



ILPA Briefing Paper on:

**Presumed Purpose of Tabled Amendments to
Borders, Citizenship and Immigration Bill – HL Bill 115**

**Based on the list published on Parliamentary Bill page
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House of Commons Report

ILPA is a professional association with some 1000 members (individuals and organisations), who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-government organisations working in this field are also members. ILPA aims to promote and improve the giving of advice on immigration and asylum, through teaching, provision of resources and information. ILPA is represented on numerous government, court and tribunal stakeholder and advisory groups.

NEW CLAUSE 2

Short-term holding facilities

Secretary Alan Johnson

NC2

To move the following Clause:—

‘In section 147 of the Immigration and Asylum Act 1999 (c. 33) (removal centres and detained persons: interpretation), in the definition of “short-term holding facility”—

- (a) after “used” insert “—(a)”, and
- (b) at the end insert “, or

(b) for the detention of—

- (i) detained persons for a period of not more than seven days or for such other period as may be prescribed, and
- (ii) persons other than detained persons for any period.”’.

Presumed Purpose:

This New Clause is intended to replace what is currently Clause 25 (see Amendment 15, below). It differs from the current Clause by ensuring that Immigration Removal Centres, where ‘detained persons’ are held (sometimes for less than seven days, and sometimes for periods greatly in excess of that period) are not re-designated as ‘short-term holding facilities’ by the amendment of section 147 of the Immigration and Asylum Act 1999. However, like the current Clause it will allow persons who are not ‘detained persons’ (i.e. persons held under powers other than those in section 62, Nationality, Immigration and Asylum Act 2002 or in the Immigration Act 1971) to be held in short-term holding facilities.

Briefing Note:

Please see ILPA’s separate briefing for Report stage on Clause 25 (*short-term holding facilities*), which highlights problems with the New Clause (and with Clause 25) in that re-designation of ‘short-term holding facility’ under either Clause could include police cells and prisons within the definition; and could allow for some persons to be held in short-term holding facilities for exceptionally long (much longer than seven days) or indefinite periods. These concerns are addressed by Amendments (a) and (b) (see below) to the New Clause.

AMENDMENTS TO NEW CLAUSE 2

As Amendments to Secretary Alan Johnson’s proposed New Clause (Short-term holding facilities):

Chris Huhne
Tom Brake
Paul Rowen

(a)

Line **6**, after ‘detention’, insert ‘by an immigration officer, general customs official or Customs revenue official’.

(b)

Line **10**, leave out ‘for any period’ and insert ‘for not longer than six hours’.

Purpose:

These Amendments to Government New Clause NC2 (see above) would avoid the inclusion of prisons and police cells within the re-designation of short-term holding facilities and would ensure that persons held in these facilities under non-immigration powers are not held for periods of more than 6 hours and not under powers other than those exercised by officials of the UK Border Agency.

Briefing Note:

ILPA supports these Amendments. Please see ILPA separate briefing for Report stage on Clause 25 (*short-term holding facilities*).

NEW CLAUSE 8

Transfer of certain immigration judicial review applications

Secretary Alan Johnson

NC8

★ To move the following Clause:—

(1) In section 31A of the Supreme Court Act 1981 (c. 54) (England and Wales: transfer from the High Court to the Upper Tribunal)—

(a) after subsection (2) insert—

If Conditions 1, 2, 3 and 5 are met, but Condition 4
“(2A) is not, the High Court must by order transfer the application to the Upper Tribunal.”, and

(b) after subsection (7) insert—

Condition 5 is that the application calls into question a decision of the Secretary of State not to treat submissions as an asylum claim or a human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002 (c. 41) wholly or partly on the basis that they are not significantly different from material that has previously been considered (whether or not it calls into question any other decision).”

(2) In section 25A of the Judicature (Northern Ireland) Act 1978 (c. 23) (Northern Ireland: transfer from the High Court to the Upper Tribunal)—

(a) after subsection (2) insert—

If Conditions 1, 2, 3 and 5 are met, but Condition 4
“(2A) is not, the High Court must by order transfer the application to the Upper Tribunal.”, and

(b) after subsection (7) insert—

Condition 5 is that the application calls into question a decision of the Secretary of State not to treat submissions as an asylum claim or a human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002 (c. 41) wholly or partly on the basis that they are not significantly different from material that has previously been considered (whether or not it calls into question any other decision).”

