



# BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009

## MINISTERIAL STATEMENTS

*Prepared for the Immigration Law Practitioners'  
Association (ILPA) by Elinor Harper and Steve Symonds*

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## Foreword

On the 14 July 2008, the UK Border Agency published a draft (partial) Immigration and Citizenship Bill. On that day, the Agency issued a news statement on its website saying:

'The draft Immigration and Citizenship Bill published today replaces ten Acts of Parliament and enshrines into law the Government's biggest shake-up of the immigration system.'

Just how premature was that statement was revealed in the following Queen's Speech in December when Her Majesty announced:

'A Bill will be brought forward to strengthen border controls, by bringing together customs and immigration powers. The Bill would also ensure that newcomers to the United Kingdom earn the right to stay.'

In due course it was revealed that the much vaunted simplification and consolidation of immigration and nationality law was to be postponed. Another draft Bill would be produced. Moreover, this draft Bill would only aim to simplify and consolidate immigration law. As is revealed in the Ministerial Statements published here, neither the Government nor the UK Border Agency now has any immediate or even foreseeable plans to consolidate or simplify nationality law. It is currently planned that the draft Immigration Simplification Bill will be published before the end of 2009. Whether or not this draft Bill is also trumpeted in similarly ambitious and overreaching terms, it is now clear that we will not see a consolidating Bill introduced to Parliament before the next general election.

Two years previously, when the UK Borders Bill was introduced to Parliament, it was described as the 'last part of a jigsaw' (*Hansard*, HL 13 Jun 2007 : Column 1749). ILPA commented upon that description with some scepticism and, on reflection, no little prophesy in the Foreword to the ILPA Ministerial Statements published on the UK Borders Act 2007 for, in the absence of a consolidating Bill in the 2008-2009 session, we got the Borders, Citizenship and Immigration Bill; and ultimately those who may yet introduce a consolidating Bill to Parliament have one more immigration Act to add to the many that Bill will aim to replace.

The Borders, Citizenship and Immigration Act 2009 is a relatively modest Act in terms of its size – fewer than 60 sections. Indeed when first published, the Bill had barely 50 substantive clauses. The passage of the Bill through Parliament was relatively unusual for its having begun its passage in the House of Lords. More significantly, however, its passage proved to be one of the more controversial of recent years, as regards immigration Bills, including significant Government climbdowns in the face of opposition in both Houses to certain of the Bill's original provisions, one of which was ultimately dropped altogether from the Bill. The Government was also persuaded to expand its original Bill to include positive new provisions relating to nationality law and the offence of trafficking. Commentary on these discrete provisions is generally left to the individual sections of this publication. Nonetheless some further observations are worth making here.

Firstly, mention must be made of the controversy over the Common Travel Area, for it is in relation to this that the Government dropped its provision entirely from the Bill. As originally drafted, the Bill had included the following clause:

#### **46 Common Travel Area**

(1) In section 1(3) of the Immigration Act 1971 (c. 77) (general principles: the common travel area), for the words from the beginning to “a person” substitute “A person who arrives in the United Kingdom on a local journey from any of the Islands or the Republic of Ireland shall not”.

(2) In section 11(2) of that Act (meaning of disembark and embark), in paragraphs (a) and (b), omit “or elsewhere in the common travel area”.

As is revealed by the Ministerial Statements published here, the Government strenuously denied that this provision would effectively disband the Common Travel Area (CTA). Those denials did not impress either Opposition Front Benches and one of the more remarkable moments of the Bill’s passage was when, at Report stage in the House of Lords, peers overwhelming (by majorities in excess of 80 votes) not only threw out the Government’s clause but inserted a clause to introduce a new restriction on the powers available to the Government to interfere with the CTA. Temporarily, at least, the Government was faced with having less power than it had started with by means of amendment of its own Bill in an area in which it had expressly sought to extend its powers.

Ultimately, the Government backed down – though somewhat ungraciously. In conceding that he must accept the wish of Parliament that he drop his CTA provision else risk losing his Bill altogether (or at least not getting it through before the summer recess), Phil Woolas MP, Minister of State for Borders and Immigration, made plain that on the CTA the Government was right and Parliament wrong, and that he would be looking for other opportunities to give effect to the Government’s intentions at a later date. While the Ministerial and Opposition Statements on the CTA included in this publication have no ultimate relevance to the content of the Borders, Citizenship and Immigration Act 2009, it may yet be that significance is given to them by future attempts at legislating on the CTA; or indeed by other policy developments in this area.

Secondly, brief mention is made of two other areas of significant controversy, in respect of which the Government also suffered defeats in the Lords and, while not wholly abandoning its position, made significant concessions before the completion of the Bill’s passage.

In early 2010, it is expected that the Asylum and Immigration Tribunal will be transferred into the two-tier unified tribunal that was established by the Tribunals, Courts and Enforcement Act 2007. That Act provides judicial review powers to the Upper Tribunal, which is the second and higher of the two tiers, and enables the transfer of judicial review applications from the High Court to that tribunal. The Act exempted immigration and nationality law judicial review from these arrangements and the Government had intended to remove that exemption. Faced with considerable protest from both Opposition Front Benches in the Lords, the Government ultimately agreed to retain the exemption except as regards judicial review applications brought against decisions of the UK Border Agency that further submissions did not constitute a fresh asylum or human rights claim (thus meriting a right of appeal).

The other area, in which the Government suffered a defeat, related to one of the two themes that had been highlighted in the Queen’s Speech – the provisions on naturalisation or what the Government refers to as ‘earned citizenship’. The Bill’s provisions in this area were subjected to much criticism for leaving so much for later delegated legislation, prompting criticisms from both Opposition Front Benches in the Commons of overuse of delegated legislation and consequent lack of Parliamentary

scrutiny. This publication includes examples of these criticisms, and should there be a change of Government in the future it may be interesting to see whether a new Government is prepared to address those concerns. In the meantime, however, it was in relation to transition and commencement of the naturalisation provisions that the Government was persuaded to make concessions so that many more of those currently in the UK and on a route to citizenship might escape the more strict and variable requirements for naturalisation that the Act introduces.

Thirdly, it is merely noted that the great majority of the Act – that is the 38 sections of Part 1 – gives legislative effect to the policy decision in April 2008 to create the UK Border Agency, replacing the then Border and Immigration Agency, and in so doing to transfer customs functions at ports of entry to the UK from Her Majesty's Revenue and Customs to the new Agency.

Finally, mention is made of the new statutory duty regarding the welfare of children introduced by this Act. ILPA, with many others and in particular our partners at the Refugee Children's Consortium, has long pressed for the inclusion of the UK Border Agency and its predecessors within the scope of section 11 of the Children Act 2004. The new statutory duty is a significant step towards that for, while the UK Border Agency has not been brought into the scope of section 11 directly, the stated intention has been to replicate the effect of that section by the dedicated duty now introduced for the Agency.

ILPA's briefings presented during the passage of the Bill can be found at [www.ilpa.org.uk](http://www.ilpa.org.uk) in the 'Briefings' section.

## Using this publication

ILPA has previously published compilations of Ministerial Statements on the Asylum and Immigration Act 1996, Human Rights Act 1998, the Race Relations (Amendment) Act 2000, the Nationality, Immigration and Asylum Act 2002, the Immigration and Asylum Act 2006, the UK Borders Act 2007 and the Criminal Justice and Immigration Act 2008. As with those previous compilations, this one is primarily aimed at providing assistance to legal practitioners in understanding the intention behind the various provisions upon which statements have been made and to offer some guidance as to what may be considered by the courts to have been Parliament's intention in passing legislation.

This publication has, as its aim, to provide in one place a list of all relevant parliamentary statements made either by Ministers or Members of the Opposition Front Bench. The inclusion of Opposition statements is a novelty for ILPA. It is done with a mind to the ongoing simplification process and the relative imminence of a general election. Of course, it is only the Ministerial statements to which reference could usefully be made, either in the practice established in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 by which a court or tribunal may consider a clear statement made in Parliament by a promoting Minister to clarify an ambiguity on the face of the Act or more generally to clarify the meaning and effects of the new law. However, for those concerned with policy and lobbying work, it may be that both Ministerial and Opposition statements prove to be of use.

The Ministerial and Opposition statements in this compilation are collected under the relevant Parts that divide up the Act, and, where possible, under the relevant section or subsection. Opposition statements are clearly identified and are not co-mingled with Ministerial statements. However, these are grouped such that Opposition statements on a particular Part, group of sections or section of the Act follow the Ministerial statements on that same Part, group or section. Where appropriate, the statements are preceded with some short commentary.

The Ministers speaking are:

- The Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office
- The Lord Brett, Government Whip
- Jacqui Smith MP, Secretary of State for the Home Department
- Phil Woolas MP, Minister of State for Borders and Immigration

The Members of the Opposition Front Bench speaking are:

- The Baroness Hanham, Shadow Minister, Home Affairs
- The Lord Glentoran, Shadow Minister, Northern Ireland
- The Viscount Bridgeman, Shadow Minister, Home Affairs
- Chris Grayling MP, Shadow Home Secretary
- Damian Green MP, Shadow Minister for Immigration
- Crispin Blunt MP, Shadow Minister (Counter-Terrorism)

Liberal Democrat Front Bench speakers are:

- Chris Huhne MP, Shadow Home Secretary
- Tom Brake MP, Shadow Minister, Home Affairs
- Paul Rowen MP, Shadow Minister, Work and Pensions

The statements should always be regarded as a gateway to the relevant parts of the debates and those wishing to rely upon them, whether in correspondence with

officials, litigation or campaigning, should go back to the full text of the relevant debate, available on the [www.parliament.uk](http://www.parliament.uk) website.

A chronology of the Bill's passage through parliament is provided. Memoranda received by the House of Commons Public Bill Committee, and reports of the Home Affairs Committee and Joint Committee on Human Rights are also available at [www.parliament.uk](http://www.parliament.uk). Ministerial Correspondence is available at <http://deposits.parliament.uk/>

### ***Using Ministerial statements as an aid to interpretation of the Act***

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

Where practitioners have identified a statement that arguably clarifies a statutory ambiguity and satisfies the other criteria, there are specific procedures to be followed, set out in the *Practice Direction (Hansard extracts) [1995] 1 WLR 92*, at the end of this report. A brief summary of the argument and the extract/s should be served on the court and other parties. Reference can usefully be made to statements that do not clarify a statutory ambiguity and therefore do not fall within *Pepper v Hart*, but that nonetheless illuminate Parliament's intentions and provide a succinct summary of a provision.

In the prefatory pieces to ILPA's *Ministerial Statements: The Human Rights Act 1998*, the author, Katie Ghose, noted Ministers' “*growing reluctance to make statements which could be used in a Pepper v Hart challenge*”, together with explicit references to *Pepper v Hart* “*when ministers wish actively to encourage interpretation of a provision in a specific manner*”<sup>1</sup>. The trends that she recorded continue to be evident.

Ministers increasingly turn to correspondence to respond to questions that they are not in a position to answer on their feet, and to elucidate difficult and technical provisions. Reference, albeit often oblique, is frequently made to these letters in debates. Contents of the letters may be the reason that MPs or peers are content not to press amendments to a vote or pursue lines of questioning any further. Letters are often placed in the library of the relevant House, although this cannot be relied upon in every case. Letters are frequently supplemented with informal meetings where the arguments put on both sides leave even less trace on the record. These procedures are an enormous challenge to the *Pepper v Hart* doctrine. We have included in this collection of Ministerial statements those letters, which relate to the Bill and are available on the Parliament website.

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<sup>1</sup> See also *Beyond the Courtroom: a Lawyers' guide to campaigning* K Ghose, Legal Action Group, 2005, paras. 3.182, 3.192.

## Chronology of the Bill's passage through Parliament

All debates available on [www.parliament.uk](http://www.parliament.uk)

14/01/09	Borders, Citizenship and Immigration Bill published as HL Bill 15
14 01 09	House of Lords First Reading
11 02 09	House of Lords Second Reading
25 02 09	House of Lords Committee Stage, First Day
02 03 09	House of Lords Committee Stage, Second Day
04 03 09	House of Lords Committee Stage, Third Day
10 03 09	House of Lords Committee Stage, Fourth Day
25 03 09	House of Lords Report Stage, First Day
01 04 09	House of Lords Report Stage, Second Day
22 04 09	House of Lords Third Reading
23 04 09	House of Commons First Reading
02 06 09	House of Commons Second Reading
09 06 09 (am)	House of Commons Committee Stage, First Sitting
09 06 09 (pm)	House of Commons Committee Stage, Second Sitting
11 06 09 (am)	House of Commons Committee Stage, Third Sitting
11 06 09 (pm)	House of Commons Committee Stage, Fourth Sitting
16 06 09 (am)	House of Commons Committee Stage, Fifth Sitting
16 06 09 (pm)	House of Commons Committee Stage, Sixth Sitting
18 06 09 (am)	House of Commons Committee Stage, Seventh Sitting
18 06 09 (pm)	House of Commons Committee Stage, Eighth Sitting
14 07 09	House of Commons Report Stage
14 07 09	House of Commons Third Reading
20 07 09	House of Lords consideration of Commons' Amendments
21 07 09	Royal Assent



## Other materials and relevant Parliamentary reports

### **Government, Ministry of Justice and Home Office Materials:**

#### **Consultation Documents**

Simplifying Immigration Law: an initial consultation, UK Border Agency consultation, June 2007 (with report on responses)

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/simplification1stconsultation/>

The Path to Citizenship: next steps in reforming the immigration system, UK Border Agency consultation, February 2008 (with Government response and analysis of responses)

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/pathtocitizenship/>

Strengthening the common travel area, UK Border Agency consultation, 24 July 2008 (with Government response and partial and final Impact Assessments)

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/strengtheningthecommontravelarea/>

Immigration Appeals – fair decisions, faster justice, UK Border Agency consultation, 21 August 2008 (with individuals', organisations' and Government responses)

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/immigrationappeals/>

Consultation on changes to the Upper Tribunal Rules (for transfer of the Asylum and Immigration Tribunal to the Tribunals Service), 1 July 2009

[http://www.tribunals.gov.uk/Tribunals/Documents/Releases/combined\\_PDF\\_AIT\\_consultation2.pdf](http://www.tribunals.gov.uk/Tribunals/Documents/Releases/combined_PDF_AIT_consultation2.pdf)

Earning the right to stay: A new points test for citizenship, UK Border Agency consultation, 3 August 2009

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/earning-the-right-to-stay/>

#### **Impact Assessments**

Impact assessment of earned citizenship proposals, 15 January 2009

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/border-cit-imm-bill/supporting-documents/ia-earned-citizenship?view=Binary>

Impact assessment for parts 3 and 4 of the Borders, Citizenship and Immigration Bill, 15 January 2009

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/border-cit-imm-bill/supporting-documents/ia-parts-3-and-4?view=Binary>

Impact assessment of legal powers to support the creation of the UK Border Agency, 15 January 2009

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/border-cit-imm-bill/supporting-documents/ia-legal-powers-creation-ukba?view=Binary>

Final impact assessment of common travel area (CTA) reform, 15 January 2009

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/border-cit-imm-bill/supporting-documents/final-ia-common-travel-area?view=Binary>

Equality impact assessments (summary) – Borders, Citizenship and Immigration Bill, 15 January 2009

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/border-cit-imm-bill/supporting-documents/equality-ia-summary.pdf?view=Binary>

Impact assessment of Migration Impacts Fund proposal, 11 February 2009

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/border-cit-imm-bill/supporting-documents/ia-migration-impacts-fund?view=Binary>

Impact assessment of earned citizenship proposals, June 2009

### **Other Government Papers**

Security in a Global Hub: Establishing the UK's new border arrangements, Cabinet Office, November 2007

[http://www.cabinetoffice.gov.uk/media/cabinetoffice/corp/assets/publications/reports/border\\_review.pdf](http://www.cabinetoffice.gov.uk/media/cabinetoffice/corp/assets/publications/reports/border_review.pdf)

Document made available to the House to illustrate the Government's emerging thinking on Active Citizenship, 19 March 2009

Document made available to the House to illustrate the Government's emerging thinking on Active Citizenship, 4 June 2009

### **Ministerial Statements**

Written Ministerial Statement, Ministry of Justice, on the Implementation of the Tribunals, Courts and Enforcement Act 2007, 16 July 2007

[http://www.tribunals.gov.uk/Tribunals/Documents/Publications/Written\\_Ministerial\\_Statement\\_16July2009.pdf](http://www.tribunals.gov.uk/Tribunals/Documents/Publications/Written_Ministerial_Statement_16July2009.pdf)

### **Parliamentary Reports and Papers:**

#### **Memoranda submitted to the Public Bill Committee**

Memorandum from STEP, UNISON and Law Centre (Northern Ireland), June 2009

<http://www.publications.parliament.uk/pa/cm200809/cmpublic/borders/memos/ucm0102.htm>

#### **Joint Committee on Human Rights**

Legislative Scrutiny: Borders, Citizenship and Immigration Bill, Ninth Report of Session 2008-09, 25 March 2009, HL 62/HC 375

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/133/13302.htm>

Government replies to the Second, Fourth, Eighth, Ninth and Twelfth reports of Session 2008-09, Seventeenth Report of Session 2008-09, 25 June 2009, HL 104/HC 592

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/62/6202.htm>

#### **Home Affairs Committee**

Borders, Citizenship and Immigration Bill [HL], Fifth Report of Session 2008-09, 29 April 2009, HC 425

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/425/42502.htm>

**Parliament Library Research Papers**

Borders, Citizenship and Immigration Bill (HL), Research Paper 09/47, 22 May 2009  
<http://www.parliament.uk/commons/lib/research/rp2009/rp09-047.pdf>

**Explanatory Notes**

HL Bill 15 en 08-09 (Bill as introduced to the Lords), 15 January 2009  
[http://www.publications.parliament.uk/pa/ld200809/ldbills/015/en/index\\_015.htm](http://www.publications.parliament.uk/pa/ld200809/ldbills/015/en/index_015.htm)

Bill 86 en 08-09 (Bill as introduced from the Lords to the Commons), 24 April 2009  
<http://www.publications.parliament.uk/pa/cm200809/cmbills/086/en/09086x--.htm>

Explanatory Notes on Commons Amendments (HL Bill 65 08-09), 15 July 2009  
<http://www.publications.parliament.uk/pa/ld200809/ldbills/065/en/09065x--.htm>

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### **Ministerial and Opposition Statements**

#### ***Appeals – case management – conduct by Home Office***

See Opposition Statements – Asylum and Immigration Tribunal – transfer into two-tier unified tribunal

#### ***Appeal rights***

See Asylum and Immigration Tribunal – transfer into two-tier unified tribunal

See Opposition Statements – Asylum and Immigration Tribunal – transfer into two-tier unified tribunal

See Unified tribunal – Upper Tribunal

#### ***Asylum-seekers – Government commitment***

‘The Government remain fully committed to meeting their international obligations in respect of those fleeing persecution.’

