IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 (C.13) MINISTERIAL STATEMENTS

Compiled by Alison Harvey

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For letters get in touch with the ILPA Secretariat.

FOREWORD

The Immigration, Asylum and Nationality Act 2006 (c.13) became law on 30 March 2006. Only administrative provisions, s.62 onwards, came into force on that date. All other sections require commencement orders. The first commencement order was made on 2 June 2006, The Immigration, Asylum and Nationality Act 2006 (Commencement No.1) Order 2006 (C.50). This brought ss. 10, 30, 43,48, 56, 57 and 60, together with a consequential technical repeal, into force from 16 June 2006, and s.45 into force from 30 June 2006. As the Ministerial statements collated herein make clear, substantial operational changes, included a new "points system" for entry clearance applications for work and study, are to be made during the period over which the Act comes into force.

The Act contains 59 sections and three schedules. It is not formally divided into parts, but sub-headings are used to organise its provisions under: *Appeals* with Schedule 1 *Immigration and Asylum Appeals: Consequential Amendments*, *Employment, Information, Claimants and Applicants* with Schedule 2 *Fees: Consequential Amendments*, *Miscellaneous* and *General* with Schedule 3 *Repeals.* An overview of each part is provided below.

The Act spans immigration, asylum and nationality, with immigration dominating, most notably in the removal of rights of appeal in non-family entry clearance immigration cases. It was considered by Parliament at the same time as the Bills that became the Terrorism Act 2006 and the Identity Cards Act 2006. For once, immigration and asylum were not the most controversial provisions under consideration. Indeed, in the House of Lords the Bill was allocated to a Grand Committee, a procedure normally used for uncontentious bills. Proceedings in Grand Committee take place in parallel with debates in the main Chamber and opposition amendments are, by agreement, withdrawn without being put to the vote while government amendments are accepted by consensus, if at all.

Debates in parliament ranged beyond the Bill to cover detention, memoranda of understanding (MoUs), trafficking and the policy change that resulted in refugees being given five years limited leave to remain rather than indefinite leave.

Not all sections were debated in depth, and not all debates yield ministerial statements of any significance. The number of ministerial statements provided for a section is not necessarily an indication of the amount of debate that section received, in particular where the government agreed to amend the section in the course of the debate. For example in the case of variation appeals, much ministerial time was spent in trying to justify making these out of country appeals, and considering groups who would still need an in-country appeal. Many of those statements fell away when the government agreed that variation appeals should remain in-country after all. Where sections changed at a late stage, as was the case for sections 54 and 55 those statements of general importance or of relevance to the final version of the Act are included, although it will be clear in reading them and from the notes that they are discussing an earlier, different version of what became those sections.

Yet again we have an act on immigration, asylum and nationality that mixes extensive amendments to acts all the way back to the Immigration Act 1971 with free-standing provisions. The edifice of immigration law is made yet more ramshackle and difficult to use. See the section on *Legislation - Consolidation* in the *Ministerial Statements Various* as Minister's acknowledge the need for consolidation in this area of the law.

ILPA's briefings presented during the passage of the Act can be found on www.ilpa.org.uk

APPEALS (sections 1to 14 and Schedule 1)

Two matters dominated discussions during the passage of the Bill. The first was variation appeals. The government's original proposal was that variation appeals would be, save in very limited circumstances,

heard out of country. The mechanism by which they planned to achieve this was to make everyone refused a variation of leave an overstayer, and then give them a right of appeal against the decision to make removal directions, at which the refusal of variation of leave would also be considered. The provisions on variation appeals can be found in this part of the Act, supplemented by the provisions in s.47 and s.48 and Schedule 1.

The second matter was the removal of rights of appeal in "non-family" entry clearance cases. Here the government used its proposed changes to the entry clearance regime to showcase its plans for a new points system for entry clearance cases.

The *Appeals* provisions include s.7, making changes to appeal rights in national security deportation cases.

EMPLOYMENT (sections 15 to 26)

Sections 15 to 26 repeal and replace the existing provisions, contained in the Asylum and Immigration Act 1996, s.8 and 8A, dealing with employers who employ people who have no right to work in the UK. No provisions of substance are left in the 1996 Act, only its repeals of previous legislation. The new part turns on two sections: s.21 which creates a new criminal offence to replace the offence contained in s.8 of the 1996 Act and s.15, which introduces a new civil penalty. Broadly, the approach is to narrow the criminal offence to one of knowingly employing a person who does not have permission to work, and to create a broader civil penalty to catch employers who do employ a person who has no permission to work. Employers can avoid the penalty by carrying out prescribed checks, in a regime reminiscent of the carriers' liability provisions set out in Part II of the Immigration and Asylum Act 1999.

This part of the Act has been the subject of a Race Equality Impact Assessment, and work is also substantially underway on two codes of practice: one on setting the amount of civil penalty, and one for employers on avoiding discrimination. These are available on the Home Office website.

INFORMATION(sections 27 to 42)

This part of the Act contains a miscellany of provisions spanning asylum and immigration law, and addressing questions of national security. Sections 31 to 39 form a discrete segment, addressing the collecting and sharing of information about people coming from abroad. The Minister of State said in Commons Committee:

> *"The e-borders and border management aim to push back the border to international airports around the world before passengers even get on the plane, which must be right and proper… The e-borders and border management projects effectively restore embarkation controls..."* (Tony McNulty MP, Standing Committee E, 25 10 05, fifth session, col. 196-7)

See the IND website for the *Partial Regulatory Impact Assessment Data Capture and Sharing Powers for the Border Agencies*, Home Office, updated 21/10/05, and subsequent regulatory work.

You will not find mention of trains in these provisions. This is because these fall to be dealt with by orders under legislation relating specifically to the Channel Tunnel. Trains are thus not forgotten.

CLAIMANTS AND APPLICANTS (sections 43 to 52 and Schedule 2)

Another miscellany. This is, in part , the "support" section, without which no immigration and asylum act would be complete any more. And, like many "support" sections before it, asylum looms larger than elsewhere in the Bill. However, this part of the Act spans immigration, asylum and nationality law and goes beyond the field of support.

MISCELLANOUS (sections 53 to 59)

The late addition of s.59 on detainees has justified the title clustering these provisions; otherwise all the provisions in this part derive from proposals for a variety of measures relating to terrorism published over the summer of 2005. Many found their way into the Terrorism Act 2006.. On 15 September 2005 the Home Secretary set out, in draft, clauses that would be introduced into the Bill that became this Act. The final list of measures was included in his follow-up letter of 12 October 2005, which covered what are now s.7, s.42, and s.53 to 58 of this Act. Despite this, the heading "Miscellaneous" is far more apposite than "national security" would be since all the measures in that package, with the exception of s.53 and s.54, go wider than any current definition of terrorism, and cover broad questions of national security and "the public good". Sections 53 and 54 rely on the broad definition of terrorism contained in s.1 of the Terrorism Act 2000. The provisions will therefore affect not only national security cases but also people convicted, or merely suspected, of other crimes or of behaviours considered unacceptable, albeit that they are not criminal.

GENERAL (sections 60 to 64 and Schedule 3)

This is the "administrative" section of the Act, dealing with technical and procedural matters, of which commencement, s.59, is the cornerstone.

Alison Harvey 2006

USING THIS PUBLICATION

ILPA has published Ministerial statements, in hard and/or electronic copies, on the Human Rights Act 1998, the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

This publication has as its aim to provide in one place a list of all relevant 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.

The Ministerial Statements in this compendium are collected under the headings that divide up the Act, and where possible under the relevant section or subsection, save that there were no statements of note on the *General* section, which is therefore omitted. Statements ranging beyond the Act or not pertaining solely to any one part appear in the part of the compendium entitled *Various*.

- The Ministers speaking are:
  Rt Hon Charles Clarke MP, then Home Secretary;
- Tony McNulty MP, then Minister of State for Immigration, Nationality and Citizenship;
- Andy Burnham MP, then Parliamentary Under-Secretary of State Home Office;
- The Baroness Ashton of Upholland, Minister of State, Department of Constitutional Affairs, who took the Bill through the House of Lords because of pressure of other work on Home Office Ministers.

Statements made other than by Ministers are clearly prefaced by the name of the speaker. All statements by Ministers are made by one of the four people named above. In the House of Commons, Humpfrey Malins MP and Mrs Cheryl Gillan MP led for the Conservative party in Standing Committee, with David Davies MP and Damian Green MP also speaking for the Conservative party in debates on the floor of the House. Dr Evan Harris MP and Mr John Leech MP led for the Liberal Democrats in Standing Committee, with Mr Alistair Carmichael MP speaking for that party in debates on the floor of the House. In the House of Lords, the Baroness Anelay of St Johns and the Viscount Bridgeman led for the Conservative party and the Lord Dholakia and the Lord Avebury for the Liberal Democrats. As to other speakers whose names will be found in this collection of Ministerial Statements, the Labour back bench MP Neil Gerrard, Chair of the parliamentary All-Party Group on Refugees,played a prominent part in the debates in the House of Commons and the Cross-bench peers the Earl of Sandwich and the Lord Hylton in debates in the Lords. The Labour back-bench peer the Baroness Warwick of Undercliffe figured prominently in the debates on appeals provisions and especially entry clearance while the Labour back-bench peer the Baroness Turner of Camden also did considerable work on the employment and nationality provisions. The cross-bench peer the Lord Chan made an important contribution to the debates on appeals and employment but, very sadly, died before the Bill had completed its passage through parliament.

Square brackets contain text in italics to provide the writer's commentary or clarification of the context in which the statement was made.

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 to go back to the full text of the relevant debate, available on the www.parliament.uk website.

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"* [1]. The trends that she recorded continue to be evident. As a result, careful selection is required to come up with a collection of Ministerial statements that is other than anodyne in the extreme and it is arguable that much Parliamentary time is wasted as Ministers recite into the record general statements that do little to illumine the intentions behind provisions.

Parliamentary time is very limited and increasingly Ministers 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 the Ministerial Statements the letters that have been shared with ILPA and are enormously grateful to those who have made them available to us. However, we pause to note that our collection of letters is not comprehensive.

Those wishing to refer to the letters will be bolstered in that approach if they can find a reference to the letter in the debates preceding or following it.

[1] 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

22 06 05	Immigration Asylum and Nationality Bill published as Bill 54
22 06 05	House of Commons First Reading
05 07 05	House of Commons Second Reading
18 10 05	House of Commons Standing Committee E, First sitting
19 10 05	House of Commons Standing Committee E Second sitting
20 10 05 (am)	House of Commons Standing Committee E Third Sitting
20 10 05 (pm)	House of Commons Standing Committee E Fourth Sitting
25 10 05 (am)	House of Commons Standing Committee E Fifth Sitting
25 10 05 (pm)	House of Commons Standing Committee E Sixth Sitting
27 10 05 (am)	House of Commons Standing Committee E Seventh Sitting
27 10 05 (pm)	House of Commons Standing Committee E Eighth Sitting
16 11 05	House of Commons Report and Third Reading
17 01 06	House of Lords First Reading
06 12 05	House of Lords Second Reading
09 01 06	House of Lords Grand Committee, First Day
11 01 06	House of Lords Grand Committee Second Day
17 01 06	House of Lords Grand Committee Third Day
19 01 06	House of Lords Grand Committee Fourth Day
07 02 06	House of Lords Report Stage
14 03 06	House of Lords Third Reading
29 03 06	Commons Consideration of Lords Amendments
30 03 06	Bill becomes an Act: The Immigration, Asylum and Nationality Act 2006 (c.13). Note that only s.62ff came into force on commencement, all other provisions required commencement orders, see s.62.
02 06 06	The Immigration, Asylum and Nationality Act 2006 (Commencement No. 1) Order 2006 (SI 2006/1497 (C.51)) made.
16 06 06	Sections 10, 30, 43, 48, 56, 57, 60 and 61 (for the purposes of repeal of word "and" in British Nationality Act 1981, s.40A(3), before paragraph (d).
30 06 06	Section 45 into force (SI 2006/1497 (C.50)

OTHER MATERIALS AND RELEVANT PARLIAMENTARY REPORTS

Government and Home Office Materials

See http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/legislation.html for access to the Bill, debates and government papers. Papers include the following (with any subsequent updates):

Codes of Practice:

- Immigration, Asylum and Nationality Bill, Civil Penalty for Employers Draft Amount of Penalty Code of Practice – 2nd Draft 6 February 2006
- Immigration, Asylum and Nationality Bill: Draft Code of Practice for all employers on the avoidance of Race Discrimination in recruitment practice while seeking to prevent illegal working, Home Office, published in draft on 13 October 2005
- Immigration, Asylum and Nationality Bill An outline framework for a Code of Practice about data sharing in accordance with Clause 31 of the Immigration Asylum and Nationality Bill between the Immigration Service, the police service and HM Revenue and customs under e-borders, Home Office, published in draft on 13 October 2005

Race Equality Impact Assessments

- Immigration, Asylum and Nationality Bill, Race Equality Impact Assessment New Clauses Introduced at Commons Committee, Home Office 1 March 2005
- Immigration, Asylum and Nationality Bill New Clause in the Immigration Asylum and Nationality Bill, TB Screening Overseas and limiting of appeal, Home Office, 13 October 2005
- Race Equality Impact Assessment for Immigration, Asylum and Nationality Bill, Home Office 21 July 205

Regulatory Impact Assessment s

- Partial Regulatory Impact Assessment Data Capture and Sharing Powers for the Border Agencies, Home Office, updated 21 July 2005
- Illegal Working Taskforce, Regulatory Impact Assessment for the Immigration, Asylum and Nationality Bill, 22 June 2005

A Points-Based System: Making Migration Work for Britain, Home Office March 2006, Cm 6741

Parliamentary reports

Listed below are parliamentary reports on the Bill and related themes. *Reports can be found on the Committees' websites on www.parliament.uk*

JOINT

Joint Committee on Human Rights

Counter Terrorism Policy and Human Rights: Terrorism Bill and related matters, Third Report of Session 2005-2006, HL Paper 75-1, HC 561-1

Legislative Scrutiny: Second Progress Report, Fifth Report of Session 2005-2006, HL Paper 90, HC 767

Government Response to the Committee's Third Report of This session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters, 10th Report of Session 2005-6, HL Paper 114, HC 888

COMMONS

Constitutional Affairs Committee

Asylum and Immigration Appeals, Second Report of Session 2003 to 2004, HC 211-I and government reply thereto Cm 6246

Legal Aid, asylum appeals , Fifth Report of Session 2003-4 HC 276-I, and govt Reply thereto Cm 6597

European Scrutiny Committee

Tenth Report of Session 2005-06, HC 34-x

Home Affairs Committee

Please see reports of the Committee's Session 2005-2006 Inquiry into immigration control, which touches on the Bill, *passim.*

Committee of Public Accounts

Returning failed asylum applicants, Thirty-Fourth Report of Session 2005-06, HC 620, 27 February 2006

Foreign and Commonwealth Office: Visa Entry to the United Kingdom: the entry clearance operation Seventh Report of Session 2004-5 HC 312

LORDS

Select Committee on the Constitution

Immigration, Asylum and Nationality Bill, letter to the Baroness Ashton of Upholland, 13 December 2003, with Response of the Baroness Ashton of Upholland, January 2006

Select Committee on Delegated Powers and Regulatory Reform

10th Report of Session 2005-6 HL Paper 87

House of Lords European Union Committee

Economic Migration to the EU Report With Evidence, 14th Report of Session 2005-06 HL Paper 58

Illegal Migrants: proposals for a common EU Returns Policy, 32nd Report of Session 2005-06, HL Paper 166

INDEX TO LETTERS

COPIES OF SELECTED LETTERS

We are very grateful to those who shared these letters with us. Copies of all letters written by Ministers during the passage of the Bill are normally placed in the House of Commons Library. The list below may not contain all letters. In it we have set out the section numbers of the Act to which each letter refers. The clause numbers at the time of writing were different, and some letters refer to clauses that never made it into the Bill at all.

15 03 06	UNHCR letter re Clause 52 of the IAN Bill, with enclosure, s.53, s.54
07 03 06	The Baroness Ashton to the Lord Avebury, s.42, s. 58
23 02 06	The Baroness Ashton to the Earl of Listowel, s.40
23 02 06	The Baroness Ashton to Christine Lee & Co. Solicitors, s.1, s.3, s.11, s.47, s.4, *Employment*
23 02 06	The Baroness Ashton to the Lord Hylton, s.32, s.33, s.39
23 02 06	The Baroness Ashton to the Baroness Turner of Camden
23 02 06	The Baroness Ashton to the Baroness Anelay of St Johns, s.4
03 02 06	Jeremy Oppenheim, Director of NASS re Section 4 support, s.43
04 01 06	The Baroness Ashton to the Lord Holme of Cheltenham, Chair of the House of Lords Select Committee on the Constitution and the Earl of Sandwich
January 2006	The Baroness Ashton to the Lord Holme of Cheltenham
January 2006	The Baroness Ashton to the Lord Dholakia, s.1, s.3, s.11, s.47, s.43, *Employment,* s.54, s.55, s.58
21 12 05	Sandra Owen, Appeals and Judicial Review Unit IND, to Nicola Rogers for ILPA, *Appeals*
30 11 05	Tony McNulty MP to Eric Illsley MP, Chair of Standing Committee E, *Employment*
24 11 05	Tony McNulty MP to Alistair Carmichael MP
24 11 05	Tony McNulty MP to Dr Evan Harris MP, *Appeals,* s.43
11 11 05	Tony McNulty MP to Sir Nicholas Winterton MP, Chair of Standing Committee E, *Information*
10 11 05	UNHCR letter RE Clause 51 of the Immigration, Asylum and Nationality Bill 2005, s.53, s.54
10 11 05	Tony McNulty MP to the Rt Hon David Davis MP, s.59, s.43, s.50
02 11 05	Tony McNulty MP to Sir Nicholas Winterton MP, *Information,* s.40, s.41, s.46, s.56, s.57, s.58
27 10 05	Tony McNulty MP to Sir Nicholas Winterton, MP s.56, s.57
26 10 05	Tony McNulty MP to Sir Nicholas Winterton MP, s.57, s.34
18 10 05	Tony McNulty MP to Dr Evan Harris MP 18 October 2005, s.1, s.3, s.11, s.47, s.4
12 10 05	Rt Hon Charles Clarke MP, to the Rt Hon David Davis MP and Mark Oaten MP, s.7, s.42, s.54, s.55, s.56, s.57, s.58
15 09 05	Rt Hon Charles Clarke MP to the Rt Hon David Davis MP and Mark Oaten MP, s.42, s.54, s.55, s.56, s.57, s.58

ILPA compilation of Ministerial Statements
Immigration, Asylum and Nationality Act 2006
Compiled by Alison Harvey

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I challenge what people say about the starting point for this legislation or anything else we are trying to do concerning immigration and asylum being to cut out abuse. It is not. I cheerfully say that in many cases the Bill is not about abuse—it is about streamlining the system. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 30

…the Bill is not, and was not offered up as, an all-singing, all-dancing omnibus Bill that answers every conceivable question on the range of immigration, asylum and nationality issues. …much of what is in the Bill should be seen as building blocks. Tony McNulty MP, Minister of State, HC 3rd Reading, 16 July 2005, col. 1062

Various - Airline liaison officers

See Various - Asylum – return of failed asylum-seekers – statistics; Various - E-borders and biometrics.

…we have an excellent network of airline liaison officers—we do not have enough of them by any means, …that is strong and growing. They are entirely voluntary professionals, working with carriers, which enhances and boosts our intelligence-based focus on specific flights or routes. Tony McNulty MP, Minister of State Standing Committee E, 5th sitting, 25 October 2005 am, col. 199

Various - Asylum

See s.27; s.29; Claimants and Applicants - General - Immigration and Asylum Act 1999- s.4; Information – General – ARC cards.; s.44.

Various - Asylum – 1951 Refugee Convention and principle of providing protection

See Various - Asylum - limited leave for those recognised as refugees – purpose; Appeals – General – rights of appeal; Appeals – s.7 – general -Refugee Convention.

Of course, the Government will continue to welcome people who are genuinely fleeing persecution. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 188

We will always cherish both our responsibilities and our record on being party to the 1951 convention and our treatment of refugees. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 271

…refugee status does afford a degree of benefits, far beyond simply the label, and…that is precisely why I will shout from the rooftops about the contributions that refugees make and about the sanctity of our commitment to the 1951 refugee convention… Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 297

…If we are to do everything that we can to maintain our position on the 1951 refugee convention and ensure that this country remains a safe haven for people fleeing persecution, we must

simultaneously adopt a robust approach to the removal of people who do not have refugee status under the convention.

Some people do not like that approach, but I am convinced that if we are to preserve the integrity of the convention—hopefully, no party will fight the next election saying that they will get rid of the 1951 convention, as that would be shameful—we need equally robust decision-making and removals processes. Tony McNulty MP, Minister of State, HC 3rd Reading, 16 November 2005, col. 1063

The Government will also continue to protect those genuinely fleeing persecution. However, we will not tolerate abuse of the system. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 515

Various - Asylum – Country Information

See Various - Asylum - return of failed asylum-seekers –post return monitoring (Zimbabwe).

The Home Office is advised…by the Foreign Office about the conditions in any given country… Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 189

…country of origin information is compiled from a wide range of sources. That obviously includes the Foreign Office, the UN High Commission for Refugees, human rights organisations and the media. It does not contain any Home Office opinion or policy. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC25

The independent Advisory Panel on Country Information has been set up, in part to ensure that the Home Office's country of origin information is accurate, balanced, impartial and as up to date as possible. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC25

The panel's role is to review and provide advice on the information produced by the Home Office. The panel provides expert external scrutiny to ensure that the information meets the high standards and that an appellant is able to use any information produced anywhere by any organisation—governmental or non-governmental—about the situation that he may wish to bring forward and to ensure that the best possible information is available to him in making his case.The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC25

When my right honourable friend Des Browne was the Minister responsible for immigration and asylum policy, he announced that the country information and the policy functions carried out by the Country Information and Policy Unit would be separated. He accepted the advisory panel's advice that, as a matter of good practice, these functions should be undertaken by different parts of the organisation because of perceptions that the Home Office country information material would not be impartial while it was produced by a unit engaged in the development of the country's asylum policy. That change has now happened and the information has been transferred to a different section, which operates as a service in itself. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, cols. GC25-6

We have now created the opportunity for high-quality, impartial, balanced and accurate information to be made available. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC26

Various - Asylum – Decision-Making

See Asylum – country information.

The principle, which must be right, is that we look at the circumstances of the individual and take those into account in the judgment process. I acknowledge that they are difficult judgments. Rt Hon Charles Clark MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 189

Various - Asylum – Decision-Making – Timescales

See Appeals - General – administration – variation appeals – time limits.

I freely accept that it is my job to make sure that we never reach a stage where people who make applications, whether or not they are successful in obtaining refugee status, languish in the system for four or five years, as that has an impact on integration, the putting down of roots and so on. Tony McNulty MP, Minister of State, HC 3rd Reading, 16 November 2005, col. 1064

Various – Asylum - Dublin II Convention

The "Dublin regulation" has successfully enabled us to remove approximately 200 asylum applicants per month to the EU state responsible. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 2 December 2005, col. 583

Various - Asylum - Limited leave for those recognised as refugees

See also House of Commons Hansard Official Report, 10 October 2005; Vol. 437, c. 134; s.45

Various - Asylum - Limited leave for those recognised as refugees – Active review

The policy would allow a five-year review of cases, in order to assess whether conditions in country had changed significantly—my hon. Friend the Member for Doncaster, North *[Edward Miliband MP]* was right to mention the word "fundamental". I assure all hon. Members that an in-depth review would not be conducted for every case. In the vast majority of cases, the review would go no further than confirming that there had been no such change and that the full protection of this country should apply in the form of indefinite leave…. I want to assure hon. Members that in the vast majority of cases an in-depth review would not be relevant… It is actually difficult to think of countries that would qualify for a review of status. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 242

…we would review the status or limited leave in the event of a significant and, I emphasise, non-temporary change in the country conditions in the whole country or part of the country from which the individual or family came. Those reviews will take place on the basis of objective country information. They would follow consultation with UNHCR. A ministerial decision would be communicated to your Lordships' House and another place and it would be done on a case-by-case basis. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC262.

The burden of proof in any review of the situation in the country would be placed on the Immigration and Nationality Directorate to demonstrate that the individual was no longer a refugee. If the individual is found no longer to be a refugee, whether he should have leave to remain on other grounds will be considered. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, cols. GC262-3

If a refugee completes five years in the UK and a review has not been triggered, then he will be eligible to apply for settlement. At that point, we would carry out background checks to ensure that there was no basis for holding that his presence was not conducive to the public good and, subject to that, we would expect the majority of applicants to qualify for settlement at that point. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC263

We would not expect country reviews to happen very often, but there will be circumstances where they are appropriate because the situation has changed dramatically. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC263

If, at the end of the five years, we have not done a review or nothing has changed in that country, he *[a refugee]* would have the right to apply for settlement. Unless there were extenuating circumstances, or reasons why we felt he was inappropriate, he would stay. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC263

Various - Asylum - Limited leave for those recognised as refugees – Consultation

The matter at issue was part of the Government's five-year strategy announced earlier this year. It was also part of my party's election manifesto, so there has already been a significant opportunity to consider the change. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 241

Various - Asylum - Limited leave for those recognised as refugees – Help and support

…we are dealing with vulnerable people. … I recognise that we are dealing with people who need help and support in a range of ways…Andy Burnham MP, Parliamentary Under-Secretary of State for the Home Department Standing Committee E, 2nd sitting, 19 October 2005 am, col. 67

…it is fully our intention that, where such protection is granted *[limited leave to remain as a refugee]*, we should help people to integrate well and in such a way that they can add to the community to which they have become attached. That would not involve just a refugee integration loan; it could involve help from a caseworker under the SUNRISE—Strategic Upgrade of National Refugee Integration Services—scheme or a range of other support that Government Members remain committed to keeping in place. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 243

Various - Asylum - Limited leave for those recognised as refugees - Purpose

We are trying to implement those changes for two key reasons. First, we want to establish across the board the principle that people must reside in this country for five years before they can become eligible for settlement. More generally, we are making changes to increase the economic benefits to the UK of permanent settlement and to introduce requirements closer to the rights and obligations of full citizenship.

Secondly, we are applying the principle that the UK should offer people protection and refuge for as long as they need it, but if conditions in their home countries change and it is safe for them to go back, we would expect them to do so.Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 270

The measure brings the UK's position into line with the principles of the 51 refugee convention, so in that sense there is no departure at all; the measure meets the spirit of that convention. It also aligns us with several other countries such as France, Germany, Denmark, Norway and the Netherlands—to name but a few—which also grant temporary leave before offering permanent settlement. Andy Burnham MP, Parliamentary Under-Secretary of State for the Home Department Standing Committee E, 2nd sitting 19 October 2005 am, col. 67

This change to five years' limited leave is entirely in keeping with the principles of the *[1951 Refugee]* convention, and it brings our policy into line with that operated by many other European countries. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 242

The purpose of the change that we announced in the five-year strategy was simply to align our system with the refugee convention and to ensure that we would honour our commitments to give people full protection for as long as they needed it, but without creating a pull factor for immigration into this country. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 243

When I looked at this provision …I probably drew the same conclusion …which was that we would be inviting people whom we want to come into our country for very good reasons and saying, "Five years and then you're out". That is absolutely not what this policy is seeking to do. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC261

We have said that there should be in general a five-year qualifying period for settlement for those who are granted leave to remain under the immigration laws… We recognise too that, under the convention…while it is entirely appropriate for us to grant people the right to be here for as long as they need it, if the conditions of a country change dramatically, it is reasonable to expect people who have been here for only a short time to return home. That is very much in line with the spirit of the convention. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC262.

Various - Asylum – Limited leave for those recognised as refugees - Timescales

If we go down that route *[5 years leave for refugees]*, it is incumbent on us to ensure that people do not wait five, eight, 10 or 12 years to get to the stage where they are declared as refugees in the first place. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 270

Various - Asylum – New Asylum Model

…the Government are introducing a new asylum process, building on the major successes that we have had in reducing abuse of the system and speeding up the treatment of applications. The reduced asylum intake will enable us to fast-track almost all new cases and to maintain contact with asylum seekers at key points in the process, so that we are in a better position to remove individuals whose claims are not justified. The new process will be simpler and more effective for genuine refugees and it is complemented by a new strategy of refugee integration… Rt Hon Charles Clark MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 189

…we are putting in place a new asylum process …That will be complemented by our new strategy on refugee integration launched in March of this year. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2006, col. 516

The new asylum model process is intended to deliver faster outcomes, resulting in improved chances of a speedy removal. By putting the case-owners closer to the claimants, the IND will be able to manage both the case and the claimants more effectively. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 588

Various - Asylum - Return of failed asylum-seekers

See Various - Asylum – 1951 Refugee Convention and principle of providing protection, - New Asylum Model; s.44.

Various - Asylum - Return of failed asylum-seekers – General

Removals remain very difficult, often for reasons outside our direct control. The vast majority of failed asylum seekers have no documents, and their countries will not accept them back unless we can prove their nationalities, but we are reaching more and more agreements with source countries to deal with that, and even small numbers of removals to those countries can have a dramatic effect on new abusive applications. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 199

Various - Asylum - Return of failed asylum-seekers – Families with children

Alistair Carmichael MP: Does he *[Tony McNulty MP, Minister of State]* accept, however, that the practice of dawn raids on families with children goes beyond robustness and strays into the realms of barbarity?
Mr. McNulty: No, I do not. I can tell the hon. Gentleman quite cheerfully that much of the debate, not least in the Scottish context, has been racked with inaccuracies, misinformation and outright mischief. …I could cite at length coverage in the Scottish media that talks about tear gas and riot police, as well as armies of police dragging children from their beds and kicking down doors at 4 am. None of those things are a substantial part of what the immigration service does in Scotland or elsewhere. Tony McNulty MP, Minister of State HC 3rd Reading, 16 November 2005, cols.1063-1064 *[Minister's comments all col. 1064]*

Various - Asylum - Return of failed asylum-seekers – Post return monitoring (Zimbabwe)

See Various - Asylum – country information.

The noble Lord, Lord Hylton, asked what we were doing about the need for an independent source of country-by-country assessment. His concern was highlighted in the court judgment about people returning to Zimbabwe. The recent decisions did not criticise the Home Office's country of origin information on the general human rights questions in that country. The view was expressed that we should take a more active role in monitoring the treatment of failed asylum seekers once returned. The Home Office is considering whether there is anything that might usefully be done. But we return people only when they are considered not to be at risk and, as I am sure the noble Lord recognises, there are limits to what one can do in monitoring non-British citizens in overseas countries. The Baroness Ashton of Upholland, HL 2nd Reading, 6 December 2005, cols. 580-581

Various - Asylum - Return of failed asylum-seekers – Statistics

See Various - Asylum - return of failed asylum-seekers – targets.

…We have gone from a position where, at best, those who had unfounded claims in the end were being removed at a rate of 200 a month at a time when applications for asylum were pushing 10,000 a month, to a position now where, roughly speaking—we are always about three months behind in these matters—1,400 or 1,500 are being removed at a time when new applications are about 2,000 a month. … Tony McNulty MP, Minister of State HC 3rd Reading, 16 November 2005, col. 1065

Various - Asylum - Return of failed asylum-seekers – Targets

…we want to make a major new effort to increase the removal of failed asylum seekers. We will use £30 million of savings from the asylum budget to recruit 500 new front-line staff and we will continue our efforts to reach more agreements with major source countries on returns, building on the considerable successes that we have already achieved. That will help us, by the end of the year, to return more failed asylum seekers than there are new unsuccessful claims. We will achieve all of that through international co-operation—not through fortress Britain—with our European Union partners during the UK presidency by working with the United Nations High Commissioner for Refugees and by developing partnerships with major source and transit countries for immigration. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 191

Daniel Kawczynski (Shrewsbury and Atcham) (Con): The Prime Minister has stated that he wants the number of failed asylum seekers deported to match the number of people coming in, yet in the first quarter of this year the number of new applications is still running at double that. Does the Home Secretary consider that target unrealistic?

Mr. Clarke: No, I think that it is entirely attainable. It is based first, on reducing the number of people seeking asylum in Britain, and secondly, on increasing the number of people who are returned to their country of origin. I shall give one clear example. We have stated clearly to our colleagues in the rest of the European Union that we believe that it is important that the EU as a whole gets a return agreement during our presidency—that is, before the end of December this year—with Russia, Ukraine and Morocco. Those are not mainstream problem countries from our point of view, but they are significant nevertheless. There is a series of such moves that we are seeking to develop and I believe we will achieve the target that we have set. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 192

Various - Asylum – Statistics

See Various - Asylum - Dublin II Convention, – return of failed asylum-seekers – statistics; Various - Detention – statistics.