(3) In section 20 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (Scotland: transfer from the Court of Session to the Upper

Tribunal)—

- (a) in subsection (1), for the “and” at the end of paragraph (a) substitute—
 - “(aa) must, if Conditions 1, 2 and 5 are met, but Condition 4 is not, and”, and
- (b) after subsection (5) insert—

Condition 5 is that the application calls into question a decision of the Secretary of State not to treat submissions as an asylum claim or a human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002 (c. 41) wholly or partly on the basis that they are not significantly different from material that has previously been considered (whether or not it calls into question any other decision).”.

Presumed Purpose:

This New Clause should be read with Government Amendments 41-45 (see below). It is to replace Clause 54 with a more restricted Clause that limits the transfer of immigration judicial reviews from the High Court to the Upper Tribunal to those judicial reviews that have been identified by the Lord Chief Justice as of particular concern. This is the position that had been accepted by the House of Lords (in amending the Bill) as an appropriate compromise between total opposition to what is now Clause 54 and the provisions of the Clause. The New Clause will require the transfer to the Upper Tribunal of judicial reviews seeking to challenge a decision of the Secretary of State, where that decision is that further submissions do not amount to a fresh asylum or human rights claim.

Briefing:

Please see ILPA separate briefing for Report stage on transfer of judicial reviews and appeals to the Court of Appeal. ILPA is opposed to the transfer of judicial reviews for reasons explained in that briefing.

NEW CLAUSE 1

Entitlement to British citizenship by certain citizens of the Republic of Ireland

Andrew Mackinlay

NC1

To move the following Clause:—

- ‘(1) After section 31 of the British Nationality Act 1981 (c.61) insert—

“(1A) Entitlement to British citizenship by certain citizens of the Republic of Ireland”.

the Republic of Ireland

(1) If a person born in the Republic of Ireland on or after 1 January 1949 gives notice in writing to the Secretary of State claiming to remain a British subject on either or both of the following grounds, namely—

- (a) that he is or has been in Crown Service under the government of the United Kingdom; and
- (b) that he has associations by way of descent, residence or otherwise with the United Kingdom or with any British overseas territory.

he shall as from that time be a British subject by virtue of this subsection.

(2) A person who is a British subject by virtue of subsection (1) shall be deemed to have remained a British subject from the date of his birth to the time when he became a British subject by virtue of that subsection.”.’.

Presumed Purpose:

This New Clause would allow Members of Parliament to probe the Government as to the 1st January 1949 cut-off in section 31 of the British Nationality Act 1981 for citizens of the Republic of Ireland who, by reason of Crown Service and ancestry, residence or other association with the United Kingdom, are permitted to be recognised as a British subject on giving written notice to the Secretary of State.

NEW CLAUSE 3

Amendment of the immigration rules relating to gurkhas

Chris Huhne
Tom Brake
Paul Rowen

NC3

To move the following Clause:—

- ‘(1) The Immigration Rules, as laid before Parliament under section 3(2) of the Immigration Act 1971 (c. 77), are amended as follows.
- (2) In Rule 276F (requirements for indefinite leave to enter the United Kingdom as a Gurkha discharged from the British Army) omit paragraphs (ii) and (iii).

- (3) In Rule 276I (requirements for indefinite leave to remain in the United Kingdom

as a Gurkha discharged from the British Army) omit paragraphs (ii) and (iii).

- (4) Gurkhas discharged from the British Army prior to 1997 shall have parity with Commonwealth servicemen in terms of the requirements for indefinite leave to enter and remain in the United Kingdom.’.

Presumed Purpose:

The New Clause will allow Members of Parliament to probe the Government as to commitments now made towards the Gurkhas in relation to settlement.

Briefing Note:

Further explanation of the Government’s position is available at:

<http://www.bia.homeoffice.gov.uk/sitecontent/newsarticles/gurkhas-right-to-settle>

NEW CLAUSE 4

Financial support for asylum seekers

Mr Neil Gerrard

NC4

To move the following Clause:—

- ‘(1) The Immigration and Asylum Act 1999 (c. 33) is amended as follows.
- (2) In section 4(11)(b) omit “not”.’.

Purpose:

This New Clause would allow (but not require) the Government to provide cash payments as part of support provided under section 4 of the Immigration and Asylum Act 1999 to former asylum-seekers or immigration detainees, who are currently unable to return to their countries of origin.

Briefing Note:

ILPA supports this New Clause. Currently, support under section 4 is provided by way of vouchers. The UK Border Agency is to operate a pilot to test alternatives to vouchers. The New Clause would allow cash to be tested as part of that pilot. Please see ILPA separate briefing for Report stage on Section 4 support; and the Still Human Still Here briefing on this New Clause.

