croydon is a scandal, with inaccessible files, unopened post and massive delays. The new information technology and computer system is already 18 months late and there is no reason to expect that they will work. Without efficient administration at the Home Office we fear that this Bill will merely add to delays. The Bill creates a new Home Office agency, the Asylum Seekers Support Agency, to deal with accommodation and support for destitute asylum seekers. It is estimated this will employ 100-200 people and pay out £350 million in its first year. It is difficult to envisage this increased administrative load being effectively implemented without significant staffing improvements.

The immigration and asylum appeals systems are also chaotic. The Bill does little to tackle the basic problems. It fails to rectify the injustice of many people having no meaningful right of appeal before expulsion and indeed removes such rights from people who have them now. It retains the complex two tier system of asylum appeals. ILPA would support the abolition of all certification. There is nothing to suggest that the appeals system will become more efficient and effective.

The Bill covers vast areas but many very sketchily. In over 50 clauses it provides that the Secretary of State may 'make regulations' or 'may by order make further provision'

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or 'in such circumstances as may be specified' he may do something, or he 'must have regard to such matters as may be prescribed'. The Lord Chancellor may also 'make rules for regulating the exercise of rights of appeal...for prescribing the practice and procedure to be followed...and for other matters'. Without these rules, regulations and orders much of the Bill is meaningless. **The Secretary of State should be asked to give an assurance that the relevant immigration rules or statutory instruments are available, at least in draft form, well in advance of the Committee deliberations. If possible, they should be available, together with other written submissions, to the Special Standing committee, to inform its deliberations. It also means that at times in the future, the Secretary of State may be able to change instruments at short notice, without full Parliamentary scrutiny. In such important areas, this is wrong.**

This Bill is an inadequate response to a serious situation. Without a massive improvement in Home Office decision-making and administration it will only make the current situation worse.

For more information, please contact the ILPA office: 0171 251 8383. On specific aspects of different Parts of the Bill, the following are available for further information:

Part I - *General Immigration Aspects* - Mick Chatwin, JCWI, 0171 251 9708 x219; Susan Rowlands, ILPA, 0171 251 8383

Part II - *Carriers' Liability* - Chris Randall, Winstanley Burgess, 0171 278 7911

Part III - *Bail* - Jeremy Rintoul, Refugee Legal Centre, 0171 827 9090

Part IV - *Appeals* - Rick Scannell, 2 Garden Ct., 0171 353 1633

Part V - *Registration of Advisers* - Andrew Nicol QC, Doughty St Chambers, 0171 404 1313

Part VI - *Support for Asylum Seekers* - Vicky Guedalla, Deighton Guedalla, 0171 359 5700

Part VII - *Powers to Arrest and Search* - Nadine Finch, Doughty St Chambers, 0171 404 1313

Part VIII - *Detention* - Jeremy Rintoul, Refugee Legal Centre, 0171 827 9090

Part IX - *Marriage* - Mick Chatwin, JCWI, 0171 251 8708 x219 ...

PART I
IMMIGRATION: GENERAL

1. The whole of this Part gives the Secretary of State almost unlimited powers to 'make regulations' or to 'prescribe' or 'specify' actions or documents which are required. Parliament will therefore be debating a Bill which is unclear and will be giving the Home Secretary wide powers. The main points in this Part include:

2. Clauses 1 and 2 provide that leave may be granted **or refused** before people arrive in the UK. Granting leave may be justifiable, as saving time on arrival at crowded airports. But refusal of leave abroad is serious, as people may have no redress, may be refused and left at airside in foreign airports and thus be in danger from their governments. This links with the present use of airline liaison officers.

3. Clause 3 gives power to charge fees at the Home Office. At present the Home Office is unable to deal with applications, there is chaos and delay, and people cannot access their documents. To suggest that they should also pay for this level of service cannot be justified. At present, the main area of work paid for is naturalisation - after asylum, the slowest area of work.

4. Clause 6 is an outrageous loss of appeal rights which people need in order to achieve a just resolution of their cases. The Labour Party in opposition spoke eloquently against the then Conservative government's removal of appeal rights in 1988. It is not clear whether there are even any transitional provisions to ensure that people who currently would have appeal rights do not lose them. Ministers should give assurances that those people - e.g. children brought in by parents six years ago, who have known nothing but the UK, would retain rights of appeal against attempts to expel them. There is no provision for any factual disputes - whether the person has overstayed or broken conditions - to be aired if there is no appeal, let alone any possibility of review of compassionate circumstances.