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 537

#### ***Asylum and Immigration Tribunal – transfer into two-tier unified tribunal***

‘Transferring the AIT provides an opportunity to address the significant burden on the higher courts, and we must ensure that we take full advantage of that.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 183

#### ***Opposition Statements – Asylum and Immigration Tribunal – transfer into two-tier unified tribunal***

‘No one would deny that there is a real problem of overburdening the courts, or that immigration cases significantly contribute to that overburdening. Indeed, the Home Affairs Committee does not object in principle to cases which are not highly significant or complex being considered in the upper tribunal. However, it came to the right conclusion when it said that failings on the part of the Home Office must not be compensated for by a lessening of appeal rights in those complex cases which engage human rights issues or constitutional principles. That is the nub of the argument, where the balance needs to be struck.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 184

‘...we do not yet know how this unified tribunal system is working, so it is not sensible to decide now to take such an important class of cases [immigration and nationality law judicial review] away from the High Court and allow them to go only as far as the upper tribunal. We should see how the system works in practice before we take that action.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 185

‘The next argument advanced, which was quite convincing, was that the horrendous delays in the immigration and asylum courts, which contribute to many of the wider problems in the immigration system, are caused not by the simple volume of cases,

but by other factors, many of which are under the control of Ministers and the Home Office itself. Those factors include the poor quality of the initial decisions, the fault of the appeals structure, the fact that withdrawing appeal rights has led to more judicial review applications, the emphasis on speed rather than quality, the failure of the Home Office to comply with case management directions, and the lack of adequate provision for early legal representation. There is some validity in each of those objections, especially the one about the poor quality of initial decisions.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 185

'We all agree that something must be done to ease the case load of the asylum and immigration tribunal.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Report 14 Jul 2009 : Column 212

'The widespread feeling is that Home Office failings must not be compensated for by a lessening of appeal rights in those complex cases that involve human rights issues or constitutional principles, and that the inadequate handling of judicial reviews by an untested tribunal risks increasing the work load of the supervising court, the Court of Appeal, and reducing supervision at the Home Office.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Report 14 Jul 2009 : Column 212

### ***Biometrics – samples – S v Marper judgment – Government response***

'I see no reason why the response to the European court [Case of S and Marper v UK (Appln. Nos. 30562 & 30566/04), Grand Chamber EctHR, 4 December 2008] should not be seen as well. I will probably get into trouble for saying that, but I see no reason at all why it cannot be made available, so I shall ensure that that is done [put on the Home Office website and/or the Lords' Library].'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Committee 4 Mar 2009 : Column 788

### ***Border force – policy***

'There has been debate—I do not doubt that it will continue—on whether this goes far enough and on whether the police should form an integral part of a much bigger unified border police force. This proposal has superficial attractions but, when we looked at it in detail, as in government we must, it is not so attractive. There are some very real operational downsides...'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 February 2009 : Column 1129

'Our bottom-line judgement remains that we have not seen a compelling case as to the operational benefits to be derived for setting up a new national border police force, when we set them against the potentially significant costs, which are probably real, and a number of drawbacks involved.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Report 25 Mar 2009 : Column 669

'...I would never say that never in future would we ever say we are not going to have a border police force.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Report 25 Mar 2009 : Column 670

'Apart from the disruption that a merger would bring about, our fear is that it would make proper partnership working with the 43 police forces in England and Wales, the eight in Scotland and the force in Northern Ireland more difficult.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 204

'...we have looked closely into the matter. It has been the subject of an important debate. The Stevens report raised it, and it was also raised in the other place. The Public Bill Committee found that opinion is divided among police authorities and forces, including not just those with a vested territorial interest. My fear is that if we created such a force as a designated force either within UKBA or amalgamated it with existing officials, our ability to get the nationwide police forces to work with us as partners would be diminished, not increased.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 205

### ***Opposition Statements – Border force – policy – Conservative***

'The Government are making a mistake in not ensuring that the border police are the force of our borders but at some stage it will come about.'

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Report 25 Mar 2009 : Column 663

'...an incoming Conservative Government would make the setting up of a national border police force one of our top priorities.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Second Reading 2 Jun 2009 : Column 231

'...we want the different expertise that is available to police, immigration and customs officers to be brought together at our borders so that it can all be effective.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Report 14 Jul 2009 : Column 184

'...a future Conservative Government would create a national border police force to replace the current inadequate system...'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Report 14 Jul 2009 : Columns 184-185

'If we do not progress down the route towards a national border police force, we are in danger of giving increasingly extensive powers to people who may not be properly trained to exercise them...'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Report 14 Jul 2009 : Column 185

### ***Opposition Statements – Border force – policy – Liberal Democrat***

'There is agreement between the Conservatives and the Liberal Democrats on the need for a UK border force, although there is some difference of opinion about precisely what responsibilities and roles such a force would have.'

Tom Brake MP, Shadow Home Affairs

*Hansard*, HC Report 14 Jul 2009 : Column 191

### ***British citizenship***

See Chagos islanders – British citizenship – Government policy

See Opposition statements - highly skilled migrants  
See Hong Kong war wives and widows  
See Illegitimacy – British citizenship – Government policy  
See Irish nationals – nationality – British subject  
See Simplification – extent – immigration and nationality law  
See Stateless persons – British citizenship – Government policy  
See CITIZENSHIP – Part 2

### ***British subjects***

See Irish nationals – nationality – British subject

### ***Chagos islanders – British citizenship – Government policy***

‘In layperson’s terms, the new clause [New Clause 1 (*The Ilois : Citizenship*) moved by Tom Brake MP, withdrawn without a vote] is attempting to right a historical wrong by assuming citizenship rights being passed on to the next generation. My difficulty with that, as I have explained, is twofold. First, any such change that would retrospectively, as it were, assign rights [to British citizenship] could be ascribed in other places to other people. Secondly, in any event, it makes an assumption that the child would have been born in the Chagos islands.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Seventh Sitting 18 Jun 2009 : Column 221

### ***Children***

See Detention – families – alternatives to detention  
See Section 25 – short-term holding facilities - consultation  
See CHILDREN – section 55

### ***Common Travel Area***

‘All I would say is that we are not abolishing it. We have made clear the value that we attach to the political, economic and social benefits of the common travel area. The noble Lord, Lord Smith of Clifton, felt that we were abolishing it, but we are definitely not doing so.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1210

‘I should make it clear at the outset that there is absolutely no intention to abolish the CTA.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Committee 4 Mar 2009 : Column 757

‘The changes to legislation that [the Government’s clause, ultimately withdrawn] would bring about will mean that travellers by air and sea to the UK from the Republic of Ireland must carry a passport or national ID card, not least because of the need to capture and analyse passenger, service and crew data within our e-borders programme... As regards the land border, we do not intend to impose controls and there will be no requirement for a passport or identity card. There will be a growth in intelligence-based operations that will be clearly legitimised by the Bill.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Report 1 Apr 2009 : Column 1112



'I can categorically say that nothing in [the Government's clause, ultimately withdrawn] allows UKBA to refuse entry to any British citizen, whether a Channel Islander or otherwise. It simply enables us to control non-British citizens.'  
Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Report 1 Apr 2009 : Columns 1114-1115

'The changes that we propose will not prevent British citizens or Irish nationals from entering the UK freely, as they do now. There is no intention to introduce fixed border controls on routes between the Crown dependencies and the UK.'  
Jacqui Smith MP, Secretary of State for the Home Department  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 173

'The claim has been made that our proposed clause abolishes the common travel area. It is not our policy, nor our intent, nor the practical impact of our proposals to abolish the common travel area. We have reconfirmed our commitment to that, because of the social and economic benefits that it brings.'  
Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 142

'Our evidence is that there are some 8,000 immigration offenders travelling each year between the Republic of Ireland and the UK on air and sea routes alone.'  
Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 141

### ***Common Travel Area – introduction of immigration controls – Crown dependencies***

'There will be no requirement for British citizens travelling to and from the Crown dependencies to the UK mainland to carry passports or ID cards. There will be no fixed immigration controls on these routes.'  
Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Report 1 Apr 2009 : Column 1111

'There is no intention to introduce fixed border controls on routes between the Crown dependencies and the UK.'  
Jacqui Smith MP, Secretary of State for the Home Department  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 173

### ***Common Travel Area – introduction of immigration controls – need for controls***

'Part of the reason that I said that we need to do something when I looked at this in 2007 is that we have become more aware that serious organised criminals are using the CTA to facilitate their criminal activity, illegal migration and trafficking. We were aware, from the clear evidence of Operation Gull, of immigration abuse between the Republic of Ireland and the United Kingdom. The sorts of numbers that we are talking about are just under 4,000 immigration offenders. This is possibly just the tip of an iceberg. There is also clear evidence of abuse of both the United Kingdom's and Ireland's asylum system, where persons who have lodged a claim for asylum in one country then travel to the other and make a further claim.'  
Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 765

'The key thing is that we are doing these things because a lot of rules are being broken and a lot of dangerous people are involved in it, which causes a lot of harm to innocent people and puts us at risk.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 765

'We are aware that traffickers of all kinds are beginning to focus on the common travel area as a weakness in our system . . . We know also that the common travel area is being exploited by illegal immigrants. Our evidence shows that around 8,000 immigration offenders travel unlawfully between the UK and the Republic of Ireland on the air and sea routes alone, but that figure represents probably just the tip of an ever-growing iceberg. We also have examples of people of international counter-terrorism interest entering the United Kingdom having initially landed elsewhere in the common travel area.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Report 1 Apr 2009 : Column 1111

***Common Travel Area – introduction of immigration controls – need for controls – Government's future intentions***

'We believe that the limited and proportionate measure that we put forward would make a difference, but that is for the future.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 238

'I have to face some hard immediate facts. The provisions of part 1 of the Bill, on which we have broad consensus, enable the formal establishment of a properly joined up border force, bringing together immigration and customs officers at the frontier. I believe that we need to get on with that, to complete the staff transfers and to draw out the real benefits of joint working... However, there can be no compromise on the option of the common travel area. We either make this necessary change now, or we do not. I have therefore decided to accept the Opposition amendments to clause 50 [the amendments were to delete the clause] this evening. We are committed to the policy and we will examine the options going forward. It is clear to me from the discussions that we have had that the clause is not acceptable across the Floor of the House, and is not acceptable to the other place. Therefore, I intend to support the Opposition amendments.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 239

'I do not wish to reopen the debate about the common travel area, because I made my proposal a moment ago. I believe that there is an unfortunate loophole in our border security and it is obviously incumbent on the Government to find a means of closing it that is acceptable to Parliament. That is what we will seek to do.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Third Reading 14 Jul 2009 : Column 244

***Common Travel Area – introduction of immigration controls – need for controls – Government's future intentions – land border***

'I want to make it clear that both political and practical considerations mean that fixed or routine controls on the land border are not a viable option; but that does not mean that we, or the Republic of Ireland, should do nothing. Tightening controls on air and sea routes without making provision for any activity on the land border would increase the risk of displacement and at the same time reduce our ability to tackle it.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 144

### ***Common Travel Area – introduction of immigration controls – racial profiling***

‘No passengers will be selected on the basis of race, and we are developing operating procedures, intelligence audit trails and ethnicity impact assessments to ensure no negative impact. We do not employ racial profiling.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 758

### ***Common Travel Area – land border – no fixed controls***

‘Let me be clear that the common travel area will remain and that we do not intend to introduce fixed controls on the land border between the Republic of Ireland and Northern Ireland or for those arriving from the Crown dependencies.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1132

‘We have made it clear that we will not introduce routine border controls on the land border between the Republic of Ireland and Northern Ireland. We have also made it clear that we will not require persons to carry a passport or national identity document on this route...’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 758

### ***Common Travel Area – land border – no fixed controls – targeted operations***

‘We propose, on the land border, the capacity to mount targeted, intelligence-led operations in response to the level of threat. There will be no routine presence at the border. We will not require persons crossing the land border to carry a passport or national identity document.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 144

See also Common Travel Area – introduction of immigration controls – need for controls – Government’s future intentions – land border

### ***Common Travel Area – volume of traffic***

‘...there are approximately 15.4 million passenger movements between the Republic of Ireland and the United Kingdom and the Crown dependencies by air and sea.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 163

### ***Opposition statements – Common Travel Area***

‘Let me move on to what I think is the most absurd portion of the Bill—the proposed change to the common travel area. For most of the past century, people travelling between the UK, the Channel Islands, the Isle of Man and the Republic of Ireland have been able to do so without border and immigration controls... The Government’s proposals are unworkable and should be scrapped. We oppose them, most importantly because the plan is completely unenforceable.’

Chris Grayling MP, Shadow Home Secretary  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 184

‘The only sensible way forward is to drop these proposals and adopt the Opposition’s proposals to put in place an upgraded electronic border around the whole of the

British Isles in close collaboration with the Republic of Ireland, which in fact should be called Ireland and not the Republic of Ireland.’

Lord Glentoran, Shadow Minister, Northern Ireland

*Hansard*, HL Second Reading 11 Feb 2009 : Columns 1184-1185

‘We on these Benches are opposed to Clause 46 [Government clause on Common Travel Area, ultimately withdrawn].’

Viscount Bridgeman, Shadow Minister, Home Affairs

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1204

‘The Official Opposition are in favour of retaining and strengthening a travel arrangement that has served the people of the British Isles very well for almost a century.’

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Committee 4 Mar 2009 : Column 760

‘The proposals are offensive in principle to many of our fellow citizens. They are careless of the constitutional implications for Britain’s relations with her dependencies, and their effectiveness will be undermined by a gaping hole in the practical applications of the measures—namely, the UK-Ireland land border. Furthermore, they will be expensive and damaging to the tourist industry; and, even according to the Government’s figures, they will entail a significant cost.’

Crispin Blunt, Shadow Minister (Counter-Terrorism)

*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 149

‘The scrapping of the common travel area and the placing of new burdens on those travelling between different parts of the United Kingdom, and between the United Kingdom and the Channel Islands, and the Isle of Man and, above all, the Irish Republic would be bad for business and an inconvenience to passengers and would, in any case, prove unworkable.’

Crispin Blunt, Shadow Minister (Counter-Terrorism)

*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Columns 153-154.

‘The Government’s proposals, which the Minister has just described as “necessary”, are offensive in principle to many of our fellow citizens. They are reckless with regard to the constitutional implications for Britain’s relations with its dependencies, and if they were ever implemented, which he said he still intended to do, they would prove ineffective. He knows that the practical application of them would be fatally undermined by the fact that the land border between Northern Ireland and the Irish Republic is simply not policed.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Third Reading 14 Jul 2009 : Column 246

‘Paul Rowen: I accept the hon. Gentleman’s point about the argument not having been made. Given that 15.4 million people travel between the UK and the Republic of Ireland annually, my calculation is that if there were a 30-second passport reading, that would take up some 2,500 man days, or person days. Does he believe that that shows the whole process would be completely unworkable?’

Damian Green: Certainly...’

*Hansard*, HC Third Reading 14 Jul 2009 : Column 246

‘It seems extraordinary that we are now hearing from the Government Benches about apparent threats to national security, when we maintained an open border with the Republic of Ireland throughout the troubles, when we faced serious terrorist threats. The Good Friday agreement, for which I pay due tribute to the Government, means

that that threat has been removed, yet they now propose ending the common travel area. That is astonishing and absurd.'

Chris Huhne MP, Shadow Home Secretary

*Hansard*, HC Third Reading 14 Jul 2009 : Column 247

'The perfectly obvious alternative is to ensure that the CTA works. It is around the boundaries of the CTA that one wants to achieve control. One does not want to start setting up double systems of control, at considerable inconvenience and expense to all concerned.'

Crispin Blunt, Shadow Minister (Counter-Terrorism)

*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 151

'This measure is a total overreaction to a problem. The Government are trying to crack a nut with a sledgehammer and unless the Minister can quantify the size of the nut, such measures are clearly unacceptable.'

Paul Rowen MP, Shadow Work and Pensions

*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 159

### ***Opposition Statements – Common Travel Area – Crown dependencies***

'The proposals are offensive in principle to many of our fellow citizens. They are careless of the constitutional implications for Britain's relations with her dependencies...'

Crispin Blunt, Shadow Minister (Counter-Terrorism)

*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 149

'The Government's proposals, which the Minister has just described as "necessary", are offensive in principle to many of our fellow citizens. They are reckless with regard to the constitutional implications for Britain's relations with its dependencies, and if they were ever implemented, which he said he still intended to do, they would prove ineffective.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Third Reading 14 Jul 2009 : Column 246

### ***Opposition Statements – Common Travel Area – land border – targeted operations***

'...checks on people crossing the land border will be on an ad hoc basis, targeting people who are not British or Irish citizens. That does not seem to me very British.'

Lord Glentoran, Shadow Minister, Northern Ireland

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1184

### ***Complaints – serious misconduct – juxtaposed controls***

See Juxtaposed controls – oversight – complaints

### ***Decision-making – quality***

See Opposition statements – Asylum and Immigration Tribunal – transfer into two-tier unified tribunal

See Legal advice – early access to

### ***Delays – decision-making***

See Opposition statements – legal advice – early access to

### ***Detention – children***

See Section 55 – duty regarding the welfare of children – detention

### ***Detention – designation of places of immigration detention***

‘...all places of immigration detention are specified as such in a direction made by Ministers under paragraph 18(1) of schedule 2 to the Immigration Act 1971. The direction is modified or replaced from time to time, and a copy of the current direction is in the House Libraries. Aside from immigration removal centres, which are identified individually, the direction specifies the categories of place in which a person may be detained, rather than the individual locations. Short-term holding facilities therefore appear as a class of place: there is no reason why their inclusion in the direction should need to be renewed and no real purpose served in doing so.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Columns 201-202

### ***Detention – families – alternatives to detention***

‘Detention is used because people do not want to be deported and so abscond. We are sometimes forced to call on homes early in the morning to avoid having to call on schools. We want to keep families together: if there was an alternative, I assure the House that we would use it. Detention is the last resort...’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 201

### ***Detention – police station – PACE***

‘Where a person has been arrested in relation to a criminal offence by an officer of UKBA and is being detained in a police station, that detention is regulated by the time scales provided in PACE and by the relevant codes of practice, to pick up on the point that was made earlier. The same procedure is followed by officers of HMRC and the police.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 53

### ***Detention – purpose***

‘Detention is used because people do not want to be deported and so abscond...’

Detention is the last resort...’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 201

### ***Detention – statistics – children***

See Section 55 – duty regarding the welfare of children – detention - statistics

### ***Devolution – immigration***

See Immigration policy – devolution

See Section 3(1) – customs powers – designation – training

See DETENTION AT PORTS IN SCOTLAND – section 52

See Section 53 – judicial review – devolved administrations

### ***Opposition Statements – e-borders***

‘The Home Secretary is muttering about the e-Borders project. We do not object to the principle of keeping a record of who comes into and goes out of the country. However, I do not believe that we need to maintain detailed records of 10 years of holiday arrangements, holiday partners or credit card statements for every citizen who wants to go on holiday. We need to achieve a balance in what we do, and the Government have completely failed to find that balance.’

Chris Grayling MP, Shadow Home Secretary

*Hansard*, HC Second Reading 2 Jun 2009 : Column 182

‘...the e-Borders database can track and store international travel records, names, addresses, telephone numbers, seat reservations, travel itineraries and, potentially, credit card details. I am sure that the Minister will be proud to tell us that, when it is fully up and running, the system will monitor all 250 million journeys made in and out of this country each year. He will be aware that the Government propose, rather controversially, to store the data for up to 10 years. We think that that is excessive and that some of the data being collected will be ineffective in tackling cross-border crime and hugely intrusive for the entirely innocent. It will also be massively expensive. It is even more toxic, however, to combine that with the use and disclosure of customs information under [section 14]...’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 32

### ***European integration fund***

See Section 41 – active citizenship – cost to voluntary sector

### ***Opposition Statements – European Union – free movement***

‘Rob Marris: The hon. Gentleman has misunderstood my question. I am not talking about transitional arrangements. Instead, I am talking about one of the fundamental aspects of the architecture of the EU—the free movement of labour. I think there is a case for looking at that again. Does the hon. Gentleman agree?’

Chris Grayling: No, I do not think we are going to look again at the free movement of labour within the EU.’

Chris Grayling MP, Shadow Home Secretary

*Hansard*, HC Second Reading 2 Jun 2009 : Column 178

### ***Fees – naturalisation – refugees***

See British citizenship – naturalisation – refugees – fees

### ***Opposition Statements – Free movement***

‘I also pay tribute to my noble friend Lord Patten, who made an eloquent case for the free movement of people throughout the world, which must, of course, be our ultimate aim.’

Viscount Bridgeman, Shadow Minister, Home Affairs

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1203

See also Opposition Statements – European Union – free movement

### ***Gateway refugees***

'On the question of the gateway refugees, those which are recognised by the UNHCR before they come to the UK will continue to be granted permanent residence when they first arrive in this country.'

