



Borders, Immigration and Citizenship Bill

PARTS 3 & 4 House of Lords Report Stage

ILPA Notes on amendments forming part of the Second Marshalled List to be moved on Report

Before Clause 43

LORD WEST OF SPITHEAD

LORD AVEBURY

42 Insert the following new Clause—

"Minors

- (1) Section 3 of the British Nationality Act 1981 (c. 61) (acquisition by registration: minors) is amended as follows.
- (2) In subsection (2), for "within the period of twelve months from the date of the birth" substitute "while he is a minor".
- (3) Omit subsection (4)."

Purpose

To replace the provision that a child born in the UK to a British citizen parent but not born British can be registered by entitlement within 12 months of birth, or by discretion up to the age of 6 years, with a provision allowing the child to be registered at any time while still a minor.

Briefing note

ILPA welcomes this amendment, but see note on amendment 49 below. Amendment 49 would apply a good character test to the registration (in the case of children over 10 years old) which is inappropriate given that the stateless are among those registering under section 3(2). See also the ILPA briefing for Committee stage where we argued for this amendment.

LORD AVEBURY

[As an amendment to Amendment 42]

42A Line 6, at end insert—

"() After subsection (3)(b)(ii) insert—

"(iii) was a British citizen otherwise than by descent at the time of the birth of the child in question, or would have been such a citizen otherwise than by descent at the time of the birth of the child in question but for his or her death."

Presumed purpose

To remove the requirement that a grandparent was a British citizen otherwise than by descent at the time of the birth of the child's parent or on commencement of the British Nationality Act 1981 and thus give children whose grandparents were British citizens by descent, but who otherwise fulfil the requirements of the clause an entitlement to register under this section.

LORD WEST OF SPITHEAD

LORD AVEBURY

43 Insert the following new Clause—

"British Nationals (Overseas) without other citizenship

(1) Section 4B of the British Nationality Act 1981 (c. 61) (acquisition by registration: certain persons without other citizenship) is amended as follows.

(2) In subsection (1)—

(a) omit "or" immediately before paragraph (c), and

(b) after that paragraph insert ", or

(d) British National (Overseas)".

(3) In subsection (2)(c), for "4th July 2002" substitute "the relevant day".

(4) After subsection (2), insert—

"(3) For the purposes of subsection (2)(c), the "relevant day" means—

(a) in the case of a person to whom this section applies by virtue of subsection (1)(d) only, 19th March 2009, and

15 (b) in any other case, 4th July 2002."

Purpose

To allow British Nationals (Overseas) with no other nationality or citizenship to register under section 4B of the British Nationality Act 1981 which makes provision for the registration of British subjects under the Act, British Protected Persons, and British Overseas Citizens with no other nationality or citizenship to register. Those who renounce another nationality or citizenship after 19 March 2009 (the day the change was announced) will not be able to register under this section.

Briefing note

ILPA welcomes this amendment. See our briefings prepared for Committee stage on amendments 94 and 95 in which we argued for this amendment.

LORD AVEBURY

[As an amendment to Amendment 43]

43A Line 15, at end insert—

- "(4) A British National (Overseas) who is registered as a British citizen under this section shall be treated for the purposes of this Act as—
- (a) A British citizen by descent; or
 - (b) a British citizen otherwise than by descent,
- according as to whether, immediately before 1 July 1997, he was for the purposes of this Act a British Dependent Territories citizen by descent or a British Dependent Territories citizen otherwise than by descent."

Presumed Purpose

To ensure that those British Nationals (Overseas) registering under s 4B of the British Nationality Act 1981 become British citizens by descent if they were British Dependant Territories Citizens by descent (i.e. able to pass on their British nationality to their children born overseas) immediately prior to the return of Hong Kong to China. All other British Nationals (Overseas) registering, like other categories of British national registering under s 4B, will become British citizens otherwise than by descent. The amendment mirrors the provision made in section 2(1) of the British Nationality (Hong Kong) Act 1997 under which people were registered at the time of the return of Hong Kong to China.