5. Clause 7 must not be allowed to become routine in some countries and not used at all in others. The Minister should give assurances on how he expects this to work. He has suggested £5,000 or £10,000 as bonds. This is wrong, as it blatantly discriminates against poorer people. If a bond is to be used at all, it should be a proportion of the income shown to support the visit. How can people be protected against loan sharks? Will there be an appeal against the refusal of entry clearance if people cannot pay the bond?

6. Clause 8: It should be explicitly stated that if a person is recognised as a refugee or is granted exceptional leave, the security should not be forfeited. Making representations alone is not enough - there must be specified situations in the law in which it is not required. There should be an appeal against such decisions.

7. Clauses 9 - 12 should specify what information is likely to be required and for what purposes. At present, it is far too broad and gives almost unlimited powers to ask for information. It must include safeguards for the confidentiality of, for example, information relating to persecution suffered. There should also be a duty to inform people of the information passed on about them. It is also adding to the 'privatisation' of immigration control by getting airlines to give information required. Airlines may not wish to do this, especially when they are being fined for other things which they have got wrong.

8. Clause 13: The CRE has made it clear that employers do not understand s. 8 of the 1996 Act, and may be discriminating illegally in employment matters. For example, a Jamaican man, who has been here for 35 years, was refused employment because the employer did not understand that a Jamaican citizen could be permitted to work. The Code of Practice will not help this. Ensuring that employers are always warned before an investigation would help to avoid this discrimination.

9. Clause 14: Monitoring should be effective. As the Secretary of State will become jointly responsible for entry clearance operation, it should not be his appointment but the Lord Chancellor's Department's. The monitor should also be able to start independent investigations of cases drawn to her attention and to send staff to overseas posts to see how things work.

10. Clause 15 (and Part IX) gives marriage registrars a duty to report to the Home Office any 'reasonable grounds for suspecting that a marriage will be a sham marriage'. No information is given as to what constitutes reasonable grounds and a sham marriage is defined as one 'entered into for the purpose of avoiding the effect of one or more provisions of immigration law'. It is vital that this should not lead to the reintroduction of the primary purpose rule by the back door, or to registrars asking intrusive questions about immigration status. As Crown servants, registrars will not have to be registered as advisers under this Bill, but if they have to know about all the provisions of immigration law they will need extensive training. They also need training in the Race Relations Act and the Human Rights Act to ensure that any questioning of potential spouses is not discriminatory nor contrary to Article 8. This could only be achieved if **all** those wanting to marry are questioned and are asked for the same documents. It is also vital that if information about couples is passed on to the Home Office they are informed of this, so they can know whether it is correct.
Clause 132 allows a registrar to require evidence as to a person's 'name and surname, age, marital status and nationality' before agreeing to marry them and the Registrar General can issue 'guidance' on what documents would be acceptable.
Clause 133 appears to shift the burden of proof, for the couple to satisfy the registrar that they are free to marry. While proof of death of divorce of a previous spouse may be available, how to prove that one has never been married?

11. Clause 16 marks the implementation of the Government's stated intention in the White Paper to extend criminal offences to specifically cover failed asylum seekers whose claims have involved deceit. ILPA fundamentally opposes such criminalisation of asylum seekers. The breadth of the clause is quite staggering, making it an offence if any deception is used to obtain or seek leave to enter or remain or 'the avoidance, postponement or revocation of enforcement action'. There is not even a need for any deception to have been material. Thus the asylum seeker who has necessarily entered on false documents will commit an offence under this clause. This is contrary to article 31 of the 1951 Refugee Convention

PART II
CARRIERS' LIABILITY

12. These clauses significantly extend the powers available to the Secretary of State and the Court against the different categories of carriers who bring undocumented or clandestine passengers to the UK.

13. They set up a new procedure to impose penalties on "responsible carriers" (broadly defined and including drivers of vehicles containing clandestines unless they are in a detachable and detached container). They allow for the detention and sale of vehicles, small aircraft and ships in default of payment. They provide for limited defences; this includes compliance with a yet to be published code for preventing the carriage of clandestine entrants and duress.

14. They extend the Court's powers of forfeiture (as opposed to the Secretary of State's powers to seize vehicles against the payment of a penalty or charge) to circumstances in which a driver is convicted of an offence under S.25 Immigration Act 1971 (assisting illegal entry, or the arrival of an asylum claimant). This power already exists in relation to owners, captains, etc.