The initial decision backlog is the lowest it has been for a decade. More than 80 per cent. of new substantive applications on asylum get an initial decision within two months, except for one quarter in 2004, where it was 77 per cent., compared with an average of 22 months or more in 1997. United Kingdom figures for asylum applications fell by a greater proportion than in the rest of the EU—by 33 per cent. compared with a 17 per cent. average for the other member states. Airline liaison offices resulted in more than 33,000 inadequately documented passengers being denied boarding by the carriers in ALO *[Airline Liaison Officers]* locations in 2003. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 264

At the moment, the first decision on more than 80 per cent. of new applicants for asylum—the changes we are making to the decision-making process on the broader side are still being worked through—is made in the space of two months. . Tony McNulty MP, Minister of State, Standing Committee E, 2nd sitting, 19 October 2005 am, col. 62

Various - Asylum – Subsidiary protection

I do not profess to know what categories or groups might be appropriate in four or five years' time, but as members of the *[Chinese]* community have suggested, I am clear about the fact that there should be some scope for some distinction between those with protected and refugee status under the Bill. A gap between those two will provide some useful flexibility. Tony McNulty MP, Minister of State, Standing Committee E, 2nd sitting 19 October 2005 am, col. 59

Various - Children

See s.13; s.25; s.29; s.40; s.41; ; s.44 s.54.

Various - Children – Every Child Matters

See Various – Asylum – return of failed asylum seekers – families with children.

The principle of ensuring that our children are safe, whoever they are, and particularly those who are vulnerable, is… is a fundamental part of what the Government do, through the work we have done in legislation, Every Child Matters, the bringing together of children's issues and so on. We have sought to make children a much more central part of the way in which we approach policy and legislation. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 646

Various - Children – Children Act 2004

It is possible, legislatively, that if this were inserted *[IND to be included within list of those who must have regard to safeguarding and promotion of the welfare of children under s.11 Children Act 2004]* it would become virtually impossible to return any family with children or any accompanied child or young person. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 646

…we believe that it *[inclusion of IND in s.11, see above]* could create circumstances where it could be used as a means of delaying or preventing people from being returned home, which we could not do. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1206

I want to commit to take the issue *[of s.11 and safeguarding]* back to IND and ask it to carry out the kind of review that noble Lords are looking for across all the children's issues… The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1206

Various - Civil partners

See Appeals – General – rights of appeal; s.47 – general – human rights.

The DCA is responsible for defining how civil partnerships are recognised…from time to time I have laid before your Lordships' House details on additional countries and their agreed status. As we work with our partners across the world and look at how they operate similar systems, we ensure that those details are laid before Parliament so that they are fully recognised. The Baroness Ashton

of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC76

Various - Complaints

… complaints…are dealt with in an appropriate fashion; in many cases, that is done by inquiry, and the inquiry is followed up, particularly in the case of detention facilities. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 280

Various - Complaints - IPCC

…we are looking to include independent complaints monitoring of immigration enforcement powers by the Independent Police Complaints Commission in the safer communities Bill or some other legislative vehicle *[a provision was included in the Police and Justice Bill 2006]* … I take the point about there being some overarching independent monitoring body. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 280

Various - Detention

See s.28; s.40; s.42; s.59.

Various - Detention - Bail

See Various - Detention – information for detainees.

…the critical question for me was: how do people get hold of the right information in the right languages to let them know that they can apply for bail?…Members of the Committee approach the problem by saying that if it *[bail]* were an automatic right we might achieve that. I would say in response that, first, I do not think we have the resources available and, secondly, I am not sure whether it would deal with the underlying aim…of ensuring that the system is competent… There is no question that the amount of resource magistrates would have to put into weekly visits is not achievable; we would do nothing else in terms of our magistrates. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2005, cols. GC249-250

Various - Detention – Decisions to detain

See Various - Detention – physical and mental health

…decisions on whether to detain take into account the physical and mental health of the detainee, and detainees have access to NHS care while in detention. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2005, col. GC257

The noble Lord himself referred to those who are considered unsuitable for detention. That is covered within the operational instructions, where there is clear guidance to immigration service staff about who would normally be considered unsuitable for detention: pregnant women; victims of torture; those with serious medical conditions; the mentally ill; the seriously disabled; and the elderly. I think that is quite a substantial group of people to be normally considered inappropriate for detention. They would not be ruled out completely, because there might just be circumstances—and I think that noble Lords on both sides would understand why we do not rule out detention in all

circumstances for all people—where it was appropriate. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 633-634

The officers who deal with these cases have to weigh up the different factors for and against detention and make an individual judgment as to whether it would be appropriate, within the guidelines that I have indicated. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 634

Various - Detention – Information for detainees

See Various - Detention - bail, – legal advice and representation for detainees.

…detainees must be advised of right to legal advice, and how they can obtain it, within 24 hours of their arrival at a removal centre. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 583

On detention people are provided with information about bail rights within a pack. They are also given details on how to make contact with the services providing free legal advice and representation. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2005, cols. GC249-250

To pick up on what was said…, about people often arriving in strange circumstances and, perhaps, not being able to deal with those issues *[applying for bail & c.]* s readily or as fully as they might, we seek to make that advice available throughout the process of detention and to make sure that they know about the issue of their representation throughout that process. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 6 February 2006, col.640

The IND is producing another information pack for detainees, which will cover a range of different issues pertinent to their circumstances. It will include bail rights and processes and be available in a way which recognises the language differences between detainees. That is an ongoing process, which tries to give information to people throughout. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 6 February 2006, col.640

Various - Detention – Legal advice and representation for detainees

See Various - Detention – information for detainees.

…we all share a desire to ensure that detainees can get competent legal advice and representation and that they understand their bail rights and their rights to challenge the lawfulness of their detention. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 6 February 2006, col. 639

Part of that [ensuring that detainees can get competent legal advice and representation]*, as I sought to address in Committee, is to try to ensure that when people arrive in detention they get information about bail - that.it is readily available to them and includes copies of the bail handbook produced by Bail for Immigration Detainees, which has been referred to. They should also be given information about how to contact the Immigration Advisory Service to get free legal advice and representation. So we seek to give them information when they arrive, in writing and verbally, and to provide them with advice on bail and legal representation at the same time. That is an important part of what happens to everyone going into detention. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 6 February 2006, col. 640*

Various - Detention – Legal advice and representation for detainees – LSC pilot

…we have a pilot running at present that will be evaluated by the Legal Services Commission in June. It is to have on-site advice surgeries for any detainees who do not have an adviser…that is being piloted at Campsfield, Colnbrook, Dover, Harmondsworth, Tinsley House and Yarl's Wood removal centres. …if it is successful, we shall consider whether we can extend it to all centres. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 6 February 2006, col. 640

Those advice surgeries provide the right kind of support for those in detention. They address the underlying question posed by the noble Lord: making sure that people get ongoing, systematic advice that enables them to take up the opportunity of bail if that is appropriate. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 6 February 2006, col. 640

Various - Detention – Physical and mental health

See Various - Detention – decisions to detain

When a detainee arrives at a removal centre they receive a medical examination and have access to good-quality healthcare throughout their detention, including secondary care at a hospital, should they need it. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 634

Any concerns that a person's physical or mental health may be affected adversely by detention must be reported on arrival or at any point during the course of detention. Any such reports have to be considered very carefully in deciding whether to maintain that detention. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col.634

Various - Detention - Statistics

The noble Earl, Lord Listowel, asked me about the trend in the number of families arrested and detained over time. I do not have details of a trend, but I do have a commitment that there are improving statistics which will include families held in detention. When they are prepared to the required standard, they will be included in the published statistics. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC249

Various - Detention - Who is detained under immigration act powers

On the specific issue…—that detention places had been given over to people whom we were trying to remove—that reflects current policy and the policy of the last three or four years. The priority and the primary focus of detention are for the purposes of removal. That also applies to the new asylum model under which most cases will be fast-tracked. Under law, we can detain for the purposes of removal or the purposes of ascertaining a person's identity. In practice, the focus has always been on the former. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC256

Various - E-borders and biometrics

See Various - Airline Liaison Officers; Information – General – biometric information, -e-borders,- embarkation controls; s.27; s.28; s.29; s.31; s.32; s.38; s.39; s.42

By 2008, we will fingerprint all visa applicants, who will have their details checked before they can board aircraft for the UK under the e-borders programme. Identity cards will help us to ensure that people do not work illegally or fraudulently claim access to services and benefits. We will check people out of the UK so that we know who has overstayed. Those checks will be supported by measures to crack down on employers of illegal workers and by closer working with the airlines to deal with individuals who use forged documents or who destroy them en route. Those measures are a major part of the Bill…Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 191

…From next year, the first biometric passports will be issued to UK citizens. The passports will hold a chip that includes facial recognition technology. Over the next two to three years, the passports will be enhanced to become full biometric passports …Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 176

…the requirement for a biometric passport has been laid down by the United States in respect of countries in the visa waiver scheme. However, there is general agreement among the majority of leading countries around the world that we need to take steps towards full biometric passports. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 176

… biometrics are coming anyway in terms of international documents for travel; in a European context, there will be a start next year…. All the G8 and subsequent discussions that we have had at an international level have shown that there is a will across the globe to move in that direction to establish firmly individuals' identities. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2006 pm, 2005 col.309

…at times of high security, there might need to be a higher level of border security checks, which might involve, for example, regular biometric checks of all holders of biometric travel documents. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, House of Lords Grand Committee, 17 January 2006, col. GC203

Various - Enforcement

See Employment – General – enforcement.

The noble Lord, Lord Dholakia, asked how many enforcement officers there are—we have some 1,200 in the UK and we are seeking to increase the level of arrest-trained staff. The Baroness Ashton of Upholland, HL 2nd Reading, 2 December 2005, col. 583

Various - Human Rights Act

See Various – Memoranda of Understanding; Appeals - s.4 – general - returning residents, s 4(1); s.5; s.6; s.7 – general, - s.7(1), - s.7(1) – s.97A(4)(b); s.12; s.13; Information – General – data protection, - human rights; s.31 – general – human rights; s.32(7); s.38; Claimants and Applicants – General – Scotland – housing; s.47 – general; Miscellaneous – General – national security; s.56(1); s.57.

The Human Rights Act is a backdrop to all public service. We expect people to take it seriously and I believe that they do. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 568

…the most important thing that a government do is to make sure that their citizens are safe. We do so in full recognition of our international obligations under the ECHR and the Human Rights Act in this country. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 550

Various - ILPA

I agree with the hon. Member for Chesham and Amersham *[Mrs Cheryl Gillan, Conservative]* that whichever bits I agree or disagree with, ILPA's thoughts throughout the Bill have been well informed and focused, as we would expect. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting 27 October 2005 pm, col. 295

Various - Immigration and Nationality Directorate

See Appeals – General – administration.

Various - Immigration and Nationality Directorate – Lost documents

… I readily acknowledge…that we have all come across cases in which passports or travel documents have gone missing. That is not something that we would consider likely or desirable because it can cause considerable stress to people who need their travel documents. I accept that, but that inconvenience has to be balanced by the need at times for immigration staff to have direct access to those documents in the course of carrying out their duties and by their overwhelming duty to uphold the integrity of the system. So although I accept that there are unfortunate examples of travel documents going missing, they have to be balanced against a more general duty on members of the immigration service to go about their work... It is not right to legislate for the two or three occasions on which a passport may go missing. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, cols.176-7

Various - Immigration and Nationality Directorate - Retention of documents

Mr. Malins: I imagine that the retention of a document will happen infrequently. …will the Minister undertake that if it is retained the person will be provided with a certified photocopy to enable him or her to help to establish their identity in other places?…

Andy Burnham: The hon. Gentleman is right to say that the power should not be exercised lightly and that it should be used proportionately at all times. …Although I listened with interest to the suggestion of the hon. Member for Woking *[Mr Malins]* about certified photocopies, that could cause an extra administrative burden on the immigration service. So long as people exercise their functions reasonably and take care and so long as systems are put in place to ensure that documents are taken care of when they are in the possession of the immigration and nationality directorate, we can give him the assurances that he wants…. how useful would that document be, given that it is a photocopy? Furthermore, it would not be especially difficult to forge. What practical use would it be for people's everyday business? Standing Committee E, 5th sitting, 25 October 2005, am, col.177

… It may not always be practical to issue the person with a copy of the document. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October am, 2005 col.177

I recognise, however, that we should put systems in place which ensure that, where documents are retained, they are safeguarded and proper account of them is kept. There have been instances in which that has not happened. I accept the point, but I am afraid that I do not concede to go so far as to require all documents to be photocopied. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.177

Various - Legal Advice and Representation

See Various – Detention – information for detainees, - legal advice and representation for detainees; s.42

Various - Legal advice and representation - Legal aid

…there has been a reduction in the overall number of suppliers with immigration contracts. In the last financial year for which we have figures, there was a relatively small reduction—less than 10 per cent.—in the number of suppliers with contracts, but that must be viewed in the context of a sharp decrease in the number of new asylum applications, from 84,000 a few years ago to 32,000 in 2004–05. We believe that those figures will continue to fall in the years to come. Andy Burnham MP, Parliamentary Under-Secretary of State for the Home Department Standing Committee E, 2nd sitting, 19 October 2005 col. 67

The hon. Gentleman would expect me to say that we must have an eye to the size of the legal aid bill. That responsibility is, of course, primarily discharged by the Department for Constitutional Affairs, but he will understand that there is a duty on us all to ensure that the public funds allocated for this purpose are used properly and are targeted on those in most need. Andy Burnham MP, Parliamentary Under-Secretary of State for the Home Department Standing Committee E, 2nd sitting, 19 October 2005, col. 67

The legal aid bill for asylum and immigration cases in 2004–05 was £171 million, which is obviously considerable and accounts for a considerable percentage of the overall legal aid bill. … Andy Burnham MP, Parliamentary Under-Secretary of State for the Home Department Standing Committee E, 2nd sitting, 19 October 2005, col. 67

If the hon. Gentleman reads the Bill, he will see that there is no suggestion that appellants will not have access to legal representation. They will, of course, continue to have access to controlled legal representation during their appeal, provided—this is the crux of the issue—that they meet the criteria that apply equally to all applications for legal aid… I close by reassuring the hon. Gentleman that we do not intend to shrink the availability of legal aid. We must, of course, have an eye to the pressures on the legal aid budget, but provided that people can meet the tests to which I referred, they will continue to enjoy access to legal aid. Andy Burnham MP, Parliamentary Under-Secretary of State for the Home Department Standing Committee E, 2nd sitting, 19 October 2005, cols. 67-68

Various - Legal Advice and Representation – Regulation of advisors

We set out in our five-year strategy specific proposals to deal with the problem because the sad fact is that a number of decent people are essentially taken in by fraudulent practitioners. That process is

misleading and causes despair—it is simply a money scam in a wide variety of different ways. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 189

Various - Legality

See Appeals – General – legality; s.11- general - legality.

I do not want to get to the stage where there is a neutral position because of legislation between legal routes and illegal routes or, worse, that by some perverse design, the consequences of legislation or of immigration rules in the wider context encourages illegality rather than legality. There lie the challenges to the integrity of the overall system and I am trying to achieve the exact opposite of that. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 36

Various - Legislation

Various - Legislation – Consolidation

I take to heart the point …about the need for a consolidated piece of legislation, which is perhaps overdue . Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 26

The one point on which I agree 100 per cent. with the hon. Member for Oxford, West and Abingdon *[Dr Evan Harris]* is that we must consolidate everything in the next year or two if possible, because immigration and asylum law is a bit all over the place. It reminds me in part of employment law in the 1960s and 1970s. It was drip, drip, drip, and then bang—in 1978 we had the Employment Protection (Consolidation) Act to consolidate the lot. Employment law then started to make sense. Tony McNulty MP, Minister of State, Standing Committee E, 2nd sitting 19 October 2005 am, col. 61

I agree with the notion that at some time in the near future, legislative time permitting, there should be consolidation to bring many of these Acts together. Every time that we bring in another Act—they do come along with alarming frequency—it
highlights lacunae or mistakes in previous Acts going back to 1971 and beyond. The point about the constant tidying-up… is well made and I support it. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting 25 October 2005 am, col.191 to 192

I cheerfully admit that in the context of a debate about schedule 3, which talks about repealing, among other things, the Immigration Act 1971, the British Nationality Act 1981, the Asylum and Immigration Act 1996, the Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, a plea for some consolidation of language and the law over the next couple of years might be appropriate. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 270

The noble Lord, Lord Avebury, raised the issue of consolidation … I am the Minister responsible for the Law Commission; therefore, perhaps more than anyone, I am pleased that the noble Lord, Lord Avebury, has raised this. I have a ministerial group responsible for looking at the work of the Law Commission and I will invite the Home Office Minister at our meeting to raise with the Law Commission whether we might take this forward. In my discussions with the Law Commission, I will find out whether it has a view on that. Having done that, if I may, I shall send a note to the

noble Lord, Lord Avebury, or discuss it with him and put a note in the Library of the House. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, House of Lords Grand Committee, 17 January 2006, cols. GC203-204

I am firmly convinced that at some stage in the very near future, there will be time for a consolidated asylum and immigration miscellaneous provisions but now is not the time. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 916

Various - Legislation – HL Select Committee on Delegated Powers and Regulatory Reform

See Various - Legislation - primary v secondary legislation; Employment - s.20; Claimants and Applicants – s.50.

I bow always to the Delegated Powers and Regulatory Reform Committee. I have not yet failed, nor do I plan ever to fail, to accept what it says. So when it does not say something, I take that to mean that noble Lords on that committee are reasonably content with what we have done. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 538

I listened carefully to what the Select Committee on Delegated Powers and Regulatory Reform said….The noble Lord will know that I always do what it tells me. Had it told me to do something, I would have done it. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State., DCA, HL 3rd Reading, 14 March 2006, col. 1166

Various - Legislation - Primary v secondary legislation

…. as a Minister I know how many times noble Lords, Ministers, officials and voluntary organisations, in particular, regret having to wait for a Bill to come round to change or amend something or to recognise a new position. The flexibility of secondary legislation should not be underestimated. I think that your Lordships' House takes its role on secondary legislation just as seriously as it does on primary legislation, and I would be very worried if noble Lords felt that putting matters in primary legislation for all time was the way forward on something as important and dynamic as this policy….The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. 28

Various - Memoranda of Undestanding

See Appeals - s.7 – memoranda of understanding

Mrs. Gillan: …I also want clarification on article 33 of the refugee convention. I presume that the Minister is familiar with the non-refoulement obligation on the prohibition against torture. It is certainly a normal instance in international law and means that people cannot be sent back to their death or to torture. However, some take the view that the memorandum of understanding that has been concluded with Jordan is incompatible with the refoulement obligations. Can the Minister comment on that? If there was a view that the UK was weakening the global ban on torture, I would want that refuted and clearly spelled out. Can he give us those reassurances?

Mr. McNulty: I can. Standing Committee E, 8th sitting, 27 October 2005 pm, col. 30

Those memoranda are for obtaining specific assurances on the individual treatment of a person who is to be returned. It is about ensuring that those who threaten our national security can be removed, but in full conformity with our international obligations. It is for the courts, not the Government, to

decide in each case whether that assessment is correct—that is important. The Baroness Ashton of Upholland, HL 2nd Reading, 6 December 2005, col. 584

The purpose of the memoranda is to make sure, on a case by case basis, that we are able to get reassurances about the treatment of an individual who would be returned. It would be for our courts to determine whether they are satisfied with the evidence that we put forward on that basis. That is an important safeguard in the memoranda, and we take it very seriously. They are evidence to be weighed up alongside any other evidence, but it is important to have them… In being able to say to the courts, "We have an agreement that if the individual is returned to their country they will not suffer degrading or inhumane treatment or torture", and that that agreement has been well made and the appropriate monitoring arrangements are in place, the courts would be able to look at that as evidence. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC107

As regards saying that you do not send people back to somewhere where they will be tortured, if you have a good memorandum of understanding with certain conditions in place—which says that that will not happen—perhaps that is something that could be considered. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC109

The present provision is absolute and we believe that certain issues are not being properly addressed. We have sought to address them through a memorandum of understanding with our domestic courts testing the matter properly and appropriately for the individuals concerned. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC109

The memorandum of understanding is specifically designed to deal with individuals and individual cases. It is more than just a diplomatic bit of paper. It is a carefully crafted agreement, where we can achieve it, between the two nations concerning an individual about what will happen. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 549

I know that the noble Lord, Lord Avebury, describes the organisation that has been appointed thus far *[in Jordan]* as one that he does not know anything about. Neither do I. But those who are involved in ensuring that we have the correct monitoring are trying to make sure that we do it appropriately and properly. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 549

Ultimately, the courts will play their part properly and appropriately in determining whether the memorandum of understanding is an appropriate agreement under which they can safely feel that a person could be deported. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 549

Various - Memoranda of Understanding – Countries

Memoranda have been agreed with the governments of Jordan and Libya, and negotiations are underway with Algeria and Lebanon. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC107

Various - - Memoranda of Understanding – Monitoring

Without wishing to be sidelined into a debate about memorandums of understanding, they will be not be signed unless there is a monitoring dimension to them. The hon. Lady can be assured that

monitoring is part and parcel of the process. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col.303

Various - Migration

See Various – resources.

Various - Migration - Contribution of migrants

The UK needs economic migration. We welcome people who migrate here to work and study—they are an essential part of our society and economy. Anyone who looks back over the recent years and decades will be able to give testimony to the major contribution that they have made to the life of this country. We need migration to fill the gaps in our labour market that cannot be filled from the domestic work force. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 188

The big issue involves a change of culture that runs right through the whole five-year strategy. We need to understand that responsibility for the migration and asylum system in this country is a matter not only for the Home Office and its agencies but for those who benefit from that migration. We are trying to form a partnership with the universities so that everyone can acknowledge their responsibilities in regard to dealing with the problem. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 196

We need to say all the time that immigrants make a substantial contribution to this country—and not simply in economic terms. Tony McNulty MP, HC 2nd Reading, 5 July 2005, col. 271

Migration presents undeniable benefits to this country. It is vital that economic migrants are able to fill the gaps in our labour market that cannot be filled from the domestic workforce, and that we maintain the valuable contributions that overseas students and visitors make to our educational institutions, the tourism industry and the wider economy. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 515

Various - Migration – Contribution of migrants - Students

See s.4 – general – points system – students.

It is critical for the economy that large numbers of people continue to want to study in this country in a variety of ways. It is important for the foreign policy reasons that the hon. Gentleman suggests as well as for economic reasons. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 196

Various - Migration - Public confidence

See Various - Migration – public debate and consultation

…If the public are to have confidence in immigration policy, we must have a controlled, managed migration system, which we announced in February with the introduction of the points system. The quid pro quo for public confidence in a transparent, simplified, managed migration system is—this goes to the heart of the Bill—a proper regime, which includes employers taking responsibility for dealing with illegal working. Tony McNulty MP, Minister of State, HC 3rd Reading, 16 November 2005, cols. 1065 to 1066

Various - Migration – Public debate and consultation

There is no doubt, in the broadest of terms of British public policy over 30 years, that we have collectively run away from a substantive debate on asylum and immigration.

Tony McNulty MP, Minister of State, HC 3rd Reading, 16 November 2005, col. 1062

We are putting out for public discussion every aspect of where we are with asylum and immigration. Tony McNulty MP, Minister of State, HC 3rd Reading, 16 November 2005, col. 1062

This country has a chance to introduce a progressive asylum and immigration system rooted in a context in which refugees are welcome. If we need a debate about community cohesion—our communities are now third, fourth or fifth generation—we can have it, because the Bill and the strategy that surrounds it will hopefully lance the Powellite poison and Mickey Mouse Alf Garnett impressions that have characterised discussions about asylum and immigration thus far. That way lies madness, so I am pleased that this Bill gets us to a place where we have a progressive asylum and immigration policy. Tony McNulty MP, Minister of State, HC 3rd Reading, 16 November 2005, col. 1066

Various - Nationality

Various - Nationality - Hong Kong cases

See s.58.

…the 1997 *[Hong Kong]* Act created an exception to the general rule at the time that British citizenship should be available only to those with a close connection to the United Kingdom. That was due to the particular concerns about those people's post-1997 future in Hong Kong. It was considered appropriate to extend eligibility to those in the territory who had former British nationality and who otherwise would have been stateless. The provisions of the Act are directed very precisely at this group. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 525

We see no case for extending the class of persons eligible for British citizenship under the *[Hong Kong]* Act given the guiding principle that British citizenship should normally be restricted to those having close connections with present day British territory, which Hong Kong is not, and the absence of any indication that conditions for non-Chinese residents in Hong Kong have deteriorated since handover in 1997 or that the non-British children of British citizens there face a particularly uncertain future, such as might justify a further exception to the principle.. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 525-526

On the particular point that the noble Lord *[The Lord Avebury]* raised in relation to Indian citizenship *[status given to Indian nationals resident in Hong Kong]*, he has been proven to be precisely right. He has received a letter today from my honourable friend Mr McNulty who outlined the steps that the Home Office proposes to take to bring this development to the attention of those affected. A press notice is being issued in Hong Kong. …details are being posted on the websites of the British consulate general there and of the IND directorate in the UK. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 626

I want to be clear that this *[information re Indian nationals]* is not about the Government misleading Parliament in any deliberate way…. we have followed an appropriate course, which was

to wait for the Indian Government to give us a definitive response … The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 626-627

When requested to do so, the Home Office will reconsider applications for British citizenship that were refused on the basis of the advice that we received from the Indian Government in 1997–98…. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 627

This is to do with those people that the Indian Government have now given a different status. On the record, I say that there will be no further charge and mere notification will be sufficient. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 629

Various - Nationality - Nationality Immigration and Asylum Act 2002 s.9

The thrust of what the noble Lord *[the Lord Dholakia, speaking on behalf of the Lord Avebury]* has sought to do with the amendment is to challenge the Government on not having brought forward the regulations as quickly as we might have. …I am not in a position—I wish I were—to give the noble Lord or the Committee precise details of when the regulations will come forward. However, I completely accept—as a Minister who has done a lot of work around children's issues, as the noble Lord was kind enough to point out—the importance of doing this. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC254-255 *[Note that s.9 was brought into force by SI 2006/1498, the appointed day being 1 July 2006 – see also SI 2006/1496].*

Various - Racism

…by talking constantly about chaos and crisis, he*[Mr Charles Walker, MP for Broxbourne]* feeds BNP support not in those areas that already have rich, vibrant and diverse communities, but in neighbouring areas where it is easy for the BNP to say, on the back of the claims that legitimate politicians make about the system, that it is in chaos and crisis. That is exactly the entrée that the BNP needs. Tony McNulty MP, HC 2nd Reading, 5 July 2005, col. 265

Various - Refugee Council

I know and respect that organisation…Tony McNulty MP, Minister of State 6th sitting 25 October 2005 pm, 2005, col.239

Various - Resources

See s.4 – general

…everywhere that we want to go for a transparent, managed migration system, ain't going to work unless such resources are put in. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 28

Various - Trafficking

See s.33

Trafficking – general

We might want to say that human trafficking may not be a direct threat to this country—but, my goodness, it is a direct threat to everything that we stand for. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC278

…a critical factor is that we do all that we can to find the perpetrators of trafficking and seek the assistance of victims to achieve that. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 607

While we know something about the exploitation of trafficked women, we know very little about the exploitation of others in the workforce who have been trafficked. Our ambition is to gather information and to be able to provide the right kind and level of support to the people involved. An information-gathering exercise on that is currently taking place. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 608

Various - Trafficking – support for people who have been trafficked

See Various - Trafficking – general.

…the provision of targeted and appropriate support is already an integral part of the Government's strategy to tackle trafficking. The Home Office-funded Poppy scheme is at the heart of current support. I know that the noble Lord, Lord Hylton, has had the opportunity to discuss with Home Office Ministers his concerns that we ensure that funding continues. I believe that he has received a commitment from the Minister that it would continue for the next two years and that there should be recognition of the need to think regionally about the operation of the Poppy scheme. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 607

For the first four weeks of the *[Poppy]* scheme, all victims accepted onto it are provided with shelter, support, medical attention, information and any other services they need to meet their immediate needs. That gives them time to recover, reflect and make decisions about their future. After four weeks, support is provided in return for co-operation with the authorities. It is envisaged that victims will be on the scheme for around four months but may remain on it longer if necessary. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 608

Existing arrangements operate successfully on a case-by-case basis, with care and support packages delivered on the basis of an assessment of the individual, ensuring that we meet their particular needs. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 608

…we have the present process *[of support for vicitms of trafficking]* to acquire as much information as possible. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 608

Various - Voluntary return

See Appeals – general – legality; s.27- general - voluntary departure; s.44.

I have said time and time again as an Immigration Minister that I would far rather reach the point at which there was never an enforced return and that people returned voluntarily when they reached

the end of the line. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 237

APPEALS

Appeals - General

Appeals - General - Administration

I was told when I took this job that administration would get me in the end—not policy, politics or organisation but bog-standard administration. That is what we are trying to streamline. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 30

Appeals - General – Administration – Variation appeals – Support

Mr. Gerrard *[Neil Gerrard MP for Walthamstow]*: I am interested in what the Minister says about how the process will be handled. Will he give some attention to the issue of support? People have their support withdrawn, and yet nothing is done about removal. That is unsatisfactory. When someone is not removed, they should not be left destitute.

Mr. McNulty: I take my hon. Friend's point...I want to get to a stage at which all decision-making processes are conflated so that the process, from original decision all the way through, takes a reasonable time but does not impact on the integrity of the decision. We must get straight, across a whole range of fronts, support and other elements of the process. I accept the thrust of what he says…The points are fairly made. I hope that the clarity that I shall be able to give on what we must do with the primary legislation in the Bill and with the immigration rules will help the process. Standing Committee E, 2nd sitting, 19 October 2005 am, cols. 60-61 *[Minister's reply all col. 61]*

Appeals - General – Administration – Variation appeals –Time limits

See Various - Asylum – decision-making – timescales.

I want to make the gap relating to the appeal process as narrow as possible…. we shall probably still be considering a period of 18 months to two years from start to finish. Tony McNulty MP, Minister of State, Standing Committee E, 2nd sitting, 19 October 2005 am, col. 62

I take the hon. Gentleman's *[Mr Peter Bone, MP for Wellingborough]* wider point about the immigration and nationality directorate—rather like other Government bodies—saying what it means and meaning what it says. …. I want the IND to be very clear about relisted time limits, however embarrassing that may be… We should bear it in mind that the people involved are often in the most vulnerable circumstances. To them, 13 weeks means 13 weeks, and after 13 weeks, to the day, they are on the telephone to Members of Parliament and others wanting something to be done. The time limits should reflect reality. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 904

Appeals - General – Evidence

…what I am trying to do in terms of the overall system must be rooted in some quantitative empirically determined evidential base. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting,18 October 2005, col. 36

Appeals - General -Judicial independence

See Appeals - General - "Secretary of State" – roles of Home Office and Lord Chancellor/Secretary of State for Constitutional Affairs.

This is about making sure that the appellate system maintains its independence from policy formulation and that the lawyers implement it justly and effectively. We have tried to ensure in the way the Bill works that the correct role of the Secretary of State for home affairs is policy formulation and determination and that the role of the Department for Constitutional Affairs is, in a sense, looking after the appellate system and making sure that decisions are taken appropriately and fairly while not interfering in any way with judicial independence. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC24

Appeals - General – legality

See Appeals s.11 - legality; Various – Legality.

…it is not our intention to force people who have observed the conditions of their leave to risk criminal sanction during their appeal. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 977

I repeat that we are committed to not endorsing the passports of those who remain in the UK to exercise an in-country right of appeal against a removal decision or who leave voluntarily following an adverse decision on a variation application. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC113

Appeals - General – rights of appeal.

See s.4- general – administrative review

My proposition is that appeal rights should be focused on asylum and family cases that raise fundamental issues. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, HC 2nd Reading, 5 July 2005, col. 194

Appeals - General - "Secretary of State" – Roles of Home Office and Lord Chancellor/Secretary of State for Constitutional Affairs

See Appeals – General- judicial independence.