After Clause 43

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

45 Insert the following new Clause—

"The Ilois: citizenship

- (1) Section 6 of the British Overseas Territories Act 2002 (c. 8) (the Ilois: citizenship) is amended as follows.
 - (2) After subsection (2) insert—
- "(2A) A person shall be entitled to register as a British citizen if—
- (a) his father or mother was or is a citizen of the United Kingdom and Colonies or a British citizen by virtue of birth in the British Indian Ocean Territory or by operation of section 6(1), and
 - (b) he is not a British citizen.

- (2B) A person shall be entitled to register as a British overseas territories citizen if—
- (a) subsections (2A)(1)(a) and (b) apply to him, and
 - (b) immediately prior to registration under subsection (2A)(1) he was not a British overseas territories citizen.
- (2C) In subsection (2A)(1)(a) "father" has the meaning given in section 50(9A) of the British Nationality Act 1981.
- (2D) No charge or fee shall be imposed for registration under section 6(2A) or (2B)."

Purpose

To ensure that Chagos Islanders born in exile can be registered as British citizens. The amendment would protect those still living who were born to parents born on the Chagos Islands – thus all of the first generation born in exile. The entitlement to register does not depend upon whether the parent was a man or woman or whether the parents were married. In addition the amendment gives an entitlement to register to the children of those who registered under section 6(1) of the British Overseas Territories Act 2002. Such people (those born on or after 26 April 1969 and before 1 January 1983) became British Citizens by descent upon registration. Therefore they cannot pass on their nationality or citizenship to their children and need this provision if their children are to be protected.

Briefing

See the ILPA briefing to amendments 92 and 101A at Committee stage. ILPA has also prepared a separate update to these briefings dealing with the new amendment.

LORD AVEBURY

LORD ROBERTS OF LLANDUDNO

47* Insert the following new Clause—

"Legitimacy

- (1) The British Nationality Act 1981 (c. 61) is amended as follows.
- (2) After section 4C insert—

"4D Acquisition by registration: legitimacy

- (1) A person is entitled to be registered as a British citizen if—
 - (a) he applies for registration under this section; and
 - (b) he satisfies each of the following conditions.
- (2) The first condition is that the person was born before 1st July 2006.
- (3) The second condition is that the person is not already a British citizen.
- (4) The third condition is that the father of the child satisfies any requirements as to proof of paternity prescribed under section 50(9B) of this Act.
- (5) The fourth condition is that the person would have been a British citizen had his father been married to his mother at the time of his birth."

Purpose

To make provision for those born to fathers not married to their mothers to register as British Citizens.

Briefing

ILPA has updated its briefing to amendment 99 laid at Committee stage. The updated briefing is available as a separate briefing.

Clause 45

LORD WEST OF SPITHEAD

- 49** Page 38, line 5, after "3(1)" insert ", (2)"

Purpose To impose a good character test on minors (over 10) registering under section 3(2) of the British nationality Act 1981.

ILPA is opposed to this amendment. See also amendment no. **50**.

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

[As an amendment to amendment 49]

- 50** Line 1, at end insert "(save in the case of a person born stateless)"

Purpose To limit the good character test imposed by amendment 49 so that it would not apply to stateless children registering under section 3(2).

Briefing

ILPA has prepared a separate briefing to this amendment.

LORD AVEBURY

LORD THOMAS OF GRESFORD

- 51** Page 38, line 21, leave out subsection (2)

Purpose To remove the good character test requirement that would be inserted by subsection (2) into the Hong Kong (War Wives and Widows) Act 1996.

Briefing

LPA has prepared a separate briefing to this amendment.

Clause 46

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

52 Page 40, line 14, at end insert—

- "() The period during which a person had a pending application for leave to remain pursuant to an asylum claim or a human rights claim shall not be treated as a period when that person was in the UK in breach of the immigration laws if the outcome of the claim is that the person is given leave to remain as a refugee, on human rights grounds or outside the immigration rules.
- () An asylum claim and a human rights claim have the same meaning given in section 113 of the Nationality, Immigration and Asylum Act 2002, and a pending application is one that has not yet been determined or that is the subject of a pending appeal within the meaning of section 104 of that Act."

Purpose:

This will allow peers to probe the Government as to the meaning of '*in breach of immigration laws*' for the purposes of new section 50A of the British Nationality Act 1981. The amendment would ensure that a person who have claimed asylum or made a human rights claim would not be treated as in breach of immigration laws during the period when his or her claim remained outstanding or any appeal remained pending if that claim or appeal led to his being granted leave to remain as a refugee, on human rights grounds or outside the rules.