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 515

### ***Healthcare – access to***

'The [naturalisation provisions in the Act] do not affect migrants' access to healthcare. Access to free healthcare is not directly linked to particular immigration categories; it is based on ordinary residence in the UK, so they will get it.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1210

### ***Opposition statements – highly skilled migrants***

'We should also pay tribute to him [Mr Woolas] for retreating on the retrospection clauses on high-skill migrants, and others, and their moves towards citizenship. That is a welcome improvement.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Third Reading 14 Jul 2009 : Column 245

See also Opposition Statements – Immigration – Policy – highly skilled migrants

See also Opposition Statements – Immigration – Policy – numbers

See also Opposition Statements – British citizenship

See also Opposition Statements – British citizenship – naturalisation – highly skilled migrants

### ***Hong Kong war wives and widows***

See Section 47 – acquisition of citizenship – good character – Hong Kong war wives and widows

### ***Opposition Statements – Identity Cards Act 2006 – commencement***

'Whole shoals of the Identity Cards Act 2006, which had a significant effect on immigration, have not yet been commenced—thank God. With a following wind and a sensible new Home Secretary, they never will be.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 200

### ***Illegitimacy – British citizenship – Government policy***

'The new clause [New Clause 7 tabled by Tom Brake MP and Paul Rowen MP, not called] would enable registration by any person born illegitimately to a British citizen father before 2006. The hon. Gentleman's point of principle is important, because the rights of children born illegitimately should be recognised as a general principle, and we did so in the 2006 Act. He is very reasonably trying to right a wrong, but let me again describe our approach. We now come to the Secretary of State's discretion exercised in relation to those born illegitimately to a British father. The discretion is exercised under the broad remit of section 3(1) of the 1981 Act, which came into force in 1983, to enable the registration of children born before 1 July 2006 who are the illegitimate children of British citizens or settled fathers.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Seventh Sitting 18 Jun 2009 : Column 223



### ***Immigration – benefits of***

‘This Government believe that migration brings benefits to our nation...’  
Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1130

‘It is important to reiterate that migration has given and still does give huge benefits to our nation. It is a very positive thing.’  
Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1207

### ***Immigration – devolution – immigration policy***

See Immigration – policy – devolution

### ***Immigration – immigration rules – changes***

‘We do not believe that migrants, as a matter of course, have a legitimate expectation that we will not change our policy.’  
Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 100

### ***Immigration – immigration rules – use of***

See Section 50 – restrictions on studies – immigration rules

### ***Immigration – policy***

‘Our migration policy must strike the correct balance between the economic benefits that inward migration undoubtedly brings and the impact that it has on those already here... We want to integrate migrant workers into the country in a way that benefits both the migrants and the communities that they join.’  
Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1130

See also Asylum-seekers – Government commitment  
See also Immigration – immigration rules – changes

### ***Immigration – policy – devolution***

‘An interesting dialogue is taking place with the devolved Administrations on how we can fine-tune migration policy. As I think is recognised by the Scottish Government and others, the quintessential point is that if an immigrant may come to a certain part of the United Kingdom, we must have policies that encourage him or her to stay there, but there is a danger that if the pull of south-east England, north-west England or wherever were great, a Scottish route might be used to usurp it.’  
Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 237

### ***Immigration – policy – Scotland***

See Immigration – policy – devolution

### ***Opposition Statements – immigration – immigration rules – changes***

See Opposition Statements – immigration – policy

### ***Opposition Statements – immigration – policy***

‘A clear and consistent policy that says that we need a limit on the number of people who come here, that those who come are welcome and that we will not mess them around by changing the rules every five minutes makes a country more welcoming than the system of the past 10 years.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 86

### ***Opposition Statements – immigration – policy – highly skilled migrants***

‘It is hugely important for the future prosperity of the country that we continue to attract, as I said, not just our fair share, but more than our fair share, of highly skilled migrants.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 80

### ***Opposition Statements – immigration – policy – numbers***

‘I want a cap just as the Americans and the Australians have a cap... A Government who keep fiddling with and changing the rules and treating people unfairly make a country unattractive to highly skilled migrants... A clear and consistent policy that says that we need a limit on the number of people who come here, that those who come are welcome and that we will not mess them around by changing the rules every five minutes makes a country more welcoming than the system of the past 10 years.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 86

### ***Immigration control – fingerprinting***

‘...the number of illegal immigrants detected in Kent was 14,600 in 2001, and it was 1,800 last year... The number of detections through visa fingerprinting in 2008 was around 4,000. That refers to cases identified for the whole of the system where the detection has been based exclusively on fingerprints.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 142

### ***Opposition Statements – immigration control – smaller ports and mobility***

‘A consideration that is always uppermost in our mind is the opportunity for immigration and customs crimes to be committed relatively easily at some smaller ports and airports, which inevitably do not have the permanent infrastructure of those at Heathrow, Dover, Harwich and the big airports in Scotland to which [the Minister] referred. In seeking to assure ourselves that there is adequate training, we are conscious that we want the job to become perhaps slightly more difficult in future because we will need a more mobile force than we have at present.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 19

### ***Opposition Statements – immigration officers’ powers – expertise and quality***

‘We are still worried that officers are potentially becoming more generalist in their approach, with a wider range of responsibilities that potentially leads to more problems, or more failures to follow the appropriate guidelines or procedures.’

Tom Brake MP, Shadow Home Affairs

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Columns 15-16

### ***Opposition Statements – immigration officers’ powers – extent***

‘These officers have wide powers and functions, which are enhanced by the provisions of PACE being passed to them. I realise that these provisions are already given to current immigration officers, but they should be confined to the police.’

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1134

### ***Opposition Statements – immigration officers’ powers – PACE safeguards***

‘...if we extend powers that were once available only to the police, the safeguards that we impose on the police need to be imposed on other people—the Minister is looking perplexed—not just at the discretion of the Secretary of State, but permanently. It is not about the current Secretary of State; essentially, the argument is about whether to trust any Secretary of State to be the guarantor of the protections that one would want.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 51

### ***Opposition Statements – immigration officers’ powers – training***

‘...our continuing concern that the exercising of great powers by officers of the state should always be accompanied by very strict training regimes and permanent observation, and that we are not giving inappropriate powers to people who may not have the skills and sensitivity to use them. There is a very serious underlying principle: it is relatively easy for Ministers to say “My job is to increase security in this area and therefore I will take whatever measures need to be taken to do that.” That always needs to be balanced against the appropriate use of those powers by the appropriate people.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 22

See also Opposition Statements – border force – policy – Conservative

### ***Opposition Statements – immigration officers’ powers – transparency***

‘The underlying and extremely important issue is that people should have clear rules and know what they are, and that those rules should be completely clear about what immigration officers can do in terms of detention and enforcement.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 57

### ***Indefinite leave to remain***

See Gateway refugees

See British citizenship – naturalisation – indefinite leave to remain – effect of provisions

See British citizenship – naturalisation – indefinite leave to remain – pending applications  
See Section 58(9) to (11) – naturalisation – commencement – transition – effect of

### ***Independent Police Complaints Commission***

See Juxtaposed controls – oversight – complaints  
See Section 30 – Independent Police Complaints Commission – customs and revenue functions

### ***Information – e-borders – use of information – privacy***

‘It [e-Borders information] will not impinge on the privacy of individuals, or their ability to live their lives with no interference from the state.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Report 25 Mar 2009 : Column 693

### ***Opposition Statements – information***

‘...it must have impinged on the Government now that simply collecting more information about entirely innocent journeys and people and keeping it for longer is not the most effective way of making our borders secure. It is not, in this context, the best way of ensuring that we get the appropriate customs information and then using that information to contribute to the general safety of the border.’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 33

‘Another important set of issues relates to proportionality. Are the data collected worth collecting in terms of the rewards that will come from the successful use of them? There can always be arguments along the lines of, “Well, if it helps to stop one serious criminal and solve one case, then it is worth while,” but we need to have a debate at a slightly higher level than that, and suggest that we introduce some kind of test of proportionality about the widespread collection and retention of important personal data.’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 41

‘Although each individual database may be justifiable in some sense, it is the aggregation of all the information that rightly causes people to be increasingly concerned.’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Columns 41-42

‘Every individual is now being treated as though they are a potential criminal, and the gains for fighting crime that we might get from that approach are outweighed in the long run by the losses of turning every citizen in the country into a potential suspect, and treating them as such through the collection, dissemination and cross-referencing of information by the Government. All of that would be true, and I would argue it just as strongly, even if I believed that the databases were 100 per cent. accurate and secure.’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 42

‘Every breach of data security not only endangers the privacy of the individuals concerned, but inevitably costs the taxpayer thousands of pounds in investigations,

internal reviews and potential litigation. If someone were to look at the matter dispassionately, they would ask whether the British state is the sort of body that should be allowed to collect and disseminate large amounts of private information.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 42

'A couple of our amendments have concentrated specifically on that last point. General permissions should not be given such that whole classes of people can start exchanging the private information of British citizens. If there is a specific reason to do it, that is arguable, but specific, not general, consent has to be necessary.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 43

'Conservative Members think that it is hugely important and that far too much of the relevant Home Office policy is proceeding in the wrong direction, with a dangerous tendency to collect too much information and to give the various organs of the state too much power to share it with one another without the permission of the person about whom the information was collected.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 31

'[Section 22] gives the Secretary of State powers to invoke provisions under PACE to enable these officers to undertake investigations. [Section 3(8)(g) and section 7(8)(h)] give the officers powers of arrest. [Section 15] then enables them to share personal information gleaned from their inquiries with other bodies. I hear what the Minister says about the care and confidentiality with which that information will be treated... We need to find out what information is open to being passed on and whether it will be passed on on security grounds, and we will need to ensure that such information is subject to legal professional privilege.'

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1134

### ***Opposition Statements - inspection***

'I have attempted at various stages of the Bill's passage to reduce the volume of inspection, because I think a single good inspection is what these facilities and those who work in them should have, and that multiple, constant inspections will result in the facilities providing a lower quality service.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Report 14 Jul 2009 : Column 189

'One anomalous thing that remains in the Bill is the multiple inspection regime that the agency and those who work in it will be forced to endure. There will be a chief inspector of prisons, Her Majesty's inspectorate of constabulary and the new chief inspector of the UK Border Agency, all of whom, to some extent, will be trampling over the same ground.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 62

### ***Opposition Statements – inspection – Her Majesty's Inspector of Prisons***

'I accept that in the short term we would want the expertise of HMIP in the detention estate, but expertise could be built up over time inside one inspectorate.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 64

### ***Irish nationals – nationality – British subject***

‘The status of British subject continues to exist in British nationality legislation as a result of Britain’s historical legacy. However, the only people who hold that status are certain people with a connection to southern Ireland, or with India and Pakistan. As such, the numbers holding that status will reduce over time and we do not wish to create a new route to British subject status. Those Irish nationals who were born after 1949 and wish to become British citizens can do so through naturalisation, based on a period of residence in the United Kingdom.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 230

### ***Juxtaposed controls – cost***

‘...we have not given £15 million to the French to police their own border; we are spending £15 million to police our border, which, with the agreement of the French, is in France, and thank goodness it is.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Columns 205-206

### ***Juxtaposed controls – oversight – complaints***

‘...there is an argument for introducing oversight of complaints relating to the exercise of specified enforcement functions by our officers at juxtaposed controls. Recently, following the Standing Committee debate on the issue, we wrote to the IPCC to inquire whether it would be content to consider having a non-statutory role in overseeing UKBA internal investigations into relevant matters at the juxtaposed controls. We await a formal response from it, but I understand that it is looking at the proposal positively.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 206

### ***Juxtaposed controls – oversight – inspection***

‘...we are looking at a voluntary means of ensuring that inspection can take place with the same effect as the hon. Gentleman seeks.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 205

### ***Legal advice – early access to***

‘I have some sympathy with the idea of early legal advice. Indeed, I have some sympathy with the idea of early legal representation to improve the quality of decision making. However, I cannot accept his other four or five criteria.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 186

### ***Opposition Statements – legal advice – early access to***

‘I seek to minimise the effect on the public purse, as would the Minister, and to maximise the speed at which people go through the system, because delay promotes both injustice and expense. As I was saying, experiments in this country, and many experiments overseas, have revealed that if someone receives decent legal advice at the start of the process, their case will not only be concluded more quickly but will be

much less likely to go to appeal. If they then end up being removed from the country, they are more likely to accept the situation. The problems with delays and with many people refusing to go and causing violence on planes are driven out of the system.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 189

'...the early application of significant legal advice, particularly in an asylum application, can mean that in the long run it is decided more quickly and accurately.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 189

### ***Migration impact fund***

See Section 41 – active citizenship – cost to voluntary sector

### ***Offences – laying of charges***

'In terms of charges being laid without the police, under current arrangements customs and immigration officers can arrest people and investigate offences, but only the police can charge them. That will not change.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1207

'In practice, a decision on the charge is one for the CPS or indeed, the Revenue and Customs Prosecutions Office.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1207

### ***Operation Gull***

See Common Travel Area

See Common Travel Area – introduction of immigration controls – need for controls

### ***Opposition Statements – Parliamentary scrutiny***

'The clause [what became section 39] also highlights the desirability of having the secondary legislation flowing from clauses explained and made visible to the House while we are considering the underlying clauses. The regulations flowing from the clause might have dramatically adverse impacts on people. The Minister may well have a perfectly good explanation, but at the moment it is impossible for the Committee to take an intelligent view, because we simply cannot know the facts.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 104

'I think we would all agree that, at this difficult time for Parliament, the power of Parliament to scrutinise legislation in detail is one of the things that we do not get right and we have not got right for a very long time... The Minister made an extremely good point earlier when he said that he believed in pre-legislative scrutiny. He is right about that. However, he also said that he believed in post-legislative scrutiny and he is right about that, too. Inevitably, some legislation has unintended consequences. If the House of Commons passes legislation knowingly and openly and there are unintended consequences, we all have to face up to that problem.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 17

'Any sensible Minister would welcome the possibility of having some sort of oversight because, of course, one of the long-term effects of effective oversight is that Ministers can often be saved from themselves. The prospect of being scrutinised would give rise to further ministerial self-censorship, and prevent foolish things being done.'

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 18

See also Opposition Statements – Section 2 – customs functions – power to amend  
See also Opposition Statements – Section 50 – restrictions on studies – ambit

### ***Points system***

See British citizenship – naturalisation – points system

### ***Refugees***

See Asylum-seekers – Government commitment  
See British citizenship – naturalisation – access to services and benefits – refugees  
See British citizenship – naturalisation – asylum-seekers – pending applications  
See British citizenship – naturalisation – asylum-seekers – 'qualifying period' – temporary admission  
See British citizenship – naturalisation – refugees – fees  
See Gateway refugees  
See Section 48 – breach of immigration laws – meaning of – refugees

### ***Retrospective measures***

'I do not believe in retrospective legislation... Where there is retrospectivity, as there is in a more liberal way in later clauses to do with children, that is reasonable. However, I do not agree with it the other way round.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 102

### ***Secondary legislation***

See Opposition Statements – Parliamentary scrutiny

### ***Simplification***

See Opposition Statements – Parliamentary scrutiny  
See Statutory language  
See also Immigration – immigration rules – use of

### ***Simplification – extent – immigration not nationality law***

'The hon. Member for Ashford pointed out that these are nationality issues; he was right to say that the proposed simplification Bill is an immigration Bill, not a nationality Bill.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Seventh Sitting 18 Jun 2009 : Column 216

'The simplification Bill, which is heading rapidly towards 400 clauses—this is a complex and serious Bill on which people are working very hard all the time, so it



cannot be rushed forward—will cover all immigration legislation since 1971 and will not cover the ground again on citizenship.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1207

### ***Simplification – programme of reform***

‘We have recognised that we must, as an integral part of these changes, reform the legal framework that underpins the UK Border Agency’s work. Last July, we started that process by publishing for scrutiny a draft partial Bill, which will replace all the current layers of primary immigration law with a single new Act. We intend to publish that Bill—a completed and revised draft immigration simplification Bill—before the end of this parliamentary Session. We remain committed to that programme of legal reform. We want to ensure that we engage fully with our stakeholders and produce as comprehensive and polished a new Bill as possible.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1128

### ***Opposition Statements – Simplification***

‘...we have had at least enough, if not too much, such legislation, of which this Bill is the latest in a long line, that has not been matched by any significant increased effectiveness in the immigration system.’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Third Reading 14 Jul 2009 : Column 249

‘We probably need less legislation and more enforcement of the existing legislation.’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Report 14 Jul 2009 : Column 186

### ***Stateless persons – British citizenship – Government policy***

‘It is a well-understood principle that British citizenship should be limited to those with a close and continuing connection with the United Kingdom or an overseas territory. As such it can normally be transmitted to only one generation born overseas... [T]he Government are committed to reducing cases of statelessness, and we will continue to make exceptions—the key point about ministerial discretion is that it is much tougher than the impression we may have given—to reduce statelessness in order to meet our obligations under the important 1961 convention on the reduction of statelessness. It is not unreasonable to insist on a period of residence before registering a stateless person.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Seventh Sitting 18 Jun 2009 : Column 222

‘Despite our commitment to reducing statelessness, we can only go so far to compensate for the fact that other nations do not share that commitment, and so do not provide for the acquisition of citizenship by children born in their territory.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Seventh Sitting 18 Jun 2009 : Column 222

### ***Statutory language***

See DETENTION AT PORTS IN SCOTLAND – section 52

### ***Students – bogus colleges – ‘college’ – protecting the name***

See Students – bogus colleges – ‘university’ – protecting the name

### ***Students – bogus colleges – ‘university’ – protecting the name***

‘...the purpose of protecting the name seems to make sense. My colleagues are putting forward ideas, and have given evidence to the Select Committee. A regulatory power exists there, so I do not believe that it is appropriate for the immigration Bill to undertake that change.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 176

### ***Students – duration of course – leave to be granted for***

‘...a student applying for leave to enter or remain under tier 4—the general student category of the points-based system—will be granted leave for the duration of their course.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 778

### ***Opposition Statements – students***

‘I do not think that there will be any division in the Committee about the idea that we are all supportive of foreign students...’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 165

‘...we are all supportive of foreign students; certainly UK universities are, not least because of the revenue that those students bring, but we are also supportive of them as a country. Conservative MPs often make the point that one purpose—perhaps the main one—of the immigration system should be to enable Britain to attract its fair share, or perhaps more than its fair share, of the brightest and best from around the world, to support and promote our economic growth. Clearly, the universities play an extremely large part in that, by introducing some of the brightest students from around the world to this country, a proportion of whom will inevitably want to make their life here.’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Columns 165-166

### ***Opposition Statements – students – bogus colleges***

‘Bogus colleges prey on unsuspecting students, who are predominantly from overseas. Once they have paid their fees for what are bogus qualifications, no recourse is available to them. Many students are scared to contact the authorities for fear of deportation, because they discover that although they may be the innocent victim of a scam, that will make them vulnerable. In the end, they are in a no-win situation. Either they return to their country of origin angry at the treatment they have received in the UK or they stay here illegally.’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 172

### ***Opposition Statements – students – bogus colleges – ‘college’ – protecting the name***

See Opposition statements – students – bogus colleges – ‘university’ – protecting the name

***Opposition Statements – students – bogus colleges – ‘university’ – protecting the name***

‘The Minister will be aware how important it is to protect the name “university”, and in the modern world it is equally important to protect the title “college”. I think that that would be a significant step forward both for the education world and in driving out the use of education as a means of circumventing our immigration controls.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 173

***Training***

See Opposition Statements – immigration officers’ powers – training

See Opposition Statements – Part 1 – training

See Section 3 – customs powers – designation – training

See Section 3 – customs powers – training

See Section 55 – duty regarding the welfare of children – training

***Unified tribunal – transfer of Asylum and Immigration Tribunal***

See Asylum and Immigration Tribunal – transfer into two-tier unified tribunal

See Opposition Statements – Asylum and Immigration Tribunal – transfer into two-tier unified tribunal

***Unified tribunal – Upper Tribunal – appeal to Court of Appeal from***

‘New clause 6 [tabled by Neil Gerrard MP, Chris Huhne MP, Tom Brake MP and Paul Rowen MP, but not called] prevents the Lord Chancellor from making an order [under section 13(6) of the Tribunals, Courts and Enforcement Act 2007] which restricts the test for permission to appeal to the Court of Appeal to that set out in the Access to Justice Act 1999. The Master of the Rolls supports this more restrictive test—it is not something that we are imposing on the judiciary against their will, as some had feared. We are clear that the test would not stop cases that raise important issues concerning human rights or asylum being granted permission to appeal to the Court of Appeal.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 210

‘...my hon. Friend [Neil Gerrard MP] made a specific point about section 13(6) of the Tribunals, Courts and Enforcement Act 2007. That section will not apply to judicial reviews. It will apply only if an appeal before the upper tribunal comes from a decision of the first-tier tribunal—if the case is on its way up, as it were. A judicial review decision is not a first-tier decision, so the section 13(6) test would not apply.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 217

‘Of course, we accept—I would argue that we know better than most—that there may be some cases that raise the real prospect that the decision of the upper tribunal will be in breach of the UK’s human rights obligations. Those are precisely the sort of cases that would meet the test that is set out in section 6 of the Act.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 182

***Unified tribunal – Upper Tribunal – judicial constitution***

‘...my hon. Friend [Neil Gerrard MP] asked whether High Court judges should hear important cases in the upper tribunal. That will be a matter for judicial allocation, but the intention of having High Court judges in the upper tribunal is that they should deal with important cases.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 217

## **BORDER FUNCTIONS – Part 1**

### **Commentary**

Part 1 of the Act seeks to do that which was announced in the Queen's Speech as:

'A Bill will be brought forward to strengthen border controls, by bringing together customs and immigration powers.'

While the subject matter of this Part is, on its face, particularly dry, the consolidation of immigration, customs and revenue powers raises significantly enhanced concerns as to the amount of personal information being collected by the UK Border Agency, the use to which this information may be put and the ever-widening scope for its onward disclosure – whether to other Government departments or agencies, or elsewhere including foreign Governments. Alongside these concerns is the risk of accidental disclosure of information.