15. They extend the financial penalties imposed by the 1987 Carriers Liability Act on carriers for undocumented (as opposed to clandestine passengers) to passengers on trains and road passenger vehicles (which carry passengers for reward). They allow for the detention of any vehicle owned by the carrier, as against the penalty.

16. Comment

    (a) It is already almost impossible for a would be asylum claimant to get to the UK lawfully. These clauses will make the alternative (coming here unlawfully) even harder, exposing more genuine refugees to yet more danger and exploitation.

(b) The clauses continue the trend of exporting the effective checks on passengers to outside the UK, and delegating them to carriers and their employees, as opposed to public officials. There is no suggestion that there will be any refund of penalties where the clandestine passenger turns out to be a refugee.

(c) The defence of duress available to carriers of clandestines may result in defendants making unfounded allegations of criminal offences against passengers as they attempt to avoid penalties.

PART III
BAIL

17. Clauses 29-36: make provision for routine bail hearings (as defined in the Bill) after a week and after five weeks. ILPA considers the provisions provide inadequate safeguards against arbitrary detention. In particular: It is noteworthy that H M Inspector of Prisons called for time standards to be applied to immigration detention. Yet, there remain no time limits on immigration detention. In the circumstances, we suggest that there should be periodic Routine Bail Hearings after the thirty-seventh day of detention

    Furthermore, immigration detainees should have the right to two "full" bail hearings, in line with the rights afforded to those facing criminal charges..

18. For routine bail hearings to be effective, detainees must have access to proper legal representation. For this purpose, legal aid should be available for bail hearings, and rights of audience must be extended to (reputable) representatives who may not be barristers or solicitors.

19. As drafted the bill gives certain powers to the Secretary of State to regulate bail hearings and their procedure. This is inconsistent with the separation of powers between the executive and the judiciary which is exacerbated in so far as the Secretary of State is a party to the proceedings

20. ILPA believes that hearings regarding the liberty of the individual must be conducted in public, which is not possible if hearings are held in detention centres.

21. Clause 34(1) makes no provision for parliamentary scrutiny of Rules. In principle, provisions regarding the liberty of the individual should be statutory in nature.

22. ILPA considers that the use of video links seriously compromises a representative's ability to take instructions from detained clients at any stage. This may lead to serious inroads into client/lawyer confidentiality.

23. Mention here may also be made to Clause 116 which unjustifiably extends detention powers in removal cases. The scope of the words "has reasonable grounds for suspecting that directions may be given" gives wide and imprecise powers to immigration officers. The clause undermines the ability of the courts to scrutinise the lawfulness and duration of detention.

PART IV
APPEALS

24. This part replaces Part II of the 1971 Act. Detailed briefings will examine individual clauses in due course. For Second Reading, ILPA makes the following brief comments.

25. ILPA supports the continuation of the IAT. However, it notes the jurisdiction of the Tribunal 'may be exercised by a single member' and the expectation that appeals will be heard by a single member unless the President directs otherwise. ILPA opposes such use of single member Tribunals for substantive appeals.

26. ILPA welcomes the right of appeal in cl 42(4) in 'family visitor' cases. It notes that 'family visitor' has yet to be defined and would urge a definition sufficiently broad so as to include (for example) persons in same sex relationships. Such an appeal however will only be meaningful if there is a right to an oral hearing if requested (with the right of the appellant to appear at such a hearing consistent with established IAT authority).

27. ILPA notes that cl 43 appears to contemplate the abolition of automatic extension of leave by making an in time application for such an extension in circumstances where the decision on that application is delayed (presently achieved by the Variation of Leave Order). This is inconsistent with the provisions of schedule IV paragraph 1(1) and is opposed.

28. ILPA is particularly concerned at the abolition of appeal rights for those who are in breach of their conditions/overstayers. It is unclear how the Secretary of State's discretion will be exercised in these cases and there will be no opportunity for the appellate authorities to review either compassionate circumstances or such exercise of discretion as presently is the position where persons have been in the UK for over seven years.

29. ILPA welcomes cl 47 and the giving of rights of appeal in cases involving human rights although it is wholly unclear how these provisions will operate in practice.

But cl 47 (1) must include 'entry clearance officers', which ILPA assumes was a drafting oversight.