LORD GLENTORAN

VISCOUNT BRIDGEMAN

LORD GOODLAD

LORD SMITH OF CLIFTON

54 Leave out Clause 48

Presumed Purpose:

This would preserve the Common Travel Area by removing clause 48 from the Bill.

Briefing Note :

ILPA supports this amendment. Further briefing is available from ILPA's March 2009 briefing for Committee stage on 'Part 3 Clause 46 Common Travel Area' which remains available in the Briefing section at www.ilpa.org.uk

After Clause 48

BARONESS HANHAM

VISCOUNT BRIDGEMAN

55 Insert the following new Clause—

"Expulsion orders

- (1) In exercising his functions under the UK Borders Act 2007 (c. 30), the Secretary of State may designate any official exercising functions under Part 1 of this Act as being entitled to make an application for an expulsion order.
- (2) An "expulsion order" in relation to a person is an order which—
 - (a) requires, if the person is in the United Kingdom, that the person leaves it, and
 - (b) prohibits the person, if the person is outside the United Kingdom, from arriving in or entering it.
- (3) The Secretary of State may make an expulsion order in relation to a person if the person is not a British citizen and falls within subsection (4).
- (4) A person falls within this subsection if—
 - (a) a person has arrived in the United Kingdom and is not an EEA entrant and, on or after arrival, the person is refused the grant of immigration permission or the person's immigration permission is cancelled,
 - (b) a person has arrived in the United Kingdom, is not an EEA entrant, and does not have immigration permission (whether or not the person had such permission on entering the United Kingdom),
 - (c) the person has permission and has breached a condition subject to which the permission was granted,
 - (d) the person has obtained immigration permission wholly or partly by means of deception by that person or by another person,
 - (e) the person has attempted, or is attempting, to obtain immigration permission as described in paragraph (d), or
 - (f) an appropriate court has recommended the person's expulsion from the United Kingdom.
- (5) An expulsion order may be made in relation to a person whether or not that person is in the United Kingdom when the order is made.
- (6) An expulsion order may be for a limited period or an unlimited period.
- (7) If an expulsion order is made in relation to a person, the Secretary of State must give the person notice the order has been made."

Presumed Purpose:

At Second Reading, the Viscount Bridgeman indicated that the Conservatives may move amendments so as to debate the provisions for 'expulsion orders' as set out in the draft (partial) Immigration and Citizenship Bill published in summer 2008. This amendment provides that opportunity.

Briefing Notes:

ILPA does not support this amendment for reasons given below.

As ILPA briefed in 2007 in relation to the provisions for so-called 'automatic deportation' orders in the UK Borders Bill, the difficulties that had been experienced in relation to deportation (particularly in 2006) were caused by administrative failings not inadequate legislative powers. Further information is available from our March

2007 'Memorandum of Evidence to the Public Bill Committee' available in the Submissions section at www.ilpa.org

The changed approach to deportation following 2006 has included changes to primary legislation (the so-called 'automatic deportation' orders) and to the Rules, policy and targets. These have had serious and adverse effects. The Home Office has been found to have acted unlawfully in operating a policy of presumed detention, and also in failing to make that policy publicly known – see *Abdi & Ors v SSHD* [2008] EWHC 3166 (Admin). The findings of the London Detainee Support Group in its January 2009 report *Detained Lives* (see <http://www.detainedlives.org/>) indicate a current practice of indefinite and prolonged detention (including of several years). As regards those who have been detained for the purpose of deportation, the use of targets has led to inappropriate detention of individuals who either cannot be or are not suitable for deportation. Although it is not stated how many were detained, by letter of 23 July 2008 to the Home Affairs Committee, Lin Homer, Chief Executive of the UK Border Agency revealed that of 697 cases that had been considered for deportation, some 389 had been considered not to be suitable for deportation.

After Clause 48

LORD SMITH OF CLIFTON

LORD AVEBURY

55A Insert the following new Clause—

"Northern Ireland: arrivals by land

In section 1 of the Immigration Act 1971 (c. 77) (general principles: the common travel area), after subsection (3), insert—

"(3A) Arrivals by land from the Republic of Ireland to the United Kingdom shall not be subject to immigration control under this Act."."