Debates highlighted these concerns, and also focussed on the need for adequate training, supervision and oversight of immigration officers exercising new and existing powers. The application of the Police and Criminal Evidence (PACE) codes of practice to immigration officers was revisited, as to a lesser extent was the issue of independent inspection of the UK Border Agency. There was also a particular focus on the use of short-term holding facilities given the inclusion of a provision, section 25, to extend the uses to which these facilities may be put such that persons may be detained in these facilities under powers other than immigration detention powers. ILPA raised particular concerns as to the holding of immigration detainees, including families and children, in these facilities alongside detainees held under other powers. We have since been informed by the UK Border Agency that risk assessments will be carried out in respect of these facilities before there is any such mixing of detainees; and the Ministerial Statements included here confirm that there will be consultation with the Children's Commissioner and 'appropriate NGOs' before that is done.

### **Ministerial Statements**

#### ***Part 1 – customs revenue***

'The United Kingdom Government receive about £22 billion from tax revenue collected at the border each year. That figure is rising, even in the current economic circumstances. It represents about 5 per cent. of the total tax take of the UK Border Agency. That is why the immigration Minister is also a Treasury Minister. The public may be interested to learn that included within that £22 billion about £2 billion is collected on behalf of the European Union.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 26

#### ***Part 1 – customs revenue – Ministers – separation of powers***

'Ministers cannot be involved in customs financial revenue functions, just as we cannot be involved in Inland Revenue functions. That is quite right, and I hope that it always remains so.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 11

#### ***Part 1 – purpose***

'Part 1 is essential as it will allow for the formal transfer to UKBA of about 4,500 officers who are currently employed by HMRC, to enable the full integration of customs and immigration work at the border.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 201

'Part 1 runs from [section 1 to section 38] and deals with the UK Border Agency. In essence, it proposes that we put on a statutory footing the merger of the customs functions taken from Her Majesty's Revenue and Customs and the immigration functions taken from the Border and Immigration Agency, previously known as the immigration and nationality directorate... Bringing the functions together will increase the UK Border Agency's effectiveness in tackling smuggling, illegal immigration and other cross-border crime. Providing more flexibility and powers for the deployment of officers in tackling those threats at the border will enhance border security and therefore the protection of our country.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 5

'The Government believe that the security of this country's borders is best served by a UK Border Agency that can give both customs and immigration powers to its front-line staff.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1128

'The measures in Part 1 of the Bill will address the report's [Cabinet Secretary's report, *Security in a Global Hub*, November 2007] clear recommendation for the implementation of a unified passport and customs checkpoint. They will allow the formal transfer of customs functions and staff integrating customs frontier work.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1129

'...a set of proposals that simply transfer existing powers from HMRC to UKBA and expand the role of immigration officials to include the capacity, under certain conditions that I have outlined, to deal with customs as well as immigration matters.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 14

### ***Part 1 – purpose – staffing levels***

'The noble Lord, Lord Avebury, asked whether the integration of the customs and immigration functions would lead to a reduction in the number of staff. That is absolutely not the aim. The aim is effectively to have more staff because one man can do a number of things.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1206

'The Bill is crucial to the future development of the UK Border Agency. I hope that its speedy enactment, subject to the agreement of the other place to our amendments, will enable the transfer of 4,500 customs officers from HM Revenue and Customs to UKBA. We want that to happen as soon as possible.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Third Reading 14 Jul 2009 : Column 243

## **Opposition Statements**

### ***Opposition Statements – Part 1 – training***

‘At this stage of our proceedings, we ought to have some kind of reassurance from the Minister that the extension of the powers, which are very extensive and intrusive, is being handled properly and that they are being extended to people who are properly trained and equipped to deal with them... I have genuine worries, as do others, about some of the details and the possible spread of powers to people who are not properly trained in exercising them.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 10

‘If these proposals are to go ahead and to succeed—they are of course enabling, and it will be up to the Home Secretary to decide whether and when they are implemented—it is essential that all the officers are trained and competent to deal with all aspects of their immigration and customs and revenue roles, including, most importantly, how those who are suspected of illegal or criminal activity are dealt with at the border.’

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1134

***GENERAL CUSTOMS FUNCTIONS... – sections 1-2***

***GENERAL CUSTOMS OFFICIALS – sections 3-4***

***THE DIRECTOR OF BORDER REVENUE – sections 6-10***

***CUSTOMS REVENUE OFFICIALS – sections 11-13***

## **Ministerial Statements**

### ***Section 1 – ‘general customs’ – meaning***

‘The hon. Member for Ashford asked me to give some examples of what is meant in the real world by general customs. Seizing criminal cash is a common function. Others include preventing unsafe products being imported into the UK; maintaining sanctions on countries and arms embargos; reducing and deterring trade in endangered species of animals and plants; control of commercial vessels and ships coming into our ports; preventing the importation of offensive weapons such as knives, daggers and so on; preventing the importation of obscene or indecent material, particularly child pornography; preventing the introduction of pest and diseases harmful to animals and/or humans, such as foot and mouth, bird flu and fowl plague; preventing the import and export of controlled drugs; and preventing chemical weapons, toxic chemicals and so on from coming into the UK and being obtained by terrorist organisations. That is not an exhaustive list, but they are the main headings under the general customs functions.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 12

### ***Section 1 – purpose***

‘The [section] will give the Secretary of State the power to exercise general customs functions concurrently with the commissioners for Revenue And Customs. The [section] specifically prevents the Secretary of State from exercising any of the commissioners’ revenue functions or any of their non-revenue functions that are not

relevant to the UK Border Agency's role, such as their work inland regulating bureaux de change and other money businesses.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 5

### ***Section 1 – purpose – no new powers***

'I reassure the Committee by saying that the transfer of the powers does not involve new powers. The relationship between the Secretary of State and the revenue functions of Customs does not change that strongly held and conventional principle about new powers in our systems.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 15

### ***Section 1(2) – 'general customs matter' – extent***

See Section 1 – 'general customs' – meaning

### ***Section 1(3) – limitation of Secretary of State's customs powers***

See Section 1 – purpose

See Section 1 – purpose – no new powers

### ***Section 3 – customs powers – training***

'To date, about 2,000 immigration officers have been trained in customs matters as we increase capacity.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 21

See also Section 3(1) – customs powers – designation – training

### ***Section 3(1) – customs powers – designation – use of contractors***

'Tom Brake: ...It might be helpful for Members if the Minister clarified whether the word "official" could include private contractors recruited by the Government to work within that department.

Mr. Woolas: On the last point, the answer is no. The officials who can be designated are customs and immigration officials.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 20

'Only those who are immigration officers or other officials of the Secretary of State may be designated as general customs officials or customs revenue officials. Officials of the Secretary of State will include the current officers of HMRC once they have transferred to the UK Border Agency, but not the private contractors.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 204

### ***Section 3(1) – customs powers – designation – training***

'The designation of officers under the Bill can take place only when the officer is suitable and properly trained... Before being entitled to be designated, they must undertake training. The appropriate skills required include, of course, those under the relevant legislation; knowledge of the customs regime, such as the common



agricultural policy; disclosure handling of material that is gathered during criminal investigation; questioning and note-taking; how to arrest and caution; custody charging and bail procedures; rules of evidence; customs allowances; how to deal with EU and non-EU goods; the calculation of duty and VAT; searching a person's baggage and vehicle; and personal safety training, of course... [T]hat training needs to be specific to Scotland, where there is a separate legal regime.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 13

### ***Section 6(1) – Director of Border Revenue – designation***

'It is our policy and intention to appoint the chief executive of UKBA as the director of border revenue. That position is a civil service position and therefore maintains the separation. The Bill does not designate that the director must be the chief executive of the United Kingdom Border Agency... [T]hat is partly because that structure may not be permanent.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Columns 26-27

### ***Section 9 – Director of Border Revenue – delegation of powers***

'Let me address directly the delegation of the director's functions to officials, which [section 9] enables. This practice allows operational flexibility and is necessary. It is already the case with officials in their relationship with the commissioners. Of course, in practice, most of the functions of the director are undertaken by officials under the designation arrangements set out in [section 11]. Only designated officials will be able to exercise the front-line enforcement powers currently relied on by officers of Her Majesty's Revenue and Customs at the border to tackle smuggling. Those powers are not exercisable by the director and are therefore subject to the delegation power.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 30

### ***Section 11 – revenue powers – designation***

See Section 9 – Director of Border Revenue – delegation of powers

### ***Section 11(1) – revenue powers – designation – use of contractors***

'Only those who are immigration officers or other officials of the Secretary of State may be designated as general customs officials or customs revenue officials. Officials of the Secretary of State will include the current officers of HMRC once they have transferred to the UK Border Agency, but not the private contractors.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 204

## **Opposition Statements**

### ***Opposition Statements – Section 2 – customs functions – power to amend***

'...the Home Secretary has the power to amend the definitions and applications of general customs matters, which, as we established in that very good debate, are extremely powerful matters in the hands of officers. If they can be amended by the Home Secretary, we believe it right that he should report regularly to the House on the changes made.'

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 17

## ***USE AND DISCLOSURE OF INFORMATION – sections 14-21***

### **Ministerial Statements**

#### ***Section 14(1) – disclosure of information – extent***

‘The type of information that UKBA will handle and disclose will be persons stopped at ports and airports who are smuggling goods and legitimate travellers’ payment of customs duty at the red channel. UKBA officers may disclose certain interceptions to trading standards—for example, goods that may pose public health risks. Those sorts of things will be used as statistical data primarily, but personal customs information cannot be exchanged or used.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 25 Feb 2009 : Column 225

‘Let me start my reassurances by saying that [section 14] relates to the powers that Revenue and Customs and immigration officers have already. The [section] is about how they share information with each other for their own purposes.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, First Sitting 9 Jun 2009 : Column 34

#### ***Section 14(1) – use of information – extent***

See Section 14(1) – disclosure of information – extent

#### ***Section 15(1) & (2) – unlawful disclosure of information***

‘We are proposing a strict confidentiality regime in relation to personal customs information gathered and retained by the UK Border Agency. A person who unlawfully discloses such information may be subject to criminal prosecution.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1131

#### ***Section 16 – disclosure of information – civil proceedings***

‘It is important to ensure that there is a clear and unambiguous power to make disclosures for civil proceedings, including those before the tribunal.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 45

#### ***Section 17(1) – unlawful disclosure of information***

See Section 15(1) & (2) – unlawful disclosure of information

#### ***Section 18 – unlawful disclosure of information – prosecution***

See Section 15(1) & (2) – unlawful disclosure of information

#### ***Section 20 – disclosure of information – consent – individual consent***

'Lastly, it seems that amendment 12 [tabled by Damian Green MP and Crispin Blunt MP, not called] is intended to clarify the fact that information may only be disclosed under proposed new section 41B(2)(f) of the 2007 Act when the person wishing to disclose it has the consent of the person to whom it exclusively relates. I want to assure the Committee that this is precisely the effect of the current drafting and reflects the existing practice of HMRC, RCPO, the Home Office and the agency, so the amendment is unnecessary.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 46

### ***Section 20 – disclosure of information – consent – general consent***

'The ability to share information under the 2007 Act, in accordance with general consents given by HMRC or RCPO, will not lead to unrestricted data sharing but, rather, will enable a class of relevant information to be shared where that is appropriate. It would be impractical and hugely resource-intensive if, as amendment 11 [tabled by Damian Green MP and Crispin Blunt MP, negated on division] requires, HMRC had to provide specific consent each and every time they supplied information to a person under section 41A of the 2007 Act. It would be paperwork. It would be form-filling. It would be tying up in unnecessary work the hands of the officials we are asking to protect our revenues and our borders. Amendment 11 is neither realistic nor desirable.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 45

### **Opposition Statements**

#### ***Opposition Statements – section 14 – use and disclosure of information***

See Opposition Statements – e-borders

#### ***Opposition Statements – Section 20 – disclosure of information***

'It is significant that much of the Minister's response was about how the provision [section 20] makes life easier for the institutions concerned to do what they do. I am sure that that is true. But overriding that should be the convenience of the citizens of this country, the vast majority of whom are not criminally inclined, are not going to smuggle stuff across the border and will not break immigration rules. The Minister and I disagree on a point of principle relating to where the appropriate balance is struck between personal freedom and personal privacy in this country and the ability of the organs of the state, including the law enforcement agencies, to do their job with what they would regard as the minimum fuss.'

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 47

See also Opposition Statements – Information

### ***INVESTIGATIONS AND DETENTION – sections 22-25*** ***TRANSFER OF PROPERTY ETC. – sections 26-27*** ***INSPECTION AND OVERSIGHT – sections 28-30***

### **Ministerial Statements**

## **Section 22 – effect and commencement**

‘Should the House give Royal Assent to the Bill, [section 22] ensures that PACE protections transfer immediately to UKBA and specifically those customs officers within it.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 52

‘[W]e need to ensure that, as the designated customs officials of the border force will in future be investigating and detaining people for the same offences and exercising the same functions at the border as officers currently do for HMRC, they have the same powers and are required to provide the same safeguards to those that they detain.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 53

‘[Section 22]... will enable the immediate application of the majority of the provisions of the Revenue and Customs PACE Orders to designated customs officials, including those officers of HM Revenue and Customs who have transferred to the UK Border Agency and who are, under the proceeds that we discussed earlier, so designated. That in turn will allow UKBA’s designated customs officials to exercise the same powers in relation to customs matters at the border as those currently available to officers of HMRC. Equally importantly, that will ensure that when in future the agency’s designated customs officials exercise those powers, they will be subject to the same safeguards as now and in the future, when they are exercised by officers of HMRC.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 56

‘We intend that there will be a seamless application of PACE to the designated officials, particularly those who are transferring over, until a further bespoke PACE application order is made directly in relation to UKBA’s customs and immigration functions, under [section 23].’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 53

## **Section 22 – PACE – extent of protection**

‘The arrested person is protected by the application of the PACE codes of practice regardless of whether he or she is at an office of HM Revenue and Customs or detained in a designated custody suite or police station.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Report 25 Mar 2009 : Column 696

See also Detention – police stations – PACE

## **Section 22 – PACE – extent of protection – maximum period of detention**

‘It will be six hours in total for them to investigate whether it is an immigration or a border and customs issue.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Report 25 Mar 2009 : Column 698

‘The PACE timetables apply in these cases [of persons held for immigration offences including drugs and people smuggling]—that is, a person can be detained for up to

six hours in a facility that is not designated under PACE, and for up to 96 hours in a place that is so designated. He asked what levels of legal advice were available, and that matter again is covered by the PACE regulations, including the right to access the duty solicitor.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 201

### ***Section 23 – purpose***

'Immigration officers do not at present use powers in PACE when conducting investigations, but they are required, when exercising powers in the context of a criminal investigation, to have regard to the relevant provision in a PACE code of practice. We have put that restriction on immigration officials. We will therefore use the order that we propose to make under [section 23] to specify those provisions of PACE—or, as the case may be, PACE (Northern Ireland)—and the associated codes of practice that will apply to any criminal investigation conducted by immigration officers, and to persons detained by those officers in connection with any such investigation. This order will replace section 145 of the Immigration and Asylum Act 1999 and replace the Immigration (PACE Codes of Practice) Direction 2000 and the Immigration (PACE Codes of Practice No. 2 and Amendment) Direction 2000 made under that section.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 57

### ***Section 25 – short-term holding facilities – consultation***

'The noble Lord [Lord Avebury] asked a further question on consultation [on extending the use of short-term holding facilities]. I can give the assurance that we will consult the organisations that he named [Children's Commissioner, HM Chief Inspector of Prisons and independent monitoring boards], including the Children's Commissioner and appropriate NGOs. I hope that, on the basis of this explanation, the noble Lord will withdraw his amendment.'

Lord Brett, Government Whip

*Hansard*, HL Consideration of Commons Amendments 20 Jul 2009 : Column 1393

### ***Section 25 – short-term holding facilities – designation***

See Detention – designation of places of immigration detention

### ***Section 25 – short-term holding facilities – immigration detention – maximum period of detention***

'I stress that the modifications do not impact in any way on the treatment of persons held under the UK Border Agency's administrative powers of immigration detention. The modification we are seeking does not relate to immigration. The treatment of such persons will continue to be governed by the existing arrangements and the maximum periods that have been referred to.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 59

'In other words, the short-term holding facilities could in future hold a range of individuals, subject to the prescribed period of detention relevant in each case, including... individuals who are subject to administrative immigration detention for no longer than five days, plus a further two days where it is proposed under removal directions set to remove the person concerned from the UK within that further period.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 59

See also Section 25 – short-term holding facilities – purpose

***Section 25 – short-term holding facilities – immigration detention – treatment in detention***

‘I stress that the modifications do not impact in any way on the treatment of persons held under the UK Border Agency’s administrative powers of immigration detention. The modification we are seeking does not relate to immigration. The treatment of such persons will continue to be governed by the existing arrangements...’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 59

***Section 25 – short-term holding facilities – non-immigration detention – maximum period of detention***

‘In other words, the short-term holding facilities could in future hold a range of individuals, subject to the prescribed period of detention relevant in each case, including individuals arrested on suspicion of committing an immigration or customs offence for up to six hours or—where a short-term holding facility has been designated for the purposes of PACE as a place for detention longer than six hours—in accordance with the time limits prescribed by the so-called PACE clock. The provision could also cover individuals who are the subject of warrants for arrest, or who are otherwise liable to arrest by a police officer, who have been detained under section 2 of the UK Borders Act 2007 for a maximum of three hours, pending the arrival of a constable...’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 59

‘Proposed new subsection (b) [tabled by Chris Huhne MP, Tom Brake MP and Paul Rowen MP, not called] to [section 25] would restrict the period of detention in a short-term holding facility of persons other than administrative immigration detainees to six hours. That is unnecessary: as I have already said, the revised definition of short-term holding facilities would have no effect whatsoever on the relevant time limits that apply to a person’s detention or custody in those facilities...’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 203

See also Section 25 – short-term holding facilities – purpose

***Section 25 – short-term holding facilities – PACE – designation***

‘The Secretary of State will designate a facility for the purposes of PACE only when he is satisfied that it meets the requirements and standards set out in PACE and Home Office guidance. Only a short-term holding facility that meets those requirements will therefore be designated for the purposes of PACE.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 202

***Section 25 – short-term holding facilities – purpose***

‘The changes to the definition will simply allow the UK Border Agency and HM Revenue and Customs to use short-term holding facilities to detain persons following

arrest, where that is in accordance with the provision we are making in relation to the application of PACE and the codes of practice. In other words, the short-term holding facilities could in future hold a range of individuals, subject to the prescribed period of detention relevant in each case...'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 59

'I emphasise again that in all cases there will be no change to the relevant powers of arrest and detention, no change to the statutory protections that would apply to individuals held in a short-term holding facility and no change to the relevant statutory time limits that apply at present. To turn that around, I reassure noble Lords that the revised definition of a short-term holding facility does not in any way create new powers of arrest, detention or custody. It simply allows for the possibility of such facilities being used in a more flexible and efficient way to support the work of the UK Border Agency and any joint operations carried out with HMRC.'

Lord Brett, Government Whip

*Hansard*, HL Consideration of Commons Amendments 20 Jul 2009 : Column 1393

'Proposed new subsection (a) [tabled by Chris Huhne MP, Tom Brake MP and Paul Rowen MP, not called] would restrict the persons who may be held in a short-term holding facility to those who have been detained

"by an immigration officer, general customs official or Customs revenue official."

I hope that the hon. Gentleman will bear with me, because I asked exactly the same question as he did when the point was put to me. The effect of the amendment would be to undermine the objectives of the UK Border Agency and HMRC, which are seeking to maximise their ability to make use of existing detention facilities. It was agreed in Committee that it makes operational sense that individuals who have been arrested on suspicion of committing a customs offence, whether by a customs official of the UKBA or an officer of HMRC, should be able to be detained in a short-term holding facility...'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 203

'The purpose of the existing clause 25 [the Government replaced the clause with section 25, but the purpose remained the same] that was inserted in the other place was to provide greater flexibility in the use of short-term holding facilities, and thus to maximise the use of these finite detention resources. In short, it was a management tool to secure greater flexibility and therefore the greater efficiency for the taxpayer that is always at the front of our concerns.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 179

'Short-term holding facilities fall into two categories—the residential facilities at Dover, Manchester, Harwich and Colnbrook near Heathrow, and the holding rooms at most ports and certain UK Border Agency offices. All are subject to a statutory maximum stay of seven days. At present, short-term holding facilities may be used to hold only individuals who have been detained for immigration purposes under UKBA's administrative powers of detention, and those who have been detained under section 2 of the UK Borders Act 2007, pending the arrival of a police officer. By modifying the definition of short-term holding facilities, we are removing that constraint so as to allow other categories of persons to be held in those facilities. As a consequence, short-term holding facilities will be able to hold a range of individuals, subject to the prescribed periods of detention and protections relevant in each case.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 179

‘These technical Government amendments [Amendments that replaced then clause 25 with what is now section 25] have been tabled at a late stage, and that is regrettable, but it has been pointed out—and we are grateful for that—that clause 25 could have had the unintended effect of making any place at which immigration detainees might be held for a period of seven days or less—including removal centres, prisons or police stations—a short-term holding facility. So leaving clause 25 in the Bill would have meant that such places were subject to the short-term holding facility rules rather than their appropriate statutory frameworks such as detention centre rules, prison rules and PACE. Indeed, removal centres could lose their status entirely and become short-term holding facilities instead... We intend to replace clause 25 with a clause that not only achieves the objective of flexibility but does so without the adverse effects for other places of detention. The revised definition of a short-term holding facility in [section 25] would allow such facilities to be used either solely for immigration detainees or for a mix of detainees and persons detained under other powers.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 180

### ***Section 25 – short-term holding facilities – rules***

‘The rules for short-term holding facilities will be brought forward in the next few months. They will set out the standards and protection that will apply to immigration detainees in police cells and prisons and they will provide the reassurance that I have given that PACE will apply if people are detained in police stations or prisons. In broad terms, they will reflect the framework of those locations, modified as appropriate to reflect the non-criminal nature of immigration detention.’