30. ILPA objects to cl 48 insofar as it cross refers to cl 6 the effect of which is to prevent any in country appeals in cases of breaches of conditions/overstaying which is regarded as a retrograde step. The cl 48(2) appeal must enable those who assert that they have not breached conditions or overstayed to challenge the decision prior to removal as at present.

31. The asylum provisions largely replicate s8 1993 Act. However, ILPA is concerned in particular as to how the one-stop appeal procedure will operate in practice where asylum and human rights grounds are raised (see for example cl 54(2) which ILPA presumes is to be read as subject to cl 47).

32. ILPA objects to the one-stop procedure introduced by cl 55. The corollary is the withdrawal of deportation appeal rights and the ability of the appellate authority to substitute discretion for that of the Secretary of State. The attempt in the clause to enable applicants to raise "any additional grounds" is ambiguous since sub-clause (5) then goes on to limit the type of additional matters able to be raised. Good legal representation will be a necessary prerequisite in being able to comply with these complicated provisions. ILPA has profound fears that the application of these provisions will exacerbate problems caused to innocent victims of bad representation. It is also entirely unclear what the procedural consequences will be when a cl 55 statement is made; it will be more sensible for the contemplated procedure to be followed prior to any decision to refuse leave to enter or remain. Further, cl 56(9) should be mirrored by a provision enabling the IAA to consider "reasonable excuse". Finally the provisions would appear to contradict the purpose of cl 47 enabling human rights to be raised at any stage.

33. ILPA fundamentally opposes the imposition of financial penalties on the exercise of appeal rights contained in cl 59. All will again depend on the adequacy of representation since many meritorious appeals are lost by the failure of representatives to competently draft grounds. At the very least there must be opportunity to be heard in opposition to any such notice. The Bill should specify criteria for when (a) appellates and (b) representatives may be required to pay a penalty. The Tribunal's view that the appeal lacks merit is not enough.

34. In general terms, ILPA believes that the exercise of regulation-making powers by both the Secretary of State and the Lord Chancellor must be subject to affirmative procedures thereby ensuring debate.

35. ILPA has consistently opposed certification in any form and continues to do so. On this basis the whole of paragraph 9 of Schedule IV is opposed. Paragraph 9(3) in particular is absurd since it has long been recognised that genuine refugees frequently have no genuine documents and to penalise them is contrary to established case law and article 31 of the 1951 Refugee Convention.

PART V
IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS

36. ILPA's response to the Consultation Paper on Unscrupulous advisers welcomed in principle the government's intention to regulate previously unregulated advisers. ILPA still believes that this sector of the advice giving services needs regulation. However, it disagrees with many of the provisions of the scheme contained in the Bill. More generally, the scheme provides negative controls. It does nothing to address the prevailing and overarching problem of the inadequate supply of good quality immigration advice which is badly needed by asylum seekers and others at the earliest stage of their encounters with the Home Office.

37. The Bill introduces a disciplinary scheme for handling complaints which leads ultimately to a decision of the Immigration Services Tribunal. However, the Tribunal is given inadequate powers to make orders for the benefit of clients who have suffered from unscrupulous or incompetent advisers. The Tribunal can order the adviser to remit fees which the Tribunal has judged to be excessive, but cannot order any other remedies. It cannot order monetary compensation. Nor can it order the Home Office to take compensatory action. Because of incompetent or unscrupulous advice a client may have submitted an application late, in incomplete form or not at all. Appeal rights may have been lost in consequence. If the Tribunal (or a professional disciplinary body) finds that this default was the responsibility of the adviser, there should surely be some means for it to order the Home Office to take compensatory action or allow the client to pursue the appeal that has been lost through no fault of his own.

38. There also seems to be no mechanism for dealing with potentially conflicting decisions of the IST and the Immigration Appellate Authority.

39. If the Tribunal is investigating the complaint other than at the instigation of the client, it is possible that the Home Office and IAA may be unaware of the significance of Tribunal proceedings for the client's immigration future.

40. More thought needs to be given to the position of employees who are not themselves registered but who work for a registered person. If a complaint is made against the registered person in relation to the work of such employees, the Commissioner and the Tribunal will need to examine the discrete questions of whether the behaviour of the employee and the employer was reprehensible. If the criticism of the employee is upheld, the scheme should make clear that he cannot simply seek out employment with an alternative immigration adviser. Parallel issues are already faced by the solicitors' profession in relation to the employment of unqualified clerks.