55B Insert the following new Clause—

"Entry otherwise than by sea or air: immigration control

In section 10 of the Immigration Act 1971 (c. 77) (entry otherwise than by sea or air), after subsection (1A), insert—

"(1AB) An Order in Council made under subsection (1) must not include provision relating to immigration control."."

Presumed Purpose:

This amendment seeks to restrict clause 48 to arrivals by air and sea as stated to be the Government's intention – e.g. in the Explanatory Notes to the Bill (HL Bill 15), which stated that the clause:

“will enable the routine control of all persons arriving in or departing from the UK via the CTA by aircraft and ship.”

Briefing Note:

The approach in this amendment seeks to preserve against ‘mission creep’ which may otherwise be allowed by way of an Order in Council, made under section 10 of the Immigration Act 1971, extending to arrivals by land provisions of the Immigration Act 1971 which apply to arrivals by air and sea.

Section 10(1) of the Immigration Act 1971 provides as follows:

10 Entry otherwise than by sea or air

- (1) *Her Majesty may by Order in Council direct that any of the provisions of this Act shall have effect in relation to persons entering or seeking to enter the United Kingdom on arrival otherwise than by ship or aircraft as they have effect in the case of a person arriving by ship or aircraft;*

...

Clause 52

LORD LESTER OF HERNE HILL

LORD PANNICK

LORD LLOYD OF BERWICK

55C Page 44, line 19, at end insert—

- "(4) Section 13(6) of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (right of appeal to court of appeal etc.) does not apply in relation to immigration and nationality appeals from the Upper Tribunal."

Presumed Purpose:

Section 13(6) of the Tribunals, Courts and Enforcement Act 2007 relates to whether a person may appeal to the Court of Appeal against a decision of the Upper Tribunal. It empowers the Lord Chancellor to restrict the right to seek permission to appeal to the Court to Appeal. The amendment would remove this power in respect of immigration and nationality matters, including the immigration and nationality judicial reviews which clause 52 would transfer to the Upper Tribunal.

ILPA supports this amendment.

Briefing Note:

Section 13(6) provides as follows:

The Lord Chancellor may, as respects an application under subsection (4) that falls within subsection (7) and for which the relevant appellate court is the Court of Appeal in England and Wales or the Court of Appeal in Northern Ireland, by order make provision for permission (or leave) not to be granted on the application unless the Upper Tribunal or (as the case may be) the relevant appellate court considers—

- (a) *that the proposed appeal would raise some important point of principle or practice, or*
- (b) *that there is some other compelling reason for the relevant appellate court to hear the appeal.*

The amendment would fulfil the recommendation of the Joint Committee of Human Rights in its Ninth Report of Session 2008-09 *Legislative Scrutiny: Borders, Citizenship and Immigration Bill* at paragraph 1.32:

“We agree with the opinion of Sir Richard Buxton that in a case where there is a real prospect that the decision of the Upper Tribunal is in breach of the UK’s international human rights obligations, that issue demands the attention of a court of the stature of the Court of Appeal. We recommend a simple amendment to the Bill to ensure that the Lord Chancellor’s power to impose the restrictive “second appeal” test on appeals to the Court of Appeal is not available in immigration and nationality cases:”

LORD LLOYD OF BERWICK

55D* Page 44, line 19, at end insert—

- "(4) Notwithstanding subsections (1) to (3), no transfer of a class of applications falling within subsection (5) may be made unless a draft of a statutory instrument specifying the class of applications to be transferred has been laid before and approved by resolution of each House of Parliament.
- (5) The applications are those which call into question any decision made under—
- (a) the Immigration Acts,
 - (b) the British Nationality Act 1981 (c. 61),
 - (c) any instrument having effect under an enactment within paragraph (a) or (b), or
 - (d) any other provision of law for the time being in force which determines British citizenship, British overseas territories citizenship, the status of British National (Overseas) or British Overseas citizenship."

Purpose:

The amendment would require delegated legislation to be approved by Parliament before the Lord Chief Justice could direct that a class of immigration or nationality judicial review applications were to be automatically transferred to the Upper Tribunal. It would have similar effect in Scotland and Northern Ireland in respect of the powers of the Lord President and Lord Chief Justice in Northern Ireland.