…the policy that is the fundamental part of the legislation—that is, maintaining effective immigration controls and looking at secure boarders—rests with the Home Office. Obviously, a critical part of that is consultation with the stakeholders involved. It is right that the requirement to make orders and regulations needs to rest with the Secretary of State for home affairs. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC23

There is not a resistance in the Government to a role for the Lord Chancellor/ Secretary of State for Constitutional affairs where appropriate, but, in this particular case, it seems to us that it is important that the structure for immigration policy in particular needs to rest in one place—and that place, most appropriately, is with the Secretary of State for home affairs. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, cols. GC24-25

Appeals - Section 1: Variation of leave to enter or remain

The provisions ensure that someone who was a refugee can appeal against a decision that he or she is no longer a refugee before we move to take removal action. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col.194

Section 4 Entry Clearance

s.4 - General

The reason for the proposals in the five-year strategy is that the appeal process is massively time consuming and expensive for the visa operational system. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 195

My hon. Friend *[Neil Gerrard MP]* said that a wide power was being sought to define the grounds on which entry clearance appeals could be brought, but that power already exists under the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 270

We are looking for the most productive and…transparent and clear set of rules and regulations so that everyone, including the applicants, understands exactly what is going on and, if a decision goes the wrong way, understands the precise reasons why. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 113

We want to reach a stage in the context of entry clearance and appeals where a number of things happen. Yes, there will be that transparency and clarity. Yes, there are improvements to the decision-making process. Yes, the sponsor has a stronger role and greater responsibility, especially in education and employment cases, but within a context of almost light-touch regulations for due compliance and the heavier hand where there is less than compliance from employers or individuals. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 113

s.4 - General – Administrative review

See also s.4 – General – points system, – quality of entry clearance decisions, - timing.

The administrative review comes about because much of the evidence that has been put forward was about information that was wrongly understood or written, or simply, as in one case, the university was not recognised by the entry clearance officer, who assumed that it did not exist. These are very clear administrative, factual and straightforward matters that relate to form-filling. It was important to make sure that the process was fit for purpose in terms of the review...It is not an appeal in the traditional sense, but it is an important concession…that seems to address the vast majority of the problems that they have raised, and combines an objective points-based system, the role of the institution, the fact that all students see whether they will be eligible with everyone looking at the same criteria, and the opportunity to review the decision in an administrative capacity. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC59

…because the issues that have been raised are largely of an administrative kind, if you take away the factor of subjectivity—that whether someone can do a course rests with the institution—getting the right kind of review in place will tackle those questions very quickly. Speed is everything in that

regard. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC65

We are talking about an administrative review, not an independent anything. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 535

Issues that are or could be of concern about decisions will be dealt with by administrative review, so the principle of having an appeal system falls. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1165

s.4 - General – Administrative review- Consultation

…one of the things that has become clear working with my colleagues in the Home Office… is their decision to involve as much as possible a broad range of stakeholders, including those from the education sector—especially from Universities UK—in the design of the detail of the administrative review programme. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1167

Baroness Warwick of Undercliffe: …my noble friend said that the administrative review scheme would be set out in Diplomatic Service procedures. My understanding of those procedures is that they are published and become effective at the same time. Is it possible that the procedures might be published in draft, so that we could look at them in advance, prior to them being published and made effective?

Baroness Ashton of Upholland: My Lords, I will commit the Government to doing that. HL 3rd Reading, 14 March 2006, col. 1168

s.4 -Ggeneral – Administrative review- Cost to applicant

We need to design an administrative review system …that..is free, which it will be; and secondly, that it is speedy, which it must be. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 07 February 2006, col. 535

s.4- General – Administrative review - Diplomatic Service Procedures

See s.4- general – administrative review- consultation.

The full details of the process *[of administrative review]* will be published in Diplomatic Service procedures, and will therefore be official government policy. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1167

s.4 - General – Administrative review- Eligibility

…the administrative review is available to anyone who is refused. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 07 February 2006, col. 537

…anyone refused entry clearance under the points-based system will be able to apply for administrative review. They have to allege that the decision was made in error on the basis of the entry clearance officer's refusal letter. We are arguing the "appropriateness" point to avoid people who might be being vexatious, or who should have provided evidence in their original application. On the basis that they are saying that they want a review based on the evidence provided, everybody

will be entitled to claim. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1167

s.4 - General – administrative review- reasons and scope

See s.4 - general – administrative review- speed; s.4 – general – points system.

Any decision that is made that says that an applicant will not be entitled to come must give within it…the specific reason why the applicant has have been turned down. That enables the applicant, or the institution if it plays a role, to say, "Hang on a minute, you have read that wrongly", or, "You have misinterpreted that information". The review is done of a very specific, relevant piece of information or of a fact that can be looked at. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 535

Written reasons will be given…The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 537

If a person is refused, then the entry clearance officer's letter refusing the application will set out exactly why it has been refused, referring back to the criteria for which points are awarded. That is part of our commitment to transparency. Someone who is refused entry clearance under the system will be able to apply for administrative review. The application for review will have to set out which aspect of the decision, as justified in the refusal letter, was incorrect. This encompasses both judgments and points of law, where they are relevant to the specific reason for refusal. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1166

s.4 - general – administrative review- regional tier

There is no regional tier involved. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 07 February 2006, col. 537

I accept that in some circumstances there may well be good reason for a person outside the management chain to be involved, whether at regional or national level. As my noble friend will agree, we had a good meeting with some of her vice-chancellors last week, and discussed this at length. We talked about the different circumstances that could exist where one might wish to look outside. Noble Lords will not be surprised that it is particularly relevant in financial issues. For example, we considered areas where there might have been substantive issues of fraud or other kinds of financial irregularity. That might well be such a set of circumstances. I am committed, and have committed the Home Office, to there being such circumstances, though we hope to determine what precisely they are in discussion with stakeholders. The expertise that stakeholders can bring is critical to determine that. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1167

s.4- general – administrative review- speed

…looking across all the information and evidence, anecdotal or otherwise, that came to me on the Bill, it was clear that the big concerns related to mistakes being made. Therefore, it seemed that an efficient process should be put in place that could quickly deal with cases where a mistake had been made on a form, information had been misread or whatever. It would be a better system than an appeal because it would be speedy and efficient. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC83

We have asked universities and employers what is an appropriate length of time—I am talking days and weeks; certainly not months—to make sure that we can handle an assumption that everyone who is refused will call for a review. Therefore the time period has to be manageable within the system but the system must make sure that no one misses out on either a job offer or a university or college place because it has taken too long. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 535

If a mistake is made, it can be overturned quickly—quickly enough that the person is not affected in their desire to come either to work or to study in this country. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1167

s.4- general - administrative review – sponsor's role

See s.4 – general; s.4 - general – points system – sponsors.

The sponsor also has a role to play in the administrative review. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee , 11 January 2006, col. GC85

s.4 – general - consequences of refusal

Of course students may reapply. That is very important. There is no desire to stigmatise students in any way if they are refused—unless of course that refusal went alongside forged documents or some other inappropriate behaviour. That would be a different matter. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC60

s.4 - general – EEA rights of appeal

…We are fully aware of the treaty rights of Bulgarians and Romanians under accession rights and of the Turkish nation under association rights. Those are enshrined in the assorted treaties, and nothing contained in this or any other Bill will challenge those rights. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 30

We have had, apparently, legal advice to the effect that, following the ECJ cases of Panyatova and Dorr and Unal, certain classes of persons claiming under European Community association agreements are entitled to rights of appeal under EC law…Such persons have rights of appeal under current legislation, but those rights will be removed by the changes to appeal rights in the Bill. We may provide the necessary rights of appeal by using the necessary legislation without amending the Bill. In other words, this is still work in progress… Tony McNulty MP, HC Report, 16 November 2005, cols.1012-1013

We may need to provide a right of appeal for non-EEA nationals who are primary carers of EEA children exercising treaty rights in the UK following a subsequent judgment. We think that we can cover that through section 92 of the Nationality, Immigration and Asylum Act 2000. Tony McNulty MP, HC Report, 16 November 2005, col. 1013

An EEA national and family members have the right to be admitted to the UK…in pursuance of a treaty right, such as the Immigration (European Economic Area) Regulations 2000, as amended… an appeal right is conferred through these regulations. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 6 January 2006, col. GC60

Following a recent European Court of Justice judgment, we accept that for Bulgarian and Romanian nationals who apply to come to the UK to self-establish under the relevant provisions of the respective European Community Association agreement, there should be a right of appeal against a decision to refuse entry clearance. We will reinstate these rights, which are to be removed under this Bill, using secondary legislation. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 6 January 2006, col. GC60

…the Immigration (European Economic Area) Regulations 2000 (As Amended) give the issue the ability to be addressed. It is not that we are replacing secondary and primary legislation; it is done through that set of regulations. They are the appropriate place for the appeal rights to be defined. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 541

The amendment does not deal with the persons claiming rights under the ECAA arrangements, but we will ensure that we reinstate all the relevant rights that are to be removed under the Bill, using those 2000 regulations… The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 541

I reiterate that we do not accept that there is settled Community law which generally requires other classes of applicant *[i.e. non-EEA nationals]* to receive an appeal against a decision to refuse entry clearance. However, we have also made it clear that if Community law develops and the right of appeal is extended, of course we will give effect to that within the regulations. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 541

s.4 – general - evaluation

Mr. Clarke: I give the undertakings for which the right hon. Gentleman *[David Davis MP]* asks to take the NAO *[National Audit Office]* proposals into account and to inform the Committee *[Standing Committee E]*. However, I can go further: because of the importance of his point, which I tried to make earlier, I am prepared to say that if we do not improve the quality of decisions, the matter should be brought before the House to ascertain how we move forward. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 195

s.4 – general - Independent Monitor

See s.4 – general – quality of entry clearance decisions- improving quality.

s.4 – general – Independent Monitor – delay in publication of report

…the time delay in producing the report of the independent monitor is not unusual, in the sense that we need a few weeks to sort it out. I understand that there are 59 recommendations made in the report, on some of which we have to seek legal advice. I am keen that we get as much information as possible to the noble Lord... it is very common practice in my experience as a Minister that we are allowed as a department—whatever department it is—to look at the recommendations and determine our views. That is not uncommon. There is often a lot of appropriate dialogue between the organisations concerned. The few weeks that have passed do not form a substantive delay. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1165

s.4 – general - Independent Monitor - hours

See s.4 – general - Independent Monitor – recommendations and reports.

The independent monitor's role will be enhanced to become a full-time post that is more embedded—for want of another phrase—in the system. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 269

The monitor will be able to spend three months a year—a considerable amount of time—with individual posts in order to identify particular things. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC85

s.4 – General - Independent Monitor – powers and role

See s.4 – General - Independent Monitor - hours

…there will be no changes to the powers of the independent monitor; the post will merely move to full-time. We understand that the role is very important. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 125

…I would hope that if that person is in place by the end of the year, as anticipated, we shall be able to avail ourselves of that new full-time role in order to discuss with him or her not simply what follows from the passage of this Bill, but other matters such as the role and function of an ECO; decision making outwith the Bill in terms of the five-year plan; and, crucially, the points system. We need to marry together all those elements, as well as the rule changes that are required. It is only appropriate that I find some mechanism to ensure that the independent monitor is party to our discussions as we develop the system. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 131

The postholder will have a very broad remit in terms of exploring the quality of the entire decision-making process Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 131

We are enhancing the role of the independent monitor. He will be full-time, but it is essentially the same post Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1012

The incumbent will travel for three months of the year to a cross-section of the posts, which we hope will identify any training gaps, for example, because particular patterns are emerging, or whether there are particular issues that are unique to individual posts. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC85

It is important that the monitor is able to take a broad-brush and a specific view; he will have the opportunity to do so in the three months. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC85

s.4 – general - Independent Monitor – recommendations and reports

One of our aims is to enable the monitor's report to be more regularly used, not only to monitor quality but to promote it. If we receive both our official reports and the more routine reports during the course of the year, and they reflect more closely what is actually happening rather than being retrospective, we will be able to achieve that aim…It will be a full-time post. The monitor will review as many cases as is considered necessary to establish a robust assessment of the quality of decision making. We will set no limit on that; it will be a matter for the person in the new, full-time

post to assess what is needed in order to get to grips with the notion of quality. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 131

The plan is to make it a full-time position where, for three months of the year, there will be an opportunity for the independent monitor to travel and make reports much closer to real time. I am sure noble Lords will accept that that is a much better proposition than the rather long annual reports—helpful though they may be—because it will enable us to speed up the responses to any lapses in quality identified in the reports. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC60

He will report six-monthly rather than annually. The purpose is to try to get sharper, punchier and more up-to-the moment reports, to which we can respond quickly. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC85

The role encompasses all the entry clearance posts. A sample will be drawn from those posts to enable us to look across the piece in a random way. The posts will not know which cases are being chosen; they will be picked randomly so there will be no opportunity to simply present cases that these posts wish to have presented. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC85

The purpose is to look at the standards being applied to the refusal of decisions. The purpose of the role will be to cover the overall quality of decision-making, particularly regarding consistency, fairness and the procedures that have been used leading to refusal decisions. But, as I have already indicated, it is not intended to look at individual cases that are brought forward. We think that a random sampling across the system will enable us to identify issues that we need to pick up quickly and to deal with them appropriately. Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, cols. GC85-86

We are talking about 3,000 to 4,000 randomly chosen entry clearance refusals—those without a right of appeal. As I have indicated, a twice-yearly report will be submitted to the Secretary of State for Foreign and Commonwealth Affairs, who will submit it to Parliament. Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC86

The monitor will also provide recommendations to Ministers and to senior Foreign Office and Home Office officials on issues regarding entry clearance. Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC86

We hope that the existing good links between the independent monitor and the UK visas operations overseas will be maintained and enhanced by the monitor's opportunity to spend time visiting the different posts. Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC86

As I understand it, in 2004 the monitor examined 1,791 cases. …noble Lords will see the scale of the ambition to take up to 4,000 cases across the system. Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC86

We believe that with this full-time position we have an efficient way of being able to randomly select and monitor across all our posts. Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC86

… My own experience of how one determines a random sample is that one looks at what will give one the best possible information to determine what is happening within a system. I presume that has been done in this case. Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC86

We are anticipating not that the number of cases will rise, but that we will have a full-time person who is able to take a larger sample. I am sure that the sample will be statistically significant as regards detecting trends across the system. By having a maximum of 4,000, as I have indicated, we shall probably be able to pick up individual posts where one might begin to see trends. That will be the basis of the exercise, but I shall confirm that, or deny it if it is not the case, although I am sure that it is. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC86

I was trying to describe someone who picks up a random sample and visits different posts as well. Two things happen. One is that, on a …random sample, you can see trends that might occur across all the entry clearance officers' work that may indicate issues that need to be addressed. Decisions may work in a particular way—I am talking not about mistakes, but about the way in which the policy works on the ground—which will enable the monitor to be able to pinpoint issues that may be of great benefit, as things may have got better, as well as issues of concern.

The second point is that, in visiting and getting information from individual posts, the monitor will be able to look at the sample of particular decisions, why they were made and the pathway that the entry clearance officer took to make that decision. That will identify in individual places any issues of concern about the way in which decisions are made. We do not have to wait for an appeal process; indeed, an appeal process might not give one that result, because not everyone appeals by any means. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, cols. GC87- 88

The monitor will be able to look at how the decision was made, and the criteria and process used, and to make specific recommendations and comments on that. That addresses the noble Baroness's point; it is exactly how you get to the point of recognising, in an individual place or as a trend internationally, that you have an issue that needs to be sorted out. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, cols. GC87- 88

…one ambition for random samples should be to identify three matters; I may be completely off-message in terms of policy, but this is important. One is a particular location in a country where things may be being done differently; the second is whether a country is operating differently within the grand scheme of things; and the third is a trend happening across all countries. That is what we need to achieve. As I understand it, there is no settled or final way in which the process will go forward. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC90

s.4 – general – points system

s.4 – general – points system – consultation and stakeholders;

See s.4 – general – administrative review – consultation, - speed; s.4 - general – Independent Monitor, - quality of entry clearance decisions, – points system – Skills Advisory Body and skill shortages, - students, - timing; Various – public confidence.

We have consulted widely to ensure that the system will be properly calibrated to target those workers whom we need most and that it will be straightforward for employers and applicants to use. This simplified system will be more transparent and objective, and robust against abuse. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 515

…the stakeholders involved in this—I refer not only to universities but also to other education institutions and employers, large and small—played a critical part in designing the new system. They will have a continuing role to play in making sure that we get it right. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 533

s.4 - general – points system – low-skilled workers

See s.4 – general – points system – salary and benefits, – Skills advisory body and skill shortages

On lower skilled workers under tier 3, we obviously expect a lot of our requirements to be met either within the UK or the EU, but tier 3 schemes will be set up if it is clear that there is insufficient labour to meet demand. They would be quota-based, operator-led, time-limited, subject to review and from countries where we have a returns policy. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1170

Waiters, kitchen porters and others will fall into tier 3 only if the scheme that encompasses them is established. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1170

In general, we expect domestic and EU labour to be sufficient for these positions, but we will of course keep this under review to ensure that—again, in conversation with the skills sector council—we have clarity over what might be required. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1170

s.4- general – points system –pilots

I have indicated already that we are looking to pilot what is happening, testing the policy against cases in the UK and overseas, refining and retesting. When this goes live, it will go live having been well established and we will be able to show that there are no unanticipated outcomes as a consequence. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC60

s.4- general – points system – objectivity

See s.4 – general – quality of entry clearance decisions, - statistics.

We are not inviting people to exercise greater subjectivity in any way. That will be a critical aspect in setting out the regulations appropriately and developing this—and, of course, consulting stakeholders, as we have sought to do throughout in developing the points-based system. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC74

The system will enable the applicant to see as much of the information and to be as crystal clear about what is required as the entry clearance officer. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC84

…the noble Lord, Lord Avebury—I hope that the Committee will forgive me if I am wrong about this—asked how an entry clearance officer would assess the work experience of a highly skilled worker. I envisage that the following will happen with regard to the level 1 tier, although this is by no means set in stone. When I considered the factors that one might take into account, it seemed to me that one could quickly identify the level of a person's qualifications. The salary they had received may or may not be pertinent as that would depend on which part of the world they had worked in. None the less, one could take that into account. One could take into account the number

of years' experience they had and their age in that context. Those are the criteria that we shall consider in a points-based system. It is not a case of assessing whether an individual has the right kind of experience; rather, it is a case of assessing objective criteria such as the qualifications that an individual has. Does the individual have a PhD? Does he have a degree? What kind of work has the individual been doing? We are trying to make the system as objective as possible. We should be moving towards a system that leaves out all subjectivity and is crystal clear not only to the entry clearance officer, but particularly to the applicant. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC87

s.4 - general – points system – salary and benefits

See s.4 – general - administrative review – regional tier; s.4 – general – points system – objectivity, - students – documentation.

First, there is the question of the £21,000, and what is taken into account. …On benefits, the obvious example is that somebody comes and is given accommodation, perhaps not only for themselves but for their family, and would therefore expect a lower salary. For the UK, I always think of those involved in the Church, who receive a smaller salary, but get their accommodation provided. That is also true in certain professions across the world of employment. There is a plan to find a way to allow those allowances to be taken into account but… we do not want to see that as a substitute for paying people properly. There is a balance to be struck between recognising that people should be in receipt of a proper wage, and recognising the benefits. That balance is being looked at. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1169

We also recognise, thinking about chefs in particular…that some skilled workers do not have paper qualifications. There is a trade-off within tier 2 against salary. I have already identified that, within salary, we would also take into account benefits and qualifications. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1170

We will not expect ministers of religion to meet the usual minimum salary requirements under tier 2… The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1170

We are hoping to end up with a system where, in the round, people who fail to have points in one area—because they do not have paper qualifications, for example—will get points in another area—because, for example, their salary level is higher—so that we end up with a balance. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1170

s.4 - general – points system – Skills Advisory Body and skill shortages

See s.4 – general – points system – low-skilled workers.

The skills advisory body will be able to draw on the Skills for Business Network, and would ensure that bodies representing the ethnic cuisine sector should be engaged with their relevant sector skills councils. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1170

We want to ensure—it is a theme throughout the Bill—that those involved in small businesses…have opportunities to talk about the skill sector shortages within their area

appropriately. We take that seriously. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1170

s.4 – general – points system – sponsors

See s.4 – general; s.4 – general – quality of initial decision-making; s.4 - general – students – regulating institutions and role of sponsors

Building on much of what we have already done in relation to colleges…we establish far more readily the relationship between colleges and other education institutions, their sponsorship role and the student, and exactly the same is true for employers. There is a far more ready focus on the sponsor rather than simply on the applicant. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 26

I am not seeking to prevent people from participating or to discourage or discriminate against them because they do not have a long track record. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 536-7

s.4 - general – points system - students

See s.4 – general – quality of entry clearance decision-making, - resources, - points system – sponsors, - statistics; Various – Managed Migration - students.

The number of people on appeal is a very small proportion of the overall student body, but it makes the whole process for all students far slower and less effective than it would otherwise be. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 194

…no university or college that is doing what it should be doing now—not all of them are—will be penalised by the burdens that the Bill imposes Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting,18 October 2005, col. 29

I cannot say loudly enough that the Government and the House, on a cross-party basis, will continue to work as closely as possible with the HE sector to ensure that those overseas students continue to get good service. Tony McNulty MP, Minister of State, HC Report, 6 November 2005, col. 1010

…the ability of the individual to recognise what is required, and the way in which they are able to relate to the system and the process will be critical as they move forward, is central and fundamental. So they will be able to identify before they apply whether they are likely to be able to get a place on a course, what the criteria and the relationship between the individual and the institution will be. That is central to how we want to deal with the issue. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC58

s.4 – general – points system – students – documentation

See s.4 –general – points system – salary and benefits, - points system – objectivity.

The officer checks that the student has sufficient funds, which is usually done by bank statements. There are issues about documentation in various parts of the world—none the less, that is the usual way of doing it. The officer has to ensure that students have the documentation necessary to show their educational qualifications. That will form most of the basis upon which the entry clearance officer will make the decision. The situation will much better for the individual student because

they will be looking at the same criteria. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC58

I indicated that the other factors to be considered would be whether individuals were able to sustain themselves economically and had the correct certification which was valid for their qualifications, which the institution may or may not have looked at. I cannot say that the institution says only, "You have the appropriate qualifications on the basis of what you have said to be able to come to this institution, and we would like to have you". It will be making sure that all the other pieces of information are accurate. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC63

s.4 – general – points system – students – intention to study

See s.4 – general – points system – objectivity; s.4(1) - purpose of the visit- s.88A(2)(d).

One issue …has been considering the subjectivity of intention to study. That will not be in the new system, because the people who will decide that someone is going to come and study in this country will be the institutions. They will determine by giving someone a place that they are qualified and able to study and that they meet the requirements, just as they do with students here. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report 7 February 2006, col. 533

s.4 – general – points system – students – Lisbon Agenda

Nothing in the Bill challenges the Lisbon agenda and the Prime Minister's initiative in terms of the importance of overseas students. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 31

s.4 – general – points system – students – regulating institutions and role of sponsor

See s.4 - general – quality of entry clearance decisions, - points system – sponsors.

Serious issues have arisen in the university sector—or I should say more generally the overall education sector—regarding essentially bogus institutions that are a device for people to come into the country pretending to be students. Together with the Department for Education and Skills, we have taken strong steps to deal with that. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 194

There is a far stronger accreditation system, rather than the simple flick-switch that caused some of the early difficulties…, where an institute is good or bad with nothing in between—no gradation, no notion of its past experience or anything else. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1010

As institutions can deal with students effectively…the approach can become much more light touch. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC58

…the critical relationship becomes the institution to the student in terms of whether the person fits the criteria and can take up a course. The entry clearance officer is looking at the information that has already been provided, such as the certificate of sponsorship—the proxy for the ability and the intention to study—and the relationship between the institution and the student. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC58

…the principal important change, as I see it, is in the role of the institution. ..if an institution is working with the student and says, "This student should come to this institution because it seems to us that they have the qualifications to do so and we are keen to have them", the person has that institution behind them and will play a much stronger role in determining whether the student will comes there—not the entry clearance officer. I said that the role of the officer is largely about asking whether the student has the sponsorship of that institution, whether they can demonstrate that they have the funds to come here and study in that institution, and so on. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC62

…the critical relationship between the institution and the students, by which the student can come to the institution because he clearly fits the bill as someone that it wants to have, is central to the new proposition. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC63

…sponsors will be required to report attendance. Also, visas will be granted for specific institutions, so in a sense they will be tied to that institution. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1168

We must find some way to be notified when a student has arrived but is believed to have disappeared—not that they are unwell, but have disappeared. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1168

Those institutions that conform with their responsibilities can expect to be rated A, and those where we find a less good record will be rated B. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1168

s.4 - general – points system - timing

I am also convinced that the points system—there is plenty of time for more consultation on the shape of the beast—will not be introduced until mid-2007, at the very earliest. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005, col. 115

I cannot pre-empt the final nature and shape of the points system. If I cannot pre-empt that, I cannot pre-empt the transition period from that to the final points system. We think that it will happen roughly about mid-2007, but, like many of these matters, as and when we can introduce elements of the points system earlier, we shall. I shall give one small example. If Members look at the first tier of the points system, the plan to replace the highly skilled migrants programme, without pre-empting the consultation, will probably not be miles different from what it is now. That may be introduced at an early stage. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005, col. 116

Do not shoot me should some of clause 4 *[now s.4]* be implemented before the points system is introduced, but in all likelihood it may not. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005, col. 117

…I think that rather than delay matters to some far-off time, there is merit in looking at the notion that only when elements of the points system are introduced completely should the commencement order on appeal systems happen. The House will forgive me for not saying simply in terms that when the points system in all its entirety is introduced, only then will there be a commencement order on the lifting of appeals. I made it clear to the Standing Committee that there will be some elements of the points system that can be introduced earlier than mid-2007. Save for those elements that may be introduced earlier, including tier one and the highly skilled migrants programme, I will say that I am happy not to go down the route of introducing the provisions of the Bill that refer to

appeals until the points system is in place. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1012

I repeat the promise that I gave in Committee: as there is no substantive change to the points system during the transitional phase, we shall preserve the appeals regime during that period. If discrete parts of the points system can be introduced early, the quid pro quo is that appeals will fall away. That will give us sufficient time to bed in the new resources, the decision-making process and other improvements in entry clearance officer structures. Tony McNulty MP, Minister of State, HC 3rd Reading, HC Report, 16 November 2005, col. 1063

The noble Baroness, Lady Anelay, was keen to make sure that we look at the points system in the context of the appeals system. We want to ensure that this works properly, so we are looking to phase in and phase out in some logical, coherent and consistent way. The Baroness Ashton of Upholland, HL 2nd Reading, 6 December 2006, col. 579

The measures can be introduced in what one might describe as a staggered way, but I am not suggesting that we will bring one in and then wait forever to bring the next one into the appeal system. I am saying that the system will come in as a whole at an appropriate moment. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, cols GC59-60

We will use a phased approach, but we need to think about how to do that—whether it should be country by country, or all of one tier. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 536

…as and when we introduce various parts of the points-based system, only then will the appeal rights fall away… there is not a big bang approach or a notion that, pending Royal Assent and subsequent commencement, appeals disappear, creating a gap before the points-based system and the new arrangements are introduced. We have made it clear that we will take away the appeal rights, as afforded by clause 4, only as and when the equivalent element of the points-based system is in place. Clause 4 *[now s.4]* will remove appeal rights simultaneously with the introduction of the tiers of the new system. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 909

s.4 general – quality of entry clearance decisions

See s.4 – general; s.4 – general – administrative review, - Independent Monitor; s.4 General – statistics; s.4(1) – s.88A(1)(a) – family visits.

One of the problems with the whole system has been a lack of transparency and clarity, both for the country as a whole and for the individuals who go through the system. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 192

I know…that there are many cases where we have not done as well as we should, but our approach must be to improve, and that is what the Bill is about. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 193

Universities justifiably complained that we had an inflexible system in which it was very difficult for them to have any impact on the operation of the visa system as regards renewals and a whole series of issues that needed to be sorted out. We are trying to make progress in those areas. Their two fundamental concerns relate to the cost of visas and the question of appeals. It is important to bear in mind that, given that universities are bringing £3 billion a year in business into this country, it is not unreasonable for us to make a charge that meets the costs as they go through. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 194

…a causal relationship that says, "The appeal is right, therefore the initial decision was wrong" is far too black and white. Any number of additional pieces of information can come to light after the initial decision has been made. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 21

…it is making a bit of a casual empirical relationship to say that every appeal refers back to a very bad decision in the first place. I accept his broad point, however. Even if we are talking about a figure of 25 per cent. rather than 33 per cent., that is still a very large number, even though only 1 per cent. of all students studying here have come through an appeal route. . Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting 18 October 2005, col. 27

…I accept the charge that all ECO decision making throughout the entire world that takes place under the auspices of UKvisas could, broadly, be improved. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1009

I think most fair-minded people would accept that the position is not as clear-cut as "successful appeal equals bad initial decision" Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1009

Limited empirical evidence from the National Audit Office and material that we discussed in Committee suggest that up to 50 per cent. of problems—happily only 50 per cent.—were caused by inaccurate or incomplete documentation at the start of the process, or by the absence of some element at the start of the decision making. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1009

…I accept completely all the anecdotal and other evidence and information about some of the decisions that have been made…. people end up appealing because the system does not work very well. All Members of the Committee have indicated their concern about how the system works and have given evidence to that effect. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC58

I accept that mistakes are made and that judgments are arrived at. Largely because of the judgemental nature of the way in which decisions are made it has been important to have an appeals process. That has proved itself through the number of successful appeals. But that is not the system that we will be dealing with. The system will be specifically designed with all those factors taken out. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 533

s.4 – general – quality of entry clearance decisions- improving quality

See s.4 – general; s.4 – general – administrative review, - Independent Monitor, - points system – objectivity.

One of the problems with the whole system has been a lack of transparency and clarity, both for the country as a whole and for the individuals who go through the system. It is important to establish a much clearer system. That is one of the reasons for the points system that we propose for people who come to the UK to work and to study, which will attempt to be much clearer…Rt Hon Charles Clarke MP, Home Secretary, 5 July 2005, col. 192

There will be greater training for ECOs and their supervising managers…and greater resources will be engaged to allow entry clearance managers more time to review decisions and to enable the recruitment of the network of regional managers. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 269

… we are already doing a significant amount and will do more to build on the quality of decision making. I accept the import of comments from assorted bodies that have written to members of the Committee, and the thrust of the contributions from hon. Members thus far, that the first thing we must do is get the quality of initial decision making right. That must be the starting point. The removal of appeals needs to be seen in that context… Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 26

We are doing far more on training, promoting consistency and best practice, management time and how management get involved in the decision-making process, learning from appeal determinations, enhancing the role of the independent monitor and making more resources available to UK Visas. We are also doing more on a risk assessment and awareness basis in terms of specific sources of abuse from specific stations…. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 26

We are enhancing training, there is quality focus in UKvisas and we have objectives on best practice. This is within our international obligations. There are best practice reviews, more management resources for posts, quality of refusal notices—which are often a problem for many individuals and MPs—and we are working more closely with judges. There is any number of other elements: risk assessment, so we are informed far more readily on where risks are involved, communications, and general awareness, where we have suffered in the past. Those and other elements are happening now. Tony McNulty MP, HC Report, 16 November 2005, col. 1012

…we will make sure that all the entry clearance officers, whether temporary or permanent, attend training courses in the UK prior to taking up their assignments overseas. They are recruited from the Immigration Service and those with no previous experience of entry clearance will attend a three-week training course. The Baroness Ashton of Upholland, HL 2nd Reading, 6 December 2005, cols. 579-580.

Reviews are going on and quality assurance forms have been introduced for completion by appeals presenting officers to provide feedback on the quality of decision-making. We have an expanded network of regional operations managers looking at best practice and making sure that we improve the quality and consistency of decision making. They will visit key posts in the next few months to support our entry clearance officers and managers in the work that they do. Entry clearance manager training is being expanded, appeals outcomes are monitored and key determinations are fed into the training courses. . The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC60.

It is important in developing the strategy to make sure that they *[Entry Clearance Officers]* have the ability, training and support that they will need for the new role, as much as we want to ensure that for the existing role. It is absolutely right, as the noble Lord, Lord Avebury, has indicated, that we are and will be giving more training opportunities, and we are looking at the number of entry clearance officers developing their skills appropriately. In part that is done through better support through the entry clearance management programme, through the existing structures and by looking at ways in which we can ensure that this happens appropriately. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC69

s.4 – general – quality of entry clearance decisions- improving quality – timing

…We are doing any number of things in terms of the ECO process. Admittedly, we are just starting the process, but all those things are happening now. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1012

s.4 – general – resources

See also Various – Resources.