NEW CLAUSE 5

Consequences of failure to fulfil requirements for naturalisation

Mr Neil Gerrard

NC5

★ To move the following Clause:—

‘Failure to satisfy the requirements set out in Schedule 1 to the British Nationality Act 1981 (c. 61) shall not exclude the possibility of the grant of a further period of probationary citizenship, or other immigration leave.’.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government as to what will happen if a person completes a period of probationary citizenship without having been granted either British citizenship or permanent residence.

Briefing:

The Bill is silent as to whether an application for further leave to remain will be entertained in such circumstances. Given that under the Bill’s provisions certain requirements must be met during the qualifying period (including not to be absent for more than 90 days in any one year; or to be in continuous employment throughout), this will be an important question for many migrants on the path to citizenship. Although the Secretary of State will have the discretionary power to waive these requirements, the migrant will not know at the time of the event that means the requirement is not met (e.g. at the time he or she has to be absent from the UK for more than 90 days because of family crisis or because an employer posts him or her abroad; or he or she is temporarily out of work). Rather, under the current provisions, he or she will have to wait until the end of the probationary citizenship period (i.e. end of the qualifying period) before finding out whether the Secretary of State will exercise the discretion in the migrant’s favour. It is, therefore, critical that the migrant knows that, if the discretion is not exercised in his or her favour, he or she may nonetheless apply for further leave so as to protect his or her immediate future and to allow him or her the opportunity to be able to meet the requirements (i.e. by rebuilding up to the required number of qualifying years in which the requirements are met).

Please see ILPA separate briefing for Report stage on the path to citizenship.

NEW CLAUSE 6

Right of appeal to court of appeal

Mr Neil Gerrard
Chris Huhne

Tom Brake
Paul Rowen

NC6

★ To move the following Clause:—

‘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.’.

Purpose:

This New Clause would ensure that, once the Asylum and Immigration Tribunal is transferred into the Tribunals Service, decisions of the Upper Tribunal (the second tier of the Tribunals Service) in immigration and nationality law cases can continue to be appealed to the Court of Appeal if the Court of Appeal is satisfied that the decision of the Upper Tribunal is arguably wrong in law and the appeal has a reasonable prospect of success. It would restrict the power of the Lord Chancellor, contained in section 13(6) of the Tribunals, Courts and Enforcement Act 2007 to impose additional limiting criteria on appeals to the Court of Appeal in immigration and nationality cases.

Briefing Note:

ILPA supports this New Clause. The New Clause was inserted into the Bill by the House of Lords, but was removed by the Government during the Committee stage in the House of Commons. The Joint Committee on Human Rights supports the New Clause. Please see the ILPA separate briefing for Report stage on the transfer of judicial reviews and appeals to the Court of Appeal.

Note: The Government New Clause (NC8) (see above) does not address the question which is addressed by this New Clause (NC6).

NEW CLAUSE 7

Exemptions to the application of Part 2

Chris Huhne
Tom Brake
Paul Rowen

NC7

★ To move the following Clause:—

‘Nothing in this Part shall affect an appliaton for indefinite leave to remain in the United Kingdom or for British citizenship if it—

- (a) has been submitted at any time in the 12 months after the commencement of this Part; or

(b) is made prior to the commencement of this Part.’.

Presumed Purpose:

This New Clause will allow Members of Parliament to probe the Government further as to its intentions for transitional protection for migrants currently on the path to citizenship at the time the Bill’s provisions are commenced.

Briefing:

The New Clause should be considered alongside Government Amendment 17 (see below).

AMENDMENT 9

John McDonnell
Mr Neil Gerrard

9

Page 3, line 35 [*Clause 3*], leave out paragraphs (a) and (b) and insert—

- ‘(a) any officer transferred to the UK Border Agency from HM Revenue and Customs, or
- (b) any UK Border Agency employee recruited for that specific purpose,’.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government as to its intentions regarding the potential re-designation of immigration officers as general customs officials. See also Amendment 11 (below).

AMENDMENT 18

Mr Damian Green
Mr Crispin Blunt

18

Page 3, line 36 [*Clause 3*], at end insert—

- ‘(ba) a police officer’.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government as to the potential involvement of police officers in customs work of the UK Border Agency.

AMENDMENT 10

John McDonnell
Mr Neil Gerrard

10

Page 3, line 43 [*Clause 3*], leave out subsection (3).