See also the Government amendment no. **62A**. The concerns noted (below) in respect of that amendment are also relevant in respect of this amendment.

Clause 52

LORD THOMAS OF GRESFORD

LORD KINGSLAND

56 Leave out Clause 52 and insert the following new Clause—

"Fresh claim applications

All fresh claim applications made under rule 353 of the Immigration Rules are transferred to the Upper Tribunal."

Presumed Purpose:

The amendment will allow peers to probe the need for clause 52 in the light of the debate at Committee stage and the indication from the Lord Chief Justice, by letter following that debate to Lord Lloyd (and copied to other peers), that the key concern for the Administrative Court was with judicial review applications in respect of decisions by the Home Office that further submissions do not constitute a fresh claim for the purposes of rule 353 of the Immigration Rules (HC 395).

Briefing Note:

ILPA supports peers who oppose clause 52. Please see the ILPA briefing on clause 52 for Report stage.

For further background information please see our briefings on this clause (formerly clause 50), and in particular our February 2009 Second Reading briefing on 'Clause 50 Transfer of Judicial Review', which remain available in the Briefings section at www.ilpa.org.uk

Rule 353 of the Immigration Rules (HC 395) provides:

Fresh Claims

353. When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

- (i) had not already been considered; and*
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.*

This paragraph does not apply to claims made overseas.

After Clause 52

LORD WEST OF SPITHEAD

BARONESS HANHAM

57 Insert the following new Clause—

"Trafficking people for exploitation

In section 4(4) of the Asylum and Immigration (Treatment of Claimants, etc.)

Act 2004 (c. 19) (trafficking people for exploitation: meaning of exploitation), for paragraph (d) substitute—

- "(d) a person uses or attempts to use him for any purpose within subparagraph (i), (ii) or (iii) of paragraph (c), having chosen him for that purpose on the grounds that—
- (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
 - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose."

Presumed Purpose:

This amendment would close a lacuna in the current trafficking offence in section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 whereby the trafficking of babies and very young children, or others who are trafficked in circumstances where because of their incapacity cannot be said to have been induced or requested to “*undertake any activity*”.

Briefing Note:

ILPA welcomes this amendment brought in response to the amendment previously moved in the name of the Baroness Hanham at Committee stage. It should be read with amendments to clause 55 and 56 (below).

Further information is available from ILPA’s January 2009 ‘Baby Trafficking’ briefing at www.ilpa.org.uk

Clause 53

LORD KIRKWOOD OF KIRKHOPE

57ZA Page 44, line 24, after "welfare" insert ", including the financial welfare,"

Presumed Purpose:

The amendment will allow peers to probe the Government further as to its intentions regarding the provision of welfare support to children, e.g. children in the asylum system (whether unaccompanied or in families). In particular, the amendment will allow peers to probe the Government in respect of the recommendation of the Joint Committee of Human Rights in its Ninth Report of Session 2008-09 *Legislative Scrutiny: Borders, Citizenship and Immigration Bill* at paragraph 1.62:

“We consider that the fact that the s.9 power is still not being used lends weight to our earlier recommendation that it should be repealed. It is unacceptable that a power which is never used is maintained on the statute book in order to keep open the possibility of its arbitrary use in future. We therefore repeat our longstanding recommendation that s. 9 be repealed.”

Briefing Note :

Section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is the provision that allows the Home Office to terminate financial and accommodation

support to asylum-seeking families, whose claims have been finally rejected, with the prospect that they face destitution and street homelessness and may suffer the separation of parents and children by local authorities taking such children into care as the only effective or lawful means to support them. Peers have previously voted for legislation empowering the Government to repeal section 9, when introducing what is now section 44 of the Immigration, Asylum and Nationality Act 2006, but section 44 has never been commenced.

LORD AVEBURY

BARONESS FALKNER OF MARGRAVINE

57ZB Page 44, line 24, leave out "who are in the United Kingdom"

57AA Page 45, line 2, leave out "who are in the United Kingdom"

Presumed Purpose:

This amendment would ensure that the duty upon UK Border Agency officials and its private contractors to have regard to the need to safeguard and promote the welfare of children would apply to those officials and contractors operating outside the UK as well as to those operating inside the UK. Without the amendment, children who are subject to immigration powers and functions at entry clearance posts overseas, at juxtaposed controls and in the course of escorted removals (once the plane or ship has left the UK) will not have the protection of this duty. The officials and private contractors dealing with these children in these circumstances will not be so bound to have regard the safety and welfare of these children when exercising their functions.