…a small amount—barely 2 per cent.—of all refusals for student visas go to appeal and are then successful. In relative terms, the amount of time and effort taken by UK Visas and the ECOs to process those cases is enormously inflated. If we get rid of that appeal layer and implement all the improvements to ECO decision making that I am talking about, both elements will ensure that more resources can be devoted to the front end of the operation, rather than otherwise. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 269

s.4 – general - returning residents

See Appeals – General – rights of appeal; Various – Human Rights Act.

…to qualify as a returning resident, the person must have had indefinite leave to enter or remain when they last left the United Kingdom, should not have been out of the country for more than two years, should not have received assistance from public funds towards the cost of leaving the UK, and must now be seeking admission for the purposes of settlement. Returning residents who are refused entry clearance would retain a limited right of appeal on human rights and, of course, racial discrimination grounds… Those who have indefinite leave also have an opportunity to apply for citizenship. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC58

s.4 – general - statistics

See s.4 – general – quality of entry clearance decisions, - resources

In entry clearance terms at least, barely 1 per cent. of overseas students studying in our universities are in the UK because they secured an appeal against that original entry clearance decision. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 32

The National Audit Office report clearly said that, in some 60 per cent. of the cases it looked at, either additional information or clarity on the role of the sponsor were the reasons for the appeal being allowed. I fully accept that the NAO report was limited in terms of numbers, but in 34 per cent. of the cases it looked at, additional evidence was the reason for the appeal being allowed and, in 23 per cent. of cases, it was the role of the sponsors. Tony McNulty MP, Minister of State, Standing Committee E, 3rd sitting 20 October 2005 pm, col. 63

The NAO report made it clear that the 180 cases studied were all cases that had been determined on appeal after they had left ECO, and in which there had been no chance for ECO to look at any new evidence between the decision and the appeal process. Therefore, it is wrong to suggest that in relation to the elements considered in the NAO report, ECO had had a second bite of the cherry, meaning that the 34 per cent. and 22 per cent. quoted were wobbly. That is inaccurate,…Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting, 18 October 2005, col. 96

Dr. Evan Harris: …I think the point was made in Committee that when appeals go in, the papers are supposed to be collected by the entry clearance manager, who has the opportunity to reverse a decision that was made on the basis of incomplete information. When the manager does not do that, there has been a second opportunity, with all the information the appeal has, for that to be corrected, so the point still stands about poor decision making overall.

Mr. McNulty: I do not think that it does. I specifically refer to the 900 or 1,000 decisions that were looked at by the NAO *[National Audit Office]*, or whoever it was—if it was not the NAO, I

apologise. That was done deliberately before a second sift, as I understand it, by the entry clearance manager. The paperwork that was initially submitted was examined. HC Report, 16 November 2005, col. 1010

The number of applications for entry clearance to study has risen dramatically, from 99,540 in 2000 to 254,000 in 2004, excluding student nurses. Data from 2003, which includes student nurses, shows that the majority of applications were granted—an appeal-allowed rate of 28 per cent. That means that 1 per cent of students gained entry to the UK as a result of an allowed appeal. The Baroness Ashton of Upholland, HL 2nd Reading, 6 December 2005, col. 581

s.4(1)

Full appeal rights will be maintained for people who are refused entry clearance as a family visitor or a dependant. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005 col. 517

s.4(1) – s.88A(1)(a) – family visits

See Appeals – General – rights of appeal

Keith Vaz (Leicester, East) (Lab): Is it still the Government's policy to remove the right of oral appeal? If so, where have abuses occurred in the system? Other hon. Members and I rely on that system to show that the immigration system is fair because people have a right of oral appeal.

Mr. Clarke: We are ready to listen to my hon. Friend and many colleagues on both sides of the House who are concerned about the issue…it is not addressed in the Bill, but it is certainly a matter of concern…Our policy remains as set out in the document—there should not be oral appeals, but we acknowledge that the process gives rise to a good deal of concern among many colleagues, so we are ready to continue discussing it with an open mind to see how we can make progress…we are ready to discuss the situation and listen to the points made by my hon. Friend and others. Secondly, in my opinion the solution to the problem lies in achieving better and more effective decision making at the initial level in the process. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, cols. 191-192

A number of complaints have been made to me by hon. Friends and others that our decision taking is not as accurate as it needs to be and does not take full account of all factors. It is important that we get a better level of co-operation than we have been able to achieve between the communities that we are discussing and the Home Office. All that is part of the same approach. I say again that our minds are not closed on the matter that my hon. Friend raises, although I am sceptical about some of the points made in that regard. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 192

People have raised significant issues in terms of papers only versus orals, the definition of family and other elements on which we would like to reflect. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 268

The issue of family visits starts from what we had in the strategy document. That is currently still our position. We are looking at the notion of charging, a redefinition of family and simply paper appeals, not oral appeals and other similar elements. I really do not have the time, and it would probably be out of order under this particular set of amendments, to go into family visits; suffice it to say that it remains a fluid issue. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting 20 October 2005 pm, col. 118

The Bill would allow us to require the family members to be settled. Of course, that does not prevent people coming in as visitors. We are not saying that people cannot come and visit. We are simply saying that we are looking to those who are settled here for the category of full right of appeal that goes alongside family visitors. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC73

s.4(1) – s.88A(1)(b) "dependant"

Baroness Anelay of St Johns: …my name is on Amendment No. 22. ..the purpose of which is to probe the scope of the meaning of "dependant"—the person for whom appeal rights can be restored by regulations under new Section 88A(1)(b). It is unclear whether a spouse, fiancé, unmarried partner or civil partner would be regarded as a dependant. The heading in the current Immigration Rules is "Family Members", of which dependent relatives are a subset. I hope that that will be the case under the Bill, but I would welcome clarification of that. Amendment No. 22 includes a reference at the end to "such other persons"; it would give the Secretary of State the power to prescribe those other persons by regulations simply because new categories sometimes appear, most famously in the case of civil partners. …

The Baroness Ashton of Upholland: …The noble Baroness, Lady Anelay, sets out in her amendment the categories of dependant. She is absolutely right that for those who are settled, provided they meet any other requirements, these categories would apply. I take fully the noble Baroness's additional point about covering new categories, not least civil partners but she will know our view that it is much better done through secondary legislation, simply because, as with civil partners, it is much simpler in parliamentary procedural terms to be able to add new categories, which we would want to do. HL Grand Committee, 9 January 2006, cols. GC71 to GC75
[Minister's comments all GC 75]

s.4(1) - - s.88A(2)(d)- purpose of the visit

I learnt about the primary purpose rule to ensure that I understood precisely what happened in that regard. It is absolutely not our intention to bring it back. ..If I may put it in a slightly more vernacular way, we are not "love" judges in any way, shape or form. We seek to consider the purpose for which a person comes here. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC73

I take the obvious example of a fiancé or fiancée who intends to get married. That person will tell us when they plan to get married. It is a straightforward matter of asking someone why they are coming here and what is the purpose of their visit. However, the measure is not intended to do any of the things that the primary purpose rule did. …I shall look again to make sure that we have this exactly right as I am utterly in agreement with him in not wishing to see that measure reinstated. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC73

Primary Purpose Rule 50, introduced in 1980, stated:

"An entry clearance will be refused if the entry clearance officer has reason to believe:

(a) that the marriage was entered in to primarily to obtain admission to the UK".

…That is quite different from saying that someone is coming here to get married—that the purpose of their visit is to stop being a fiancé or a fiancée and to become a husband or wife. That is the

reason you are coming—you are becoming a family member at that point, as it were. It is a question of asking, "What date are you getting married"? That is not a subjective judgment. It is not a case of someone saying, "I think you are marrying him in order to stay in this country"—which was the objection to the primary purpose rule. Someone is simply saying, "Can you tell us when you are getting married because that is what you are coming here for"? I deliberately chose that example because it demonstrates for me at least very clearly the difference between the primary purpose rule and what we are suggesting. We would not wish to return to that measure, which we repealed, after all. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, cols GC73-4

s.4 (1) – s.88A(3)(a)

See Various – Human Rights Act; s.4 - general – returning residents.

…there is no intention in any circumstances to take away people's ability to use the Human Rights Act appropriately to make their claim. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC74

Of course there is the opportunity for someone to claim under Article 8 that they wish to make a claim on the right to family life and so on. That right was never going to be withdrawn in any case. The noble Lord may think that that would increase the number of challenges. I hope that that would not happen, as we are being genuinely open that we want visitors to come and visit—the question is, "Are they visitors or family visitors?" But it is always possible that people could use the Human Rights Act, and appropriately so. We do not believe that we are taking a risk. …we are agreed that people should have that right and the Government must face the consequences if that does not happen as we believe it will. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC75

s. 4(3)

…if we are making such a move, which is radical in introducing the points-based system and perhaps in removing the appeal process, it is incumbent on us to make substantive reports to the House about the efficacy or otherwise of the system once the appeal process has been removed. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 26 March 2006, col. 909

We want the report to be as full as possible. We want it to include concerns and opinions about how effective or otherwise the system has been from what we are now told—in the training school for Ministers—to call stakeholders. The various groups that have some interest in the efficacy of the points-based system and the removal of appeals should be included in a report presented to the House. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 26 March 2006, col. 909

Section 5 Failure to provide documents

See Various: Human Rights Act.

Section 88 of the 2002 Act limits the availability of a full right of appeal in cases in which unsuccessful applicants fail to meet certain basic requirements set out in the section. Those limitations apply where an application has been refused on the grounds that the applicant does not hold a necessary document or where he does not meet another specified requirement of the rules;

for example, he has applied for leave to enter as a dependent child but is too old to meet the requirement of the relevant provision of the rules. The new clause extends the scope of section 88 of the 2002 Act so as to restrict the availability and full rights of appeal in cases in which the applicant has failed to supply a medical report or a medical certificate as required by the rules. The provision would apply where an applicant for entry clearance was required by the immigration rules to hold a medical certificate confirming that he was free of tuberculosis but failed to supply such a certificate. In that situation, an appeal against a refusal of entry clearance could be brought only on the grounds that the decision was racially discriminatory or a breach of the applicant's human rights. It is the absence of documentation that is the issue. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 134

…**Dr. Harris**: ..The Minister said that it starts with TB; is he aware of any plans in the Department to include HIV testing in this sort of provision?

Mr. McNulty: .. the answer is no. It is rather like saying that it is in four countries at present but we need the universal provision; again there is the universal provision in terms of medical documentation as well as other documentation added by the new clause. In this instance, the pilot is purely for TB screening. Standing Committee E, 4th sitting, 20 October 2005 pm, cols. 134-135 *[Minister's comments all col. 135]*

Dr. Harris:…. I am assuming that his Department and the Department of Health have evidence that implementing such a scheme for TB will reduce the incidence compared with not doing so. Will the Minister give an undertaking to provide the evidence, advice or information that he has from the Health Protection Agency if such information exists? Could he give that simple undertaking so that we can see what underpins the proposal with regard to TB?

Mr. McNulty: If I can, of course I shall. When I say high risk, it is commonly accepted that something like 40 cases annually in over 100,000 population is a notional measure of the high incidence of TB, which affects a range of countries.

…it is in order and appropriate to look at specific countries with very high risk to see if the correlation that the hon. Gentleman suggests can supplement the existing evidence. On the figures that I mentioned, there are currently 135 countries that would come under the measure of high incidence of 40 cases annually per 100,000. Clearly, it is not appropriate to include all 135 in the first instance but I am more than happy to provide that information if I can. Standing Committee E, 4th sitting, 20 October 2005 pm, col. 135

Clause 5 *[now s.5]* limits the right of appeal against refusal of entry clearance or leave to enter if someone fails to provide a medical report or certificate when required. It will have no effect on the appeal rights of someone who provides the requested report, whatever its contents may be. The Baroness Ashton of Upholland, Lords 2nd Reading, 6 December 2005, col. 94

Section 6 Refusal of Leave to Enter

See Various: Human Rights Act

People who arrive with the right visa should of course be let in. If they choose to say, "Actually, I've changed my mind and want to do this instead", they do not have a right of appeal on that basis and have to start at the beginning. If for some reason—I cannot think of one—an entry clearance officer says, "We've received information about you and I am not going to let you in", the person has a full right of appeal if they have the right visa for the thing that they said that they were coming to do. The Baroness Ashton of Upholland, HL 2nd Reading, 6 December 2005, col. 94

The position that exists now will exist in the future. If you have received clearance, having gone through the process when you applied, and are for some reason refused entry at the port of entry, you have a full right of appeal. The person who determines whether you have changed your status is you, not the entry clearance officer. If on arrival you say, "Well, I was coming in as a student, but I've decided that I want to work instead," you—not the entry clearance officer—have changed your story. It would not be for the entry clearance officer to make any judgment, so we are not going back to the bad old days. However, suppose you change your story and say, "I was coming in as a student, I have gone through the process as a student and have a place at a university, but I do not want to do that any more—I want to work in industry". In that case, you have no right of appeal, because you have to go back to the beginning and start the process again… Of course, their rights in terms of human rights, asylum or discrimination always stand—that is always the backdrop to what I say. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC94

Section 7 Deportation

s.7 – general

See Various - Human Rights Act, - Memoranda of Understanding; Miscellaneous – General – national security.

The provision may be even narrower *[than s.54 & s.55]* in terms of those on whom it has an impact. However, we feel that, in situations in which deportation orders have been made on national security grounds, the current appeals system results in unnecessarily lengthy delays. That is no longer acceptable. Tony McNulty MP, Minister of State 8th sitting, 27 October 2005 pm, col. 298

The new clause is designed to streamline the process of appeals against deportation orders in national security cases. The aim is to be sure that those who threaten the security of the UK and its people will be removed from the UK more quickly than is currently the case. Tony McNulty MP, Minister of State 8th sitting, 27 October 2005 pm, col. 298

The new clause allows the Secretary of State to issue a certificate that the decision to make a deportation order has been taken on national security grounds. In such cases, any appeal against the deportation order would be from abroad, unless the proposed deportee has made a human rights claim while in the UK. If such a claim has been made, the appeal may be brought from inside the UK, unless the Secretary of State then certifies that removal of the individual would not breach the UK's obligations under the European convention on human rights. If such a certificate is issued, the substantive appeal against the decision to make the deportation order can only be brought once the affected party has left the UK. We again have that interplay between the various conventions. The provision does, however, allow for an in-country right of appeal on human rights grounds to the Special Immigration and Appeals Commission against the Secretary of State's decision to certify that removal of the individual would not breach the convention. That ensures that proposed deportees would not be removed if it would be a breach of their human rights to do so. Tony McNulty MP, Minister of State 8th sitting, 27 October 2005 pm, col. 299

We think that the clause will speed up the system because the hearing of the national security aspects of a case can be the most time-consuming element of an appeal. The future of this process will happen after removal, but the clause retains judicial scrutiny, prior to removal, of the Secretary of State's decision that removal would not breach the human rights of the individual. Tony McNulty MP, Minister of State 8th sitting, 27 October 2005 pm, col. 299

In these narrow cases of national security, the temptation is always to look at deportation as a whole. But we are on this narrow ground. Tony McNulty MP, Minister of State 8th sitting, 27 October 2005 pm, col. 299

Decisions to deport individuals on national security grounds are taken only after the most careful consideration. If the assessment is that the person constitutes a threat, we think it is better to remove the person at once and readmit them if the appeal is allowed rather than to permit them to remain here continuing to pose that potential threat until after the often lengthy—frequently very lengthy—proceedings are concluded. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 549

s.7 – general - appealing from overseas

See Various - Human Rights Act.

I do not think that appellants are disadvantaged by conducting the appeal from overseas. In the great majority of cases, much of the evidence is closed; that is, the detail is not disclosed to the appellant. The noble Lord, Lord Avebury, referred to the role of the special advocate. The appellant of course will be able to have a solicitor to represent him or her and to deal with open evidence. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 549

I take seriously our obligations under Article 3 of the Human Rights Act. It was this Government who brought that Act in. We did so in full knowledge of the commitment that we were making. We would work very carefully to ensure that people were not going to be deported where there was a threat of torture. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 549

s.7 – general – ECHR

See also s.7 – general – memoranda of understanding, s.7(1) – s.97A(4)(b); Various – Human Rights Act, - Memoranda of Understanding.

Our position has been clear: we would not remove individuals contrary to our obligations under the European Convention on Human Rights. But we are equally clear that where individuals threaten our national security, and we can remove them compatibly with our international obligations, it should happen as quickly as possible. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col.GC107

s.7 – general - exporting risk

See Miscellaneous – National Security

We need to work with our international partners to ensure that we do not export risk to them, but work collaboratively with them to deal with the global threat. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 550

s.7 – general - memoranda of understanding

See Various – Human Rights Act, - Memoranda of Understanding.

We also believe that Clause 7 *[now s.7]* is fully compatible with our obligations under the European Convention on Human Rights. We anticipate this working alongside the memorandum of understanding that we have agreed with the governments of Jordan and Libya and are currently negotiating with the governments of Algeria and Lebanon. The Baroness Ashton of Upholland, HL 2nd Reading, 6 December 2005, col.584

s.7 – general - Refugee Convention

See Various – Asylum – 1951 Refugee Convention and principle of providing protection; Various – Human Rights; Miscellaneous – General – national security.

The Secretary of State's decision to certify that removal would not breach the European convention on human rights cannot, however, be appealed from within the UK on asylum grounds as a person who is a national security threat is excluded from the protection of the refugee convention. As the purpose of the clause is to ensure that the national security aspect is only to be challenged from abroad, there would be no point in granting an appeal right on asylum grounds in-country as the appeal would certainly fail.

That does not raise protection concerns as the protection afforded by the ECHR, especially by article 3—prohibition of torture, inhuman or degrading treatment and punishment—is sufficiently broad to preclude the removal of someone to a country where there is a real risk to their life or freedom. Tony McNulty MP, Minister of State 8th sitting, 27 October 2005 pm, col.299

There will of course remain a full out-of-country right of appeal against the decision to make the deportation order, at which stage any claim to refugee status can be fully considered by the commission. Tony McNulty MP, Minister of State 8th sitting 27 October 2005 pm col.299

…the clause deliberately does not provide an in-country right of appeal on asylum grounds. A person who is a national security threat is excluded from the protection of the refugee convention. Even if the person is a refugee, Article 33.2 of the convention allows their expulsion from the country of refuge if they threaten its national security. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, cols. GC98

The particular issue that the noble Lord raised is answered by what happened in the Ullah judgment. The case involved a claimant who entered the United Kingdom from Pakistan and applied for asylum, claiming to have a fear of persecution because of his religious beliefs. The claim was refused and the appeal dismissed on the basis that the claimant did not have a well founded fear. The applicant also argued that removal would give rise to a breach of his right to freedom of religion under Article 9 of the European Convention on Human Rights. …the House of Lords, in considering the issue, found that where removal of an individual from the United Kingdom would result in treatment in the receiving state that would amount to a flagrant breach of any other article of the European Convention on Human Rights, such as to amount to a complete denial of the right in question—as was being argued in this case—it would be possible for removal to breach the sending state's obligation under the convention, notwithstanding that the treatment in the receiving state would not breach Article 3. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC98

The *[Ullah]* judgment now ensures that there are no circumstances in which a person could be returned in compliance with the European Convention on Human Rights but in breach of the refugee convention. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC99

Prior to the Ullah judgment, of course, it could be argued that there were certain sorts of persecution that fell outside the scope of Article 3. We believe that, in this part of the Bill, because of the way in

which the House of Lords determined that judgment, there is no question but that the issues are effectively covered and that there is not a gap, if I may describe it as such. The protection afforded by the ECHR is sufficiently wide to ensure that, where removal would not breach our obligations under that convention, it would also be compatible with the 1951 refugee convention. ..that is the basis on which the clause is framed as it is on that particular aspect. Clause 7 *[now s.7]* already provides for a full out-of-country appeal against the decision to make the deportation order. Any claim to refugee status can be considered at that stage. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC99

s.7 – general - SIAC

See s.55(2) – SIAC.

Our view is that SIAC is well and best placed to deal with what is, as the noble Lord said, the potential for a two-part appeal. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC99

… SIAC would hold the part of the appeal against the certification in open session. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC99

s.7(1) – s.97A(4)(b)

See Various – Human Rights Act.

The purpose of proposed new clause 97A(4) of the Immigration and Asylum Act 2002 is a recognition that the ECHR, particularly article 3, is fluid....A number of cases are before the European Court of Human Rights at present. Case law on article 3 may change in the near future to allow the risk of prosecution to be balanced against the danger to national security. An assessment will be made on whether removal would breach article 3. As a result, SIAC may be required to examine the substance of the national security case. If the balancing test is introduced—any number of cases before the Court that are at various stages in the process do involve that balancing test—we can use subsection (4) to readjust our statute in the light of that subsequent case law. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, cols.300-301

I agree that were there not at least one case—perhaps a couple of others—before the Court, it might be too prissy and tidy to include the option of the order just in case the Court might alter its interpretation of the convention. Tony McNulty MP, Minister of State 8th sitting, 27 October 2005 pm, col. 301

For completeness and tidiness it is more appropriate to have a little flick switch that says we can alter the proposed new section by statutory instrument, subject to resolution of both Houses, and include any transitional provision between what prevails now and subsequent case law. Tony McNulty MP, Minister of State 8th sitting, 27 October 2005 pm, col. 301

…subsection (4).. is not a mini Henry VIII clause that says, "Well, actually, here is the new clause and here is what it says about appeals deportation. For God's sake don't read subsection (4); we're slipping in a little bit of power that means the Home Secretary can do whatever he wants, whenever he wants."I assure the hon. Gentleman that that is not the position. Subsection (4) is merely a tidying-up provision as a result of some substantive cases that are before the European Court of Human Rights. Tony McNulty MP, Minister of State 8th sitting, 27 October 2005 pm, col. 301

s.7(1) – s.97A(4)(b) - Ramzy v Netherlands ECHR

… the purpose behind the subsection is that if the case were successful it would enable us to deal with the new case law from the European Court of Human Rights. ..If we are successful *[in Ramzy v Netherlands ECHR]*, it is right to use this mechanism to enable us to enact what would be the new case law in Strasbourg. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, cols. GC107-8

We are seeking to do this properly through the European Court; we are not trying to take unilateral action The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC108

Torture is not the only thing in Article 3. It also refers to inhumane or degrading treatment or punishment. The court may need to consider all the different ways in which that could be interpreted. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col.108

Section 11 Continuation of leave

NB Provisions relating to variation appeals, including s.11, were extensively amended at HL Report on 7 February 2006. Statements before that date relate to earlier versions of the provisions and are included where they give assurances as to the intention behind the provisions as finally included in the Bill.

See Appeals – General – legality; Claimants and applicants - s.47.

s.11 – general

s.11 – general - legality

I shall also reflect on whether any changes to the immigration rules, which are part of the basis of the matter as well as the legislation, are needed to reflect what people require—some sort of formal legislative statement that people will not be instantly criminalised during the gap between the end of leave to remain and final dispatch of an appeal. Tony McNulty MP, Minister of State, Standing Committee E, 2nd sitting am, 10 October 2005, col. 62 [*the clause was subsequently amended to produce what is now s.11]*

My noble friend Lady Warwick spoke about students' passports being endorsed when they leave the UK. There is no intention of doing that. Assuming that people are compliant and do not break the law in any way, they will not have their passports endorsed if they leave the country voluntarily within the context of this Bill—I am not talking about what we might change in the Bill. The Baroness Ashotn of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC43

…people who are not detained have 10 working days from the date that they are notified of an appealable decision, if they are in the UK, in which to lodge an appeal. During that period their previous leave is continued; so, people currently have 10 days' leave without lodging an appeal. That will continue under these arrangements. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 523

s.11(2), s.11(3)

Amendment No. 12 *[now s.11(2) & (3)]* corrects a technical problem with the existing continuing leave provision in Section 3C of the Immigration Act 1971. Under the current version of Section 3C leave continues while an appeal could be brought without specifying whether to trigger an extension of leave; the appeal must be brought in the UK or otherwise. Amendment No. 12 inserts a condition that leave will be continued only where appeal may be brought in the UK or where such an appeal is pending. The change has been made to make it absolutely clear on the face of legislation that leave will be continued only where an appeal against a decision to vary leave could be brought in-country. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 519

s.11(5)

Amendment No. 13 *[now s.11(5)]* is designed to ensure that the continuation of leave provisions provides an appropriate period of extended leave for applicants who are challenging decisions to curtail limited leave or to revoke indefinite leave to remain. It will bring the position for these appellants into line with the present position for persons who are challenging a refusal to vary leave. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 519

At the moment, leave is continued for appeals against refusals to vary decisions by Section 3 of the Immigration Act 1971 whereas for curtailment and revocation decisions leave is continued by Section 82(3) of the Nationality, Immigration and Asylum Act 2002.

The provisions of Section 82(3) of the 2002 Act do not extend leave beyond its original expiry date. Therefore, it is theoretically possible for a person's limited leave to expire midway through the currency of their appeal. To address that problem and for the benefit of coherence, Amendment No. 13 *[now s.11(5)]* will bring all of the continuation of leave provisions into the same format and will extend leave in curtailment or revocation cases during the period in which an appeal against such a decision could be brought or is pending. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 519-520

Section 12 Asylum and Human Rights Claim: definition

See Various – Human Rights Act.

s.12(2)

The new clause amends section 113 of the Nationality, Immigration and Asylum Act 2002. In particular, it amends the definitions of "asylum claim" and "human rights claim" under part 5 of the 2002 Act to remove the requirement to claim in person at a place designated by the Secretary of State. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 274

To ensure that the United Kingdom provides protection when it is genuinely needed, it is important that the Asylum and Immigration Tribunal should be able to consider any human rights or asylum issues raised by appellants. It is therefore unhelpful for definitions under section 113 to refer to procedural restrictions that are not relevant in that context. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 274

It must, however, be stressed that the changes in no way alter the general requirement that asylum and human rights claims must be made in person. To that end, clause 42 will in future allow the

procedures to be set out under immigration rules. That will allow us to maintain a fair and flexible system by which such claims must be made. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 274

Not everyone can claim in person. We need the flexibility to accommodate the seriously ill, for instance. Furthermore, it is not usually necessary for a person's identity to be examined more than once. That can be done in the first instance. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 274

…Immigration rules will also allow us to make explicit provision for special arrangements in exceptional cases such as serious illness, which we are not allowed to do under the existing statute. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, cols.277-278

s.12(3)

New clause 1 *[now s.12]* also clarifies that further submissions made by a claimant after his asylum or human rights claim has already been decided will not amount to another asylum claim or human rights claim for appeal purposes, if it has been decided in accordance with the immigration rules that the further submissions do not amount to a fresh claim. They may amount to that, but it should not follow that in every instance that they do. The relevant provision of the immigration rules is paragraph 353. Tony McNulty MP, Minister of State 8th sitting 27 October 2005 pm col. 277

To be regarded as a fresh claim, further submissions must be significantly different from the original claim. This means that the content of the submissions must not already have been considered and must, when taken together with the material considered previously, create a reasonable prospect of success. It is important that the legislation is clear that a claimant whose further submissions are determined not to amount to a fresh claim will not have another right of appeal. Underpinning the rule in primary legislation will create greater certainty in its application. …we believe that this is a helpful new clause which tidies things up. Tony McNulty MP, Minister of State 8th sitting 27 October 2005 pm cols. 277-278

Section 13 Appeal from within the United Kingdom: certification of unfounded claim

Amendment No. 15 *[now s.13]* provides an order-making power to limit the scope to certify clearly unfounded human rights claims under Section 94 of the 2002 Act. This would mean that where a type of leave was designated it would not be possible to use Section 94 powers in relation to variation appeals. …we consider that the type of leave a person has before making a clearly unfounded claim may be relevant to whether they should be able to bring an in-country appeal.

No decisions have yet been reached on what types of leave, if any, fall into this category but an order-making power ensures that we can seek Parliament's early approval if we decide that some types of leave should confer an in-country appeal right even where a person is making a clearly unfounded claim to extend his stay. The Baroness Ashton of Upholand, HL Report, 7 February 2006, col. 520

We have also introduced a new order-making power, which will potentially place a limit on the power to certify asylum and human rights claims as clearly unfounded. The intention is that that will allow the Secretary of State to designate certain categories of applicants as being beyond the scope of the section 94 certification powers in the Nationality, Immigration and Asylum Act 2002. That will enable us to ensure that where people have been granted leave on a particular basis, they

will always be entitled to an in-country right of appeal. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 902

We do not intend to use that power with any repetition or regularity, but at one end of the process it will include children, and in other cases it will include those who, through the Special Immigration Appeals Commission or other processes, have been earmarked as necessarily being excluded. It is not—I am grateful that this did not characterise our deliberations too much—a universal power that affects everyone but is used in limited circumstances. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 902

EMPLOYMENT

Employment – General

Employment - General - consultation

See also Employment - General: Illegal Working Taskforce; Various – Migration – public debate and consultation.

…there will be a full, detailed public consultation on the illegal working measures proposed… the consultation will last for a minimum of 12 weeks. The responses will be analysed with particular attention paid to possible new approaches to the questions consulted on, further evidence given on the impact of the proposals, and the strength of feeling among particular groups. A report including a summary of responses received during the course of the consultation will be produced and published at the end of the consultation and a copy placed in both Houses and published on the IND website. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 11 January 2006, cols.1176-77

We certainly now have in mind to make sure that the Chinese community and the Bangladeshi, Pakistani and Indian community, particularly around the restaurant business, are consulted. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 561

Employment - General - dissemination of information

See s.15.

When changing the law, it is incumbent on Government to make sure that information is disseminated throughout the sectors affected, even those that are hard to get at, such as small businesses generally and those in the ethnic community specifically. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 916

Employment - General - employers

See Various – Act - (Immigration Asylum and Nationality Act 2006) – overview; Appeals – s.4 – general – points system – consultation; s.15; s.22; s.25.

It is critically important that we drive out those illegal employers who keep people here, often in the most appalling conditions, and we must ensure that we deal with them in the most effective way. These measures are designed to achieve just that. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col.198

I do not agree…that it is all a matter of sweatshops and exploitation. That accounts for part of the illegal working that exists, but many of the more recent, successful operations in this regard relate to high-street supermarkets…and their assorted warehouse operations. It is not just a question of sweatshops and small employers. . Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 156

There are occasions when employers might have a slipshod approach to employment issues and may not do things properly, but by no means are they behaving in a criminal manner. We should make that distinction and I believe that we do so in these clauses *[now ss.15 to 26]*. The Baroness

Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC120

Employment - General - enforcement

See also Employment - General – employers - guidance, - other offences; s.15; s.19; s.26; Various - Enforcement

…Somebody said that that was all very well, but that in terms of managed migration there were only 12 individuals in the central team…. He is entirely right, but that is all we need at the centre. By the time the law is introduced, there will be about 1,200 warranted immigration officers with full rights to employ the fixed penalties. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 266

The noble Viscount *[the Lord Bridgeman]* was worried; he thought that we had only 12 staff. Let me reassure him immediately that those 12 staff will handle litigation and objections, but there will be 1,200 enforcement officers capable of dealing with these matters. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC123

Employment - General - European Convention on the Legal Status of Migrant Workers 1997

The European Convention on the Legal Status of Migrant Workers was established in 1977. No one has ratified it and I do not think that there is any prospect that the Government will do so. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC134

Employment - General – guidance

See Employment – General – dissemination of information; s.15.

I confirm that guidance will be issued to employers. I believe that that means guidance above and beyond the code of practice and that addresses the wider issues, not simply greater levels of detail and specifics. I shall inform the Committee if it does not. …Enforcement officers will be encouraged to offer the information and guidance to employers when undertaking visits, using the draft code that I have already presented to the Committee. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting 20 October 2005 pm, col. 155

Employment - General - Illegal Working Taskforce

See also Employment - General – consultation, - dissemination of information, - employers; s.23.

We shall work with the group *[Illegal Working Taskforce]* on the implementation of civil penalties, thereby ensuring that it is indeed participating fully. We shall work with it in the industrial tribunal system and researches to monitor compliance with the statutory non-discrimination code. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1177

Employment - General - other offences

See Employment – general – workplace regulation; s. 26.