Lord Brett, Government Whip

*Hansard*, HL Consideration of Commons Amendments 20 Jul 2009 : Column 1393

### ***Section 28 – chief inspector – resources***

‘The role of the independent chief inspector is a new one. He has just commenced his pilot inspections and has been made aware of the full planned scope of his role, as envisaged in the Bill. He published his inspection plans in April cognisant of that, and they take account of the proposed increased role. The then Home Secretary agreed the budget for 2009-10—£3 million—cognisant of that plan. I concede that the inspectorate is new, and we have given a commitment to review that budget, subject to the financial restraints.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Column 61

### ***Section 30 – Independent Police Complaints Commission – customs and revenue functions***

‘Section 41 of the Police and Justice Act 2006 gives the Secretary of State the power to make regulations conferring functions on the IPCC in relation to the exercise by immigration officers and officials of the Secretary of State of specified enforcement functions that relate to immigration or asylum. [Section 30] will enable the Secretary of State to extend further the functions of the IPCC to inspect any contractual services provided in relation to the discharge of those enforcement functions. It may also investigate the exercise of the general customs functions by designated customs officials and officials of the Secretary of State; the exercise of customs revenue functions by the director and any person exercising those functions on his behalf,



and; the provision of contractual services provided in relation to the discharge of any of those customs functions.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Second Sitting 9 Jun 2009 : Columns 66-67

## **Opposition Statements**

### ***Opposition Statements – Section 25 – short-term holding facilities – treatment in detention***

'...it is essential to strike the right balance so that they are secure but also humane.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Report 14 Jul 2009 : Column 188

### ***OTHER PROVISIONS – sections 31-34***

### ***SUPPLEMENTARY – sections 35-38***

## **Ministerial Statements**

### ***Section 32 – customs revenue – accounting***

'[Section 32] deals with the payment of revenue to Her Majesty's Revenue and Customs commissioners, and sets out provisions on the accounting of revenue collected by our officials in the UK Border Agency. That revenue includes duties and taxes that may be paid on goods by passengers who go through the red channel at an airport, a ferry terminal and so on. The second issue is the post. A significant amount of excise and duties work is carried out on goods that come through the post, most of which are legal, although some are not. The [section] requires the director of border revenue—the chief executive of UKBA—and the Secretary of State to pay any money by way of revenue, or security for revenue, to HMRC in accordance with Treasury directions... The [section] also provides for HMRC to make funds available to ukba if we need to pay any money back. A ship or a container may drop some of its goods in the UK and then move on. We may charge duty on all of it, but the company will then point out what the manifest shows.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Columns 71-72

### ***Sections 32(4) and (5) – customs revenue – 'drawback'***

'Drawback is described as a method for repaying excise duty on goods that have not been, and will not be, consumed in the United Kingdom—the goods coming in and going out. Subsection (5) provides that subsection (4) will apply whether or not the reason for the deficiency is, or might be, that an amount has been paid or retained on the basis of an estimate that has proved, or might prove, to be inaccurate. Again, if it is estimated from a ship's manifest that four containers have been dropped off at Harwich and it turns out that it was only three because the order was changed, the [section] allows us to reflect that.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 72

## CITIZENSHIP – Part 2

### Commentary

Part 2 is largely concerned with the introduction of what the Government refers to as 'earned citizenship' – that is the changes that are to be made to the way by which migrants in the UK may naturalise as British citizens, changes that were first proposed in the February 2008 consultation *The Path to Citizenship* and the public event immediately preceding the publication of that consultation at which Gordon Brown MP, the Prime Minister, and Jacqui Smith MP, then Home Secretary, spoke to their proposals.

The provisions introduced in the Act are thoroughly unsatisfactory for introducing new and increased uncertainties for migrants in the UK, sufficient to lead the Conservative Home Affairs lead in the House of Lords, the Baroness Hanham, to envisage the predicament of migrants as 'a game of snakes and ladders'. That prospect became even more real when, at the start of the Bill's passage through the Commons, Jacqui Smith MP, announced the Government's intention to introduce a new points test into the naturalisation route.

The Government offered some comfort to migrants already in the UK and on a route to naturalisation by agreeing to delay implementation of the new naturalisation provisions until at least July 2011; and including in the Commencement section (section 58) measures that will offer some transitional protection against the changes these provisions will make to migrants who have progressed to the stage of having applied for indefinite leave to remain (or progressed further) by the time the provisions are commenced. However, for those who are ultimately required to satisfy the new requirements, it can be seen that there is far less flexibility in the requirements – e.g. in relation to absences from the UK, in respect of which the current capacity to average out absences over a period of time is to be removed such that absences of 90 days in any 12 months period will fall foul of the requirements – and the retention of discretion to waive requirements, while important, will nonetheless leave the weight of uncertainty heavy on any migrant who finds himself or herself in need of that discretion but unable to test whether it will be exercised until he or she reaches the end of the new qualifying period. The new continuous employment requirement for migrants, under Tiers 1 or 2 of the Points-Based System, entails similar problems.

The debates largely focussed on two aspects of these provisions – the new 'probationary citizenship' stage and the new 'activity condition'. The substance of the latter, insofar as this was and is yet knowable, received particular criticism for introducing unnecessary bureaucracy and undermining volunteering. The former, however, was largely criticised for the nomenclature. While the term 'probationary citizenship' is plainly unsuitable, the introduction of this stage (and when coupled with the effect of the 'activity condition' measures in section 41) entails substantial adverse consequences for many migrants. Migrants, who do not want to become British citizens (several do not naturalise currently simply because of the expensive fee) or who cannot do so without abandoning their original nationality, will under the new regime no longer have the comfort of indefinite leave to remain attained at an earlier stage. In the future, 'permanent residence' will be available to migrants after a period of at least two years longer than that which would have permitted a naturalisation application. In the meantime, the extended period during which migrants, other than refugees or those granted humanitarian protection (it remains to be seen what is intended with discretionary leave), are yet to naturalise or attain permanent residence will continue to leave them and their families excluded from

various basic services and benefits. As for how long the extended period may last, much will depend on whether the migrant has taken part in accredited, 'voluntary' activities that meet the activity condition requirement. Failure to take part will further delay the time by which applications for naturalisation or permanent residence may be made by two years – a consequence which all bar the Government appear to recognise to amount to compulsion to volunteer. The Conservative Immigration Shadow, Damian Green MP, described this as 'blackmail' and 'perhaps the ultimate absurdity'.

Part 2 also includes some new routes to British citizenship by way of acquisition at birth or registration for a range of individuals. ILPA can take significant satisfaction from the inclusion of several of these new routes having lobbied hard along with Liberal Democrat peers for their inclusion following the initial publication of the Bill, though not all that ILPA sought was attained.

The final provisions in this Part – sections 48 and 49 – complete a significant task in support of the now reduced aim of simplification: to introduce a consolidating and simplifying Bill only on immigration law. These sections complete the move of nationality law provisions from various immigration Acts into the British Nationality Act 1981, paving the way for the repeal of all immigration Acts whenever consolidating immigration legislation is introduced.

## **Opposition Statements**

### ***Opposition Statements – British citizenship***

'It is worth while setting out the Conservatives' attitude to citizenship in principle. We believe that UK citizenship is a privilege, not a right. Anyone who is here on temporary leave to remain should not assume that that gives them the right to remain here permanently or to become a British citizen. However, we need to be fair and reasonable. We also need to recognise that our country is competing with others around the world for highly skilled migrants who will benefit our economy—we all agree that Britain benefits from highly skilled migrants.'

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Report 14 Jul 2009 : Column 223

### ***ACQUISITION OF BRITISH CITIZENSHIP BY NATURALISATION – sections 39-41***

## **Ministerial Statements**

### ***British citizenship – naturalisation – access to services and benefits***

'Is it discriminatory to require newcomers to support themselves while they have limited leave to remain here? They need to spend only one year as a probationary citizen before becoming eligible for citizenship.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1209

'It is a fundamental tenet of our proposed reform of the path to citizenship that the rights and benefits of citizenship are reserved for those who have earned the right to them. Migrants earn those rights and benefits by completing both the temporary residence and the probationary citizenship path.'

Lord Brett, Government Whip  
*Hansard*, HL Committee 2 Mar 2009 : Column 509

'The restrictions on access to benefits and services at the probationary citizenship stage will apply only to migrants on the work route—that is, those highly skilled and skilled workers under tiers 1 and 2 of the points-based system—and the family route, for family members of British citizens and permanent residents.'

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 509

***British citizenship – naturalisation – access to services and benefits – contributory benefits***

'Further, all migrants, including those on the family and work routes, will have full access to national insurance contribution-based benefits on the same basis as British workers. These benefits are contribution-based jobseeker's allowance, incapacity benefit, contributory employment and support allowance, retirement pension, maternity allowance and bereavement benefit. This applies equally during the probationary period of citizenship.'

Lord Brett, Government Whip

*Hansard*, HL Committee 02 Mar 2009 : Column 509

'...people on the family and work routes will have full access to national insurance contribution-based benefits on the same basis as others.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Eighth Sitting 18 Jun 2009 : Column 249

***British citizenship – naturalisation – access to services and benefits – refugees***

'I emphasise again that those granted refugee status will be eligible for benefits as soon as they are granted that status.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1209

***British citizenship – naturalisation – asylum-seekers – pending applications***

'Migrants with a pending application for ILR that is submitted but not decided before the Immigration Rules are changed following commencement of the earned citizenship provisions will have their applications considered under the existing rules. This is also the case for those who have a pending human rights or humanitarian protection claim or who have applied for asylum.'

Lord Brett, Government Whip

*Hansard*, HL Report 25 Mar 2009 : Column 708

***British citizenship – naturalisation – asylum-seekers – 'qualifying period' – temporary admission***

'Fiona Mactaggart (Slough) (Lab): The Home Secretary talks about a deal between a migrant seeking citizenship and the state that awards that citizenship. Will she assure the House that there will be no circumstances in which an asylum seeker who has been on temporary admission for a long time because of delays by the Home Office in deciding their case will not have the time that they have been in the country counted as legal residence for the purposes of becoming a citizen, as is currently the case?'

Jacqui Smith: There was considerable discussion on this issue in another place. I certainly think that we need to look at situations in which such delays are clearly a result of decision making not being done in time, and to look at ways in which that

period of time could contribute to the period of residency for the purposes of citizenship. I do not believe that that should be a blanket provision, but I believe that there can be flexibility in the way in which we deal with that issue.'

Jacqui Smith MP, Secretary of State for the Home Department  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 174

***British citizenship – naturalisation – highly skilled migrants***

'We do not accept that HSMP migrants have a legitimate expectation to be able to apply for citizenship...'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 232

***British citizenship – naturalisation – indefinite leave to remain – effect of provisions***

'...I have reassured the House that these proposals do not in any way retrospectively affect those with ILR.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 236

'Any migrant who already has ILR in the UK will be deemed to have permanent residence status for the purposes of the earned citizenship clauses. They will not need to make an application to be recognised as a permanent resident or pay any sort of fee, and they will continue to have full access to benefits and services, subject to the general eligibility criteria. Migrants with ILR, or those whose pending application for ILR is subsequently successful when the earned citizenship clauses in the Bill are commenced, will be able to apply to be naturalised under existing Section 6 of and Schedule 1 to the British Nationality Act 1981, provided that they apply within a set period after the clauses have been commenced.'

Lord Brett, Government Whip  
*Hansard*, HL Report 25 Mar 2009 : Column 708

'The rights of people who have already been granted ILR will not be affected.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 98

'The Bill is about citizenship and it cannot affect applications for indefinite leave to remain, which are made at an earlier stage in the process and are decided under immigration rules.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 99

'May I just reassure him [Neil Gerrard MP] that the proposals do not affect individuals who already have indefinite leave to remain?'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 187

'For the avoidance of doubt, let me reassure the House that although [section 58(9) to (12)] does not specifically make provision for migrants with a pending application for ILR submitted but not decided before the rules are changed following commencement, those people will have their ILR applications considered under the existing rules. The law requires that. As I have said, the Bill is not the appropriate place to set out transitional arrangements for applications for ILR, and I am making this statement on the record in order to provide clarity.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 233

***British citizenship – naturalisation – indefinite leave to remain – pending applications***

‘Migrants with a pending application for ILR that is submitted but not decided before the Immigration Rules are changed following commencement of the earned citizenship provisions will have their applications considered under the existing rules. This is also the case for those who have a pending human rights or humanitarian protection claim or who have applied for asylum.’

Lord Brett, Government Whip

*Hansard*, HL Report 25 Mar 2009 : Column 708

***British citizenship – naturalisation – points system***

‘We have always said that the points system will allow us to be flexible in controlling migration, and more effective than the arbitrary cap proposed by the Opposition. It allows us to raise or lower the bar according to the needs of business and the country as a whole, as we showed in February when I announced changes to raise the qualification and salary levels for entering the UK as a highly skilled migrant.’

Jacqui Smith MP, Secretary of State for the Home Department

*Hansard*, HC Second Reading 2 Jun 2009 : Columns 173-174

‘...the Government will bring forward proposals before the summer recess on how we can take the next steps towards a points-based system for the path to citizenship as well.’

Jacqui Smith MP, Secretary of State for the Home Department

*Hansard*, HC Second Reading 2 Jun 2009 : Column 175

‘What I have said is that while I do not think an arbitrary cap on entry, as proposed by Conservative Members, is the most effective and flexible way to control migration, I do believe that we should control the numbers coming into this country. We are doing that through the current points-based system. What I am arguing today is that we should go further and use what we know about the architecture that has been created to control the number of those granted citizenship at the next stage. That is why we will bring forward proposals on how to introduce a points-based system for the path to citizenship as well as for entry.’

Jacqui Smith MP, Secretary of State for the Home Department

*Hansard*, HC Second Reading 2 Jun 2009 : Column 176

***British citizenship – naturalisation – purpose of provisions***

‘As for what we are trying to do, our policy is aimed at helping the migrant who wishes to become a citizen of our country to integrate, to better understand our society and the specific community and to better be able to contribute. That is based on the belief that migrants want to contribute and that we should provide a route for them to do that.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 97

‘The strategy is to try to break the automatic link that is in many people’s minds, and in some cases in statute, between temporary stay and automatic right to citizenship, and to help the migrant to integrate.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 97

‘The main point is that the proposals for earned citizenship should not be seen as punitive on the prospective citizen, but as a route to help those people to integrate into our society... This means reassuring our indigenous population that that immigrant positively wants to be a member of our community so that we can have better cohesion and better relations in all our communities.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Second Reading 2 Jun 2009 : Column 236

‘The Government have set out that only if migrants enter through one of the three key routes—work, protection and family—can it lead to naturalisation as a citizen. We made it clear that only time spent in one of those routes is capable of counting towards the qualifying period for naturalisation.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 108

### ***British citizenship – naturalisation – ‘qualifying period’ – expiry of***

‘It will also be open to the Secretary of State to grant further probationary citizenship.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 232

### ***British citizenship – naturalisation – refugees – fees***

‘I was asked whether refugees have to pay fees to get citizenship. Like everyone else, they have to pay. However, unlike other migrants on the path to citizenship, they are not charged at other stages of the process. In other words, when they have been given protection, they become the same as other people on the route.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 108

### ***British citizenship – naturalisation – transition***

‘I reassure the Committee that any application for naturalisation that is received by the UKBA before the earned citizenship provisions are implemented, and which remains undecided, will be considered under existing arrangements set out in the British Nationality Act 1981; that is, the earned citizenship provisions will not be applied when the application is considered.’

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 540

‘I confirmed that any application for naturalisation received by the UKBA before the earned citizenship provisions are implemented, and which remains undecided at point, will be considered under existing arrangements set out in the British Nationality Act 1981. To be clear, the earned citizenship clauses will not apply to those cases.’

Lord Brett, Government Whip

*Hansard*, HL Report 25 Mar 2009 : Column 707

‘The point has been made on both sides of the House that we should not move the goal posts and that it is unfair to legislate retrospectively. Where that expectation is legitimate, I absolutely concur with that point of view.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 97

‘There is a good argument for the commencement order giving effect to part 2 of the Bill being the proper place to set out transitional arrangements. The provisions need to be detailed and will be relevant only for a certain period. Setting out the provisions in a commencement order also gives us scope to update them, should the need arise.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 99

‘First, any application for naturalisation that is received by the UK Border Agency before the earned citizenship provisions are implemented, and which remains undecided at that point, will be considered under the existing arrangements set out in the British Nationality Act 1981. Secondly, migrants with pending applications for ILR that have been submitted, but not decided, before the immigration rules are changed, following the commencement of the earned citizenship provisions, will have their applications considered under the existing rules.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Columns 99-100

‘The transitional arrangements that we will put in place need to take on board the tests of reasonableness and fairness without moving the goalposts for the legitimate expectation of the person with temporary leave.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 101

‘The Government consider that it is not appropriate to set out details of transitional arrangements in the Bill... Rather, such arrangements should be in the commencement order that would give effect to part 2 of the Bill. That is the right thing to do, given the level of detail needed to be set down.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 99

‘Our intention is and has always been to make transitional arrangements that are fair and reasonable...’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 99

‘I assure hon. Members that we have given, and continue to give, thought to the transitional arrangements for that group [those nearing the end of their temporary leave who would be eligible for ILR]. Our dilemma is how to devise arrangements that are rational, proportional and reasonable, but that also minimise the operational complexity and costliness of running two systems concurrently. We do not believe that migrants, as a matter of course, have a legitimate expectation that we will not change our policy.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 100

### ***Section 39(2) – ‘continuous employment’***

‘Finally, there is the issue of continuous employment. I gave assurances to the Committee that sensible arrangements could be made. I said that if people lost their jobs through no fault of their own, they would be given reasonable opportunities—commensurate with employment law, as agreed in the Employment Acts—that would provide the flexibility that they sought.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 233



'Individuals can change employer. This condition is intended to ensure that an individual continually contributes to the United Kingdom economy while they are here, not that they have to be in the continuous employment of one employer.'

Lord Brett, Government Whip

*Hansard*, HL Committee 02 Mar 2009 : Column 526

'We agree that the requirement that a migrant on the work route must be in continuous employment should not be interpreted rigidly. That is why there is discretion to waive that requirement where appropriate. Continuous employment does not mean employment with one employer; we are clear that people can meet the requirement in the earned citizenship clauses if they change jobs, or types of jobs, or self-employment during the qualifying period. That will be set out in the guidance we publish on that requirement.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 107

'Our view is that we should mirror the time period allowed under the points-based system for migrants to secure alternative employment. In other words, we would consider applying discretion where the total number of days of unemployment for the duration of the probationary citizen period is 60 days or less. In some circumstances, we would consider applications where the total is more than 60.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 107

### ***Section 39(2) – 'probationary citizenship' – access to services and benefits***

'People on temporary leave to remain under those routes do not have access to benefit. That view is supported widely and we believe that that policy should be clarified in respect of the probationary citizen proposals, so that everyone is clear that those benefits derive from citizenship but not from probationary citizenship.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Eighth Sitting 18 Jun 2009 : Column 249

See also British citizenship – naturalisation – access to services and benefits

See also Section 39(2) – 'probationary citizenship' – meaning

### ***Section 39(2) – 'probationary citizenship' – expiry of***

See British citizenship – naturalisation – qualifying period – expiry of

### ***Section 39(2) – 'probationary citizenship' – meaning***

'I will clarify the position on probationary citizenship. It is a further period of temporary leave, and it is right that someone should have full access to benefits only once they have completed the journey to citizenship, but I should make it clear that refugees will continue to have access as soon as they are granted that status. We believe that that is reasonable.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1210

### ***Section 39(2) – 'qualifying period' – absences***

'Under our proposals, migrants will be able to spend one-quarter of each year of their qualifying period outside the UK and still qualify for British citizenship. We feel that

that is a more than adequate provision. As I said, we will not examine the requirement too closely where the absences take place in the early part of the qualifying period—that is, in the entry into the probationary citizenship stage, which has already been examined. We are not concerned about absences from the UK before the start of the qualifying period.’