Briefing Note:

ILPA supports this amendment, and supports the briefings of the Refugee Children's Consortium in relation to this.

Clause 53

LORD RAMSBOTHAM

57A* Page 44, line 39, at end insert—

"() In issuing and reviewing any such guidance the Secretary of State must take into account any guidance issued for the purposes of section 11 of the Children Act 2004 (c. 31) (arrangements to safeguard and promote welfare) and of section 17 of the Children (Scotland) Act 1995 (c. 36) (duty of local authority to child looked after by them)."

Presumed Purpose:

This will allow peers to probe further as to the Government's intentions to ensure that guidance given under clause 53 (duty regarding the welfare of children) is issued and reviewed in line with other relevant guidance, in particular guidance under section 11 of the Children Act 2004; and to consider how regard may be also be had to guidance given in Scotland under section 17 of the Children (Scotland) Act 1995.

After Clause 53

LORD RAMSBOTHAM

57B* Insert the following new Clause—

"Duty to collect and publish statistics on detention and children

Duty to collect and publish statistics on detention and children

- (1) In pursuance of his duties under section 53, the Secretary of State shall collect and publish statistics regarding detention of children in relation to immigration, nationality and asylum on a regular basis.
- (2) In this section "statistics regarding detention and children" includes information relating to—
 - (a) the total number of children detained under immigration act powers, during the relevant period, including details of—
 - (i) their ages,
 - (ii) their nationalities,
 - (iii) where they are detained, and
 - (iv) the length of their detention.
 - (b) the number of people who have dependent children under the age of 18 and who are detained under immigration act powers, without those children, and
 - (c) the number of people whose ages are disputed and who are detained under immigration act powers."

Presumed Purpose:

This would require the Home Office to collect data and publish statistics relating to the detention of children.

Briefing Note:

The amendment will allow peers to probe the Government as to how it intends that the UK Border Agency will monitor trends in the detention estate in relation to the detention of children and in relation to age disputes so as to fulfil the duty under clause 53 to safeguard and promote the welfare of children.

ILPA supports the amendment and would refer peers to the briefing of the Refugee Children's Consortium on it.

Clause 55

LORD WEST OF SPITHEAD

BARONESS HANHAM

58 Page 45, line 31, after "to" insert—"(a)"

59 Page 45, line 32, at end insert ";

- (b) the amendment made by section (*Trafficking people for exploitation*)

(trafficking people for exploitation), which extends to England and Wales and Northern Ireland only."

Briefing Note:

See note on amendment no. 57 (above).

Clause 56

LORD AVEBURY

59A* Page 46, line 2, at end insert "except sections 42, 43 and 44, which come into force on the day this Act is passed."

Purpose:

To ensure that the stated provisions (on children born in UK etc. to members of the armed forces, descent through the female line and children born outside UK etc. to members of the armed forces) commence on the day the Act is passed.

ILPA supports the amendment.

Clause 56

LORD WEST OF SPITHEAD

BARONESS HANHAM

60 Page 46, line 13, leave out "section" and insert "sections (*Trafficking people for exploitation*) (trafficking people for exploitation) and"

61 Page 46, line 13, leave out "comes" and insert "come"

Briefing Note:

See note on amendment no. 57 (above).

Clause 56

LORD AVEBURY

BARONESS MILLER OF CHILTHORNE DOMER

62 Page 46, line 22, at end insert "; and

- (c) must make provision for those who on the appointed day have leave to enter or remain in the United Kingdom—
 - (i) in a category in which an application for indefinite leave to remain may be made under the Immigration Rules as in force on the appointed day;
 - (ii) as refugees and persons with humanitarian protection, or as persons with a pending application for leave to remain pursuant to an asylum claim or a human rights claim provided that when the application is no longer pending the person is granted leave to

enter or remain in the UK to make an application for indefinite leave to remain in accordance with the provisions of those rules as in force on the appointed day or as a refugee or person with humanitarian protection.