I would say to those who ask why it has taken so long to do anything about section 8 *[of the Asylum and Immigration Act 1996]* that it is important to remember that there is other legislation under which cases have been brought, especially for facilitation. In 2002, there were 62 convictions for facilitation in magistrates courts and 147 in Crown courts. Some of those cases will have involved people who import and supply illegal workers. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 266

We have been able to pursue some of the business organisations concerned for charges far more serious than those in section 8 of that Act. In some cases, as I suggested earlier, in the end the co-operation of the employer to stop illegal working had greater value in public policy terms than adding another scalp. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting 20 October 2005 pm, col. 161

Employment - General - rights of migrant workers

See Employment – General – employers, - European Convention on the legal status of migrant workers 1997, - workplace regulation

I accept absolutely that we must do as much as possible to support the position of legal workers in this country and to ensure that they get appropriate terms and conditions. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC134

Employment - General - statistics

See also Employment – General - enforcement; s.26

In 2004, some 1,600 successful operations were carried out that resulted in over 3,000 illegal workers being arrested. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State DCA, HL Grand Committee, 11 January 2006, col. GC123

Employment - General – workplace regulation

See Employment – General – employers, - other offences, - rights of migrant workers.

…we should look for a range of measures and actions to tackle people who use illegal workers beyond what is in the Bill and the five-year strategy. I totally agree, and that was why we supported the Gangmasters (Licensing) Act 2004. We are developing joint working with other workplace enforcement bodies, such as the Health and Safety Commission, the Department for Work and Pensions, the national minimum wage inspectorate and others. That work includes establishing a joint pilot scheme in the midlands to examine such matters in more detail. We are working closely with employers, unions and others to examine the whole issue of illegal working, as it is right and proper to do. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 270

The Government are looking at how best the public authorities responsible for enforcing workplace regulations can work together—IND, the Department for Work and Pensions, HMRC, DTI, the Health and Safety Executive and so on—to make improvements. For example, our pilot scheme in the West Midlands tests our departments' ability to share intelligence on the suspected exploitation of illegal workers within the existing legal powers and establish how we work better together to support workers in all situations. That could be an important part of the work of the new Equality and Human Rights Commission that we are setting up. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC134

Section 15 Penalty

s.15 – general

See Employment - General- dissemination of information, - employers, - other offences; s.16; s.19; s.21; s.23; s.25

The civil penalty scheme is a more measured and calibrated system through which the problem can be addressed without having to resort to criminal prosecutions in every instance. Andy Burnham MP, Parliamentary Under-Secretary of State, HC Report, 16 November 2005, cols. 1041-1042

s.15 – general - administration

See Employment – General – dissemination of information, - employers.

…we want the civil penalty regime in this clause to be operated in the context of much that we are trying to do, offering a lighter-touch regulatory framework for those who comply than exists for those who repeatedly transgress, whom we reserve the right to pursue. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting 20 October 2005 pm, col. 153

…we will have a simple process; that employers will know precisely what we are asking them to do; that we will work with them to support them, using the officers concerned to give advice, information and support; that we recognise that mistakes can be made; that we have in mind the necessary flexibility and proportionality to ensure that this civil process will work effectively; that we will ask employers to look again at the information, but on a basis that is proportionate, reasonable and not burdensome; and that with employers as our colleagues we will be able to address the particular concern we all share—that of ensuring that we do not have illegal working this country. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC125

s.15 – general - carrier sanctions as a precedent

The thinking behind the proposal, however, is that we have had great success through applying precisely that kind of measure to carriers of illegal migrants, as it forces them to think carefully about how they operate. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col.198

We have modelled much of this provision on the scheme provided for road hauliers, which seems to be working extremely well. Only seven appeals have been brought forward out of 1,000 cases. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC129

…we are determined to make sure that employers work collaboratively with us and that the civil penalty side is simply to address the fact that we know there will be circumstances where unfortunately perhaps a few employers do not do that and we need to deal with that properly and efficiently. The Baroness Ashton of Upholland, Parliamentary Under-Secretry of State, DCA, HL Report, 7 February 2006, col. 561

s.15 – general - inspection

I can say that the immigration service will continue to carry out intelligence-led operational visits as now, and civil penalties do not presage a new inspection regime. The inspection service only works where it is intelligence that leads the problem. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 267

s.15(1)

Insofar as an employer believed he was employing illegally but it later transpired that the person was entitled to work, liability as laid out in clause 11(1) *[now s.15]* would not arise. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 147

s.15(1)(b)(ii)

… I give my hon. Friend the Member for Walthamstow *[Neil Gerrard MP]* the assurance that although subsection (1)(b)(ii) literally says "has expired" *[wording now changed]*, that does not relate to those who apply in time and carry on. We are still considering the practicalities that are in place, not in terms of rules or legislation, but in terms of persuading an employer or anyone else that the other application has been made. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 147

We have reflected on whether the term "expired" provides sufficient legislative clarity in every case where leave has ended, other than as a result of the passage of time. It is, of course, important to ensure that the obligations which these provisions place on employers are not ambiguous and that they effectively prohibit the employment of those not entitled to work.

The amendments clarify that employers should not employ adults whose leave to enter or remain,

"has ceased to have effect",

by virtue of curtailment, revocation, cancellation or the passage of time. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 554

s. 15(2)

…the Secretary of State may issue a penalty notice without first establishing whether the employer has established an excuse. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 155

…immigration officers will, as a matter of practice, give employers the opportunity to demonstrate that they can benefit from a statutory excuse prior to imposing any penalties. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 153

…immigration officers enforcing the civil penalty scheme will assess as part of their investigation whether the employer has complied with the specified requirements and established an excuse. No penalty will be served if the employer satisfies the immigration officer on that point. It would be possible to include, with the penalty, information on specified requirements in the supporting guidance to which I referred. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 155

…the Bill gives the Secretary of State unilateral powers in respect of the civil penalty regime, so it is entirely a matter for the Secretary of State to decide whether to impose penalties or otherwise.

Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting 20 October 2005 pm, col. 162

…the penalty varies in proportion to the extent to which an employer has taken steps to comply. Andy Burnham MP, Parliamentary Under-Secretary of State, HC Report, 16 November 2005, col. 1042

…it will be possible for a first-time offender who showed good will and carried out some partial checks to avoid a penalty on the first occasion of being found in breach. Andy Burnham MP, Parliamentary Under-Secretary of State, HC Report, 16 November 2005, col. 1042

…first-time offenders will not be clobbered. The penalty will vary according to how many times the employer has breached the provisions and the extent to which the employer has taken steps to tackle the problem. Andy Burnham MP, Parliamentary Under-Secretary of State, HC Report, 16 November 2005, col. 1042

s.15(2) "prescribed maximum"

See s.19

The maximum amount to be paid per employee would be £2,000. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 518

…there will be a maximum fine of £2,000 per illegal worker. It may not be used in all cases. We may caution people if they collaborate and are co-operative, we might, for example, reduce that sum. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA HL 2nd Reading, 6 December 2005, col. 582-3

There is a maximum penalty. It can be applied at different levels in order to recognise the contribution of employers in making sure that they were trying to act reasonably and so on. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 560

s.15(6)

We will also have comprehensive guidance for employers, the Home Office website and a helpline service. We do not think it necessary to include all of that in the penalty notice, but we think we have a robust system that will give employers the information to enable them to make sure that they are compliant in the future and that we have provided the necessary links to make that happen in a simple and easy manner…. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC 25

Amendment No. 97 would require the Secretary of State to explain on the penalty notice how the employer might appeal to the courts…the amendment is not necessary because that information is already included in penalty notices and it is not essential to make it a legal requirement. I shall reconsider the matter and decide whether it is more appropriate to include the information in the draft code of practice, which outlines the broad system and issues, or in some of the more detailed guidance that follows from it. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting 20 October 2005 pm, col. 156

s.15(6)(a)

The penalty notice will set out why the Secretary of State thinks that the employer is liable to a civil penalty, so that there is absolute clarity about the obligations that are needed to prevent illegal working that the Secretary of State thinks they have failed to meet. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA HL Grand Committee, 11 January 2006, col. GC124

s.15(6)(f)

The civil penalties scheme will be similar to those already in statute. He *[Humfrey Malins MP, Member for Woking]* is right that the Secretary of State could use the county court to recover payments. He is right about all the assorted and normal processes that prevail: warrant of execution, charging order, third-party debt or, as he suggests, attachment of earnings. …In short, we do not want to reproduce a civil penalty regime specific to this Bill and to these offences; we want a regime that prevails in the wider term. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, cols. 154 –155

s.15(7)(c)

Clause 11 *[now s.15]* is concerned with facts rather than intentions, and with facts relating to the status of the employee and the documents that the employer has checked…those documents are laid out in lists 1 and 2 at the end of the code of practice on the avoidance of race discrimination while seeking to prevent illegal working. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 147

Keith Vaz: …Every single person who is employed in every single factory on those roads is from the ethnic minority communities. Some are British born, some have acquired citizenship and others have indefinite leave. Does he not accept that the measure will disproportionately affect members of the ethnic minority community, and have an impact on those who are in this country legally because employers simply will not want to employ them?

Andy Burnham: My hon. Friend is right to raise such serious issues…. I would guess that the vast majority of those people are British born and British passport holders, so there will be no requirement for employers to check their documentation. HC Report, 16 November 2005, cols. 1041-1042

How about a national identity card? …That might be an easy way to ensure that employers could quickly verify whether or not the person had the right to work in the country. Andy Burnham MP, Parliamentary Under-Secretary of State, HC Report, 16 November 2005, col. 1043

We do not expect employers to become experts in forged documents; that would be ridiculous and completely inappropriate. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC121

We do not expect employers to become experts in forgery, nor indeed necessarily to have a great understanding of all the documentation. However, it is reasonable to ask them to look at documents and to check photographs of the person involved. We will be working through the helpline and with the different officers who will be working with them to give support and advice to employers so that they become better at understanding what the documents will do. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 561

s.15(7)(e)

…how frequently one would be expecting to consider documents again... we discussed 12 months as being the point, regardless of whether the employee had a six-month visa and was going to renew it. We are not expecting them to keep track of individuals in that way, but we think that about once a year is right. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 561

…our current ambition is that about every 12 months employers will consider the status of those people who do not have indefinite leave to remain or who may have temporary status. …We want to work with employers to see what works best for them. In some industries, it might be that it would be more effective if on a specific day everyone brought their documents in—for example, 1 April—because that would suit those employers. Others may choose to do it differently. But we do not suggest that employers are required to look more often than that. Even if an employer takes on someone who has the ability to work for six months, we do not expect the employer to remember and go back after six months saying, "Hang on, where are you in this?". Much as I might like that, I recognise that for many employers it might be quite impracticable…. How employers go about this is for them; they may do things differently for their own reasons The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC125

…"regular intervals" would probably be on an annual basis; certainly not less than that. The notion is not that it should be quarterly and an unnecessary burden. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 157

s.15(7)(e) - when employees' documents are with the Home Office

I shall deal as well with the point raised by the noble Lord, Lord Avebury, about someone whose passport is at the Home Office *[applying for an extension of leave]* —the 28-day point. It is right that we have to ensure that the employer is able to get hold of the appropriate person. That has led to a review of the way in which the IND helpline will work, because it is obviously important that verification can take place as quickly as possible. It is a point well made and well taken…. Those who apply in time for further leave will enjoy the right to work while their case is considered. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, cols. GC122-3

Section 16 Objection

See s.15; s.19.

s.16(1)(c)

We can and will consider whether it is appropriate in some cases for the employer who is served with a penalty to pay in instalments over a particular period…I have made the point already about clause 12(1)(c)*[now s.16(1)(c)]* meaning far more than simply, "Let's have a row about the level of the fine." It encompasses those other points about the life and viability of the business as well. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 160

…we are concerned that an employer should not be driven out of business for making an honest mistake in checking an employee's entitlement to work. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC129

It is implicit in this part of the Bill that the Secretary of State can consider the impact of a penalty on the business if it forms part of the employer's objections, which surely it would. Furthermore, Clauses 16 and 17 *[now s.16 and 17]* provide that an employer may object at appeal on the grounds that the penalty is too high. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC129

In appropriate circumstances, we have made it clear that we would enable payments to be made over a period of 12 months. That recognises the financial issues that would form part of the case. However, we are always mindful of ensuring that the deterrent effect we want to see is in place. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC129

We can strike a sensible balance, as we have sought to do, between the civil penalty arrangements and the concerns of the CBI and hon. Members about the viability of business. I fully accept those concerns. This is not about driving businesses, large or small, out of existence. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, cols. 160-161

We will have to make provisions, particularly as some of these fines could be quite large, given the level of transgression. We will have to look further, if we have not done so already, at times for payment and an instalment process. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting 20 October 2005 pm, cols. 154 to 155

s. 16(4)(c)

I also understand the point about the Secretary of State being able to raise the level of a fine if it were appropriate to do so. I want to make it absolutely clear that that would not be done just because someone disputed the fine. They should not feel that such an objection would have any bearing on an increase in the penalty. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC129

…the fine can go up as well as down. It is a useful device in normal circumstances under civil penalty regimes, preventing regular, ongoing, vexatious, capricious and downright chancy applications in the appeal process. Used sparingly, that is appropriate. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 160

We want to retain the provision so that if the circumstances warranted it, the Secretary of State could say that the penalty was too lenient. But the decision would be made only on that basis; it would not be linked in any way to someone bringing forward an objection. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC129

Section 19 Code of Practice

See s.15; s.16.

We say clearly in the draft code of practice that a specific framework will cover gradation, and will offer a more lenient approach to first-time transgressors when partial checks and other elements have been carried out. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 156

Part of the enforcement officers' responsibility will be to offer information and guidance to employers on illegal working legislation when they undertake visits. The draft code will direct immigration officers to do just that each time they serve a caution or a penalty. The Baroness

Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC124

There will be a maximum figure and, if appropriate, the penalty could be zero, £50, £100 or whatever. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC122

The code is applicable at the point of imposition, of objection and of appeal. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC127

…the draft code of practice specifies that the Secretary of State must consider evidence provided of an employer's financial means in determining the objection. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC129

…the draft code will be subject to full public consultation and may well be amended further in the light of the results of that consultation. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1177

Section 20 Orders

See Various - Legislation – HL Select Committee on Delegated Powers and Regulatory Reform.

…the Delegated Powers and Regulatory Reform Committee in its recent tenth report …recommended that, in view of the absence from the Bill of an implied maximum penalty, orders to prescribe a maximum penalty should be subject to the affirmative resolution procedure, thereby ensuring that they are subject to debate and approval by each House. We accept the committee's recommendation to provide that orders made under Clause 15(2) *[now s.15(2)]* will be subject to the heightened level of parliamentary scrutiny required by the affirmative resolution procedure. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC193

Section 21 Offence

See s.15, s.25

The new "knowingly" offence, with a custodial penalty, will be used to deal with those who deliberately use illegal workers but cannot be reached either by the law on facilitation or the original flawed law under section 8. I welcome any contributions to strengthen those provisions, because we need to go in that direction. We are not talking about bona fide employers who try their best to establish what is going on with their employees. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 266

There may even be circumstances where an employer knew that a person did not have the right permission to work but where, we believe, a civil penalty would be a better way of disposing of the issue. The Clause 21 offence is meant to deal with the most serious cases—those involving the deliberate trade in and use of illegal workers. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC121

Section 22 Offences: bodies corporate etc.

See Employment – General – employers,- other offences.

A corporation should not be able to avoid criminal liability for its actions through delegation. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 164

Section 23 Discrimination Codes of Practice

See Employment – General – Illegal Working Taskforce; s.15(7)©.

…we have an ongoing obligation under the Race Relations Act to ensure that this ….measure, and all others on the statute book, comply with that Act. In the normal fashion, it is in part about working with the CRE, which we need to do, and about research once the measure is bedded in for an amount of time and, as is normal for employment law, through regular engagement with the EC system and assorted employment tribunal cases….we are and will remain alive to that issue. Tony McNulty MP, Minister of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col.158

Section 25 Interpretation

s. 25(a) "adult"

…it *[Clause 21, now s.25]* defines an "adult" as

"a person who has attained the age of 16".

…The reason why we are comfortable with the Bill as drafted is that the UK policy on abolishing child labour is based on existing legislation. There is sufficient protection in such legislation prohibiting the employment of children under the compulsory school age of 16. The specific legislation is the Employment of Women, Young Persons and Children Act 1920, which, unlike the Immigration Act 1971, I do not believe the hon. Gentleman was around to see into force. The 1920 Act lays out clearly the restrictions on the employment of young people under16, and for the purposes of this Bill, they are satisfactorily covered by that legislation. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 14

s.25(b) "employment"

The provision is about the legal contract between employer and employee. There is no distinction between public and private employers. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 916

Section 26 Repeal

See also General - other Offences.

s.26 – General - existing offence – s.8 of the Asylum and Immigration 1996

The section 8 legislation to prevent the use of illegal workers, introduced in 1997, before May, was flawed and provided a poor basis for launching prosecutions against employers. Last year, we took action to strengthen section 8 by reforming the system of document checks, and there were 10 convictions. Tony McNulty MP, Minister of State, HC 2nd Reading, 5 July 2005, col. 266

We are bringing forward the measures because the regime introduced by the Conservative party has failed to fulfil its intended function. In the nine years since that regime was introduced, some 17

prosecutions have been brought, but that is not to say that the IND has not carried out many more operations than that to detect illegal working and that it has not detected many more illegal workers than that during the course of its activity. The situation demonstrates the inadequacy of the current offence. Andy Burnham MP, Parliamentary Under-Secretary of State, HC Report, 16 November 2005, col. 1041

Since it *[s.8 offence]* came into force, in January 1997, there have been 17 successful prosecutions…Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 4th sitting, 20 October 2005 pm, col. 146

…there were 17 convictions between 1997 and 2004 under Section 8 of the 1996 Act. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 11 January 2006, col. GC124

INFORMATION

Information - General

Information – General – biometric information

See Various – E-borders and biometrics; s.27; s.28.

…we have begun to roll out…the biometric visa programme. The first pilot began in Sri Lanka, I believe, but the system is now in use at various locations around the world and is producing interesting and encouraging results. …

Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.176

A key component of establishing identity is the provision of a biometric. The immigration fingerprint bureau contains a store of fingerprints against which persons of doubtful identity could be checked before departure from the UK. This is a valuable tool to reconcile immigration records and minimise fraud before the e-borders programme is implemented. It will also help to provide intelligence to prevent people from returning to the UK with false identities. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 306

The ability to use the most effective biometric technology as it develops is an important tool in combating immigration offenders and identity thieves—those who are detected on arrival in and those who are detected on departure from the UK. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 306

Information – General - data protection

See s.32 – General – data protection.

Any disclosures made will have to be in accordance with the Data Protection Act 1998, which requires us to look at the eighth data protection principle subject to exemptions. That means that we have to consider the data protection regimes in other countries. There is quite a wide exemption, which is to do with substantial public interest providers. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC210

There are issues about sharing data between nation states. We need to be clear with whom we are sharing information, on what basis and in what the circumstances and, broader than that, we have to recognise the importance of this. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 569

On the data protection principle, the exceptions that are applied concern substantial public interest. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 569

Essentially this concerns enabling the appropriate level within our police services to share information and give information appropriately. We believe that the safeguards are there. We accept the role of the Human Rights Act, as do the police. We accept the data protection principles, particularly the eighth principle. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 569

Information – General - e-borders

See Various – Airline Liaison Officer, - E-borders and biometrics; Information- General - embarkation controls; s. 27, s.28, s.31, s.32, s.42.

Clauses 26 to 34 *[now s.31 to 39]*are necessary to enable the capture of passenger, crew and freight details in advance of travel. That will assist border agencies, such as the immigration service, police service and Her Majesty's Revenue and Customs, to detect known specific targets or to identify individuals whose travel behaviour indicates that they might be of interest to one or more of the border agencies. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, cols. 198-199

The sharing of data is essential to provide a joined-up approach to border management. It optimises the potential to identify those individuals who present a threat to the UK through their involvement in activities such as terrorism, drug smuggling and illegal migration. It also enables the border agencies to mount an appropriate, co-ordinated and proportionate response. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 199

Capturing data in advance also maximises the time available to determine and deploy the most appropriate intervention action—a key component of the type of proactive, intelligence-led operation that we are trying to address. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 199

The e-borders and border management aim to push back the border to international airports around the world before passengers even get on the plane... Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.196

…we will move towards a full e-border position…probably by 2010. The provisions in the Bill are part of a process. Rather than wait and then have a big-bang flick of the switch, we are already putting resources into embarkation controls; and there is significant recruitment in the immigration service, particularly at warrant officer level. All told, there are some 600 or 700 new posts. Those interim measures will take us from where we are now to the full use of e-borders. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2006 pm 2005 col. 309

Information – General – embarkation controls

See s.42.

... The e-borders and border management projects effectively restore embarkation controls… Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.197

Information – General – human rights

See Information – General – data protection; Various – Human Rights Act.

Regarding human rights, Section 6 would apply to anyone making a disclosure under the Act. We would have to ensure that there is a legitimate aim under Article 8(2); that disclosure is in accordance with the law; and that any interference is proportionate to the legitimate aim. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC210-211

Information – General - national security

See Various – E-borders and biometrics; Miscellaneous – General - national security; s.32; s.38.

… I know from a previous manifestation as a Transport Minister that we were able to stop or turn back flights under security and terrorism legislation. Those powers prevail but, within the context of the Bill, they are not required as they are available elsewhere. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.196

Section 27 Documents produced or found

See Various – E-borders and biometrics, - Immigration and Nationality Directorate; Information – General - biometrics, - e-borders; s.28; s.29.

s.27 - General

It allows immigration officers to require passengers who present biometrically-enabled travel documents to provide biometric information such as fingerprints, to allow their identity to be checked against the documents. That is necessary to support the global roll-out of fingerprinting visa applicants by 2008. Rt Hon Charles Clarke MP, HC 2nd Reading, 5 July 2005, col.198

The clause does give immigration staff powers to detain documents, but those powers already exist—immigration staff could at present detain a document for more than seven days, or until removal. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October am, 2005 col.171

Clause 23 *[now s.27]* simply extends the existing law to other relevant documents to simplify the procedure and make the job easier for front-line staff at immigration control…. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.172

…the purpose of clause 23 *[now s.27]* is to rationalise and simplify the existing provisions so that the same procedures apply to the examination and detention of all types of documents…those powers are laid out under the provisions of paragraph 4 of schedule 2 to the 1971 Act, but a distinction is made between travel documents and "other relevant documents" that may be of use to an immigration officer in their inquiries. Therefore, at present there are two different sets of procedures governing the detention of documents. We believe that it would be easier and more convenient for immigration staff if they could operate under a single code, so the clause rationalises and simplifies those procedures. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October am, 2005 col.171

I hope hon. Members will accept that the clause does nothing more than simplify the existing law…. The power is in existing legislation. …we would expect that power to be used proportionately and legitimately. The aim would not be unfairly to disadvantage individuals in any way. It would simply be used to help the member of staff carry out his official functions. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.172

Where there are neither criminal proceedings nor a pending immigration appeal to which a document is relevant evidence, documents are normally returned when a person is removed from, or decides to leave, the UK. The only circumstances where it may not be possible to return a document is where it is required in criminal proceedings, has been tampered with, is a forgery or contains a forged visa or entry stamp. In such cases, the national authorities of the person concerned are

contacted in order to re-document the passenger and thereby enable them to leave or be removed. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC201

It *[criminal proceedings for which a document is needed]* might be criminal proceedings concerning somebody else. There may be circumstances where it was appropriate for the person to leave, even though criminal proceedings were pending. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC201

We are interested in hanging on to such documents only where they are relevant for the purposes of an appeal or criminal proceedings. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC201

s.27 – general - ARC cards

See s.29 inserting new s.142(2A)(a).

The ARC card is a biometric identity card. …they are a proof of identity that is not currently available to other citizens. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.178

s.27 – general – e-borders

See Information – General – eborders

…the clause *[now s.27]* will initially relate to the verification of biometric visas…it will, in due course, apply to all persons, including UK citizens, with biometrically enabled travel documents, as well as to those who have a biometric visa or about whom biometric information has been recorded. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 176

The clause *[now s.27]* envisages the time when we will all hold biometric travel documents and it gives the power to the immigration officer to verify the person before them at the immigration desk. It gives them the ability to ensure that the reading for the person standing there who places their finger on the machine or looks into the system corresponds with the information held on the chip. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 176

s.27- general - voluntary departure

See Various – Voluntary Returns.

…there is no intention to hinder anybody who wishes to make a voluntary departure. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC201

Clause 27 *[now s.27]* …is not in any way intended to prevent those who wish to travel in or out of the country doing so. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC203

I can assure the noble Lord that it is not our desire to hang on to people who wish to leave voluntarily. They are perfectly at liberty to go. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC205

The critical issue is that, where the individual is allowed to leave the country voluntarily, we would look to get him or her re-documented if we had to hang on to the documents for other reasons—it may have nothing to do with the individual concerned. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC201

s.27(1) inserting paragraph 4(4)(a)

The purposes here could also include possible investigation into forgery or document tampering. There can be a wider application than simply examination which is the point referred to in proposed new sub-paragraph (a). It might sometimes be necessary to make further inquiries about the integrity of the document or the post that issued the visa included in the document. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, cols.172-173

The role that the immigration officer can play can go wider than a simple examination by hand of the document, which is why the clause is drafted as it is…The clause is non-contentious and simplifies the existing the law… Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.173

s.27(1) inserting paragraph 4(4)(c)

If someone was exercising their right to appeal from outside the country, travel documents would have to be released to them so that they could re-enter the country from which they wanted to make the appeal. A person could not regain entry to the country from which they arrived in the UK if they were not adequately documented on their arrival back in their country. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 171

Sub-paragraph (c) considers the situation in which immigration service staff or the immigration and nationality directorate may wish to hold documents until an appeal is heard on a particular case. That is the scenario that sub-paragraph (c) envisages. In considering fully a case before the asylum and immigration tribunal, the IND would want to hold documents pending full consideration and conclusion of that case. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 171

The hon. Gentleman asked about out-of-country appeals. Depending on the outcome of an appeal, the documents would be held until grant of appeal or removal/departure. That is the case in law at present. The Bill does not substantially change the present system; it simply rationalises the process that is in place…I cannot believe that there could be many—if any—circumstances in which travel documents would be retained when a removal had been effected or in which a voluntary return had been made. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.178

It would always be right to enable the individual to receive his or her documents. The hon. Member for Woking asked when people would be given back their documents. That would happen at the point of removal, when the individual has boarded the aircraft to leave the UK. That would be the right time to release the documents. These are points of operation for the immigration service and not for primary legislation. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.178

The overall principle is that we should return people's travel documents to them. As he *[Humfrey Malins MP]* rightly said, it is not a light thing to take someone's documents away from them. We

should return them when they are no longer of any reasonable use to the immigration service. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.178

s.27(1) inserting paragraph 4(5) "external physical characteristics"

The hon. Member for Woking (Mr. Malins) asked in what circumstances a passport may be needed in an immigration appeal. The passport or travel document is often relevant to an immigration appeal—for example, in cases in which the nationality of the individual who is appealing is disputed or in which passport stamps are relevant evidence to the claim that is being made. The document is also potential proof of that individual's identity.

More broadly speaking, immigration service staff retain passports to ensure that, where an appellant loses his or her appeal, he or she can be removed. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.178

…external physical characteristics do not include DNA. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC201

s.27(1) inserting paragraph 4(5) –" fingerprints"

To be clear, the provision significantly enhances the security of travel documents. The strength of the biometric identification system is that people will be unable to hold multiple travel documents. They will be able to register their biometrics only once and therefore the scope to travel on false documents will be severely limited. That is why the clause is important. It will apply generally to holders of all biometric passports in time, and I am grateful to have had the chance to clarify that point. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 176

The definition of fingerprints has been used in other Immigration Acts; it includes scans of fingerprints as well as physical prints. …as I understand it, its meaning has a well documented historical basis in other Immigration Acts. I have just been told that it is not defined in those Acts, but that the term "fingerprints" is used. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC203

Section 28 Fingerprinting

See Information - General – biometrics; s.27; s.29; s.42; Various – Detention, - E-borders and biometrics.

The improvements to immigration officers' powers to examine departing passengers in new clause 9 *[now s.42]* are complemented by provisions in new clause 10 *[now s.28]*. It amends section 141 of the Immigration and Asylum Act 1999, which provides for the taking and storage of fingerprints. It amends section 141(7)(d) to enable fingerprints to be taken from a person who has been detained under schedule 2 powers and to be stored. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, cols. 305-6

The new clause is necessary because many people are detained, particularly at ports, without being arrested. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 306

In particular, new clause 10 *[now s.28]*, in conjunction with new clause 9 *[now s.42]*, will permit fingerprints to be taken from an embarking passenger who has been arrested or detained pending

further examination at an exit control. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 306

In addition to the fingerprinting provisions of section 141 that new clause 10 *[now s.28]* amends, section 144 enables the Secretary of State to make equivalent provision in relation to other external physical characteristics—in particular, features of the iris or other parts of the eye. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 306

We already have powers under the Immigration and Asylum Act 1999 to use "reasonable force" to secure fingerprints should the Bill be enacted. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 309

s.28(4)

New clause 10 *[now s.28]* also amends section 141 of the Immigration and Asylum Act 1999 to enable detention custody officers in immigration short-term holding facilities to take fingerprints from immigration detainees. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 306

Section 29 Attendance for Fingerprinting

See s.27; s.28; Various - Asylum.

s.29 - general

I was keen to make sure that where a prohibitive cost is involved, the person is given a travel warrant by post; or, where the notification is done orally, they may be given the money to get to the required place. In other words, we will ensure that they do not fail to attend because they cannot afford to do so, which would completely defeat the object of the exercise. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC212-213

s.29 - general – notices

As for postal delays and the administrative chaos that could ensue, most notices are handed to individuals in person when they attend the initial interview that all asylum seekers go through. Notices are frequently not put into the post; they are frequently handed to the individual in person. That is why the change can safely be made without causing chaos…I am not saying that the notice would be received in person in every case. There may be circumstances in which it will arrive by post. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.184

In the vast majority of cases, notices will be sent by post to the address recorded on the case information database. Where we need to post a notice, we want to ensure that the period specified is sufficient for them to be able to return for fingerprinting. If they do not attend, we will obviously want to ensure that there was a legitimate reason not to do so and deal with that effectively. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC212-213

…if an individual's circumstances require a longer period of notice, that can be given. I have already said that we will be looking carefully at the travel arrangements that would be required for

an individual or a family in that context. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. 213

s.29 inserting new s.142(2A)

... It is not the intention to place undue pressure on individuals to attend at a time of the system's convenience or to make it extremely difficult for them to do so. We intend to move to a clearer system, where people are given an appointed time within a reasonable time frame, where we do not have to issue them with a temporary standard acknowledgment letter and where we can proceed straight to the ARC card. Those measures will speed up the process and make it more efficient. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.184

…the provision does not extend to those under the age of five… Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.185

It *[the provision]* does not affect a particular group. The requirement applies to all asylum applicants and their dependants. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.185

The majority of claimants will be issued with an ARC card at the first point they present in person or at their initial interview. We want to issue them with that document at the earliest possible time, and that is in their interests, too.

Clause 24 *[now s.28]* deals only with a minority of cases that have to be given an appointed time to return. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.185

s.29 inserting new s.142(2A)(a)

See s.27- general- ARC cards.

…in certain circumstances it is not possible to take fingerprints from or issue claimants with an ARC card at the point at which the application is made, for a variety of reasons. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.183

They *[people applying for asylum]* may be asked to go to an asylum screening unit…section 142 of the Immigration and Asylum Act 1999 provides the Secretary of State with the power to issue a written notice that requires the principal claimant and any dependants to return to a specified place to provide fingerprints. ..Clause 24 *[now s. 29]* makes two amendments to section 142 to bring it in line with our processing procedures, which have become more streamlined and more efficient since the 1999 Act was passed. First, the clause reduces the period between the date given in the notice as its date of issue and the date when an asylum seeker and any dependants can be required to attend for fingerprinting from seven days to three, as has been said. Secondly, the clause enables the Secretary of State to specify a day on which the asylum applicant must attend for fingerprinting, which cannot be less than three days after the notice's issue date. It removes the requirement that the applicant attend at some point during a seven-day period. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.183

Under article 6 of the EU directive on reception conditions, which came into force in February this year, we are obliged within three days of a claim being lodged to provide every claimant with a document issued in their name, certifying their status as an asylum seeker. In our case, there are two

principal documents that can be used to confirm that: the ARC card, which I have mentioned, and a document referred to as a standard acknowledgment letter. …Either can be used to satisfy that document. The standard acknowledgment is obviously a far less secure document than the ARC card.