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 513

‘We want—I think this meets the point made by several noble Lords—to avoid a system that penalises those who we want to stay here from being able to because they have exceeded the set limit by a few days, or who may have justifiable reasons to explain their absence.’

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 514

‘...the Bill provides a discretion to allow the Secretary of State to overlook periods of absences exceeding 90 days in the special circumstances of a particular case. The noble Baroness [Falkner] makes a good point: how will people know what those would be?... information on how we will see the discretion of the Secretary of State being used will be published in guidance on the UKBA website.’

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Columns 514-515

‘I do not support... the idea of an average calculation of absences over the qualifying period. However, we will not examine the requirement when the absences in the earlier part of the qualifying period—that is, at the entry into the probationary citizenship stage—have been examined already.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 109

‘First, we are not concerned about absences from the UK before the start of the qualifying period. Secondly, we want to avoid a system that penalises—for exceeding the time limit by a few days—those whom we might want to remain, or who might have justifiable reasons for their absence.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 109

‘In recognition of the need for flexibility, the Bill provides discretion to allow the Secretary of State, or his designated officials, to overlook a period of absences exceeding 90 days in a year in the special circumstances of a particular case. We shall, of course, continue to expect migrants to justify large absences, and in such cases we would expect the applicant to demonstrate close links with the UK through length of residence, and presence of home, family and estate in the UK. We would then consider the reasons for an absence. The 90-day rule will apply, therefore, but the discretion will enable the applicant to demonstrate a genuine reason for an absence.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 109

### ***Section 39(2) – ‘qualifying period’ – aggregation of periods***

‘Somebody who spends two periods in the UK with a qualifying immigration status, and who in between is lawfully in the UK with an immigration status that is not a qualifying one, can have the two qualifying periods aggregated. The hon. Gentleman is nodding—he knows what I mean. For example, an applicant who entered under

the work route, stopped working after three years to commence a two-year period of study and then resumed work, could count both periods spent as a worker towards the qualifying period. The Government have set out that only if migrants enter through one of the three key routes—work, protection and family—can it lead to naturalisation as a citizen. We made it clear that only time spent in one of those routes is capable of counting towards the qualifying period for naturalisation. If the period in the middle was spent as a student, which was the hon. Gentleman's example, it would not count because that is not a qualifying route. However, the work chunks on either side could be aggregated.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 108

***Section 39(2) – ‘qualifying period’ – time prior to commencement***

'...migrants who are in the UK and have existing limited leave to enter or remain will be able, under the new system of qualifying immigration status, to count that time towards a qualifying period for naturalisation as a British citizen.'

Lord Brett, Government Whip  
*Hansard*, HL Committee 2 Mar 2009 : Column 540

***Section 39(4) – ‘qualifying period’ – absences – discretion to waive requirement***

See Section 39(2) – ‘qualifying period’ – absences

***Section 39(5) – ‘qualifying period’ – ‘qualifying immigration status’ – aggregation***

See Section 39(2) – ‘qualifying period’ – aggregation

***Section 39(7) – ‘continuous employment’ – discretion to waive requirement***

See Section 39(2) – ‘continuous employment’

***Section 40(3) – ‘probationary citizenship’ – access to services and benefits***

See Section 39(2) – ‘probationary citizenship’ – access to services and benefits

***Section 40(3) – ‘probationary citizenship’ – expiry of***

See Section 39(2) – ‘probationary citizenship’ – expiry of

***Section 40(3) – ‘probationary citizenship’ – meaning***

See Section 39(2) – ‘probationary citizenship’ – meaning

***Section 40(3) – ‘qualifying period’ – absences***

See Section 39(2) – ‘qualifying period’ - absences

***Section 40(3) – ‘qualifying period’ – time prior to commencement***

See Section 39(2) – ‘qualifying period’ – time prior to commencement

***Section 40(3) – ‘relevant family association’ – discretion***

‘...I have used the case of bereavement; she [Baroness Miller] has used the case of domestic violence—that would clearly be relevant. Those are but two examples [where discretion may be exercised despite an association no longer being extant] that might be added to.’

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 545

***Section 40(4) – ‘qualifying period’ – absences – discretion to waive requirement***

See Section 39(2) – ‘qualifying period’ – absences

***Section 40(4) – ‘relevant family association’ – discretion***

See Section 40(3) – ‘relevant family association’ – discretion

***Section 41(1) – ‘activity condition’ – children***

‘It is not envisaged that a child would be able to do this programme.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 118

***Section 41(1) – ‘activity condition’ – cost to voluntary sector***

‘There are opportunities for funding to address any cost impact. The hon. Gentleman mentioned the migration impact fund. There is no policy decision on that; it is a suggestion from the design group. There is also the European integration fund, which may be able to assist.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 119

***Section 41(1) – ‘activity condition’ – failure to satisfy condition – consequences***

See Section 41(1) – ‘activity condition’ – purpose

***Section 41(1) – ‘activity condition’ – purpose***

‘I think that it is quite a noble objective to get people to be involved. It is a question of how to achieve that. Looking at the design group that has been set up I agree that we need to talk closely, think and maybe articulate better what are the precise requirements.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1208

‘The advantage of what we are seeking to do is that it will bring contact between migrants and the wider community; it will show British citizens that those who seek to join them are earning their citizenships by participating in British life; and it will encourage those who want to become citizens by opening up to them new experiences and life-long rules. Active citizenship is a positive process: it is a way for migrants to earn citizenship more quickly and it will assist their integration into British society. Its purpose is to incentivise a positive attitude towards Britain.’

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 560

'Let me be absolutely clear: there is no mandatory requirement for any migrant to undertake active citizenship; migrants who are unwilling to undertake any form of active citizenship can simply choose not to do so. They are not prevented from qualifying for citizenship but it will take two years longer than for those who choose to undertake citizenship activities. We have been careful in developing the citizenship activities proposals in such a way that they do not discriminate against any person or group.'

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 560

'So none of these are requirements for citizenship; they are a way of incentivising and speeding up citizenship, and from the wider community's point of view are a way of benefiting from that application.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 118

### ***Section 41(1) – 'activity condition' – requirements – activities prior to commencement***

'The noble Lord, Lord Wallace of Saltaire, asked if migrants can count activities they were doing before the commencement of citizenship provisions towards active citizenship requirements. The answer is yes.'

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 562

### ***Section 41(1) – 'activity condition' – requirements – delegated legislation – affirmative resolution***

See Section 41(1) – 'activity condition' – requirements – design group

### ***Section 41(1) – 'activity condition' – requirements – design group***

'To reassure the noble Baroness, Lady Hanham, I should say that when the design group has completed its work and we have a formal picture of what it has designed for active participation, that will be subject to an affirmative resolution of the House.'

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 561

See also Section 41(1) – 'activity condition' – purpose

### ***Section 41(1) – 'activity condition' – requirements – non-remuneration***

'It is not policy that there should be any financial compensation for taking part—or remuneration, as he said on his trade union point. It therefore is incumbent on the system, in fairness, to take into account the fact that people have caring responsibilities. Without being too rigid it is incumbent on me to point that out. We do not believe there are any equality and human rights implications.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 119

### ***Section 41(1) – 'activity condition' – requirements – permitted activities***

'I think that trade union activity is a legitimate part of active citizenship.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 121

'I was interested in the debate about whether party political activity should be considered a legitimate part of active citizenship; a dividing line opened up on that issue. My view, which will not count in the long run, is that we should encourage political parties. We should encourage the idea that politics is part of citizenship. Excluding it from the regulations would send the wrong message; it would imply that participating in a political party does not contribute to civic society.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 121

***Section 41(1) – ‘activity condition’ – requirements – permitted activities – political party activities***

See Section 41(1) – ‘activity condition’ – requirements – permitted activities

***Section 41(1) – ‘activity condition’ – requirements – permitted activities – trade union activities***

See Section 41(1) – ‘activity condition’ – requirements – permitted activities

***Section 41(1) – ‘activity condition’ – requirements – verification – local authorities***

'Moving on to the duty on local authorities, the hon. Member for Ashford was speaking against a potential new burden being placed on them. Around 80 local authorities have signed up to the nationality checking service. There is an opportunity for local authorities: I would not over-egg it, but this is a potential source of income.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 121

'It should be compulsory for the applicant to register through the nationality checking service, but not for the local authority to provide that service.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 121

***Section 41(1) – ‘activity condition’ – requirements – verification – nationality checking service***

See Section 41(1) – ‘activity condition’ – requirements – verification – local authorities

***Section 41(1) – ‘activity condition’ – requirements – verification – referee***

'...an obligation will be put upon the referee to ensure that the information is valid...'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 120

***Section 41(1) – ‘activity condition’ – requirements – verification – referee – penalty***

'The fine, or the punishment, can only exist where the person has intentionally and knowingly falsified... I have very helpfully been handed something with the word “recklessly” on it—knowingly, intentionally or recklessly are the criteria.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Columns 119-120

## **Opposition Statements**

### ***Opposition Statements – British citizenship – naturalisation***

‘The citizenship proposals in the Bill construct a complicated and bureaucratic set of mechanisms to deal with the adverse consequences of out-of-control immigration’

Chris Grayling MP, Shadow Home Secretary

*Hansard*, HC Second Reading 2 Jun 2009 : Column 182

### ***Opposition Statements – British citizenship – naturalisation – citizenship test***

‘The citizenship test is clearly inadequate for the Minister’s purpose. It is not a real test of knowledge or of commitment to this country. Being able to take the test again and again until you pass it, does not necessarily achieve a great purpose. I suspect that the Minister shares my view of how we need to tighten up marriage loopholes.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 79

### ***Opposition Statements – British citizenship – naturalisation – English language***

‘There is also the much vaunted requirement to be able to speak English, which, as the Minister said, is a requirement already. However, the current standard is far too low.’

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1135

### ***Opposition Statements – British citizenship – naturalisation – highly skilled migrants***

‘We would all agree that this country benefits from highly skilled migrants, and the amendments are specifically about such migrants. The root of our objections to the Government’s original proposal—objections that were carried through the Lords by my noble Friend Baroness Hanham—was that highly skilled people who had been here a number of years and wanted to stay, and who were working towards citizenship, found the rules changed from under them, retrospectively, in their view. The rules were changed halfway through the game, which they thought unfair, and I agree with them.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 79

‘There is a moral aspect, but also a practical aspect, because that sends a signal around the world. If the highly skilled people around the world believe that this is not a country that welcomes them, they will stop coming here. The more highly skilled one is, the more marketable one is in an international context, and the more choice one has about where to live for large parts of one’s working life.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 80

See also Opposition Statements – highly skilled migrants

### ***Opposition Statements – British citizenship – naturalisation – numbers***

‘The root of the Government’s worry—and something that infuses the whole of this part of the Bill—is that grants of citizenship are at an all-time high in this country. The number of people granted British citizenship in the UK increased by 7 per cent. in 2007 to 164,635, which is straightforwardly the highest ever number in our country’s history. To put that in some kind of perspective, 10 years earlier, in 1997, only 37,010 people were granted citizenship. That is a significant quantum of increase.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 78

### ***Opposition Statements – British citizenship – naturalisation – policy***

‘It has been expressed to me that, if someone is in this country with a work permit, it is a right to have British citizenship. I do not agree. British citizenship is a privilege and not a right to anyone who happens to work in this country.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 82

### ***Opposition Statements – British citizenship – naturalisation – requirements – uncertainty***

‘Many migrants currently will be progressing their way along the road to citizenship and will be concerned as to whether they will end up in a game of snakes and ladders, by which they may fall down and have to start the process all over again.’

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Second Reading 11 Feb 2009 : Column 1135

### ***Opposition Statements – British citizenship – naturalisation – secondary legislation***

‘As usual, the Government intend to set out the details in secondary legislation, but Parliamentary should have the opportunity to scrutinise the important question of which activities will count towards qualifying for citizenship.’

Chris Grayling MP, Shadow Home Secretary

*Hansard*, HC Second Reading 2 Jun 2009 : Columns 182-183

### ***Opposition Statements – British citizenship – naturalisation – transition***

‘...I have a huge concern to ensure that the people whom we were trying to cover under the amendment—the people who are at various stages of the current naturalisation process—will not be caught by this. We want to ensure that they can proceed as they have been proceeding under the previous legislation. They should get their naturalisation and their citizenship under the rules that apply at the moment.’

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Committee 2 Mar 2009 : Column 541

‘...we on the Conservative Benches do not go all the way with those who are saying—as I think that the Liberal Democrats are—that everyone who is here should not have any of the new citizenship tests applied to them. That would be a step too far.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 84

‘The Government need to make it clear in the Bill that those who are already in the [naturalisation] scheme will be able to enjoy its benefits as originally offered to them.’

Baroness Hanham, Shadow Minister, Home Affairs



*Hansard*, HL Second Reading 11 Feb 2009 : Column 1135

‘[T]hose who are coming to the end of a period of temporary leave to remain will have developed that reasonable expectation. They in particular deserve the protection of the House against what they see—not unreasonably—as retrospective legislation. I agree with the Minister that the principle of retrospection is normally bad in legislation.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 103

See also Opposition Statements – highly skilled migrants

### ***Opposition Statements – Section 39(2) – ‘probationary citizenship’ – meaning***

‘I agree with the noble Lord, Lord Avebury, that “probation” is an unfortunate term here. It sounds as if everything is against the person trying to get their citizenship. Probation means that you have to be on your best behaviour all the time, whereas, as the correspondence that we have received shows, everybody understands “interim leave to remain”.’

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Committee 2 Mar 2009 : Column 517

### ***Opposition Statements – Section 39(2) – ‘qualifying period’ – absences***

‘One thing that has yet again sprung out of this debate is how unfortunate the phrase “probationary citizenship” is. Because of the history of the usage of the word in this country, probation sounds like something given when an offence has been committed. I am sure that before all this eventually passes, it cannot be beyond the wit of Ministers and their officials to come up with a better phrase, such as “qualifying citizenship”. In the scheme of things, that is a relatively trivial point, but the current wording sends out the wrong message, so I hope that the Minister can find another word.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Eighth Sitting 18 Jun 2009 : Column 250

‘[Section 39] seeks to impose stricter rules on absence by requiring that a person must not be absent from the UK for longer than 90 days in each qualifying year. In practice, that might mean that a person who consistently remained in the UK for the first two years of their qualifying period but was absent for more than 90 days in their third year, perhaps as the result of a genuine family emergency or work commitment, would thereby jeopardise their application for citizenship. The change imposes a much heavier restriction on freedom of movement and might unfairly discriminate, particularly against those who have a family emergency.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 104

### ***Opposition Statements – Section 39(4) – ‘qualifying period’ – absences – discretion to waive requirement***

See Opposition Statements – Section 39(2) – ‘qualifying period’ – absences

### ***Opposition Statements – Section 40(3) – ‘probationary citizenship’ – meaning***

See Opposition Statements – Section 39(2) – ‘probationary citizenship’ – meaning

***Opposition Statements – Section 40(3) – ‘qualifying period’ – absences***

See Opposition Statements – Section 39(2) – ‘qualifying period’ – absences

***Opposition Statements – Section 40(4) – ‘qualifying period’ – absences – discretion to waive requirement***

See Opposition Statements – Section 39(2) – ‘qualifying period’ – absences

***Opposition Statements – Section 41(1) – ‘activity condition’***

‘Volunteering is by definition an undertaking that individuals want to do: they want to do it to help others. It is not usual—in fact, I think it is probably unheard of—for it to be a statutory requirement, or one that affects people's future, but that is what it would be under [section 41]. It is there to expedite the route to citizenship. It is blackmail, to some extent, in that by undertaking a voluntary activity you get citizenship somewhat quicker.’

Baroness Hanham, Shadow Minister, Home Affairs

*Hansard*, HL Committee 2 Mar 2009 : Column 550

‘...the offer of a quicker route to citizenship if voluntary activity is undertaken. That comes very close to compulsory volunteering, which is perhaps the ultimate absurdity.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Second Reading 2 Jun 2009 : Column 232

‘The Bill introduces an activity condition for qualifying for citizenship, but it is not clear what could be covered by it—it is not given, but left to be clarified in secondary legislation... The proposals threaten to be both expensive and bureaucratic.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Report 14 Jul 2009 : Column 224

‘Genuine concerns arise about the type of activities that would count. There is a potential burden on the voluntary sector, and particularly on small charities. There could be huge demands for form-filling, and we understand that referees for applicants may even be fined. The Minister is proposing a national checking service, which would be a huge extra burden on local authorities, but it is not at all clear what will happen to the money from the migration impacts fund to offset some of those costs on local authorities.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Report 14 Jul 2009 : Column 224

The underlying problem is that the proposals for earned citizenship will rapidly create fairly big bureaucracies, and the groups most affected will be in the voluntary sector, which we all hope to support and we all know is most vulnerable to bureaucracy.

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 111

‘Two areas give rise to particular concern. One, which has been mentioned by Members on both sides of the House, is the offer of a quicker route to citizenship if voluntary activity is undertaken. That comes very close to compulsory volunteering, which is perhaps the ultimate absurdity... We are in the throes of setting up yet more unnecessary new bureaucracy that will make life difficult, particularly for the small organisations in the volunteering field that often do very good and important work.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Second Reading 2 Jun 2009 : Column 232

***Opposition Statements – Section 41(1) – ‘activity condition’ – requirements – activities prior to commencement***

‘We can deal quickly with [our argument that] the activity condition can be completed at any point during an applicant’s arrival in this country or the subsequent probationary citizenship stage. On carefully reading the document, I discovered that is the Government’s thought too. I am pleased that in that detail the Minister and I are thinking along the same lines.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 111

***Opposition Statements – Section 41(1) – ‘activity condition’ – requirements – verification***

‘We all agree that the opportunities for exploitation, fraud and unpleasant things happening are considerable. The Minister is right that if we go down this route, there will need to be a checking body.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 122

‘There are clearly bodies that could do that [verification], such as the charity commissioners, which register charities. However, the activity is so important, and almost open-ended as new people arrive, that whoever does it will find themselves having to devote considerable resources to it. It will therefore be costly in terms of money, time and staffing.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 124

***ACQUISITION OF BRITISH CITIZENSHIP BY BIRTH – section 42  
ACQUISITION OF BRITISH CITIZENSHIP BY REGISTRATION – sections 43-47***

***Ministerial Statements***

***Section 42 – acquisition of citizenship – armed forces***

‘The Government wish to maintain the current rights to citizenship of children born in the UK or a qualifying territory to a parent who is, or who becomes, a foreign and Commonwealth member of the armed forces. That is because the right has existed in law and has been asserted by this class of person since commencement of the 1981 Act. It is also because the Government are committed to improving the lives of service personnel, their families and veterans, as outlined in the MOD Command Paper from July 2008, “The Nation’s Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans”, by amending section 1 of the 1981 Act to accommodate that group of persons. The current ambiguity in the application of the definition of “settled” to that group will be removed and the existing rights will be maintained.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fourth Sitting 11 Jun 2009 : Column 125

***Section 43 – minors – purpose***

'The [section] relates to the registration of minors under Section 3(2) of the British Nationality Act 1981... The law currently specifies that an application under this section must be made within 12 months of a child's birth. The Government accept that, in view of changing employment and residence patterns over time, the 12-month requirement set out in 1981 is now too stringent... In future, a child up to the age of 18 will have an entitlement to register if his grandparent had or would have had British citizenship other than by descent on commencement of the BNA 1981.'

Lord Brett, Government Whip

*Hansard*, HL Report 1 Apr 2009 : Column 1082

#### ***Section 44 – British Nationality (Overseas) without other citizenship – purpose***

'[Section 44 provides] a new route to British citizenship for certain persons connected with Hong Kong who would be stateless but for being a British national (overseas)... This [section] provides for stateless BNOs who, unlike those who can apply under the British Nationality (Hong Kong) Act 1997, do not have an alternative route to Section 4B [of the British Nationality Act 1981]. The Government recognises that such persons are at a disadvantage and therefore proposes to give them a route to British citizenship through this [section].'

Lord Brett, Government Whip

*Hansard*, HL Report 1 Apr 2009 Columns 1085-1086

#### ***Section 45 – Descent through the female line – section 4C(3C), British Nationality Act 1981 – purpose***

'...new Section 4C(3C) is intended to ensure that Section 4C covers only provisions that are about a child automatically acquiring British nationality from their parent, rather than any provision where the acquisition would have required an application to be made by that parent. This is because we cannot now be sure whether such an application would have been submitted and, even if it had been, whether that application would have been successful.'