41. In its White Paper the government said that the registration scheme was intended to be self-financing. ILPA understands that the fees are expected to be £6,300 on the assumption that around 200 advisers will apply to join. ILPA is sceptical as to whether there are that many advisers who will wish to pay a fee of that size. It compares, for instance with a solicitor's practising certificate which costs £430.

42. The Bill provides for a fee to be levied on the "designated bodies" ie the legal professions. The size of this fee or the method of calculating it is unspecified in the Bill. Even if it were the case that the fee charged to each body reflected the work of the Commissioner in relation to that body, this method of funding is wrong. In the first place, the professionals are already subject to a scheme of regulation by their own disciplinary bodies. The Bill duplicates that function. In the second place, if, as ILPA suspects, the take-up rate of non-professional advisers is low, there will be a corresponding temptation on the part of the Secretary of State and the Commissioner to direct more and more attention at the already regulated professions and charge a correspondingly increased fee to those bodies who (unlike the unregistered/non-professionals) will have no option but to pay. The position of non-practising barristers remains unclear.

43. It is essential that any scheme of regulation of advisers should be independent of the Secretary of State. Immigration advisers are necessarily and inevitably a potential adversary of the Secretary of State. It is proposed that the Commissioner is appointed by the Secretary of State having consulted the Lord Chancellor, but the Lord Chancellor's approval is not required. The scheme proposed by the Bill does not satisfy the criterion of independence.

44. The Commissioner is given extraordinary powers of entry and search. The powers are more significant because they will almost always give access to documents concerning legal advice. Whether or not they would be the subject of legal professional privilege, they are obviously closely analogous. ILPA believes that these power should be dependent on the grant of an order or warrant by a Crown Court judge. This would then put them in a comparable position to the police investigating a serious arrestable offence who likewise need a Crown Court judge's warrant in order to gain access to privileged material.

46. The place of exemptions in the scheme is unclear. There appear to be no criteria for exemptions. ILPA would also suggest that there should be a possibility of limited exemptions so that, for instance, a person might be exempt for giving advice but not for representation.

47. The Act devolves so much power to the Secretary of State that it is difficult to see how the scheme will work.

PART VI
SUPPORT FOR ASYLUM SEEKERS

48. Part VI of the Bill would create an apartheid system of parallel and inferior welfare and housing provision for all asylum seekers, including those who will subsequently be recognised as refugees. Such social exclusion is wrong in principle. ILPA opposes it outright.

49. Parliament is being asked to give the Secretary of State a blank cheque and cede its powers to scrutinise these proposals. In this part of the Bill there are almost as many powers to make secondary legislation as there are clauses. The Secretary of State is given broad, sweeping, draconian and often contradictory powers to set up a scheme he has yet to decide upon and whose enormous costs and complexity remain utterly invisible.

50. In terms of race relations and social cohesion the proposals are a recipe for disaster. They impose on asylum seekers and local authorities alike an involuntary dispersal policy that delivers the message "these people are undesirable" and will inflame the worst strands of popular prejudice.

51. ILPA is aware of the government's view that welfare benefits are an incentive to asylum claims. But this is a view that has been developed against a background of Home Office delay that has commonly given access to benefits, and to the UK job market, for periods of 5 years and more before determination of initial applications, a problem that is better solved by ending the delay than by ending the benefit. After all, the proposed alternative is so harsh that the White Paper itself states that it would only be acceptable if people were to be subjected to it for a short time only. And once the proposed targets for speedy decision making in the asylum determination process are met the rationale for this whole costly and cumbersome support system disappears.

52. There is a striking absence of provision for what is to happen if the government fails to determine asylum applications within the proposed 6 months. Do they believe they can achieve their own target or not?

53. This Bill is one of the first certified by the Home Secretary to be compatible with the Human Rights Act. Yet Part VI makes express provision for breaches of the rights to privacy and family life and of the right not to be subjected to inhuman and degrading treatment.

54. Part VI should be therefore be opposed in its entirety, and the present unsatisfactory muddle of measures for the support of asylum seekers replaced with something more rational and humane within the existing welfare system.

PART VII
POWER TO ARREST AND SEARCH

55. Notwithstanding the stated aim of reducing the Immigration Service's reliance on the police for effecting arrests and searches in connection with immigration offences, ILPA is in principle opposed to the fusion of the judicial functions, which immigration officers exercise, with these broader enforcement functions. The individuals being vested with these very broad powers are civil servants without any formal training and without any public accountability and are not subject to any codes of practice regulating the exercise of their functions.