I am not making the point that we have an EU directive and that is why we have to do it within three days, but the clear expectation is that we issue a document within that time frame, not just for the convenience of the administrative staff, but because the directive recognises that it is important for asylum seekers to have a reliable document as quickly as possible so that they gain access to the support to which they are entitled. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.183

An ARC card is important so that individuals can receive benefits via the post office or other locations. The directive is driven not only by administrative convenience but by a wish to ensure that people are documented as quickly as possible. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.183

The noble Lord, Lord Dholakia, asked me …whether the reduction in the notice period might make it more difficult for them to return for fingerprinting by the appointed time. The purpose is to use it only where we are confident that the asylum seeker will be able to attend within that period and where it is expedient to do so; we have no desire to set an unrealistic time limit for someone. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC212

s.29 inserting new s.142(2A)(c)

The Secretary of State will continue to have the power to specify the time of day or hours—to answer the hon. Lady's point—during which an asylum claimant and their dependants should attend for fingerprinting, as under the existing legislation. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.182 to 183

The hon. Lady asked who would take the fingerprints and raised potential cultural issues. The immigration and nationality directorate is highly aware of those issues and care would always be taken when registering a person's fingerprints. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.185

The clause relates to fingerprints held on the ARC database. Section 141 provides for the destruction of records or prints after 10 years. I say to the hon. Lady that, with regard to immigration control, there is a purpose in keeping records for a period of time. The introduction of biometric visas in certain parts of the world has enabled the immigration and nationality directorate to compare fingerprints taken by entry clearance officers of people applying for visas. On occasion, they have been matched against asylum records and the fingerprints of people whose claims for asylum were turned down. That is relevant information to the entry clearance officers and the IND… Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.187

People's asylum claims will not be held in perpetuity, but for the time in which it is relevant for them to make a claim. The valid period of time for which to hold that data is considered to be 10 years. It is different for UK citizens; we believe that we would all benefit from being enrolled on a national identity register…If we are going to introduce such a system, we need to keep a permanent record of an individual and their unique identifying characteristics. That is why there is a difference. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.188

Section 30 Proof of right of abode

s.30 inserting new s.9(d) & (e)

…schedule 1 to the other legislation *[Identity Cards Bill 2005, now the Identity Cards Act 2006]* describes only what may be on the identity card register. It includes and has always included immigration status as part of the data. That is clear in the schedule…. The terminology in proposed new paragraphs (c) and (d) refers to the Act—what we hope will be an Act—and that of course talks about the interplay between the cards and the database. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.190

Section 31 Provision of information to immigration officers

s.31 - general

Clause 26 *[now s.31]* is simply the definitional building block that bridges the existing law and the new powers outlined in clauses 27 and 28 *[now s.32 and s.33*. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.190

We…have given assurances to industry during our consultation that they will only have to provide the data once…*[we]*… have proposed to do it through an electronic format to a central point. The difficulty with allowing oral requests for information is that we do not want to create any administrative difficulties. We have outlined precisely how we will do it, and we want to make sure that even accidentally we do not ask for the information more than once…That has been accepted by the industry, which I think is comfortable with that proposition. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC213

s.31 - general – human rights

See Various – Human Rights Act.

…all requests from an immigration officer under schedule 2 to the 1971 Act must comply with the Human Rights Act. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.194

As he will see, the Bill is structured such that clause 26 *[now s.31]* amends the 1971 Act, whereas clauses 27 and 28 *[now s.32 and 33]* are new provisions. I can tell the hon. Gentleman that the powers in schedule 2—powers already contained in the 1971Act—must be compliant *[with the Human Rights Act]*. For that reason, there is no need to take that requirement from clauses 27 and 28 into clause 26. I assure him that the fact that we have included it in those two further clauses…indicates that there is no wish to evade the principles of the Human Rights Act, which this Government passed… clause 26 amends the 1971 Act, which is compliant with the Human Rights Act. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.194

The way in which immigration service staff operate must be compliant with that Act…., the powers have been included, and I hope that he will take that as a sign of good faith. Andy Burnham MP,

Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.194

If I understand the effect of the hon. Gentleman's amendment correctly, it would raise the bar slightly by deleting the phrase,

"there are likely to be circumstances in which".

He has raised an interesting point, but I want to explain why we would resist that higher test for the disclosure of information, which is allowed by the order made by the Secretary of State. If we were to agree to the hon. Gentleman's amendment, the Secretary of State and the Treasury Minister would have to be sure that the information provided under clause 27 *[now s.29]* would not breach convention rights. They would have to be sure in advance that there would be no breach. We believe that such a test would be unworkable in practice, because the Ministers concerned would have to have absolute certainty that convention rights would not be breached. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.194

It may help if I explain a little about how e-borders will work. They will work sometimes by general and bulk data being made available to the immigration service and the police, which would make it extremely difficult to be able to have absolute certainty that the information provided would be fully compliant *[with the Human Rights Act]*, …The test that we have imposed in the clause offers sufficient protection. It means that people have to be mindful of the conditions of section 6 of the Human Rights Act. In addition, section 6 of the Act would allow a challenge where a person considered that their convention rights had been breached. The Act imposes a requirement on the police not to use the powers unless that is necessary and proportionate. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.195

The Government introduced the Human Rights Act and we intend that these powers should be exercised with due care and regard to the provisions of section 6 of that Act. We have enshrined it on the face of the Bill in respect of the parts where we need to, but in relation to this clause, the existing legislation is already covered by the Human Rights Act. The day-to-day operations of the immigration service are also covered by the provisions of that Act. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.195

Section 32 Passenger and crew information: police powers

See s.31; Information – General – data protection.

s.32 - general

… advance passenger information is entirely time-limited. As I have already confirmed, extremely limited information is available in advance on what passengers are on what plane at what time on any given day of the year. The wider issue of people travelling, and the nature and regularity of that travel, can be garnered from elsewhere. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 201

s.32 - general - data protection

Concerns about data retention are unfounded in the sense of the limited and immediate nature of the data. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 201

In accordance with the Data Protection Act, the information cannot lawfully be stored for any longer than is necessary. …. It is very time-limited information, which we want to use proactively and in an intelligence-led fashion. We do not wish to use it for fishing. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col. 201

s.32 - general - offences

…the offence for failure to comply is already provided in Section 27 of the Immigration Act 1971, . The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC214

s.32 - general - public awareness

It is entirely fair to say that, as e-borders and the border management programme unfold, we must make people aware that the authorities are likely to hold advance passenger information and passenger record information. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.201

s.32 - general – relationship to paragraph 17(2) of schedule 7 to the Terrorism Act 2000, as amended, and the Schedule 7 to the Terrorism Act 2000 (Information) Order 2002

See Miscellaneous – General – national security; Information – General – national security, - e-borders.

Broadly, the powers under schedule 7 of the 2000 Act are restricted to the counter-terrorism context and to an officer's role as the examining officer. They also allow only specified information to be requested. Through clause 27 *[now s.32]* we seek to broaden those powers, not just in terms of moving beyond counter-terrorism to include serious crime and general policing powers and requests, but also in terms of experience. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.198

It might be the case that the information required concerns a specific flight, which would already be covered under the terrorism legislation. However, if we are to move to a proactive intelligence-led approach, we should take into account that the information required might in some cases—rare cases, I would think—relate to the carrier rather than to a specific flight. More generally, the difficulties and problems in terms of serious crime—immigration-related or otherwise—or terrorism might be specific to a route rather than a specific flight on a route. … In some cases, it might be a general requirement under subsection (2), but in others, it may be specific to one or more specified ships or aircraft. All that we are doing with e-borders and border management is to afford the police and the immigration services as much flexibility as possible. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.198

At present… police have the powers to capture passenger data under Schedule 7 of the Terrorism Act 2000, and those powers are restricted in that context to counter-terrorism. We recognised fully in our discussions with the police that in an intelligence-led approach to managing our borders, the ability to get bulk data in advance is very important because we can better target resources towards

those who present the greatest threat to the UK. We also trust that a more targeted approach means that we are reducing the likelihood of innocent travellers being stopped. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC214

s.32(6)(b) "apply generally"

Clause 27 *[now s.32]* is about broadening the nature of the information available to include e-borders and the border management programme system. The clause goes beyond the information acquisition powers that are currently available under the Terrorism Act 2000. Those powers are extremely limited. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.201

We think that the flexibility afforded by the simple little phrase "apply generally" allows the police the flexibility to, on the one hand, pursue particular routes on an intelligence-led basis and, frankly, on the other, to build up and generate that intelligence in the first place. . Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.199

s.32(6)(d) "six months"

We want to have six months to make sure that the system does not continue indefinitely without an evaluation of whether it is relevant or whether there is a need for the data to keep coming in; but we wanted it to be a reasonable period in which the police could monitor activity on a particular route. …Six months gives us a cut-off point where we can go back and review it properly. . The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC213

s.32(7)

Clause 32(7) *[now s.32(7)]* provides a safeguard to ensure that the Secretary of State specifies information in an order only where he is satisfied that there are likely to be circumstances in which the information can be required without breaching convention rights. That is an important safeguard, but it is also important to note that the police making a request for specified information will also be under a duty, as are all public authorities, pursuant to Section 6 of the Human Rights Act, to ensure that they comply with convention rights. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC214

The problem with the amendment *[which would have reworded this sub-section to read "The Secretary of State may make an order under this paragraph only if satisfied that the nature of the information sought is such it can be required under subsection (2) without breaching Convention rights.*"] is that it imposes an unworkable burden. It requires the Secretary of State to be sure when specifying information in an order, which will necessarily be a process that has got general relevant factors, that the requiring of information will be compliant with convention rights. The Secretary of State will not be able to fulfil that requirement of foresight. As I said, it is unnecessary because there will be an obligation on police officers at the rank of superintendent or above to consider convention rights when making a request. How the Secretary of State will use the power in the generality, combined with the role of the police in the specific requirements and their need to have regard to convention rights, captures the essential point that was raised. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC214

Section 33 Freight information: police powers

See Various – Trafficking.

s.33 - general

Freight is utilised and exploited for people trafficking. …information on freight is absolutely essential in fighting serious crime such as smuggling, immigration offences and people trafficking. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.202

Currently, there are constraints on how the police can access freight information. A police officer can get access to freight data obtained by Her Majesty's Revenue and Customs for those purposes via a Revenue and Customs officer on only a case-by-case basis. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC218

The police need access to routine data in advance in electronic format to help them gain good intelligence on the movement of goods connected with terrorism as well as organised crime. It is essential that they have access to freight data in their own right. The industry recognises that and is working with them to agree the best way forward for providing such information. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC218

s.33 - general – vehicles

Lord Brooke of Sutton Mandeville: Why do vehicles appear in Clause 33 *[now s.34]*, but not in Clause 32 *[now s.33]*?

Baroness Ashton of Upholland: There is no need to include vehicles in Clause 32 because people come into the UK by ships or planes, or by trains through the Channel Tunnel. The provisions will be extended to Channel Tunnel trains under secondary legislation under the Channel Tunnel Act 1987. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC218

s.33 – general - use of s.21(3) of the Immigration and Asylum Act 1999

Lord Avebury: Can the Minister give me an answer to the question about the exercise of powers under Section 21(3) of the 1999 Act? What purposes have been specified in the six years since that Act was passed?…

Baroness Ashton of Upholland: …The answer is none. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC218

s.33(3)(c)

Although carriers may hold relevant information on how goods are being transported, other parties involved in the freight supply chain, such as the importer or exporter or their agents, would be best placed to provide information on the consignments. Tony McNulty MP, Minister of State, Standing Committee E, 5th sitting, 25 October 2005 am, col.202

Section 34 Offence

s.34(1)

Carriers will commit an offence unless they can prove that they had a reasonable excuse for not supplying the information. Passengers and crew members will also be guilty of an offence if they fail to provide information to the carrier without reasonable excuse. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1178

s.34(2)(b)

To comply with the Sewel convention, the police in Scotland can only require passenger, crew, service or freight information for police purposes that are or relate to reserved matters within the meaning of the Scotland Act 1998. The police in England, Wales and Northern Ireland can require passenger, crew, service or freight information for any police purposes. The reason for this difference…is that police powers are in general a matter devolved to the Scottish Parliament. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, cols. 1178-1179

A concern has recently arisen that Clause 34 is insufficiently clear as to whether a passenger or crew member who refuses to provide information to a carrier in Scotland in response to a request from a police constable in England, Wales or Northern Ireland for police purposes, would have committed an offence under English or Scots law. If the request had been made for police purposes, which would, in Scotland, not be police purposes in relation to reserved matters, and the failure to comply was an offence committed under Scots law, this would mean that a UK statute would be creating an offence in Scottish law in relation to matters that are not reserved—namely, general police purposes—thereby breaching the Sewel convention. This amendment *[now s.34(2)(b)]* seeks to put the matter beyond doubt. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, cols. 1178-1179

Section 36 Duty to share information

s.36(1)

…the clause concerns the duty to share information among those agencies and services that come under the purview of the Home Office—the police service and the immigration service—with…Her Majesty's Revenue and Customs, which naturally comes under the Treasury. It is therefore appropriate that both the Home Office and the Treasury are involved in the duty to share information. Tony McNulty MP, Minister of State, Standing Committee E, 6h sitting, 25 October 2005 am, col. 208

Section 38 Disclosure of information for security purposes

See Miscellaneous – General – national security; Information – General – national security; s.32.

s.38 - general

s.38 - general – code of practice

We have already worked closely with the Information Commissioner on the production of the framework code of practice…On 13 October, we published an outline framework for a code of practice on data sharing, in accordance with clause 31 of the Immigration, Asylum and Nationality Bill, between the immigration service, the police service and Her Majesty's Revenue and Customs under e-borders… The Home Office will continue to work with the commissioner's office in the production of the subsequent documentation related to the clause. Andy Burnham MP, Parliamentary Under-Secretary of State, 6th sitting, 25 October 2005 pm, col. 214

The *[government]* amendments *[now s.38]* give the border agencies a discretionary power to disclose travel and freight data to the security and intelligence agencies for specified purposes: national security, economic well-being and support in combating serious crime. The original provisions allowed the reciprocal sharing of data, but we can inform the Committee that those provisions are not necessary, because existing powers in the Security Service Act 1989 or the Intelligence Services Act 1994, which enable the security and intelligence agencies to disclose data to the border agencies for certain purposes, are sufficient. As a consequence of the amendments, the code of practice on data sharing no longer applies to the clause. Andy Burnham MP, Parliamentary Under-Secretary of State, 6th sitting, 25 October 2005 pm, col. 213

s.38(4)(a)

…the only relevant vehicles are those on ferries, which would be covered under passengers and freight, and vehicles coming through the channel tunnel. The Bill, especially the sections that relate to aircraft and vessels, does not mention trains. Trains passing through the channel tunnel are governed by separate legislation, and we shall lay out in an order flowing from that legislation similar provisions to those in the Bill in respect of other transport movements... Vehicles coming through the channel tunnel will be dealt with in secondary legislation. For the purposes of the Bill, vehicles on ferries are covered under passengers and freight. Andy Burnham MP, Parliamentary Under-Secretary of State, 6th sitting, 25 October 2005 pm, col.216 to 217

Section 39 Disclosure to law enforcement agencies

See Various – E-borders and biometrics; Information – General – biometrics.

s.39 - General

…we think that there is already sufficient explanation and definition of the information and the sharing thereof in the Bill without including it in this clause. Tony McNulty MP, Minister of State, Standing Committee E, 6h sitting, 25 October 2005 am, col.220

I think that I am right in saying that thus far, other states are working towards such a joint sharing arrangement and, as and when we deal with other states, there is a mutuality that would almost demand reciprocity. However, I am not entirely sure—I cannot give chapter and verse—whether other states have reached the level of legislation that we have. However, there has been significant progress at the European Union level in working towards data sharing and to a common standard in terms of biometrics and other dimensions. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 am, col. 221

We are very mindful that the sharing of information needs to be done properly and that those with whom we share information need to be operating on the same basis as us, otherwise there are real dangers in the sharing of information, as the noble Lord will recognise. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC210-211

The examples have been given of Zimbabwe and Burma; I am not suggesting that we will be sharing much information with them in the foreseeable future. Even with regimes with which we have a great deal in common, it is important to make sure that the information will be used effectively and properly. The Human Rights Act and data protection are important in that. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC211

s.39 General – human rights

See also Various – Human Rights Act

…anything in the Bill, not least in clause 34 *[now s.39]* will be implemented—we can do a chorus—entirely in accordance with the UK's obligations under the 1951 convention, not to mention the 1951 European convention on human rights. Tony McNulty MP, Minister of State, Standing Committee E, 6^{h} sitting, 25 October 2005 am, col. 219

Responsibilities are put on those who seek to share information under the Human Rights Act…. We do not try to define those states to which we would wish to disclose information. My personal view is that in considering disclosure and taking the two states identified by both noble Lords, Burma and Zimbabwe, we would have to be very careful to observe our human rights obligations for reasons that I do not need to spell out… But the critical factor is that in disclosing information, the chief police officer must take seriously our responsibilities under the Human Rights Act. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC220-221

s.39(1)(d)

Lord Avebury: Before the Minister leaves the question of data protection, will she answer my question about Interpol? …I was asking for information on whether it would be treated as falling within the definition of a foreign law enforcement agency. In fact, we share some police information with Interpol, and I believe that it conforms to the data protection principles and that we have satisfied ourselves on that score.

Baroness Ashton of Upholland: Interpol would be covered precisely as the noble Lord has indicated and for the reasons that he has indicated. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC212

Section 40 Searches: Contracting out

See s.41

s.40 - general

I assure the hon. Gentleman that there is no question of standards being compromised. However, he needs to consider in its entirety the process that is undertaken at ports of entry. Some functions

require less skill and experience than others. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 227

The development will not lead to redundancies…it is not a question of giving this flexibility in order to withdraw or reduce the head count of trained immigration service staff. That is not the purpose of the clause. We are increasing immigration control and if an operation meant any staff being displaced from the front-line work of directly searching vehicles coming in, those staff would be redeployed to other parts of immigration control along the Kent coast. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 227

The hon. Lady *[Mrs Cheryl Gillan MP]* asked where the power would be used; we intend that it would be only within the confines of a port. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 231

The exercise of the functions, if it happens at all, will be dictated by the frequency of arrivals at the port concerned. …The immigration service operates by targeting resources according to the risk associated with the routes operating through any port. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col.227

… If the person detained does not speak English, they will be transferred to the offices of the UK Immigration Service, where there are facilities for the language line—a 24-hour translation and interpreting service. So their needs will be met in that way. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186

s.40 - general – border agencies

…the hon. Member for Manchester, Withington [*John Leech MP]* made a point of asking the Government why it was our intention to create an unregulated security force. I strongly object to that, and entirely refute the suggestion. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 225

Every port of entry now has a multi-agency security team that monitors activities across the port. That team includes the various border agencies, and it is our full intention that there should be even closer working between them. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 228

s.40 - general – inspection

The noble Lord, Lord Avebury, asked about the inspection carried out by the Chief Inspector of Prisons and the statutory right to inspect places of detention. Of course there is a statutory right there. The Children's Commissioner does not have a statutory right, but would be welcomed. In fact, an invitation has already been issued to him. He has not, to my knowledge, been to Calais. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186

s.40 - general – PACE

See s.42.

The Police and Criminal Evidence Act 1984 is not applicable to this function, as subjects are not regarded as criminal—in the way that anybody arriving at an immigration port of entry and then subject to a search is not regarded as a criminal—and are not under arrest. Individuals being

detained are detained under administrative procedures. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 225

…the application of PACE is neither a legal requirement nor, we believe, appropriate and there will be no alternative code. But the contractors will be provided with detailed operational instructions which in some respects will mirror a number of the requirements of the Police and Criminal Evidence Act. For instance, all those detected will be advised in writing of the reason for their detention and the purpose of any search undertaken. Records will be kept. There will be significant safeguards within the proposed layers of scrutiny to ensure that those searching abide by the operational instructions provided by the immigration service. Because essentially the provisions of PACE are intended to protect the rights of those under investigation and facing arrest, the noble Lord will recognise that there are different circumstances, but I hope that I have given some assurances. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 577

s.40(5)

There is no reason why, with adequate training and scrutiny, a private contractor could not perform successfully the operation that we are discussing and allow hard-pressed immigration staff to devote their skills and expertise to areas where they can be more useful… This measure is purely about flexibility. It is not about someone doing the job more cheaply so that we can save money. The point is that we want trained, qualified, skilled immigration service staff to do the jobs in which they can add most value and use their skills most effectively. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col.224

The contractors will be used to fill gaps at small ports and other places where intelligence has highlighted a problem. That is our intention; we do not propose covering all ports. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col.228

…immigration service staff will be supported by contracted organisations if necessary and if the volume and the risk justify that deployment and investment. … Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col.228

Security checks will be undertaken, and training will include cultural awareness, race relations, the legal framework, interpersonal skills and care for vulnerable detainees. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC229-230

Private contractors will work under the Immigration Service, which will be present at the ports where they operate. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC230

Private contractors will be supervised by the Immigration Service and authorised individually. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC230

…those involved in such work need to perform to the highest possible standards, bearing in mind that the care of the individuals concerned is absolutely paramount. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC233

There is no intention to replace warranted staff with contractors. I put it this way: there will be no redundancies. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 577

…we want to ensure that contractors have the proper safeguards in place, that they train their staff appropriately, that it is an individually based contract and so forth. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1185

We retain responsibility and people are properly trained and understand the functions and roles with which they will be concerned. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186

We talked in Grand Committee about the strict safeguards that will apply to the recruitment and the work of the contractors. These include security checks, which will be undertaken in both the UK and France. The training will include cultural awareness, race relations, the legal framework, interpersonal skills and care for vulnerable detainees, including—perhaps I would say especially—unaccompanied minors. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186

…we want to identify a contractor through an open and fair competition that will require any potential bidder to submit references and their work-related history for verification. We further propose that a contract will be awarded on the same basis as that issued to detention custody officers. Firms will have to operate in accordance with their operational policy standard and procedures that are agreed with the IND's detention services department. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186-7

…there will be absolute clarity about the vetting of each individual. . The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1187

s.40(5) - children

See also s.40(5) - vulnerable groups; s.40(5)(ii); s.41(3); Various – Children.

….in talking about vulnerable people, I am including children in that generic term. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC230

Individuals will receive training to ensure that they are fully competent in the care of children. They will not be authorised unless the Secretary of State is satisfied on that point. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC231

Contractors will be required to demonstrate that they have procedures in place to ensure that they provide suitable care for any children that they deal with. As I said, in most cases, we would expect them to be placed in the care of the Immigration Service almost immediately. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC232

I would not want the noble Lord to think that the Government would abdicate their responsibilities to children in any way, shape or form. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC234

I accept that any child found in these circumstances will be among the most vulnerable we may ever find—a child who speaks no English and may not know where he is or why he is here and so on. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 577

I have had good discussions with the Refugee Children's Consortium, with which we shall continue to work to ensure that the provision is right. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 577

The noble Earl and I, and the Refugee Children's Consortium, discussed ensuring that people are properly trained to hold on to young people in particular. They might run away because they do not know where they are and what is happening. It is important that they are held on to for their own safety. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 578

We will ensure that the contractors' training is appropriate and that children who need support from social services get it as quickly as possible. These children could be very vulnerable. If they are unaccompanied, they may even try to run away, and we will ensure that people know how to handle them properly, that we lessen their fears, and that they get the proper support as quickly as possible. We will involve the Children's Commissioner… The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1187

s.40(5) - complaints

The noble Lord, Lord Avebury, was rightly concerned that those who had a complaint would need to know to whom they could complain. At the time, they can complain to the Immigration Service officer in charge, the chief immigration officer, who will be required to refer the matter to the monitor. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 577

s.40(5) – language

…a contractor who is brought in must be able to speak sufficient English to be able to converse with the officers of the UK Immigration Service, under whose supervision they will operate, and to be able to carry out their functions properly. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186

We have to begin from an understanding that we are not delegating responsibility for these activities and the proposals will ensure that the borders receive additional resources. The operation of the UK border remains in the hands of the UK immigration authority…. ensuring that we do not hand over responsibility to private contractors. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186

s.40(5) – juxtaposed controls

It is envisaged that the powers would be useful in the operation of the juxtaposed controls—the controls over the channel where it may not be sensible or practical to deploy fully-fledged immigration service staff or other border controls at all times of the day. Andy Burnham MP, Parliamentary Under-Secretary of State, 6th sitting, 25 October 2005 pm, col.231

The French police will screen all contractors who work on the post, and will check criminal records, including those for sex offences. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186

…no freight searching is envisaged anywhere else other than at Calais port. There is no freight at the Gare du Midi, so that is not relevant in this context. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1186

…the French police will check all those who are to work in the Calais port area, regardless of the nationality of the employee. All persons will be checked for the existence of a criminal record in France. These records contain all charges or other issues around sex offences. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 577

s.40(5) - vulnerable groups

All contractors will be required to submit to the Secretary of State detailed procedures for handling vulnerable groups, including unaccompanied minors. Authorisation will be granted to individuals and will be suspended or revoked if there are any concerns. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC232

s.40(5)(b)

The noble Earl, Lord Sandwich, raised the point about "thinks" and "is satisfied that"… When I say, "I think that" something is right, I am satisfied that it is right. So, for me, the two terms are interchangeable.The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC228-229

s.40(5)(b)(ii)

I can give an assurance that the Home Office will ensure that cultural issues are fully addressed as part of the training. Andy Burnham MP, Parliamentary Under-Secretary of State, 6th sitting, 25 October 2005 pm, col.225

The training that must be included involves, among other things, managing detention anxiety and stress, including the detention of vulnerable trainees; health and safety; suicide and self-harm prevention; and race relations, cultural awareness, and human rights issues. The safety and security of those who will be in the care of the authorised person is of the utmost importance—I want that to be on the record—and must not be jeopardised. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC231

…we will ensure that there is a period of training before authorisation that will include the care of vulnerable persons, including children. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC232

We have to make a differentiation here. On training in relation to children, we want to make sure that those who will deal with such children or people in a vulnerable situation are properly trained in issues like human rights, racial awareness, dealing with vulnerable people in traumatic circumstances, and of course all the issues around children. That is quite different from the kind of skills needed by immigration service officers as a part of their professional training. While they will have the skills I have outlined, they will have other skills as well. I want to differentiate between those carrying out reasonably mundane and regular tasks, but who need to be professional in how they deal with people when they come across them, and those undertaking far more detailed and challenging tasks in order to ascertain where people are and so forth. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC235

One issue to address is to ensure that staff are properly trained to hold a child. The noble Earl knows well from our discussions on children with special needs and behavioural issues that this is

an important point. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC237

I understand noble Lords' need to ensure that the contractors are properly trained. They will have to provide the Immigration Service and the appointed monitors with access to the course material and the opportunity to attend the training they provide to ensure that there is high quality. I am happy *[make]* to that training document available to noble Lords, if they would find it of value. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 576-577

s.40(7)

…at this stage we are not talking about a search that has to be comprehensive in every respect. Immigration officers have powers to conduct further searches if necessary. The purpose of searches is described here, and it is related to the other points about training. They are brief and non-intrusive searches to establish basic facts about what the person is carrying and if there is anything that needs to be drawn to the attention of an immigration officer. Andy Burnham MP, Parliamentary Under-Secretary of State, 6th sitting, 25 October 2005 pm, col.225

The hon. Lady also asked for clarification on the welfare of people in detention, particularly those liable to inflict self-harm…, the detention and search powers are limited. The Bill will allow the searchers physically to search those detected at the earliest opportunity and to remove objects that they might use to harm themselves, but we are not talking about extensive powers of search and detention. The concerns are legitimate, but they are not valid in this case. Andy Burnham MP, Parliamentary Under-Secretary of State, 6th sitting, 25 October 2005 pm, col.229

The powers of the contractors are set out in Clause 40(7) and they are deliberately limited. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 576

s.40(7)(c)

Vehicle searches are currently undertaken by immigration officers who have the power to detain any person seeking to enter the country in a clandestine fashion. The purpose of the legislation is to provide additional resources at optimal cost to allow for the redeployment of those immigration personnel. …it is simply about using resources where they are most effective. It is therefore essential that those undertaking the task be empowered to detain any persons they discover until such time as they are able to hand them over to the appropriate authority. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 229

s.40(7)(c) – " 3 hours"

Contractors will be regulated by close scrutiny from the immigration service itself, which will demand high standards. In addition a monitor will be appointed, as we will discuss under clause 36, to review the operation of the contractor and to investigate any failings. Three hours is the maximum and the clause refers to

"a period which is as short as is reasonably necessary".

People would not need to be detained for that long. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 226

Members of the Committee were concerned about the three hour issue. …it is anticipated that there will rarely need to be anything like that period of time. It is anticipated that people will be detained for minutes only, but we need to give people the power to implement the provision. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC230-231

There is no general power of detention, it applies in a very specific set of circumstances. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC231

The three hours should be seen in the context of the maximum amount of time and not the norm. That is not the intention underlying this part of the Bill. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 578

…we want to ensure that we can hang on to people so that we can hand them over properly. However, when I have discussed the matter with officials, the expectation has always been that you would hand them over very quickly—much more quickly than three hours. The three hours is a maximum limit and the critical point in legislation is to be clear about the maximum limit. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 576

We would expect that *[3 hours]* to be extremely rare. However, it is possible—not because immigration officers are off-site having a cup of tea or whatever—that it may be extended. Let us say that, for example, a number of people have been found, that the officers are trying to move from person to person, and that other incidents may have taken place. There could be a range of circumstances in which that maximum of three hours is important, but it is there as a safeguard and we would expect it to be exceeded only in extremely rare circumstances. The current pilot schemes are different because the private contractors work only alongside immigration officers. Here we are setting up something different, which is why we have set it out this way and have been clear about the maximum time. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 576

Section 41 Section 40: Supplemental

See s.40.

s.41(1)

A monitor will be appointed, who will consider any complaints of failings made against a contractor. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC232

…the independent monitor *[N.B. Monitor is a Crown Servant, see s. 41(1)]* will report back directly to the Secretary of State on those questions. He will monitor the exercise of the powers, inspect the exercise of the powers, investigate and report to the Secretary of State any allegation made in respect of an authorised private contractor. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC230

s.41(3)

Authorisation will be granted only following stringent checks against a number of criminal record databases in the UK and in France, because people operating in France may be French. That will

include the Sex Offenders' Register, as the Committee would expect. They will mirror existing procedures that apply to current contractors who already hold detention and escort contracts. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC232

Of course the checks will be as rigorous as those made in the public sector; that is the whole point. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC234

We do not want anyone to be given access to children who should not have it. I am absolutely determined on that point and I speak on behalf of Home Office Ministers in saying it. The checks must be rigorous and done properly because we have to protect children in all circumstances.The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC234

s. 41(6)

On Clause 41(6) *[now s.41(6)]*, dealing with issues of committing an offence, we would not apply this provision to children. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC237

The point about obstruction in paragraph (c) is aimed at lorry drivers who seek to obstruct searches and therefore would not apply to children. We seek to ensure that children are kept in safety if they seek to run away. If the paragraphs apply at all, it would be for those reasons. However, in no sense would they be committing an offence; that would not apply. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC237

Section 42 Information: Embarking Passengers

See Various – Detention; s.28; s.40 - General – inspection, - PACE.

s.42 - general

New clause 9 *[now s.42]* brings the powers of examination at embarkation control under paragraph 3 of schedule 2 to the Immigration Act 1971 in line with the powers of examination on arrival under paragraph 2 of schedule 2. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 305

The new clause provides for an immigration officer to examine a departing passenger for the purpose of establishing his identity and immigration status and, if that is not clear from the initial examination, to detain and subject the person to further examination until he can satisfactorily establish his identity and/or immigration status. Detention is permitted for a period of not more than 12 hours. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 305

We need to start from the perspective that if we went to the full extent of the immigration service's powers now, which clearly would not be practical, it could arrest everyone about whom they had remote suspicion, if that was its wont. That would not be terribly effective; in today's circumstances, neither would taking a view that as these people are at the door marked exit, they are no longer our concern until they come back to our shores. That would also be inappropriate. This is about striking a balance in the middle…. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 308

Currently, we are able to take all that information from someone only if they are arrested. Clearly, we do not want to arrest everybody… having the facility, which is all that the two new clauses *[now s.28 and s.42]* propose, to establish beyond doubt a person's identity as they are leaving and to take a record of that by biometrics is a more than appropriate halfway house. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 308

…no new centres or new facilities are involved. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col.308

The particular powers under the clause will apply to the immigration service and immigration officers or, where there are stronger concerns, to special branch. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col.310

s.42 – general – legal and other advice.

See s.42(3); Various – Legal advice and representation.

Mrs. Gillan: Before the Minister sits down, will he comment on the individual's ability to contact a legal adviser, or his embassy or high commission?