Lord Brett, Government Whip

*Hansard*, HL Committee 2 Mar 2009 : Column 608

#### ***Section 47 – acquisition of citizenship – good character***

'In considering whether the good character requirement is met, we have taken into account a range of criteria. We would not expect to naturalise a person if they did not respect or were not prepared to abide by the law, if their financial affairs were not in order, if their activities were notorious and cast serious doubt about their standing in the community, if they had practised deceit in their dealings with the Home Office, the Department for Work and Pensions or Her Majesty's Revenue and Customs, or if they had assisted in the evasion of immigration control.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 134

'...we take the view that it is prudent to continue to apply the character test in its current form via the discretion rather than by establishing specific requirements in primary legislation. The reason is that it enables the Secretary of State of the day to continue to exercise discretion in exceptional cases.'

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 135

#### ***Section 47 – acquisition of citizenship – good character – convictions***

‘On 5 December 2007, however, the then Home Secretary announced a new policy which came into force on 1 January 2008. Any applications for citizenship received on or after that date are normally refused if the applicant has a conviction that has not become spent under the 1974 Act.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 134

‘There is discretion to grant citizenship to an individual with a single unspent conviction resulting in a bind-over, conditional discharge or relatively small fine or compensation order where the applicant is of good character in all other respects. Typically, it is used for regulatory offences such as a speeding offence.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 134

‘...a person who has a conviction that will never become spent, meaning that they have received a sentence of 30 months or more for their crimes, is not normally regarded as satisfying the good character requirement.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 135

### ***Section 47(2) – acquisition of citizenship – good character – Hong Kong war wives and widows***

‘The Home Secretary also indicated that she would be prepared to consider, in exercising that discretion, the caveat that, while we are prepared to exercise that discretion if necessary in these particular circumstances, we do not think it wise to amend the law in this respect. To remove the legal requirement in this case would, we are advised, set a precedent for removing it from other sections, and we think this is an important requirement for potential citizens to fulfil.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 139

## **Opposition Statements**

### ***Opposition Statements – Section 47 – acquisition of citizenship – good character***

‘Allowing the Home Secretary and Home Office of the day so much discretion to decide on something as important as whether people are of good character or not, makes me uneasy—particularly as Committee members are seeing no hard and fast rules and criteria that the Home Secretary is obliged to apply. . . That sort of thing ought to be set down in legislation.’

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 137

## ***INTERPRETATION ETC. – sections 48-49***

## **Ministerial Statements**

### ***Section 48 – breach of immigration laws – meaning of – effect***

‘We are moving it into the 1981 British Nationality Act so that it sits alongside the provisions to which it relates. It does not change policy or the law in its application; it moves the piece of legislation from nationality law to immigration law. As such, it is

part of the simplification process to achieve greater consistency within our legislation.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Fifth Sitting 16 Jun 2009 : Column 140

***Section 48 – breach of immigration laws – meaning of – purpose***

'One of the key principles of our proposals is that anyone who wishes to remain here permanently and become a British citizen must obey the laws, and those are not limited to those who commit criminal acts. We also say that such people should have relevant leave or entitlement to be here; those who do not should not be allowed to become a British citizen.'

Lord Brett, Government Whip  
*Hansard*, HL Committee 2 Mar 2009 : Column 531

***Section 48 – breach of immigration laws – meaning of – refugees***

'Their qualifying period does not start until they are granted leave as a refugee. Therefore, the requirement not to be in breach of immigration laws does not become relevant for naturalisation until later, when that period has begun—in other words, beyond the point at which the status has been given. Furthermore, the requirement regarding breach of immigration law is about having the rights or the status to be in the UK, not about offences committed.'

Lord Brett, Government Whip  
*Hansard*, HL Committee 2 Mar 2009 : Column 533

## **IMMIGRATION – Part 3**

### **Commentary**

Part 3 comprises of three discrete provisions. However, so little merits being said about two of these that it is more practical to offer a commentary on the Part rather than the individual provisions.

Sections 51 and 52 do no more than complete outstanding matters from the UK Borders Act 2007. The first of these appears to result from oversight. It will be recalled that the 2007 Act introduced the ‘automatic deportation’ regime, and in doing so created a new immigration decision – the making of an automatic deportation order. However, the Government neglected to expand the powers in section 141 of the Immigration and Asylum Act 1999 to provide for the fingerprinting of those subject to these new deportation orders. That omission is corrected by section 51.

The second outstanding matter has different antecedents. When the powers to detain at ports were introduced by sections 1-4 of the 2007 Act, the Scottish Government indicated that it did not wish for these to apply at Scottish ports. Since policing is a matter devolved to Scotland, and since the new powers being given to immigration officers concerned the detention of persons, British or otherwise, for offences unrelated to immigration crime, the UK Government did not extend these powers in the 2007 Act to Scotland. Following further discussion between the two Governments, section 52 now allows for these powers to be extended to Scotland.

The final provision – section 50 – relates to students under Tier 4 of the Points-Based System, though the provision itself is framed so broadly as potentially to apply to any migrant in the UK with only limited leave. Section 50 allows for restrictions to be placed on the migrant’s right or opportunities to study. Ministerial statements concerning this provision are highly important in demonstrating the very limited, though nonetheless significant, intention to use this new power only by way of the immigration rules and only so as to restrict Tier 4 students to studying at the institution which is their sponsor. To change institution, a Tier 4 student will need to make a further application with the sponsorship of the proposed new institution.

During the debates on section 50, the Government made a significant policy announcement in respect of university students. Leave granted to a student under Tier 4 should now be granted for the duration of the student’s course, even where that course is longer than 3 years.

### ***STUDIES – section 50***

#### **Ministerial Statements**

See also Students – duration of course – leave to be granted for

#### ***Section 50(1) – restrictions on studies – change of course – same institution – no requirement to inform***

‘...such a restriction will restrict a migrant to studying at a specified institution, rather than their chosen course of study... I can provide an absolutely clear and unequivocal reassurance to the Committee that the Government do not intend to use this provision to prevent students from moving courses within the same sponsoring institution.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 777

***Section 50(1) – restrictions on studies – change of institution – guidance***

‘...the revised guidance... that will be published when we make the changes to the Immigration Rules in order to impose this condition on tier 4 students, will specify exactly what a student will need to do if he or she wishes to change institution, in terms of the requirement for him to submit a new application to the UK Border Agency. The revised guidance will also make clear the likely timeframes for consideration of an application, so that a student is able to submit his application to allow him to take up his studies at the new institution in good time.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 778

***Section 50(1) – restrictions on studies – change of institution – requirement to inform***

‘In future, we want to ensure that there is a responsibility on both the educational institution and the student to inform us that they will move to another course at another educational institution, which must be properly sponsored and registered. That is to ensure that we do not have a loophole, which has caused considerable problems in the past.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1132

‘The provision in the Bill is a relatively limited measure. It ensures that a student who has been sponsored by one institution when they enter to study must seek permission if they wish to change their institution and sponsor.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1211

***Section 50(1) – restrictions on studies – immigration rules***

‘...it is usual practice for the overall architecture of the immigration system to be set out in primary legislation, with the Immigration Rules containing the detail of how the power will apply. While I appreciate that noble Lords may have their reservations about this approach, the ability to amend the Immigration Rules, rather than having to amend primary legislation, is an essential tool which is vital to ensure that necessary legislative changes can be implemented quickly and effectively...’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 777

‘Under the skilled-worker tier, tier 2, of the points-based system, the Immigration Rules set out the conditions on a migrant’s employment, including a restriction on taking any employment other than with his licensed sponsor, supplementary employment that is outside of his normal working hours and voluntary work. We envisage that the condition [section 50] will allow us to impose on a migrant in relation to his studies will operate in much the same way, with the Immigration Rules specifying where these restrictions will apply, clearly stating that the restriction will be in relation to where the migrant studies and will be imposed on those granted leave to enter or remain under tier 4.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Columns 777-778



**Section 50(1) – restrictions on studies – purpose**

‘By imposing a restriction on a migrant, so that he can study only at a specified institution, he would have to apply to the UK Border Agency to vary the conditions of his leave should he wish to change institutions. This will allow the UK Border Agency to check that the institution to which the migrant wishes to move is a bona fide education provider, with a sponsor license. Having the ability to link a student to a particular licensed institution is integral to the successful operation of tier 4, the student tier of the points-based system.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 777

‘The [section] supports the new system by addressing the issue of students wanting to transfer from one sponsored college, university or institution to another. Under the new system, a student cannot come into the country on a visa for study at a sponsored institution and then transfer to a non-sponsored institution, because that is not allowed. The [section] states that, if a student wants to transfer to another sponsored institution, they can, but they must first seek permission.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 174

**Section 50(1) – restrictions on studies – tier 4 only**

‘It is the Government’s intention that the restriction on studies would be placed on those migrants granted leave to enter or remain as tier 4 migrants: that is, students.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 777

**Section 50(2) – restrictions on studies – retrospective effect**

‘As soon as we have secured Royal Assent, it is our intention to amend the Immigration Rules, specifying that in addition to the conditions restricting a student’s employment, we will also add a further condition restricting the student to studying at the educational institution that is acting as the student’s sponsor under tier 4. As is usual practice, the Immigration Rules will be laid before Parliament for 21 days before coming into force, and we will look to publish revised guidance for tier 4 students around what this change will mean for them when we lay the rules. Once the rules are in force, the UK Border Agency will write to all migrants who had been granted leave to enter or remain under tier 4, informing them that they will, from the date of the letter, be subject to this condition. Hence, the condition will apply only from when the student is notified. At the same time, we will also inform these students of the potential consequences of any subsequent breach. Once subject to this condition, a tier 4 student would need to apply to the UK Border Agency to vary the conditions on their stay before moving to a new institution.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 779

‘[Removing the retrospective power would] seriously undermine one the key parts of tier 4 of the points-based system, essentially creating two distinct categories of students; namely those granted leave to enter or remain under tier 4 before enactment... and those granted leave under tier 4 after enactment.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 778

## **Opposition Statements**

### ***Opposition Statements – Section 50 – restrictions on studies – ambit***

‘Amendment 57 [tabled by Damian Green MP and Crispin Blunt MP, withdrawn] would address the underlying problem of the Government’s tendency to legislate for powers whose nature and extent is realised only much later, when further regulations or guidance are introduced. That process undermines the authority of Parliament. Given that no reason has been advanced for a power to impose conditions restricting studies other than for the stated purposes, which would remain permitted under the amendment, [section 50] appears to be too wide ranging.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Columns 170-171

### ***FINGERPRINTING – section 51***

## **Ministerial Statements**

### ***Section 51 – fingerprinting of foreign criminals liable to automatic deportation – purpose***

‘[Section 51] is a minor amendment to the UK Border Agency’s existing powers to take fingerprints, to ensure that the agency can take fingerprints of all foreign criminals subject to the automatic deportation provisions in the UK Borders Act 2007 at the earliest possible opportunity.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 177

‘The proposed power to take fingerprints allows us to get fingerprints and fix the identity of the individual whom we have put in prison for crimes in the UK and whom we wish to remove from the UK. Then we have a record when he tries to come back into the country. That is the reason for the specific measure in the Bill.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office

*Hansard*, HL Committee 4 Mar 2009 : Column 786

### ***DETENTION AT PORTS IN SCOTLAND – section 52***

## **Ministerial Statements**

### ***Section 52(1) – detention at ports in Scotland – statutory language – ‘thinks’***

‘I will not detain the Committee much longer, because there is no practical difference in implementation; it is simply that there would be an inconsistency in the legal regime if the amendment were agreed to. Briefly, the amendment would require an officer in Scotland to have reasonable suspicion. Meanwhile, an officer in England, Wales or Northern Ireland, as the hon. Gentleman says, may detain an individual if he or she simply thinks that a person may be the subject of any warrant.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 180

## **Opposition Statements**

***Opposition Statements – Section 52(1) – detention at ports in Scotland – statutory language – ‘thinks’***

‘The specific issue addressed by our amendment, which simply removes “thinks” and inserts “has reasonable suspicion”, is to probe what the Minister means. “Thinks” seems to be a word that is not particularly suited for legislation. It would appear to allow an immigration officer incredibly wide powers if he “thinks” something about an individual. The phrase “has reasonable suspicion” would not only have more legal force but would be somewhat more precise.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 178

## **MISCELLANEOUS AND GENERAL – Part 4**

### ***JUDICIAL REVIEW – section 53***

#### **Commentary**

As highlighted in the Foreword, this provision is significantly reduced in scope from that which was originally included in the Bill. The Government's intention had been to allow for the transfer of any immigration or nationality law judicial review applications from the High Court to the Upper Tribunal in the same way as may be done for other judicial review applications under the provisions in the Tribunals, Courts and Enforcement Act 2007. Similar provision was to be made for judicial review in the High Court in Northern Ireland and the Court of Session in Scotland.

Much of the debates, particularly in the House of Lords, recalled the debates on the Tribunals, Courts and Enforcement Bill in 2006-2007; and the reasons then given by the Government for acceding to the wishes of peers, including eminent Law Lords, that immigration and nationality law judicial review should be exempted from measures permitting transfer. However, on this occasion, the Government were able to pray in aid the support of the Lord Chief Justice in England and Wales and, more generally, the senior judiciary in England and Wales, who wished to reduce the immigration law workload in the High Court in particular. In light of this, Law Lords who had in 2007 opposed the transfer of immigration law judicial review applications now supported the Government.

Nonetheless, both Opposition Front Benches strongly opposed the provision to permit transfer of immigration and nationality law judicial review applications. The Lord Kingsland and the Lord Thomas of Gresford led for the Conservatives and Liberal Democrats respectively, and needless to say this was an area on which ILPA lobbied strongly. Although the Opposition statements that have been collected here do not include statements from either the Lord Kingsland or the Lord Thomas, it would be right here to acknowledge their efforts which have resulted in an important compromise; and in particular the work of the Lord Kingsland who sadly passed away only days before the Bill received Royal Assent. Lord Kingsland spoke passionately to the reasons that had been advanced by the Government for agreeing to exempt immigration and nationality law in 2007 – that these tended to include the most sensitive applications, and it was vital that opportunity be given to assess the working of the new unified tribunal arrangements before taking any decision to transfer these. Ultimately, the Government accepted that position remained good and hence the exemption from the transfer provisions in the 2007 Act have been retained save in relation to judicial review applications brought against decisions of the UK Border Agency to refuse to accept further submissions as amounting to a fresh asylum or human rights claim. This compromise, which is a variant of a compromise (somewhat reluctantly) suggested by ILPA, satisfies the chief concern expressed by the Lord Chief Justice regarding judicial review in the High Court, which was that the workload was overburdened by applications in these 'fresh claim' cases.

The debates also touched upon other matters relating to the intended transfer of the Asylum and Immigration Tribunal into the two-tier unified tribunal. Ministerial and Opposition statements relating to some of these matters, including rights of appeal to the Court of Appeal, are addressed in the earlier 'Various' section of this publication.

#### **Ministerial Statements**

### ***Section 53 – judicial review – purpose***

‘In Part 4, [section 53] will provide the administrative court and equivalents in devolved areas greater flexibility in handling immigration judicial reviews. It will allow the transfer of suitable cases to the Upper Tribunal of the new unified tribunals system established under the Tribunals, Courts and Enforcement Act 2007. That [section] will be commenced only if it is decided to move the Asylum and Immigration Tribunal to that system.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Columns 1132-1133

‘I am not in any sense taking away the right to apply for a judicial review. I am trying to put in place a system that deals with judicial review more effectively.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 187

‘On the accusation that the measure is an attempt to oust judicial reviews, the right of judicial review will still exist but some cases will be heard in the upper tribunal rather than in the High Court. It will be for the High Court judges, or the Lord Chief Justice with the agreement of the Lord Chancellor, to decide which cases will be heard in the upper tribunal. The measure does not take away that right. It makes the system more effective. How many cases will be transferred into the upper tribunal will be a decision for the High Court and the Lord Chief Justice. The Lord Chief Justice will be able to take into account the capacity of the upper tribunal, as well as the burden on the High Court.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 187

‘We are now proposing that only fresh claim judicial reviews can be transferred as a class, and that will not happen until the asylum and immigration tribunal has transferred to the first tier and upper tier. Our expectation, although it is not down to us, is that that will take place about February next year, but the transfer of the AIT will require an affirmative resolution approved by both Houses. Before making an order to allow transfer, the Lord Chief Justice will need to take account of the capacity in the upper tribunal. The decision to ask for the order will be a matter for him, and it will also require the approval of the Lord Chancellor. That is our expectation of the timing, but it depends on the capacity being available.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 216

‘Let me be clear that the effect of new [section 53] is that the Lord Chief Justice, with the agreement of the Lord Chancellor, will be able to order the transfer of judicial review cases that deal with fresh claims to the upper tribunal. Transfer of other cases, either on a case-by-case basis or on a class of case basis, will not be possible.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 217

‘Once the upper tribunal has established its ability to deal efficiently and effectively with the judicial reviews of fresh claims—and the process that I described in response to my hon. Friend the Member for Walthamstow has been fulfilled—the House may be persuaded that we should be able to deal with other cases, too. However, that is a discussion for another day and would require another Bill. It is the Government’s view that that is desirable, but we must pass the tests first.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 218

***Section 53(2) & (3) – judicial review – devolved administrations***

‘[Section 53] extends the same powers to the Lord Chief Justice in Northern Ireland and the Lord President in Scotland, in line with the procedures set out in the Tribunals, Courts and Enforcement Act 2007. It also provides that it cannot be commenced—the hon. Member for Ashford has tabled an amendment on the commencement provisions—until the asylum and immigration tribunal has been transferred into the first-tier tribunal and upper tribunal system established by the Tribunals, Courts and Enforcement Act.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 209

**Opposition Statements**

***Opposition Statements – Section 53 – judicial review – caution***

‘...we do not yet know how this unified tribunal system is working, so it is not sensible to decide now to take such an important class of cases [immigration and nationality law judicial review] away from the High Court and allow them to go only as far as the upper tribunal. We should see how the system works in practice before we take that action.’

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 185

See also Opposition Statements – Asylum and Immigration Tribunal – transfer into two-tier unified tribunal

## ***TRAFFICKING OF PEOPLE FOR EXPLOITATION – section 54***

### **Commentary**

This is another area in relation to which ILPA may take considerable satisfaction. From the initial publication of the Bill (and indeed prior to that), at which time the Bill made no reference to trafficking, ILPA pressed hard for an amendment to remedy a defect in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, to which ILPA had pointed at the time that Act was passing through Parliament, which meant that the section 4 trafficking offence in that Act failed to address trafficking in babies and very young children (e.g. for benefit fraud).

The Baroness Hanham, Home Affairs lead for the Conservatives, took up the matter with such force that before the Bill had completed its passage through the Lords, the Government had felt compelled to include what is now section 54 so as to close the lacuna in the original offence.

### **Ministerial Statements**

#### ***Section 54 – trafficking of people for exploitation – purpose***

‘[Section 54] widens the definition of the offence of human trafficking to capture the mischief usually referred to as “trafficking of children for benefit fraud”.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Report 1 Apr 2009 : Column 1138

‘For an act to be regarded as trafficking for non-sexual exploitation, our current legislation requires, among other things, for the trafficker or someone else he knows about, to intend to exploit a person. One definition of exploitation in the current offence requires a person to be “requested or induced” to undertake any activity. As noble Lords have argued, very young children, including babies, cannot be requested or induced to do anything; nor would they be carrying out any activity themselves. Their passivity therefore means that they may not be regarded as having been exploited as currently defined in the context of trafficking, and therefore another person may not be liable for an offence of trafficking. That issue was highlighted in the case of Mrs Peace Sandberg, who purchased a baby from Nigeria to seek priority housing in the UK. In this case, the baby’s role was passive. Mrs Sandberg was convicted of facilitation, not trafficking, and jailed for 26 months in 2008. We believe that such conduct should rightly fall under the remit of trafficking. Our proposals will amend the definition of exploitation to enable that by removing the requirement for the child to be requested or induced to undertake any activity.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Report 1 Apr 2009 : Column 1138

### **Opposition Statements**

#### ***Opposition Statements – Section 54 – trafficking of people for exploitation***

‘My Lords, I have much pleasure in putting my name to this amendment [to introduce section 54; the amendment was tabled in the names of Lord West and Baroness Hanham].’

Baroness Hanham, Shadow Minister, Home Affairs  
*Hansard*, HL Report 1 Apr 2009 : Column 1138

## **CHILDREN – section 55**

### **Commentary**

This, the final substantive measure in the Act, is also a matter on which ILPA may take some satisfaction. As highlighted in the Foreword, section 55 is a result of concerted effort by the Refugee Children's Consortium, including ILPA, in pressing for inclusion of the UK Border Agency and its predecessors within the ambit of the section 11 duty to safeguard and promote the welfare of children contained in the Children Act 2004. The wording of section 55 specifically adopts wording from section 11, and Ministerial statements make clear the intention to introduce the same duty in respect of the UK Border Agency, and importantly its private contractors, that by section 11 applies to other public authorities such as local authorities and the police.