56. ILPA will be making detailed comments on all the clauses in this section, but in this initial briefing will focus on three areas of particular concern.

57. Clause 104 gives immigration officers broad powers to arrest without warrant. And, in particular, introduces a power to arrest for a new offence created by Section 24A of the Immigration Act 1971, as inserted by Clause 16 of this bill. This will enable an immigration officer, discharging his statutory duty to decide whether or not to grant leave to an asylum seeker to enter, to arrest that individual if he has reasonable grounds to suspect that he had used any deception.

58. This could occur before any independent assessment of his claim by the Asylum Directorate or any independent scrutiny of the decision by the independent Immigration Appellate Authority. This clause also permits the initial fact finder, the immigration officer at the port of entry, to arrest and criminalise a bona fide refugee, who was compelled to use false documents to escape persecution abroad.

59. Clause 111 permits the search of people held in police custody by immigration officers. Although Clause 111 (8) excludes the use of intimate searches. In the absence of a binding code of practice regulating the exercise of such a power, ILPA is concerned that these search powers must explicitly exclude power to strip search.

60. ILPA notes that where strip searches are conducted by the police and HM Customs and Excise, codes of practice or guidance exists to protect the rights of the individual to be searched. Indeed, in relation to strip searches by customs officers, ILPA notes that greater protection is provided, which is entirely commensurate with their status as civil servants.

61. Clause 117 permits immigration officers to use reasonable force when exercising any enforcement powers under this Bill or the Immigration Act 1971 ILPA notes that this provides them with broader powers than those exercised by police officers, where reasonable force will only be permitted in certain circumstances.

62. Conferring such wide powers on officers, who have no formal training and are not guided by any published manuals on acceptable and safe methods of restraint, is likely to lead to further tragedies such as that of the death of Joy Gardner.

PART VIII and Schedules 9 and 10
DETENTION CENTRES AND DETAINED PERSONS

63. H M Chief Inspector of Prisons, in his 1997 report on Campsfield House, recommended a properly, and transparently, regulated detention service with a clear, coherent set of rules which should include detainees' rights as well as responsibilities (10.12). "The precise powers of contractors' staff in the use of force should be defined in statutory legislation" (10.08) and the conduct of detention centre staff "should be regulated by the professional codes applying to law enforcement officials" (10.08 and 10.09). He disapproved of using prisons to hold uncharged immigration detainees.

64. It is likely that there will be no diminution in use of prisons and increased use of private contractors in an enlarged detention estate. The Bill goes only some way to meet HMIP's suggestions. It proposes a statutory scheme of regulation involving more controls and restrictions but without the corresponding legal safeguards or public accountability appropriate in a civilised and democratic society. The controls will approximate to normal prison regimes but there is no recognition that detainees are generally uncharged with any offence and not necessarily in need of retribution and rehabilitation. There are no guarantees that private sector custody officers will be subject to the minimum qualifications, training requirements, or grievance and disciplinary regime, applicable in state prisons.

65. Those who go in uncharged will easily become offenders during detention. Under Section 9 resisting or obstructing a custody officer will be an offence. Officers will be able to use "reasonable force", inter alia, to search detainees and "any other person who is in, or is seeking to enter, any place where any such detained person is or is to be held", or to ensure good order and discipline, or "to attend to (the detainee's) well-being".

66. The statutory regime proposed, ill-defined and unbalanced by safeguards and proper public accountability, offers scope for arbitrary exercise of increased control functions by inadequately trained and monitored staff. For example, Section 10, paragraph 6, makes it an offence to convey anything into or out of a detention centre contrary to detention centre rules. "Prohibition items" listed in the back of HMIP's 1995 report on Campsfield House (but not necessarily a matter of public knowledge) included "large quantities of dried fruit" and "cleaning materials". Taking prunes or Brillo pads into Campsfield House could render a person liable to a level 3 fine and a criminal record.

PART IX and cl. 15
REGISTRARS OF MARRIAGES

67. The provisions amending the powers and duties of registrars are without close parallel. These are sweeping changes to a common civil procedure which has no direct connection with immigration control - or has not had until now. The effect of the proposals as drafted seems to be to make all registrars into snoops and busybodies.