Mr. McNulty: …The power to detain a person pending examination is an administrative power for immigration purposes, and it is for a maximum of 12 hours. If the individual is subsequently arrested for an offence, the usual safeguards of the Police and Criminal Evidence Act 1984 will apply, including the right to legal representation. It is an administrative device. Before the 12 hours are up, there will be no right to legal representation and none of the other rights afforded by PACE. It is not an arrest for a criminal offence. It is detention under the administrative powers of immigration legislation. If it goes beyond 12 hours, the legal rights and powers under PACE will kick in, but not before—and probably rightly so. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col.310

At present, those detained on arrival under paragraph 16(1) or (1A) of Schedule 2 to the Immigration Act 1971 have access to telephone facilities once they are taken to the holding facilities in the port. The treatment of embarking passengers detained under the new limited power will mirror those existing powers, so people will have access to telephones during that time if they are transferred across. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 581

s.42 - general – information to airlines

If a person is detained and cannot depart on the planned flight, it will be necessary to inform the airline that that person will not be travelling. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 309

s.42 – general – PACE

See s.42 – general – legal and other advice

If the examination reveals grounds sufficient to justify the arrest of the passenger for a criminal offence, he will be arrested and transferred to police custody where…the usual PACE safeguards will apply. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 581

s.42(6) embarkation controls

See Information - General – embarkation controls

Interesting things have been discovered in the context of the embarkation controls that have been restored to varying degrees since 7 and 21 July, but there is a lack of clarity, if not an absence of power, for our immigration services and others at ports to take details and, if necessary, to detain for up to 12 hours those leaving the country in order to ascertain their details. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 305

s.42(3)

See s.40 – general – inspection.

We have said that 12 hours is enough. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 309

…all our short-term holding facilities at airports are already run by the private sector, but it does not carry out the other activities. When it comes to embarkation and the capture of information herein, I understand that immigration and special branch will be involved precisely because it is such a finely focused art. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 310

As the officers go about their business and look for further information or whatever else under today's provisions, which are largely for incoming rather than outgoing passengers, an individual might have to wait in the short-term facility. They would not have to wait in a cell, but the facility would be a secure waiting room, for want of a better term. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 310

…the purpose of holding somebody is—if you like, it is an administrative detention—to establish their identity, nationality and/or immigration status. The vast majority of people, therefore—we are back to maximum times—will be held for much shorter lengths of time than 12 hours. Twelve hours, as I have indicated, is a maximum. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 580-581

As I have indicated, in practice, the detention will be kept to the shortest possible period necessary to satisfactorily establish the person's identity and/or immigration status, after which the person would be released. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 581

. The circumstances that we are describing, with access to phones, a minimum time—we have also put a maximum amount of time—and the fact that this is an administrative detention to establish who the person is are appropriate. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 581

CLAIMANTS AND APPLICANTS

General

See Various – Asylum – limited leave to remain for those recognised as refugees.

Claimants and Applicants - General - Immigration and Asylum Act 1999- s.4

See also s.43(7); s.44; Various - Asylum - return of failed asylum-seekers – families with children.

Claimants and Applicants - General - Immigration and Asylum Act 1999- s.4 - who gets s.4 support?

…we are talking about people whose every avenue has been entirely exhausted—people, including Iraqis, who have a voluntary return route. Hundreds have already returned, and hundreds are in the pool to do so. To suggest that they have no safe route back and are restricted to a twilight zone of section 4 is wrong. That is not the case at all…The notion that section 4 cases concern those whom it is not possible to return…is factually inaccurate in most cases under section 4—that is, those Iraqis from north Iraq. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, cols.234-235

Section 4 support is currently provided for, in the main, failed asylum seekers who are temporarily prevented through no fault of their own from leaving the UK. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 581

The hon. Member for Buckingham (John Bercow) mentioned that there might be difficulties with the safety of the removal process, among other things, and I accept that…it is not the case that thousands of people are languishing under section 4 support. Many of those who have returned voluntarily—principally, as my hon. Friend the Member for Walthamstow *[Neil Gerrard MP]* suggested, to northern Iraq—were on section 4. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, cols. 926-7

Claimants and Applicants - General - Immigration and Asylum Act 1999- s.4 - health care for those on s.4 support

They are provided with that health treatment which is immediately necessary free of charge under primary care. Under secondary care they can receive a number of services free of charge. To ensure that we have dealt with issues of accessing primary and secondary care we are at present considering, with colleagues from the Department of Health, the eligibility for failed asylum seekers for whom there is a temporary barrier to leaving the UK. I shall come back to your Lordships on that, but there is access to care; I would not want our deliberations to suggest otherwise. We need to think about it more carefully in the light of what the noble Lord has said, and more generally in any event. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 586

General - Immigration and Asylum Act 1999- s.4 - problems with s.4 support

I agree with my hon. Friend the Member for Walthamstow (Mr. Gerrard) that problems may arise in connection with people who suffer under section 4 for a long period of time. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 926

I do not pretend that the regime under which they live is terribly pleasant—it is meant to be temporary, although I take the point about longevity. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, cols. 927-928

Claimants and Applicants - General - Immigration and Asylum Act 1999- s.4 - s.4 and removals

The new targeted contracts, under the National Asylum Support Service, will afford people support and dignity while the section 4 regime prevails and we concentrate more on their removal. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 928

Claimants and Applicants - General - Immigration and Asylum Act 1999- s.4 - support provided under s.4

The Government believe that the cash-based regime applicable to all people going through the asylum process should be distinct from the process endured by those receiving section 4 support, as such people have exhausted all the legal processes, including appeals, and have no right to remain in this country. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 926

…for the robustness and integrity of the system, it is right and proper that people on section 4 support, who have exhausted all avenues and have no substantive legal right to remain in the country, should, as a prelude to their departure, be on a different regime to those who are still going through the system. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 928

There is an overall package—it is not just the vouchers. That package is temporary and it is about a prelude to a removal. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 930

Where possible, section 4 support consists of the provision of full board and accommodation. It is not true that the people involved get a mere pittance in vouchers, and no more. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 927

…when people covered by section 4 cannot get full board and accommodation where they are located, the difference is made up by means of vouchers…. the law provides for vouchers to be given in lieu of full support and accommodation only when that entitlement cannot be provided. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 927

Under the NASS contracts, a substantive package of support is provided to those who find that they require section 4 support. Such support is supposed to be all-embracing—and to the extent that it can be, it is—for the duration of the time before people depart. The fact that that cannot always be so led to vouchers and some additional support for food or essential toiletries. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 928

Claimants and Applicants - General - Scotland – housing

[NB – as is clear from the discussion below, this debate relates to a clause tabled for Commons Report but then withdrawn, which never became part of the Bill nor the Act]

Mr. Carmichael: …will the Minister say why the Government tabled new clause 3 on access to the housing list in Scotland, which is clearly a devolved matter, and why they then withdrew that provision?

Mr. McNulty: …The new clause was tabled on Report. I think—people far more expert than I will tell me if I am wrong—that was at the behest of the Scottish Executive, not least because there was an assumption that there is a grey area between what is a UK matter and what is devolved in regard to what we are doing in the Bill. Between the tabling of the new clause and our considerations today, there was a court case that rendered the form and the language of the new clause inappropriate. …Working with the Scottish Executive, it was determined that the clause needed to be tabled. The Court of Appeal in the case of Morris *[R(Morris) v Westminster CC and First SS [2005] EWCA Civ 1184]* —we got the final judgment this week—made a declaration of incompatibility in respect of section 185(4) of the Housing Act 1996, holding that that provision was within the ambit of article 8 of the European convention on human rights and breached article 14, as it discriminated on grounds of nationality, immigration control, settled residence and social welfare.

New clause 3(1)(d) is in the same terms as section 185(4) and, although it does not apply to persons subject to immigration control, but only to other persons from abroad—essentially European Economic Area nationals—which was the point of the new clause, it has the same potential for discriminatory effect. A petition has been filed in the House of Lords seeking leave to appeal. That is the present position. As the new clause was incompatible with section 185(4), it was withdrawn. I shall let the hon. Gentleman know in more detail about its gestation, but it originated from discussion between the Home Office and the Scottish Executive. Tony McNulty MP, Minister of State, HC 3rd Reading, 16 November 2005, col. 1064

Section 43 Accommodation

See Claimants and Applicants - General – Immigration and Asylum Act 1999 s.4; Various – Asylum.

s.43(7)

The amendment to Clause 43 *[now s.43(7)]* will enable the Secretary of State to make regulations to provide for additional needs to be met for those in receipt of support under Section 4 of the Immigration and Asylum Act 1999. The provisions will ensure flexibility, both now and in the future, to meet essential needs not directly connected with the provision of accommodation. Such needs might include, for example, travel to essential appointments and essential supplies for new mothers, such as baby clothes. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 581

The vouchers also cover the bare essentials when it comes to toiletries, but that is not enough. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 927

…it is right and proper to expand that provision to support in kind in goods and services. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 931

We are broadening the system to provide things in kind, which are not currently allowed under the regulation, such as the bus pass to get to an urgent medical appointment, to which my hon. Friend referred, and broader goods and services. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 927

Concern has been expressed that the narrow definition of food and essential toiletries could be extended to cover everything possible. The definition will be made clearer in regulations, but it will certainly cover nappies and other essential goods for new mothers, where there has been confusion, about which a fair point was made. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 927

I assure the House, and certainly my hon. Friends, that that will cover things such as bus passes for serious and necessary appointments and all the points made about lack of definition such as where essential toiletries finish and other elements begin. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 928

…we are trying—again, this is outwith the Lords amendment—with the new targeted contracts to get far more direct contact with individuals on section 4 support and to get them involved in the NASS contracts. It is no longer simply the case that someone can be sent a letter in the hope that they will receive it so that they will know exactly what they need to do and in what circumstances. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, cols. 929-930

Those who provide section 4 support give vouchers as part of their contract when they cannot provide full board and accommodation, so there is no further cost.. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 927

Section 44 Failed asylum seekers: withdrawal of support

See Various - Asylum - limited leave for those recognised as refugees.

s.44 - general

…the Government take very seriously the matter of ensuring that people who have exhausted the process recognise that we expect them to go. There is sometimes a dilemma in ensuring that that happens—voluntarily where possible; that is the most appropriate method. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 587

Further implementation of the provisions of Section 9 will depend on the outcome of the evaluation… The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 587

s.44 – general - Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) - s.9

…these families have exhausted all rights of appeal and all legal status to be in this country. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 237

…I suggest that by not co-operating on the voluntary return, and therefore maintaining support until such a return, the family put themselves in that position. If there is any fault, it is theirs. However, there are concerns about the interplay with the Children Act 1989 and about a range of other matters. That is why we have made it clear that there will be a full review and evaluation of the current position before any attempt is made to implement section 9 on a national basis. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 237

…we are talking about a small number of families ..here we have four written warnings telling them that their support will end and that they have gone through the entire process and are not, under any circumstances, entitled to stay here. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC247

s.44 – general - Asylum and Immigration (Treatment of Claimants) Act 2004 (c.19) - s.9 - evaluation

I have tried to ensure, too, that not only the Home Office and NASS, but also the Department for Education and Skills—given the concerns about the 1989 Act—will be involved in the evaluation process. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 237

The Children's Commissioner has met the head of IND to discuss Section 9. The observations that he made will form part of the evaluation. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC248

On whether the evaluation would consider the effect on children, it will take into account the representations and views of NGOs and local authorities. My brief does not tell me whether children will be interviewed. I do not know the answer to that, but there will be opportunities for children's organisations to make representation. …I can confirm that it includes the ADSS. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC248

s.44 – general - Asylum and Immigration (Treatment of Claimants) Act 2004 (c.19) - s.9 – evaluation – controls

… the pilot included an equal number of control cases outside Section 9. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC248

s.44 – general - Asylum and Immigration (Treatment of Claimants) Act 2004 (c.19) - s.9 – evaluation – criteria

The evaluation criteria will look at whether there is an increase in voluntary departures and removals, whether there is a decrease in support costs and whether there is a more efficient end-to-end process. Those are classic statistical evaluation criteria which will form a part of the evaluation. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, col. GC248

s.44 – general - Asylum and Immigration (Treatment of Claimants) Act 2004 (c.19) - s.9 – evaluation – publication

I shall make the results of the evaluation process, or at least the headline figures, as public as I can so that there will be time for debate before we move on to national implementation of section 9. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 237

I can say without pre-empting the outcome of the evaluation at all—not being interested in courting controversy for the sake of it—that if section 9 works and achieves what we want post-evaluation we may well go in that direction. I am not interested in what is apparently a hard-edged, nasty

bogeyman measure that does not achieve what we want. I shall view the evaluation in that context. … Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, cols. 237 to 238

s.44 – general - Asylum and Immigration (Treatment of Claimants) Act 2004 (c.19) - s.9 – statistics

…I think that in the pilot areas support has been withdrawn in 38 or 39 individual cases. My hon. Friend is entirely right; no one has returned yet on a voluntary basis, but in 15 cases the paperwork is being processed with a view to return. The thing is in the balance, and I happily give the Committee an undertaking that the review and assessment will take place before any roll-out…Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 237

… I understand that some 116 families were included in the pilot and that in 42 cases the decision to terminate was taken. The termination actually took place in 21 cases. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 17 January 2006, cols. GC248-249

Section 45 Integration loans

s.45 – general

See Various – Asylum - limited leave to remain for those recognised as refugees.

…the *[government]* amendments *[extending scope of clause beyond Convention refugees recognised in the UK to include inter alia humanitarian protection and Gateway protection programme]*…extend support to people who are trying to create a new life in this country, and who need our support and our warmth at a time when they are most isolated. I commend the amendments to the Committee. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 240

s.45 – general - Gateway protection programme

…the Bill seeks to extend our flexibility to provide that support more widely to people under that *[the Gateway Protection]* programme. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 240

s.45 – general - humanitarian protection

The *[government]* amendment will enable the Government to extend eligibility for integration loans to other categories of migrants. …As currently defined, eligibility for an integration loan extends only to those who have been granted full refugee status. We believe that the legislation should be sufficiently flexible to allow for the inclusion of further categories in future. For example, those granted humanitarian protection under article 3 of the European convention are subject to many of the same policies as those granted refugee status. We believe that there may be a strong case for affording that group of people the same treatment in this regard too. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 239

s.45 – general - limited leave for recognised refugees

See Various – Asylum - limited leave to remain for those recognised as refugees.

…the very fact that we are making the loan available to people granted five years' leave suggests that we are keen to help them to create a new life here. The purpose of the loan is to enable them to put down roots, to find their feet in their new communities; it is about good integration. Andy Burnham MP, Parliamentary Under-Secretary of State, 6th sitting, 25 October 2005 pm, col. 242

The purpose of the change that we announced in the five-year strategy was simply to align our system with the refugee convention and to ensure that we would honour our commitments to give people full protection for as long as they needed it, but without creating a pull factor for immigration into this country. However—this is the purpose of the clause—it is fully our intention that, where such protection is granted, we should help people to integrate well and in such a way that they can add to the community to which they have become attached. That would not involve just a refugee integration loan; it could involve help from a caseworker under the SUNRISE—Strategic Upgrade of National Refugee Integration Services—scheme or a range of other support that Government Members remain committed to keeping in place. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 243

Section 46 Inspection of detention facilities

Mr. Neil Gerrard (Walthamstow) (Lab): The provisions to extend the competence of the prisons inspector are welcomed. Will my right hon. Friend confirm that all detention facilities in the United Kingdom in which asylum seekers or failed asylum seekers might be held will be covered, as we are concerned not just about failed asylum seekers but about those in facilities such as Oakington whose asylum claims have not yet been determined?

Mr. Clarke: Certainly, that is the intention. …The reason for that is simple. Because of the concerns that are expressed, it is important for an independent inspectorate to examine conditions across the range of facilities. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 199

…clause 39 *[now s.46]* simply puts on a statutory footing that which already prevails. …most of our ports have non-residential holding rooms, as do our immigration service enforcement offices. This measure will cover four residential facilities, at Colnbrook, Manchester airport, Dover and Harwich, but it simply regularises the position that prevails at the moment. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, cols.243-244

Clause 45 *[now s.46]* puts HM Chief Inspector of Prisons' voluntary oversight of short-term holding facilities and escorts on to a statutory footing…The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State DCA, HL 2nd Reading, 6 December 2005, col. 519

Section 47 Removal – Persons with Statutorily extended leave

See also Appeals – General – legality; s.11; Various - legality.

NB Provisions relating to variation appeals, including s.47, were extensively amended at HL Report on 7 February 2006. Statements before that date relate to earlier versions of the provisions and are included where they give assurances as to the intention behind the provisions as finally included in the Act.

s.47 - general

We want to get to a stage where we have a one-stop appeals system. ..It is a comprehensive appeal process. Tony McNulty MP, Minister of State, Standing Committee E, 2nd sitting 19 October 2005 am, col. 60 *[speaking on an earlier version of the provisions relating to variation appeals]*

We intend to clarify things…so that the practice is, as it is now…that people are not pursued, hounded and criminalised between the expiration of their leave and the outcome of their appeal. …there is confusion in the Bill and in the terms, we will need to amend the Bill *[the Bill was subsequently amended]* and reflect the amendments in the rules. In terms of leave, we must get to a stage—this is a fair point, however disingenuously put by some—at which people are not affected at all until the exhaustion of their last appeal against removal. That is the situation that prevails now, anyway.

However, it must be right that, under this new system and, indeed, the existing system, people apply for extensions or durations before leave is extended Tony McNulty MP, Minister of State, Standing Committee E, 2nd sitting 19 October 2005 am, col. 60

The hon. Member for Chesham and Amersham *[Mrs Cheryl Gillan]* asked me to clarify that it is our intention to allow appellants to challenge the quality and the decision reached in the initial circumstance so that the first decision could be fully contested at that single appeal. We fully intend to allow that possibility. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 2nd sitting, 19 October 2005 pm, col. 76

…if the asylum and immigration tribunal accepted that the earlier decision either to refuse to vary or to curtail leave was wrong, the appeal against the latter decision to remove would succeed. Andy Burnham MP, Parliamentary Under-Secretary of State, Standing Committee E, 2nd sitting, 19 October 2005 pm, col. 77

Our intention behind these amendments is to allow variation and removal decisions to be made simultaneously and for both decisions to be contested at the same appeal. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 519

Under these provisions, appellants will be able to contest variation and removal decisions at the same appeal, while continuing to remain in the UK with continuing leave. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 519

Amendment No. 42 *[now s.47]* creates a new power to make a decision to remove someone from the United Kingdom. The intention behind the amendment is to allow the enforcement decision to be made at the same time as the decision to revoke, curtail or refuse to vary leave. When two such decisions are made before an appeal is lodged, the tribunal will, by virtue of Section 85(1) of the 2002 Act, be required to deal with matters in a single set of appeal proceedings. That will address the issue of variation and removal decisions, triggering the separate appeal. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 520-521

…we have created a power to make a removal decision while a person's leave is extended by statute. That will put the onus on the Government to make variation and removal decisions simultaneously in order to gain the benefits of that provision. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 902

Appellants will be able to contest a decision to curtail or to refuse to vary leave at the same time as they can contest a decision to remove them from the UK. That right of appeal can be exercised while in the UK and the appellant will continue to enjoy leave, on the same terms as before, during

the appeal process. For example, a student will be able to continue studying throughout his appeal proceedings. Again, the position is the same under existing legislation. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 902

…there is a backstop to all the options in the shape of natural justice and all the other elements of given rights, and a full deliberation on all aspects of an individual's case at the one-stop appeal. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 902

The hon. Member for Ashford *[Damian Green MP]* made a fair point when he asked for an assurance that the new powers would not subject people to restrictions over and above existing powers that apply to a person with an in-country appeal against a decision to refuse, vary or curtail leave. I happily give that commitment. The amendments create a new power to make a removal decision while a person has continuing leave, but they do not create new powers to restrict a person's activities, so because people will have continuing leave during an appeal they cannot be detained, or required to report, during the currency of their appeal. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 904

…people will have continuing leave on the same terms; for example, if they were able to work before the original decision, they can continue to do so before the appeal. Tony McNulty MP, Minister of State, Commons Consideration of Lords Amendments, 29 March 2006, col. 904

s.47- general – human rights

See Various – Human rights

…when an applicant alleges that removal would breach his rights to private and family life under article 8, his appeal against the decision would be in-country unless the article 8 claim was certified as clearly unfounded under the appropriate section 94… Generally, when there is acceptance of a human rights claim, the appeal will be in-country rather than otherwise. It would never be possible to remove someone from the UK without their human rights being considered. Tony McNulty MP, Minister of State, Standing Committee E, 1st sitting 18 October 2005, cols. 28-29

As to ..civil partners and spouses, the noble Lord, Lord Avebury, quite rightly indicated that many, if not all, of them would appeal under Article 8—the right to family life—in any event. That is what I would expect them to do. On that basis, they would remain here while their appeal was being dealt with. The Baroness Ashton of Upholland, Parliamentry Under-Secretary of State, DCA, HL Grand Committee, 9 January 2006, col. GC 44

Section 48 Cancellation of Leave

Clause 40 *[now s.48]* provides that where a person has breached the conditions of limited leave, or has obtained leave to remain by deception, leave is invalidated when he is served with a decision to remove him from the United Kingdom. Rt Hon Charles Clarke MP, Home Secretary, HC 2nd Reading, 5 July 2005, col. 199

Section 50 Procedure

See Various - Legislation – HL Select Committee on Delegated Powers and Regulatory Reform

…the Government are willing to concede that the consequences of non-compliance should be set out clearly in immigration rules and not be provided for administratively. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1020

…the Government have considered the views of the Delegated Powers and Regulatory Reform Committee about the powers in Clause 48(2) *[now s.50(2)]* . These were that by exercising a power administratively, as in requiring applicants to follow particular procedure, the Government will be doing away with parliamentary scrutiny of the procedure. The Government accept the point and seek to introduce the amended Clause 48 so that any mandatory procedures required of applicants will be set out in the immigration rules. We still wish to set out administrative details, such as what information and documents are required, and to be able to change this easily, where necessary. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 582

Section 51 Fees

s.51 – general

Dr. Harris: ..As I understand it, when the Home Office first introduced charging for applications, the then Home Office Minister wrote on 23 September 2003 to the Immigration Law Practitioners Association. The letter said:

"The fees are set under Treasury rules to recover the full administrative cost entailed in considering applications and no more. This is calculated by taking the overall costs of processing applications divided by the number of decisions we expect to make."

I shall be grateful if the Minister will confirm that there is nothing in the clause that changes that.

Mr. McNulty: …There would need to be an express power in legislation in order to recover more than the full cost of the application. The important thrust of the hon. Gentleman's comments is entirely right and there would need to be legislative change for that to be otherwise. Standing Committee E, 6th sitting, 25 October 2005 pm, col. 248

s.51 – general - amount of fees

…the fees, which I do not accept are exorbitant, reflect the cost of the process, as we have just discussed. The numbers of applications and everything else across the whole business have increased significantly since the early '90s, and the fees merely reflect that. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 250

s.51 – general - ethnicity

I urge the hon. Member for Oxford, West and Abingdon at the very least to read the Institute for Public Policy Research report, "Beyond Black and White: Mapping New Immigrant Communities". The notion that the fees fall disproportionately on ethnic minorities is simply not borne out by the work of the immigration and nationality directorate across the piece. In the gentle south-east, the second and third largest communities of foreign-born people are French and South African. This is not simply a black and white issue. Tony McNulty MP, Minister of State, 6th sitting, Standing Committee E, 25 October 2005 pm, col. 250

s.51 – general – unsuccessful applications

…it costs the same amount to process a failed application form, an application form that in the end gets less *[leave]* than applied for, and one that gets the full amount applied for. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, col. 248

s.51(2)(c) "advice"

There is no intention under this bit of the clause to charge individuals for any advice given in terms of their individual cases or mandatory requirements. We reserve the right in terms of representatives or agents, but not in relation to individuals. Tony McNulty MP, Minister of State, Standing Committee E, 6th sitting, 25 October 2005 pm, cols. 243-247

MISCELLANEOUS

General comments on sections 7, 42, and 53 to 58

Miscellaneous - General - national security

See Various - E-borders and biometrics, - Memoranda of Understanding; Appeals – s.7; Information – s.32; s.38.

The Bill is about immigration, asylum and nationality law, and the new clauses are about changes to that law in terms of what is happening now in our wider counter-terrorism initiative. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 268

Those provisions will deny asylum to those involved in terrorism and speed up the appeals process in national security deportation cases. They will also extend our powers to withhold and to remove British nationality and the right of abode in the UK where an individual is found to have engaged in behaviour which creates a climate in which extremism can take root. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 516

Miscellaneous - General - national security – asylum and national security

See Miscellaneous - General - Terrorism Bill 2005, now Terrorism Act 2006 – links.

The idea that we subscribe in any way to the notion that asylum seekers are problematic, and that it is appropriate to include these amendments in the Bill because asylum seekers are inextricably linked to terrorism, is nonsense. People should understand that this is the appropriate place to amend those parts of the legislation in terms of the wider backdrop of what we are doing. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 268

I am…more than happy to associate myself with the remarks made by the hon. Member for Woking *[Humfrey Malins MP, Conservative]* about uncoupling the spurious notion that asylum seeker equals terrorist equals problem. That is nonsense. It is just that this is the appropriate place to put the amendments in terms of the scope of the Bill. It would not have been appropriate, given the scope of the Terrorism Bill, to include them in that Bill. They sit more appropriately in this Bill, but the idea of a causal link is wrong. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, cols. 268-9

Miscellaneous - General - national security – use of force

See Miscellaneous - General - United Nations.

People are saying that there are circumstances, in this day and age, in which we fully support murder. I do not accept that there are. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 294

...I cannot think of one explicit public pronouncement by a Government, in statute and certainly historically, that, with the exception of world wars, they fully endorse liberation movements or killings.

I accept the point…about the United States' support of the Contras. My hon. Friend will remember, however, that the fact that such a policy existed was not exactly in the public domain from the outset. It was drawn out kicking and screaming. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 294

It is, in part, pettyfogging to talk about national liberation movements in 2005. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 295

Through our foreign policy, we have positions against particular Governments whom we do not like and would encourage democratic opposition. It is a long way from there to say that it is all right because we have some sort of repression barometer and if the reading is over seven out of 10, it is okay to kill, maim and destroy innocent people. It is not. That is where the terrorism definition starts… I was going to have a dig at the interwar coalition Government for not supporting the Spanish republic. That was quite the opposite situation. It was a state that we should have supported. There was an almost formal terrorist threat from insurgents in their own army. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 295

We have also made it clear that we do not believe that there are any circumstances in which terrorism is justified, wherever the terrorist act is committed; we cannot condemn terrorist acts in the United Kingdom but tolerate them elsewhere. . Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 284

Miscellaneous - General - genesis

We have come to a series of new clauses that relate not just to the events of 7 and 21 July, but in part reflect our wider response over the last year to the general terrorist threat. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 254

…provisions were added to the Bill after the cross-party deliberations in July…The measures are aimed at people who threaten the UK's national security and engage in unacceptable behaviour that creates a climate in which extremism can take root. Tony McNulty MP, Minister of State, HC 3rd Reading, 16 November 2005, col. 1066

…following the events of 7 and 21 July, the Government undertook a thorough review of our immigration, asylum and nationality laws in the light of the heightened risk from terrorism. As a result, we have brought forward a number of additional provisions, which were added to the Bill during its consideration in another place. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, Lords 2nd Reading, 6 December 2006, col. 516

Miscellaneous - General - numbers affected

I do not believe that the measures *[provsiions added to the Bill on national security, see – genesis, above]* will impact on large numbers of people in practice. Tony McNulty MP, Minister of State HC 3rd Reading, 16 November 2005, col. 1066

…there is a narrow focus to each of the new clauses, which applies not to millions or thousands but to small, albeit significant numbers of people. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 254

Miscellaneous - General - Terrorism Bill 2005, now Terrorism Act 2006 - links

See Miscellaneous - General – National Security – asylum and national security.

…of course, the backdrop to our deliberations is the proceedings on the Terrorism Bill in the Chamber last night. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 254

… the new clauses are specific to particular matters relating to asylum and immigration. While the wider proceedings on the Terrorism Bill are germane, I ask the Committee to bear it in mind that there is a narrow focus to each of the new clauses,…Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 ctober 2005 am, col. 254

…as much as we possibly can, given that the Terrorism Bill is the backdrop, there may be cross-referencing in terms of words, definitions and criteria. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 254

It is not for me to pre-empt the passage of the Terrorism Bill, but it may be amended and in so far as the two parliamentary procedures align, we will try to ensure that there is appropriate cross-referencing of definitions and criteria as well as clauses. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 254

…it is right and proper to align definitions and criteria in the Terrorism Bill with this Bill as much as we can as they proceed through both Houses. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 285

Miscellaneous - General – terrorism - definition

There is no internationally accepted definition of terrorism… Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 296

Miscellaneous - General - unacceptable behaviours

…as much as we can align what results from our consideration of the Bill with what is going on in the Terrorism Bill, we will try to do so, because that makes perfect sense. I have no doubt that this *[list of unacceptable behaviours]* is one area in which matters will evolve. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 254

…on 24 August the Secretary of State issued a statement in which he went through a series of unacceptable behaviours. ..We have included in our thinking conduct seriously prejudicial, war crimes, serious crimes, threat to public order and actions prejudicial to relations between the UK and another state. We do not believe that we should set out an exhaustive list…because there might be circumstances in which a future Secretary of State could lawfully be satisfied that deprivation was conducive to the public good. That is why we are resisting the inclusion of a list in the Bill. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 585

Miscellaneous - General - United Nations

See s.55.

It is glib to talk about freedom fighters and terrorism, but are we as a Government, on statute, really able to condone murder and the killing of people? The answer must be no. The answer in Security Council resolution 1566, which was passed nem. con., is no. That resolution does not go far enough… The UN Security Council resolution would not cover, for example, the Provisional IRA's announcement that it was back and had not gone away when it blew up Canary Wharf, because the

explosion killed people. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 294

I have passed on material to Committee members that puts the more modern language of the UN on such matters into the wider context of terrorism. We have tried to reflect that in the new clauses. We are still with the spirit and the grain of the United Nations. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 272

Section 53 Arrest Pending Deportation

s.53 – general

The clause *[now s.53]* confirms that the power of arrest in deportation cases is available when notice of intention to deport is ready but has not yet been given to a prospective deportee. The clause will ensure that immigration officers and constables can continue to seek a warrant to enter named premises in order to search for and arrest a prospective deportee and serve him with a notice of decision to deport. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 279

I assure the Committee that all previous warrant applications were lawful; they were properly made and lawfully granted. The new clause effectively puts into statute the current practice, which is entirely lawful. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 279

As I understand it, the new clause relates to arrest and detention pending deportation and is not specific to terrorism; it is simply broadening things out. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 280

s.53 – general - PACE

See s.40 – general – PACE; s.42.

Dr Evan Harris….Section 145 of the 1999 Act provides for immigration officers to have regard to codes of practice when exercising these powers. …

Mr McNulty… Given that it refers only to arrest and detention pending deportation and not to arrest for criminal offences, PACE does not apply. That has always been the case. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col.280

s.53 – general - warrants

…a person can be arrested without warrant pending deportation. The warrant is more about the ability to gain entry to and search premises to effect the arrest. As I understand it, the warrant is not required in the first instance to arrest someone pending deportation. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 280

Section 54 Refugee Convention Construction

NB: The Bill as originally presented to parliament contained only one clause on this subject, the (amended) provisions of which were split between s.54 and s.55 at HL Report. Therefore see s.55 also.

See Miscellaneous - General – national security – use of force; s.55.

s.54 – general

It *[precursor to s.54]* is probably the most substantive of all the new clauses. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 294

...the new clause has not only been introduced as a result of 7 July, although those events obviously brought things into stark focus. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 285

I appreciate the "good terrorist", "bad terrorist" and "terrorist versus freedom fighter" undercurrents to the debate, as well as the broader issues that are being deliberated on elsewhere in far more depth and detail. The Committee must remember that we are dealing in a narrower sense with immigration and asylum legislation and rules. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 285

We believe that, in light of the heightened threat from terrorism that this country faces, it is appropriate to legislate to provide statutory backing to the accepted practice that terrorists and suspected terrorists should not be afforded the protection of the refugee convention. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC264

s.54 - general - ATCSA s.33

…after the introduction of the Bill, we identified an overlap between the appeal provisions in Clause 52(2) and Section 33 of the Anti-terrorism, Crime and Security Act 2001 as regards appeals on Article 1F of the refugee convention.