Nonetheless, one disappointment remains the limitation in section 55 which means the duty only applies to functions of the UK Border Agency in respect of a child who is present in the UK; albeit that Ministerial statements confirm that the guidance issued under this section is intended to guide staff in respect of children overseas (e.g. children making entry clearance applications).

The Ministerial and Opposition statements collected here touch on other important matters relating to children, particularly those in the asylum system, including detention and age disputes.

### **Ministerial Statements**

#### ***Section 55 – duty regarding the welfare of children – purpose***

'...the Bill introduces a duty on the UK Border Agency to safeguard and promote the welfare of children in its work...'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1133

'I also welcome the duty to safeguard and protect the welfare of children, which imposes that important principle at the centre of the UK Border Agency's work.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Third Reading 14 Jul 2009 : Column 244

'Let me remind the Committee of the primary purpose of the duty. We are attempting to ensure that UKBA has a duty that is the same as that found in section 11 of the Children Act 2004, thereby bringing the agency in line with a number of other public bodies in the UK, so that they can share information and concerns about children.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 192

See also Section 55 – duty regarding the welfare of children – relationship with section 11, Children Act 2004

#### ***Section 55 – duty regarding the welfare of children – relationship with section 11, Children Act 2004***

'...the intention of [section 55] is to mirror as closely as possible the effect of Section 11 of the Children Act 2004. We want the border force to be on the same footing as other public bodies which have significant dealings with children so that we can



improve interagency working and be more effective in the way in which we jointly safeguard and promote the welfare of children, which I think all of us in this House will agree is extremely important.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Report 1 Apr 2009 : Column 1143

'He [Lord Ramsbotham] also asked whether we can confirm that the full implications of looking after children that are contained in Section 11 of the Children Act are being looked into. We are exploring with the Department for Children, Schools and Families how the Section 11 duty will apply in strategic arrangements and in the framework for co-ordinating with other agencies.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 834

See also Section 55 – duty regarding the welfare of children – guidance – review of guidance

### ***Section 55 – duty regarding the welfare of children – training***

'Keeping children safe is what we refer to in management speak as a three-tier learning and development programme designed to ensure that staff have the knowledge to safeguard children. Tier 1 is an electronic package designed to raise awareness of the issues around children, and is compulsory for all UK Border Agency staff, regardless of grade or department. Tier 2 is a classroom-based course where staff will have regular contact with children or children's issues, or conduct substantive interviews with them. Tier 3 involves job-specific training for officers.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Third Sitting 11 Jun 2009 : Column 75

### ***Section 55(1)(a) – duty regarding the welfare of children – 'in the United Kingdom' – purpose***

'...the duty is based on the systems in place in the UK and that it cannot be transplanted to other countries, which may have entirely different arrangements. Moreover, it is likely that other countries would consider it an interference in their jurisdiction if UKBA were to seek to assume the level of responsibility for local children as it would for children in the UK.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 192

### ***Section 55(3) – duty regarding the welfare of children – 'guidance'***

'...the issue of guidance, which is a crucial element in the implementation of the new duty in making it clear to the UK Border Agency, our customers and other bodies with whom we work what the duty means in practice.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 832

'It is already our intention that the guidance to support [section 55] will be developed and issued jointly with the Department for Children, Schools and Families—a point made by the noble Earl, Lord Listowel—and will reflect closely the existing Section 11 guidance.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 832

'Let me now return to the substance of the amendment and the relationship between our guidance and the existing Section 11 guidance. It might assist noble Lords if I describe the existing statutory guidance on making arrangements to safeguard and promote the welfare of children under Section 11. The guidance is divided into two parts. Part 1 sets out the general arrangements to safeguard and promote welfare, which all bodies subject to the duty must have in place. It includes strategic and organisational arrangements such as senior management commitment to children; a clear statement of the agency's responsibilities towards children that is available for all staff; staff training; effective inter-agency working; and so on. Part 1 also highlights some of the ways in which the duty affects direct work with children and families; for example, in the need to ensure that children are listened to and taken seriously; to be clear when to refer children in need to other agencies; to keep good records; and so on. Part 1 is drafted in such a way as to be relevant to all the different bodies that are subject to the duty and to enable them to apply it in ways appropriate to their own functions. We think that Part 1 as drafted is equally relevant to the UKBA and should apply in the same way.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 833

***Section 55(3) – duty regarding the welfare of children – ‘guidance’ – overseas staff***

'...the statutory guidance that accompanies the duty sets out the expectation that UKBA staff overseas will make referrals to overseas authorities where local or other international agreements permit or require. In addition, our staff going to work overseas receive training in children's issues as part of their induction.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 193

***Section 55(3) – duty regarding the welfare of children – ‘guidance’ – review of guidance***

'The amendments make a specific point about taking account of the Section 11 guidance when the guidance on this [section] is reviewed. In view of the very close relationship between the two that I have described, it will be obvious that neither could be reviewed without reference to the other and that this aspect of the amendments is also unnecessary.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 834

***Section 55(3) – duty regarding the welfare of children – ‘guidance’ – role of Department for Children, Schools and Families***

See Section 55(3) – duty regarding the welfare of children – ‘guidance’

***Section 55(5) – duty regarding the welfare of children – ‘guidance’***

See Section 55(3) – duty regarding the welfare of children – ‘guidance’

See Section 55(3) – duty regarding the welfare of children – ‘guidance’ – overseas staff

See Section 55(3) – duty regarding the welfare of children – ‘guidance’ – review of guidance

See Section 55(3) – duty regarding the welfare of children – ‘guidance’ – role of Department for Children, Schools and Families

### ***Children – detention – alternatives to detention***

‘Government policy is, of course, that alternatives to detention to children are preferable, and a number of pilots have been conducted... I can reassure the House that I personally review each and every case of a child in detention. Each case comes up through the system and on to my desk, and I take that responsibility very seriously.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 238

‘We have run projects as alternatives to detention, but the problem with one project was that, of the 32 families who signed up, only one turned up at the airport. It is a serious problem. If there is not to be detention, there has to be a serious alternative.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 217

### ***Children – detention – review***

See Section 55 – duty regarding the welfare of children – detention – alternatives to detention

### ***Children – detention – statistics***

‘I have thought about the matter, and the hon. Gentlemen [Damian Green MP and Tom Brake MP] are right. We should publish statistics based on the average length of stay, as well as the ones we currently publish that give a snapshot. It is common sense; it is decent.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 197

‘...the Home Office statisticians have already commenced work on the project to develop statistics on children in detention, and they plan to publish additional statistical analyses on the number of children in detention—by age, gender, nationality and place of initial detention, which is something that I think the hon. Gentleman has previously raised—and the total number of children leaving detention, so that we can see the full picture. The statistics will appear in the August 2009 issue of the quarterly “Control of Immigration: Statistics” statistical bulletin... plans include expanding the details about those leaving detention, to show the time periods involved and the reason for leaving, whether that be removal to another country or another reason.’

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 198

‘I am glad that the amendment [Amendment 60 tabled in the names of Damian Green MP and Crispin Blunt MP, withdrawn] has been tabled as it draws attention to the need for more accurate and up-to-date recording of data on the detention of children, and it also informs the debate.’

Phil Woolas MP, Minister for Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 197

‘Mr. Hamilton: Will my hon. Friend add to those figures the number of under-18s in the same family? That would be relevant. There are cases involving three or four people from the same family.’

Mr. Woolas: If that figure is not there, it should be.’  
Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 198

***Children – local safeguarding boards***

‘The noble Lord, Lord Ramsbotham, also asked about the relationship between the border force and LSCBs. The [section 55] duty will ensure that the border force fits within the inter-agency arrangements set out in Section 11 of the Children Act. That includes liaison with the local safeguarding children boards.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 834

***Children – missing children***

‘The noble Lord, Lord Ramsbotham, asked about missing children. If children from overseas go missing, the police are immediately informed and normal police procedures are followed. The borders staff attend local safeguarding children boards where issues are raised involving children from overseas.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 834

***Children – naturalisation – ‘activity condition’***

See Section 41(1) – ‘activity condition’ - children

***Children – unaccompanied children – age assessment – age dispute – Refugee Council Children’s Panel***

‘One of the issues raised by the noble Baroness, Lady Hanham, was also touched on by other speakers. It is the withdrawal of funding from the Refugee Council’s children’s panel. We have agreed to fund it to carry out substantially the same services as in previous years; the only significant change is that we will no longer fund it to liaise with local authorities on age assessment. Instead, on that issue, we will go direct to trained social workers in local authority children’s services departments, and we are providing additional funding for authorities with the largest number of such cases. Far from dropping money and taking it away, we are spending slightly more in a slightly different way.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 4 Mar 2009 : Column 834

***Children – unaccompanied children – age assessment – use of x-rays***

‘The noble Lord, Lord Avebury, and the noble Earl, Lord Listowel, mentioned the issue of checking age. It is correct to say that we went through the process of asking whether we should take X-rays and it was absolutely agreed not to do so. There is no intention for us now to do that.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 10 Mar 2009 : Column 1151

***Children – unaccompanied children – detention***

‘It is our policy that unaccompanied children must be detained overnight only in the most exceptional circumstances and with appropriate care while alternative arrangements for their care and safety are made.’

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 10 Mar 2009 : Column 1149

'The noble Earl, Lord Sandwich, mentioned children pursuing a freestanding claim. Such children—unaccompanied or separated—will not be detained in a removal centre or a detention centre. That is done with children who are with their families, or occasionally a prisoner we are trying to get rid of from the UK who we feel is a threat to our public.'

Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office  
*Hansard*, HL Committee 10 Mar 2009 : Column 1152

## **Opposition Statements**

### ***Opposition Statements – Section 55 – duty regarding the welfare of children***

'I should say now that we are in favour of the duty to have regard to the welfare of children . . . we want to assure ourselves that the provisions remain sufficient to prevent children being detained under unsatisfactory circumstances, and that they are all encompassing.'

Baroness Hanham, Shadow Minister, Home Affairs  
*Hansard*, HL Second Reading 11 Feb 2009 : Column 1136

### ***Opposition Statements – Children – detention***

'I accept that in some cases detention of families with children may be necessary at the moment. Given that at present we do not have adequate alternatives to detention, I think it is important that such facilities are available. None the less, it still seems necessary that we should make available proper information about what is happening to those families, and particularly their children.'

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 195

### ***Opposition Statements – Children – detention – alternatives to detention***

'I rise as a constituency Member, because the alternative-to-detention project that the Government started took place in my constituency and was pursued, at best, half-heartedly. It did not clearly engage any particularly serious part of the Government's thinking—if, indeed, it was a serious alternative to detention. I suspect that Members from all parts of the House want desirable alternatives to detention, but they have never been properly set out or tried. The experiment in my constituency was nothing like long enough, well resourced enough or serious enough to answer the question about whether we can have a proper alternative.'

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Second Reading 2 Jun 2009 : Column 217

### ***Opposition Statements – Children – detention – statistics***

'...statistical information should be made available to allow scrutiny of the Government's policy of detaining families. Data should show the number of families removed from the UK after their detention and the number of families temporarily released or with other outcomes after their detention.'

Damian Green MP, Shadow Immigration Minister  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 195

'We now need, and I hope to gain from the Minister today, a timetable for producing the comprehensive cohort data that we, the children's charities, and the wider public need to assess what is happening: the total length and outcome of detention, the

children's nationality and at what point in their asylum claim they were detained. It is unacceptable that such data are not routinely gathered either by immigration removal centres, if the Minister decides that they are not—though, having seen the data, I have my doubts—or centrally by UKBA. We also need data in one other area—the number of age-disputed young people who are held in detention and the number of disputed cases subsequently found to be children.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 196

'I am glad that the Minister was able to confirm that he will be able to produce proper, useful statistics on the number of children in detention. As he is aware, that was the subject of one of the key amendments that Conservative Members tabled in Committee.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Third Reading 14 Jul 2009 : Column 245

'At the moment we get a limited snapshot in the quarterly statistics, which are aggregated into the annual statistics. We get a snapshot of the children who are detained with their families. The key is that it is not possible to track cohorts or to know how many children were detained over a given period, the cumulative length or outcome of their detention, the children's nationality or where or at what point in a child's asylum claim they were detained. The most recent figures were published on 20 May and they demonstrate the paucity of information that is currently available to us.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 195

'We also need data in one other area—the number of age-disputed young people who are held in detention and the number of disputed cases subsequently found to be children. Once again that is a central point about transparency and accountability.'

Damian Green MP, Shadow Immigration Minister

*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 196

## **GENERAL – sections 56-59**

### **Commentary**

This section is included in this publication mainly for the Ministerial statements (see below) relating to commencement and transition in respect of the provisions to introduce the Government's 'earned citizenship' plans (i.e. changes to naturalisation routes) which are contained in Part 2 of the Act.

### **Ministerial Statements**

#### ***Section 58 - commencement***

'...the Government have every intention of implementing everything in the Bill within the next two years. A total of 43 [sections], including provisions in part 1 on border functions, and [section 50] on restriction on studies, come into force immediately on Royal Assent... All the other provisions in the Bill will begin implementation by the end of 2010. The only exception where I cannot assure the Committee relates to [section 52], because we remain committed to consulting Scottish Ministers in advance of laying any orders.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Committee, Sixth Sitting 16 Jun 2009 : Column 201

#### ***Section 58(2) – naturalisation – commencement***

'I am also announcing today that, as part of our package of transitional measures, we have decided that to give those who are currently in the UK on a route to settlement time to adjust to the new system, we will allow the earned citizenship provisions to commence in July 2011.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 232

#### ***Section 58(9)-(12) – naturalisation – commencement – transition – effect of***

'We have made clear in legislation that people who apply for citizenship before the earned citizenship provisions are commenced will be treated under the current system—that is, they will not be subject to the earned citizenship provisions. We have also made it clear that people who already have indefinite leave to remain when the earned citizenship provisions commence, and people who apply for ILR before the provisions commence and whose application is successful, will be eligible to apply for citizenship under the current system, provided that they apply within two years of commencement.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Report 14 Jul 2009 : Column 233

'I have therefore made a commitment to commence earned citizenship no earlier than July 2011, and placed in the Bill clear assurances, first, that people who apply for British citizenship before the earned citizenship provisions are commenced will be treated under the current law; and, secondly, that the transitional arrangements on the commencement order must allow for citizenship applications that are made within two years of commencement by those who have indefinite leave to remain on the date of commencement, or by those who are granted ILR following an application pre-dating commencement, to be considered under the current law.'

Phil Woolas MP, Minister of State for Borders and Immigration  
*Hansard*, HC Third Reading 14 Jul 2009 : Column 244

See also British citizenship – naturalisation – transition

***Section 58(9)-(12) – naturalisation – commencement – transition – power to extend protection***

‘The amendment prevents us from doing anything more restrictive in the commencement order regarding those individuals whom it covers. It does not prevent us from extending the protection by making further transitionals for other groups.’

Phil Woolas MP, Minister of State for Borders and Immigration

*Hansard*, HC Report 14 Jul 2009 : Column 233

**Opposition Statements**

See Opposition Statements - British citizenship – naturalisation – transition



## INDEX TO LETTERS AND TEXT OF LETTERS

The following letters are available from ILPA:

- 19 02 09 The Lord West of Spithead to the Lord Avebury (Benefits and services; Undocumented people; Judicial review in Scotland; Tribunal procedure rules; Government amendments to Part 1)
- 19 03 09 The Lord Brett to the Lord Avebury (Naturalisation and Government amendments; Raising the marriage visa age to 21 years; Forced marriage code of conduct; Information received from third parties; Sponsorship declarations; Impact of changes; and appending document on Government's emerging thinking on Active Citizenship)
- 19 03 09 The Lord West of Spithead to the Baroness Hanham (Common Travel Area; Eurodac and fingerprinting; and appending letter from the Lord West to the Chief Minister of the States of Jersey)
- 19 03 09 The Lord West of Spithead to the Baroness Hanham (General customs functions; Discretion and citizenship; British Nationals (Overseas); stateless children born overseas to British citizens by descent ; Trafficking)
- 20 03 09 The Lord Brett to the Lord Avebury (Children of armed forces personnel; British Nationals (Overseas); Descent through the female line; Chagos Islanders; Stateless persons and stateless children of British citizens by descent; Registration of minors; British Overseas citizens, British protected persons and British subjects; Illegitimacy; Children of British nationals other than British citizens; Hong Kong war wives and widows)
- 27 03 09 The Lord West of Spithead to the Lord Kingsland (Transfer of judicial reviews)
- 30 03 09 The Lord West of Spithead to the Baroness Hanham (Children, new statutory duty and: Detention; Trafficking and missing children; Age determination; Refugee Council Children's Panel; Section 11, Children Act 2004; Guidance: and Extent of Act and Crown Dependencies; Commencement)
- 02 04 09 The Lord Brett to the Baroness Hanham (Fees)
- 06 04 09 The Lord Brett to the Lord Avebury (Passports; Continuous employment; Refugees and the qualifying period; Active Citizenship; Commencement)
- 07 04 09 The Lord West of Spithead to the Baroness Hanham (Consultation on retention of samples and S v Marper judgment; Legitimate purpose and e-Borders; Director of Border Revenue; Detention and PACE; Short-term holding facilities; and appending draft Immigration (Places of Detention) Direction)
- 06 05 09 The Lord West of Spithead to the Lord Avebury (Fees for applications under section 4C, British Nationality Act 1981 as amended)

# Practice direction

## Hansard extracts

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

- 17A–69/1 1. **Authority** – The Practice Direction was issued with the concurrence of the Lord Chancellor by the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor. It applied throughout the Supreme Court, including the crown court and the county courts.
- 17A–69/2 2. **Application** – The Practice Direction concerned both final and interlocutory hearings in which any party intended to refer to the reports of parliamentary proceedings as reported in the official reports of either House of Parliament, *Hansard*. No other report of parliamentary proceedings was to be cited.
- 17A–69/3 3. **Documents to be served** – Any party intending to refer to any extract from Hansard in support of any such argument as was permitted by the decisions in *Pepper v. Hart* [1993] A.C. 593; [1992] 3 W.L.R. 1032, and *Pickstone v. Freemans plc* [1989] A.C. 66; [1988] 3 C.M.L.R. 221, HL., or otherwise, must unless the judge otherwise directed, serve upon all other parties and the court copies of any such extract together with a brief summary of the argument intended to be based upon such report.
- 17A–69/4 4. **Time for service** – Unless the judge otherwise directed, service upon other parties to the proceedings and the court of the extract and summary of arguments referred to in paragraph 3 was to be effected not less than five clear working days before the first day of the hearing. That applied whether or not there was a fixed date. Solicitors had to keep themselves informed as to the state of the lists where no fixed date had been given.
- 17A–69/5 5. **Methods of service** – A service on the court was to be effected in accordance with Order 65, rule 5 of the Rules of the Supreme Court appropriately addressed as the circumstances might demand to:
- (i) In the Court of Appeal, Civil Division, three copies to the Registrar, Room E325, Royal Courts of Justice, Strand, London WC2A 2LL;
  - (ii) In the Court of Appeal, Criminal Division, three copies to the Registrar of Criminal Appeals, Room C212, Royal Courts of Justice;
  - (iii) In the Crown Office list, two copies to the Head of the Crown Office, Room C312, Royal Courts of Justice;
  - (iv) In the Queen’s Bench Division in cases to be heard in London, the Clerk of the Lists, Room W16, Royal Courts of Justice. In the Queen’s Bench Division cases to be heard out of London, the chief clerk of the relevant district registry;
  - (v) In the Chancery Division in cases to be heard in London, the Clerk of the Lists, Room TM 8.13, Thomas More Building, Royal Courts of Justice. In the Chancery Division in cases to be heard out of London, the chief clerk of the relevant district registry;
  - (vi) In the Family Division in cases to be heard in London, the Clerk of the Rules, Room WC4, Royal Courts of Justice. In cases to be heard out of London, the chief clerk of the relevant district registry;
  - (vii) In the Principal Registry of the Family Division, the assistant secretary, Somerset House, London SW1R 1LP;
  - (viii) In the crown court, the chief clerk of the relevant crown court centre;
  - (ix) In the county court, the chief clerk of the relevant county court.
- N.B. Service upon other parties was to be effected in accordance with Order 65, rule 5 of the Rules of the Supreme Court, or otherwise as might be agreed between the parties.
- 17A–69/6 6. **Failure to serve** – If any party failed to comply with this Practice Direction the court might make such order, relating to costs and otherwise, as was in all the circumstances appropriate.