- () An asylum claim and a human rights claim have the meaning given in section 113 of the Nationality, Immigration and Asylum Act 2002.
- () A pending application is one that has not yet been determined or that is the subject of a pending appeal within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002."

Presumed Purpose:

To ensure that those who are currently in the UK with leave in a category that currently leads to settlement (to Indefinite Leave to Remain) will be able to progress to Indefinite Leave to Remain and at that point be deemed to have Permanent Residence (under new paragraph 11(4) of Schedule 1 to the British Nationality Act 1981 inserted by the Bill).

Briefing Note:

ILPA supports this amendment, which addresses the concern as to fairness highlighted by the Baroness Hanham when speaking to amendment no. 23A at Report stage (*Hansard*, HL 25 Mar 2009 : Column 710). The Baroness Hanham said :

"...the principle behind this proposed new clause, which would be inserted before Clause 39, is fairness. The Government are seeking to change the routes in this Bill for those applying for various categories of naturalisation and residence in this country. However, we have some issues with some of the planned changes. The people who have faithfully adhered to the current rules and thought that they were firmly established on the road to citizenship should not now have the rug pulled from beneath their feet..."

The amendment would preserve the position of those currently on a route to citizenship. It would in effect meet the concern and recommendation of the Joint Committee of Human Rights in its Ninth Report of Session 2008-09 *Legislative Scrutiny: Borders, Citizenship and Immigration Bill* at paragraph 1.52:

"We urge the Government not to repeat the unedifying spectacle of riding roughshod over migrants' legitimate expectations of settlement, which undermined many migrants' faith in the UK's commitment to basic fairness. We recommend that clear transitional provisions are made which meet the legitimate expectations of those already in the system."

Clause 56

LORD WEST OF SPITHEAD

62A Page 46, line 37, at end insert—

- "() No order may be made commencing section 52(1)(a) or (c), (2)(a) or (c), or (3)(a) or (c) (transfer of immigration or nationality judicial review applications)

unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament."

Presumed Purpose:

This amendment would mean that the power in clause 52 for the Lord Chief Justice in England and Wales (and similar powers for the Lord President in Scotland and the Lord Chief Justice in Northern Ireland) to prescribe a class or classes of immigration or nationality judicial review applications to be automatically transferred to the Upper Tribunal could not be commenced without approval by resolution of each House of Parliament.

Briefing Note:

ILPA does not consider that this amendment provides any satisfactory answer to the concerns expressed by peers in relation to clause 52, particularly having regard to the convention not to vote against the Government in respect of delegated legislation. In *Law in the Making* published by the Hansard Society, the authors observe at page 196 that "...the scrutiny of delegated legislation was considered by many to be relatively weak".

Please see further the note on amendment no. 56 (above).

Before the Schedule

BARONESS HANHAM

VISCOUNT BRIDGEMAN

63 Insert the following new Schedule—

"SCHEDULE

LIST OF "CUSTOMS REVENUE" FUNCTIONS AND "GENERAL CUSTOMS" FUNCTIONS

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Customs revenue functions	General customs functions
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Functions relating to the collection and enforcement of— Customs duties; Excise duties; Agricultural levies; Anti-dumping duties; Countervailing duties; VAT in so far as it relates to the import or export of goods.	Any function of the Commissioners of HMRC other than functions relating to— any former Inland Revenue function; any other tax, duty or levy; the Paymaster General's function; the control of money transfer businesses. The non-revenue enforcement functions of the Commissioners relating to customs matters, including— the enforcement of import and export prohibitions and restrictions on goods, for example— drugs; weapons; endangered species; animal products; powers under the Proceeds of Crime Act to seize criminal cash; other functions given to the
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Commissioners or officers of HMRC in a relation to the regulation of international trade and shipping."

Presumed Purpose:

To set out in a schedule the respective functions that are Customs revenue functions and General customs functions.

The Schedule

LORD WEST OF SPITHEAD

LORD AVEBURY

64 Page 47, line 16, column 2, at beginning insert—

"Section 3(4)."

65 Page 47, line 16, column 2, at beginning insert—

"In section 4B(1), the word "or" immediately before paragraph (c)."

Purpose :

To reflect amendment nos. **42** and **43**.