The provisions have a similar intention; that is, to provide in cases where the Secretary of State considers that a person's criminality or other activities excludes them from the protection of the refugee convention for the appellate bodies to consider those issues first when determining an asylum appeal. However, while these provisions have the same aim, there are procedural differences between them which mean that they cannot work together. The amendment *[introducing s.54 and s.55 as they now appear in the Actl]* is designed to address them. It removes the appeals provisions from Clause 52, repeals Section 33 of the 2001 Act and inserts into the Bill a new clause, refugee convention certification. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 613

s.54 - general - fettering discretion and individual consideration

I do not believe that what we seek to do in new clause 7 *[precursor to s.54]* is to fetter the discretion of judges… Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 298

We would of course consider every case on its individual merits and absolutely take into account issues of coercion—that is the critical issue in these particular tragic circumstances. Clause 52 does not remove that element of discretion, so there is no question that child soldiers would be automatically excluded under the clause. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, Col GC264

It is clear to all of us that if there is compulsion or coercion, we are not dealing with a terrorist. In the case of child soldiers, that could not be clearer. I hope that noble Lords will take that as an absolute certainty—the Government will look very carefully, case by case. Where a child has been

coerced by any means, they could not conceivably be a terrorist and we will act on that basis. I want to be as clear as I possibly can on that. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA , HL Report, 7 February 2006, col. 616

s.54 – general - need for the provision

Mr. Neil Gerrard (Walthamstow) (Lab): …It would help the Committee if he indicated what sort of cases there are or how many cases there have been in which the absence of new clause 7 *[precursor to s..55]* from the current law has caused a problem? Its absence has presumably led to someone being given asylum whom the Minister feels should not have been granted it.

Mr. McNulty: It is an entirely fair point. I say quite candidly that that question is difficult to answer, simply because we do not know the answer. Standing Committee E, 8th sitting, 27 October 2005 pm, cols. 284-5 *(Minister's comments all col. 285)*

The Government's proposals may be otiose, belts-and-braces measures, but I would far rather start from that perspective than a much weaker one. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 297

s.54 – general - numbers affected

We start from the premise that there will potentially be instances of people being granted asylum who perhaps should not have been granted it, but we are talking about a small number. It is not a blanket measure, but the legislation does require tightening up. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 285

s.54 – general - Refugee Convention

The amendment *[precursor to s.54]* is entirely consistent with the refugee convention Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 284

It *[precursor to s.54]* is compatible with article 1(F)(c) of the refugee convention. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 284

All the elements that we think are germane to the convention are certainly germane to any attempt to look at what we can define as terrorism. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 294

We are not seeking to make 146 other states think again. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 611

s.54 – general - Refugee Convention - Article 1F(c)

It is implicit in article 1(F)(c) that terrorists should be excluded from asylum decisions that have been upheld by both a tribunal and the Special Immigration Appeals Commission. However, we consider that in the light of the heightened threat of terrorism, particularly following the London bombings, but not exclusively for that reason, it is appropriate to legislate to make it explicit that such individuals should not be afforded the protection of the convention. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col.284

I was asked whether this is a clause directed at crimes committed abroad. Terrorist acts committed abroad will be covered by the definition of article 1(F)(c) …Other crimes committed abroad may

come under article 1(F)(b) of the convention, which relates to non-political crimes committed overseas. It is nothing to do with us or the new clause. That happens anyway. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col.296 *[NB – statement made before the amendment to s.54 and s.55 which resulted in s.55 encompassing the whole of Article 1F]*

In these clauses, we are seeking to make explicit what we believe Article 1(F)(c) implicitly requires us to do. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA , HL 2nd Reading, 6 December 2005, col. 584

Although the Refugee Convention already provides the necessary framework for denying refugee protection to those who engage in acts of terrorism, we consider that a more explicit interpretation of Article 1F(c) is required in order to clarify who falls within the scope of that exclusion clause. The clause reflects the provisions of relevant Security Council resolutions which set out the types of acts that are considered to be contrary to the purposes and principles of the United Nations. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA , HL 2nd Reading, 6 December 2005, col. 520

The primary purpose of Clause 52 *[precursor to ss 53 and 53]* is to make it crystal clear in statute that terrorists are excluded from asylum by virtue of Article 1F(c) of the 1951 Geneva Convention on the Status of Refugees. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 610-611

Article 1F(c) has long been interpreted by the courts and by the UN Security Council resolutions as allowing for the exclusion of terrorists from asylum. It is not explicit within the wording. We think that in the light of the heightened threat from terrorism that this country now faces, it is appropriate to legislate to provide statutory backing to the accepted practice that terrorist should not be afforded the protection of the refugee convention. I do not accept that it is inappropriate for Parliament to legislate to interpret specific provisions into domestic law. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 611

s.54 - general - statistics

In 2004 we were able to exclude some 32 people under the current regime. If that is not the correct figure I will get back to the hon. Gentleman. I do not know how many others would have been excluded if there had been such a construction in 2004 Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 297

s.54 - general - unacceptable behaviours

See also Various: Unacceptable behaviours; s.56.

The clause is about excluding those who commit, prepare or instigate acts of terrorism or encourage or induce them. Some of the unacceptable behaviours fall in the area of terrorism and encouraging terrorism and the clause covers them but the list of unacceptable behaviours goes wider to deal with issues such as serious criminality. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 296

s.54 – general - UNHCR

See also Miscellaneous - General - National Security, - United Nations.

The UNHCR considerations *[See UNHCR letter and note]* are serious, although in part they challenge and condemn many past UN discussions and resolutions….We have a strong and not always unduly non-critical relationship*[with UNHCR]*… It is a good one. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1054

. …The UNHCR points are serious and need to be considered with the seriousness that they deserve. The charge is that clause 51 *[now s.54]* is not compatible with the refugee convention but part of the justification for clause 51 in all its glory is that it reflects the relevant Security Council resolutions that refer to the guiding principles of the UN. UN Security Council resolution 1373 states that

"knowingly financing, planning and inciting terrorist acts"

as well as the commission of such acts constitute acts

"contrary to the purposes and principles of the United Nations."

UN Security Council resolution 1377 is broadly in the same terms…Tony McNulty MP, Minister of State, HC Report, 16 November 2005, cols.1054-1055

We believe that the UNHCR's points about the definition of terrorism in the 2000 Act are unfair. The definition is compatible with article 1(F)(c) of the refugee convention, as is the 2005 Terrorism Bill. We do not consider it to be at odds with UN Security Council resolutions that were drawn up reflecting the principles of the UN. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col.1055

We are exhorted by UNHCR to take a holistic approach to exclusion clauses. We argue that we have done so, and they are reflected in this Bill. Clause 51 *[precursor to s.54 & s.55]* is not piecemeal. Our approach to the application of article 1(F) is holistic …Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col.1055

The UNHCR London paper suggests that in principle only persons who have been in power or a state-like entity would be capable of committing such acts, given that articles 1 and 2 of the UN charter set out the fundamental principles that states must uphold in mutual relations. A slew of Asylum and Immigration Tribunal case law and Security Council resolutions themselves contend that very position. Although I take UNHCR's points very seriously and take into account …that these are serious clauses in the Bill, I do not accept UNHCR's point that, of themselves and in their own terms, they are incompatible with the overall thrust of what is in the UN charter. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, cols.1055-1056

The noble Lord will know that contact and dialogue continues with the UNHCR, but we disagree with certain elements it raises. We do so having looked carefully at the UN Security Council resolutions and the interpretation placed on aspects of the convention. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, HL Report, 7 February 2006, col. 611

s.54 - general - UN Security Council Resolutions

See s.54 – UNHCR; Miscellaneous – General - United Nations.

The amendment *[precursor to s.54]* is...in line with UN Security Council resolutions. For example, resolution 1373 states:

“Any act of international terrorism constitutes a threat to international peace and security . . . acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the

purposes and principles of the United Nations". Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 284

We have looked at other *[UN]* resolutions, such as Resolution 1624, to try to put into the Bill as accurately and appropriately as we can our interpretation of Article 1(F)(c). The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 585

The clause reflects the provisions of relevant Security Council resolutions which set out the types of acts that are considered to be contrary to the purposes and principles of the United Nations. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 520

Although we accept that Article 1F(c) has long been interpreted by the courts as allowing for the exclusion of terrorists and suspected terrorists from asylum, that is not explicit in its wording. We have looked at United Nations Security Council resolutions, which have clarified the position. UNSCR 1373 of 28 September 2001, for example… UNSCR 1377 of 12 November 2001 …The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, Col GC264

s.54(1) "acts contrary to the purposes and principles of the United Nations"

See s.54 – general.

On the particular question raised by the noble Lord—that the UNHCR's paper suggested that it appears that only those who have been in power in a state or a state-like entity, for argument's sake, are capable of committing such acts—it is clear that in the case of *KK* v *Immigration Appeals Tribunal*, that was rejected. The tribunal stated: "owing at least partly to the growth of terrorist activity, it is now accepted by almost everybody that the meaning of Article 1F(c) is not so confined . . . we are perfectly content to hold that a private individual may be guilty of an act contrary to the purposes and principles of the United Nations, and we see no difficulty in reading the words in this way . . . we should have some difficulty in confining 1(F)(c) to individuals who control States". The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, cols. 616-617.

s.54(2) "terrorism"

The definition of "terrorism" in our domestic law is compatible with those accepted in other fora; for example, the definition in the European Union framework decision on combating terrorism. The Baroness Ashton of Upholland, HL Report, 7 February 2006, col. 611

…we have asked the noble Lord, Lord Carlile of Berriew, to conduct an independent review of our definition of terrorism and report back within a year of commencement of the new Terrorism Act. If Parliament decides in the light of that review that changes to the existing definition are needed, we would commit to bringing forward this change if parliamentary time allowed and would reflect the new definition in Clause 52 *[now s.53]* of this Bill as necessary. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 612

Section 55 Refugee Convention - Certification

NB: The Bill as originally presented to Parliament contained only one clause on this subject, the (amended) provisions of which were split between s.54 and s.55 at HL Report. Therefore see s.54 also.

s.55 – general – ATCSA 2001

…while Section 33 of the 2001 Act excludes the possibility of judicial review in relation to decisions connected with the certification, the asylum claim or decisions made as a consequence of all or part of the asylum appeal, we have decided not to replicate this in the new clause. Individuals affected by SIAC decisions have a statutory right of appeal to SIAC. Decisions taken in connection with a certificate can therefore be challenged through this appeal route. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 613

s.55(1)

…the Secretary of State will certify that an appellant is not entitled to the protection of the refugee convention because 1F and/or Article 33(2) applies and requires the asylum immigration tribunal and SIAC to begin substantive deliberations on the asylum appeal by considering the certificate. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 613

We seek through the amendment *[introducing what are now s.54 and s.55]* to ensure that there is a certification procedure for appeals involving all exclusion cases. The Baroness Ashton of Upholland, HL Report, 7 February 2006, col. 613

s.55(2) - SIAC

See Appeals - s.7 – General – SIAC.

When a person to whom new clause 7 *[now s.54 and 55]* applies presents a threat to national security, he will be liable to deportation under powers that we are seeking to add to the Bill in new clause 8 *[now s.7]*. The appeal for those people will be heard by SIAC and for other cases the appeal is likely to go to the AIT, unless the refusal decision is based on intelligence information, in which case the SIAC arrangements would apply. That is the normal practice. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 296

We would expect the number of article 1(F)(c) cases that do not involve matters of national security for the reasons implicit in the clause to be relatively low. Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 296

s.55(3)

…the clause *[precursor to s.55]* requires that where the Secretary of State rejects an asylum claim, or makes any other decision wholly or partly in reliance on Article 1F, the asylum and immigration tribunal or the Special Immigration Appeals Commission hearing an appeal in which the rejection or decision is to be considered must begin its consideration of the refugee's appeal by considering whether Article 1(F) applies. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, Col GC263-4

s.55(3) - burden of proof

. It is a well-known position in our law that the burden lies on the party making an assertion. The burden will therefore implicitly lie with the Secretary of State and his ability to show that there are "serious reasons for considering that a person falls within the scope of article 1(F)(c)". Tony McNulty MP, Minister of State, Standing Committee E, 8th sitting, 27 October 2005 pm, col. 295

Section 56 Deprivation of Citizenship

s.56 – general

s.56 - general – citizenship

…citizenship…is granted to people, as opposed to them having it as a right of birth. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC273

General – Citizenship – deprivation

It *[power to deprive]* is a power to be used not often, but extremely sparingly. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC273

s.56 - general – dependants

…the provisions deal with individuals. They do not cover, revoke or take away any rights of dependants with regard to nationality or right of abode. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col.270

s.56 - general - dual nationals

he point about the anomaly of those with dual nationality is well made and may be explored in the international domain. …That others might determine at least part of our own control on this issue might seem perverse, but that is the way of it. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, cols.270-1

s.56 - general - European Convention on nationality 1997

From memory, about a dozen countries have ratified, so the convention is by no means well on the way to full ratification. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 272

We have not yet ratified and we shall have to reflect, in the light of all the nationality legislation in this Bill, on whether it will be possible to do so. There may be a reservation in respect of our powers of deprivation. There may well be scope to ratify, but we shall have to look. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 272

Since 1997, there has been a recognition, Europe-wide—certainly on the part of an advisory body to the Council of Europe—that there is a fluidity to all these matters that may have gone beyond where

the convention was in 1997. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col.272

s.56 – general - evidence

Given that the appeal mechanisms are still in place and that the Secretary of State will have to defend his decisions on appeal, the decision to deprive will have to be based on fairly robust evidence. That excludes the point, raised by the hon. Member for Woking, that the decision might be based purely on uncorroborated evidence from a foreign state. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col.271

s.56 – general - prosecution and risk

…we shall not use the powers to export risk; we need to do far more than that. Last night, the Home Secretary was clear that there is an increasingly international dimension to our response to such matters, and that means co-operation. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 271

s.56 – general - retrospectivity

There is no retrospective nature to any of the new clauses *[now s.56, s.57 and s.58]*. They talk about an assessment of existing present behaviour. The assessment of existing behaviour and potential threat may be informed by previous behaviour. However, in the context of the Secretary of State's decision, we will not determine just on past behaviour. Such a decision must be made in the context of a particular threat now from which the public need protection. Individual past conduct and an assessment of the propensity to repeat it is part of the test. That must be clear… The new power is about it now being conducive to deprive—conducive, that is, at the point of decision, rather than in any retrospective sense. However, I must add the rider that past behaviour and a propensity to repeat it would come in. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 271

s.56 - general – role of the courts

. I hope that the normal ways in which courts operate, with rights of appeal and so on, will go some way to satisfying the noble Lord, Lord Hylton, that a decision could never be made on the whim of the Home Secretary, but that it would be subject to being tested in the courts, and rightly so, for that is an important part of the way in which we operate justice in this country. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC274

s.56 – general - statistics

We cannot be accused of being overzealous in the implementation of the powers since 2002, because the straight answer to the question …about how many are deprived of British nationality under the 2002 powers is none. In some cases, that is because broader charges were made and they were a matter of criminal proceedings; in others, it is because other things happened and we have not got that far. However, the absolute answer is none. We think that things have moved on and it is appropriate to have the power that we are discussing in the locker—if nothing else—given the way

circumstances are. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, cols.270-271

s.56 - general – statelessness

The proviso that, unless nationality was in the first place obtained by deception, deprivation of nationality cannot proceed where the end result would be statelessness, will continue to have effect. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 255

However, if citizens of some countries take British citizenship, they have to lose their existing citizenship, and we have to weigh that against our responsibilities on statelessness; the two must run together. Not every country takes citizenship away because of the use of British citizenship, but I fully accept that some—in the subcontinent and elsewhere—do, and in those circumstances we have to invoke the point about statelessness. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, cols. 270-1

…we have made it clear that we would not make anyone stateless under our international obligations. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 585

…the provision would apply only to people with joint nationality—not, I hasten to add, to those who are entitled to joint nationality, such as Jewish people, who are automatically entitled to be members of the state of Israel but choose not to be. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 2nd Reading, 6 December 2005, col. 585

s.56 – general - unacceptable behaviours

See Miscellaneous - General - Unacceptable behaviours.

Following the terrorist attacks in London on 7 July, the Home Secretary published a list of behaviours on 24 August which, he said, would form the basis for the use of his discretionary powers to deport and exclude from the United Kingdom those whose presence here was deemed not to be conducive to the public good. Such behaviours included speaking or publishing material which encourages or provokes terrorism or other serious criminal activity. It is, in our view, now essential that we have similar powers to withhold and to remove British nationality and the right of abode in the United Kingdom where an individual is found to have engaged in such activity. It is wrong that certain individuals with rights of residence elsewhere should be allowed to acquire and then to shelter behind their British citizenship, or their right of abode here, so as to avoid the consequences that would otherwise befall them. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, cols. 254-255

We have already discussed at Second Reading and elsewhere the particular behaviours that were named and the fact that, although important, they are not to be seen to be exclusive. The Baroness Ashton of Upholand, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC273

…it is fundamentally wrong for those who engage in such activities and who have rights of residence elsewhere to be allowed to acquire and shelter behind their British citizenship, and the right of residence that goes with it, to avoid the consequences that might otherwise befall them. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC274

The difficulty with the higher test that we had is that we already know of situations in which people may not be caught. We believe that they should not continue to be dual citizens—or, in the case of those seeking citizenship, should not be granted it—because of their activities. One might argue that they were not necessarily a great danger in this country but that their behaviours were, in our view, completely unacceptable. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC277

…we ultimately have to make a decision, recognising that the safeguards are in place that will help us to ensure that these powers will be used sparingly—which is our intention—but appropriately. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC278

s.56(1) "not conducive to the public good"

s.56(1) "not conducive to the public good"- need for lower test

…there are cases with which we wish to deal pending this legislation where the higher test *["seriously predjudical to the vital interests…]* might result in an appeal going either way. Examples might include war criminals and human traffickers, although I do not know whether the examples fit the cases, so I would not want noble Lords to interpret them as doing so. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC273

…we recognise that, ultimately, the courts will interpret "conducive"; that we must be mindful of the Human Rights Act and obey it; that there will be a right of appeal; and that my right honourable friend the Secretary of State must behave reasonably. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA ,HL Grand Committee, 19 January 2006, col. 274

For me the principal concept of citizenship is that people have a right to be a citizen and not to be stateless. That is fundamental, in my personal view, but it does not mean that you have a right to be a citizen of more than one nation. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC276

s.56(1) "not conducive to the public good" - threshold

Dr. Harris: …is the intention in the clause to deprive people of their citizenship for acts that are not seriously prejudicial to the vital interests of the UK? …

Mr. McNulty: That is a fair question, and my answer is that I do not think so. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col.272

…an individual involved in the large-scale trafficking of young women from eastern Europe for prostitution would not be covered under the current test, but could be under the test we are proposing…. They are very few in number, but are none the less significant. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1192

s.56(2) - appeals

…the rights of appeal against deprivation of nationality provided for in the current law are unaffected …except to the extent that new clause 4 *[now s.56]* would also enable the asylum and immigration tribunal to receive evidence in private where it was alleged that a document relied

upon by either party was a forgery and disclosure of how that forgery was detected would be contrary to the public interest. It already has that jurisdiction in the case of appeals against asylum and immigration decisions. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 255

It is very difficult to predict what may happen in future because of rights of appeal and the role of the courts, which ultimately settle what is meant—something that we are all very proud of. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC277

Section 57 Deprivation of Right of Abode

See s.56; Various – Human Rights Act.

s.57 – general

Section 2 of the Immigration Act 1971 confers the right of abode in the United Kingdom—the right to enter and remain here without any need for leave to do so—on all British citizens and on certain other Commonwealth citizens who had that right before the law on right of abode was last amended in 1983. Falling into the latter category are, primarily, citizens of Commonwealth countries such as Australia and Canada whose mothers were born in the United Kingdom and Commonwealth citizen women married before 1983 to men with the right of abode here. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 255

New Clause 5 *[now s. 57]* would enable the Secretary of State, by order relating to a named individual, to remove a right of abode where it was considered conducive to the public good that the individual be excluded or removed from the United Kingdom. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 255

There is a precedent for that *[removal of the right of abode]* in the Immigration Act 1988, which prevents exercise of the right of abode by certain women seeking to join husbands in this country to whom they are polygamously married and who have already been joined by another wife. But whereas the restriction in the 1988 Act applies to a defined class of people, the restriction that we propose could be imposed only on an individual basis and would be subject to a right of appeal, either to the asylum and immigration tribunal in the first instance or, where sensitive information might otherwise be disclosed in the course of the appeal, to the Special Immigration Appeals Commission. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, cols.255- 256

s.57 – general – discrimination

Lord Judd: Does the Minister agree that the argument put forward by the Joint Committee *[on Human Rights]* was rather important in this respect; that is, that the legislation might well be in difficulty in terms of the convention *[ECHR]* because it does not apply to everybody equally?…

The Baroness Ashton of Upholland …My understanding is that we are not in contravention, because of the way in which the convention deals with issues of citizenship, as one would expect. That is the advice that I have. It is because citizenship is not an absolute right within the convention—it is qualified.

Lord Judd: …I am sure that the advice that the Minister received was given in good faith, but it does not coincide with the advice that we received in the Joint Committee… HL Grand Committee, 19 January 2006, cols. GC275-6 *(Minister's comments all col. 276)*

s.57 – general – statelessness

See s.56 – general – statelessness.

The noble Baroness, Lady Carnegy, asked what would happen to people whose right of abode we removed, because we have made it clear that we would not make anyone stateless. People have a right of abode because they are citizens of a Commonwealth country other than the UK, so they have somewhere else to go. They are given right of abode because they are citizens elsewhere. They automatically have somewhere else where they could go. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, cols. GC274-275

The clause *[now s.57]* specifically refers to people who are citizens of another country but who are granted, because of different circumstances, right of abode. The clause says that in circumstances in which they have citizenship and right of abode and have citizenship in two countries, we can remove that. It makes reference to the fact that some people have citizenship of another country and right of abode here, when we might wish to remove that right of abode because of acts that they have committed. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC276

s.57 – general - retrospectivity

See s.56.

s.57 – general - unacceptable behaviours

See s.56 – general – unacceptable behaviours; Miscellaneous – General- unacceptable behaviours.

Our exercise of the power would be informed, but not wholly constrained, by the published list of "unacceptable behaviours" to which I have referred. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 256

s.57(1) inserting new section 2A(2) "thinks"

See s.17; s.40.

It makes sense when we are amending previous legislation to talk in terms of that previous legislation and its language, where appropriate. New clauses 4 *[now s.56]* and 6 *[now s.58]* amend the British Nationality Act 1981 and add new provisions to it. The reference throughout is to the Secretary of State being "satisfied", whereas new clause 5 amends the Immigration Act 1971, which talks about "thinks". We are clear—and the points were well made—that in substance they mean the same thing. There is not some coded difference between the two in terms of a nice little call-my-bluff exercise about what "thinks" means and what "satisfies" means. Where we are amending previous legislation and where it does not matter in substance, aligning with the language of the previous Acts makes sense, rather than introducing a new concept for the first time… There is no substantial difference in what each of the things I mentioned does. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 270

Section 58 Acquisition of British nationality, & c.

s.58 – general

See s.58 – general – those not subject to the good character test.

…when we consider groups such as the wives and widows of those who fought in the defence of Hong Kong, we believe that we have brought them all into the system in one way or another. We do not believe that anyone remains outside. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 617

…the Government's commitment to seeing that the vast majority of those seeking to register are of good character. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1197

…applicants under the 1997 Act, and British overseas nationals in general… invariably have a right of residence in Hong Kong. Indeed, applicants under the 1997 Act are required to have been "ordinarily resident" there on particular dates—a concept which, while not necessarily equating to possession of a right of permanent residence there, at least implies lawful and, for the time being, stable residence in Hong Kong.

In 1997, those with only British nationality were told that they would be admitted to the UK if conditions deteriorated in Hong Kong, not that they would be given British citizenship. I do not believe that we have reneged on the agreement that we reached. British overseas territorities citizens normally have the right of abode in the British overseas territory from which their citizenship derives. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1200

By contrast *[with British Nationals (Overseas) and British Overseas Territories Citizens]*, the right of many of those eligible for registration under Section 4B of the 1981 Act to remain in their counties of current residence is at best precarious. It was this lack of a secure residence in any country that prompted the Government to announce on 4 July 2002 their intention to introduce a provision now having effect as Section 4B, and which at Report stage prompted us to move for their exemption from the good character test, which was welcomed. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, cols. 1200-1201

We do not accept the position of those qualifying for registration under the 1997 Act, or of British nationals in general is sufficiently close to that of persons presently entitled to registration under Section 4B of the 1981 Act to justify the support that the noble Lord's amendments *[Lord Avebury – to exempt them from the good character test]* clearly seek. Nor do we accept obligations towards stateless persons going beyond those we have accepted by ratifying the 1961 convention The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1201

s.58 – general - registration

The registration route is reserved for those people—minors, certain persons already holding a form of British nationality, and certain persons with ancestral connections to the UK—whose particular circumstances are deemed to merit varying degrees of exemption from the full rigours of the naturalisation process. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 256

We are aligning the two processes of nationality by naturalisation and registration so that they have a common legal base. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 256

We accept that there is a case for continuing to exempt certain people—minors; those with other forms of nationality; persons with ancestral connections—from the full rigours of the naturalisation process. That would not change. They would continue to enjoy exemption from most of the requirements, but we now think it inappropriate that those who have engaged in certain unacceptable behaviours should be able to benefit from the special arrangements. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Grand Committee, 19 January 2006, col. GC279

s.58 – general - retrospectivity

See s.56.

s.58 – general - statelessness

See s.58 – general

An exception would continue to be made in a small number of cases where, because of our obligations under the 1961 United Nations convention on the reduction of statelessness, it would not in general be possible to refuse on character grounds where statelessness would be the result. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 256

At present such a requirement *[that the applicant be of good character]* applies only to those seeking to acquire British nationality by naturalisation. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 256

s.58 – general – those not subject to the good character test

See s.58 (1) "adult or young person"

The Government's Amendment No. 58 *[removing reference to s.4B of the British Nationality Act 1981]* would make a further exception in the cases of those seeking to register as British citizens on the basis that they are already British overseas citizens, British subjects or British protected persons and hold no other nationality or citizenship. As noble Lords will be aware, such people frequently have no right of abode in any country. In recognition of this fact, and accepting that we owe a moral obligation towards them as holders of British passports, we changed the law in 2002 to give them an entitlement to British citizenship and thus the right of abode in this country. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 623

We also consider that British overseas citizens, British subjects and British protected persons who have no other nationality or citizenship and have not recently and deliberately given up another nationality or citizenship should not in addition be required to satisfy the Secretary of State that they are of good character before they may be registered as British citizens. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 623

…our starting point was that we should not apply the good character requirement to those whose entitlement to registration derives from a provision of the 1961 UN Convention on the Reduction of Statelessness. The Government then additionally agreed to exempt from the good character

requirement those seeking to register as British citizens on the basis that they are already British overseas citizens, British subjects or British protected persons and hold no other nationality or citizenship. They have not made a general exception for all such nationals or for all such stateless persons. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1197

s.58(1) "adult or young person"

[N.B. Until House of Lords Third Reading, children under the age of 10 remained within the scope of the clause that became this section. However comments applying to children above and below 10 were made prior to this stage.]

The provision just aligns nationality by registration with nationality by naturalisation. The issues pertaining to children and how we measure the good character of a child are the same on both. Given that, most of the measures and tests of good character are largely not currently germane for children in terms of naturalisation and the same will prevail in terms of registration. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 270

It is clear that we will not shake down a four-year-old, looking for a bank account and their recent financial history. A four-year-old's name might be run through the police national computer, but I suspect that there would not be much of a hit. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col. 270

All the general measures of good character are not terribly germane to children…. Tony McNulty MP, Minister of State, Standing Committee E, 7th sitting, 27 October 2005 am, col.270

…there is a difference between a one year-old and a 17½ year-old. The latter may be involved in acts that would be of concern. Perhaps it could be something to do with drugs, or an attack on a particular group of people, or even the young person might be involved with an extreme right-wing organisation. At the age of 17½, people are responsible and it is right and proper for us to think about their character in that context. Therefore I do not want to make a blanket statement to cover everyone from the age of one year to those we now consider to be adults, at the age of 18. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL Report, 7 February 2006, col. 617

My noble friend described the issue of troubled teenagers; I accept that one has to put into context the matter of young people who have perhaps had issues. I take the point made by the noble Lord, Lord Avebury, about those who have perhaps had anti-social behaviour orders. It is relevant to consider that there are young people who may have committed quite serious offences with whom we would wish to engage in terms of considering good character. I do not accept the premise that a 17 year-old or a 16 year-old is not responsible. That is where we come to the age of 10. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1196

s.58(1) "good character"

We believe that it is right and proper, in general, that we should be able to say that those who have engaged in drug dealing, paedophilia or war crimes—those who are guilty of such serious crimes—fail to meet a good character test, in order to exclude them from the granting of nationality. The Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, DCA, HL 3rd Reading, 14 March 2006, col. 1192

Section 59: Detained persons: national minimum wage

See Various – Detention.

s.59 – general

There is a strong body of opinion that holds that paid activity should be available, on a voluntary basis, for people in immigration removal centres. This new clause *[now s.59]* works to that effect. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col.1016

At the moment, detainees in immigration removal centres do not have the opportunity to undertake paid work of any description. Despite the presence of educational and other activities in removal centres, many non-governmental organisations have established that the absence of paid activity can lead to boredom and frustration among detainees. That is harmful to their well-being, and that of the entire institution, and contributes directly to control and order problems. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1016

Paid activity is generally accepted as a necessary component of the activities provided to individuals in custody. It benefits the individuals concerned by giving them additional constructive and purposeful activity with which to occupy their time. As a direct result, it plays a key role in helping to maintain order. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1016

The absence of paid activity for immigration detainees, with the potentially adverse consequences for their well-being and for removal centre security, has been highlighted by Her Majesty's chief inspector of prisons and by the prisons and probation ombudsman. Both have recommended that the current position should be remedied. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1016

In order to provide opportunities for detainees in removal centres to participate in paid activity, we need to exempt them from the national minimum wage. Detainees may be regarded as "workers" for the purposes of the National Minimum Wage Act 1998 if they perform paid activity of any sort, and would therefore be entitled to receive the national minimum wage. That would not be viable financially, nor reflect the true economic value of the work likely to be carried out, which is likely to be remedial and assistive. "Assistive" is the correct word in this context, but nevertheless I apologise for using it. The current position has prevented detainees from being given opportunities to undertake paid activity. We need to change that. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1016

Prisoners who undertake paid work would do so on the basis of an exemption from the national minimum wage in section 45 of the National Minimum Wage Act 1998. There is no similar exemption for immigration detainees in removal centres, and that is what we want to remedy. . Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1016

Paradoxically, individual detainees held in prisons are, by default, covered by the exemption for prisoners. That means that an immigration detainee incarcerated temporarily or otherwise in the prison estate is covered by the exemption for prisoners and could do paid work. In contrast, that person could not do paid work on transfer to the removals estate. The exemption created by this new clause would therefore remove that anomaly and bring detainees in removal centres in line with people held in prisons. . Tony McNulty MP, Minister of State, HC Report, 6 November 2005, cols. 1016-1017

It is important to note that all paid activity would be entirely voluntary and provided in addition to the various educational, sporting and recreational activities offered to detainees at present.

Detainees would be encouraged to participate, just as they are in relation to other activities, but in no way would they be compelled to carry out the work. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1017

Detainees who chose not to participate in paid activity would continue to receive any allowances due to them under the removal centre incentive schemes. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1017

Work opportunities provided to detainees are likely to be of two main types. The first type would be the "traditional" custodial activities such as light cleaning, kitchen assistance, laundry work and gardening. However, I accept the point made by my hon. Friend the Member for Walthamstow, and assure the House that contractors would not be allowed to bid for such work on the basis that detention centre internees would be used. That will not be allowed to happen. The second type of paid work would include activities organised by charitable or voluntary groups, for which detainees would receive direct financial reward for participation. Detainees would not engage in commercial work of any description…Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1017

This measure is principally intended to enhance detainee welfare, with the consequential benefits for removal centre security. It will ensure that the existing range of activities available in removal centres can be complemented by paid activity, which has well established benefits for those in custody. Tony McNulty MP, Minister of State, HC Report, 16 November 2005, col. 1017

There is substantive evidence— in the broad academic sense and from the ombudsman and the prisons inspector, who has investigated detention and removal centres—that people occupied on a voluntary basis are far better served individually. That deals in part with the hon. Lady's *[Mrs Cheryl Gillan MP]* point about resettlement either in the UK, if that is how things pan out, or in the person's country of origin. Tony McNulty MP, HC Report, Minister of State, 16 November 2005, col. 1019

APPENDIX

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

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.

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.

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.

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.

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.

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.