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government as to why it is necessary to designate certain officials as general customs officials if any other official of the Secretary of State will be able to exercise the customs functions of the Secretary of State; and as to why, if any official of the Secretary of State may exercise such functions, what steps will be taken to ensure that those exercising these functions are suitable and trained for the job.

AMENDMENT 11

John McDonnell
Mr Neil Gerrard

11

Page 8, line 4 [*Clause 11*], leave out paragraph (a) and insert—

- ‘(a) any officer transferred to the UK Border Agency from HM Revenue and Customs, or’.

Presumed Purpose:

The Amendment will allow Members of Parliament to probe the Government about the designation of customs revenue officials in the same way as Amendment 9 will allow for probing about the designation of general customs officials (see above).

AMENDMENT 12

John McDonnell
Mr Neil Gerrard

12

Page 9, line 10 [*Clause 12*], leave out ‘or for a specified period,’.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government as to the circumstances in which it is envisaged that the designation of an official as a customs revenue official may be time-limited. See also Amendment 13 (below).

AMENDMENT 13

John McDonnell
Mr Neil Gerrard

13

Page **9**, line **11** [*Clause 12*], leave out from ‘withdrawn’ to end of line 12.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government as to the circumstances in which it is envisaged that the designation of an official as a customs revenue official may be varied (and in what way). See also Amendment 12 (above).

AMENDMENT 19

Mr Damian Green
Mr Crispin Blunt

19

Page **15**, line **39** [*Clause 21*], at end insert—

‘(3A) The Secretary of State shall lay an annual report before Parliament on the data- sharing activities under this section.’.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government as to how Parliament will be able to effectively scrutinise the sharing of information that may be undertaken under Clause 21 of the Bill (but also under section 36 of the Immigration, Asylum and Nationality 2006, and more generally).

AMENDMENT 15

Secretary Alan Johnson
Chris Huhne
Tom Brake
Paul Rowen

15

Page **19**, line **23**, leave out Clause 25.

Purpose:

This will delete Clause 25. The Government seeks to replace the existing Clause 25 with New Clause NC2. Please see above; and also see Amendments (a) and (b) to that New Clause (also, above).

AMENDMENT 20

Mr Damian Green
Mr Crispin Blunt

20

Page **19**, line **29** [*Clause 25*], at end insert—

‘(1A) The designation of short-term holding facilities must be renewed every six months.’.

Presumed Purpose:

This will allow Members of Parliament to probe the Government as to the need to keep under review the use of short-term holding facilities in view of the intention to allow for the holding of a much wider range of persons in these facilities (under e.g. policing powers) alongside those who are currently held there (short-term immigration detainees) and for more variable and extensive (potentially indefinite) periods of time.

Briefing Note:

Please see Government New Clause NC2 and Amendments (a) and (b) to that New Clause (above).

AMENDMENT 21

Mr Damian Green
Mr Crispin Blunt

21

Page **22**, line **27** [*Clause 28*], at end insert—

‘(10A) The Chief Inspector of the UK Border Agency may delegate his responsibility to inspect facilities to Her Majesty’s Inspectors of Constabulary.’.

Presumed Purpose:

This will allow Members of Parliament to probe the Government as to the envisaged working relationship between these separate inspectorates.

AMENDMENT 3

Chris Huhne
Tom Brake
Paul Rowen

3

Page 24, line 9 [*Clause 30*], at end insert—

(2B) Regulations made under subsection (1) or (2A) may make provision conferring functions on the Independent Police Complaints Commission in respect of the exercise of immigration and customs functions and the provision of services pursuant to arrangements relating to the discharge of those functions whether in the UK or overseas.’.

Presumed Purpose:

This will allow Members of Parliament to probe the Government as to how independent scrutiny will be provided in relation to serious allegations of misconduct by the UK Border Agency or its private contractors where the relevant conduct occurs outside the UK.

Briefing Note:

At Committee stage in the House of Lords, the Lord West of Spithead indicated that there was ongoing consideration of this matter, at least in relation to conduct at juxtaposed controls (those places in Europe where the UK Border Agency exercises jurisdiction, with agreement of the relevant EU State, to carry out immigration functions including stop and search powers):

‘The Government are considering whether an independent oversight system can be put in place for matters arising at the juxtaposed controls that do not warrant criminal investigation but do constitute serious misconduct. Currently such matters would be investigated by the agency’s professional standards unit but are not subject to independent oversight.’ (Hansard HL, 25 Feb 2009 : Column 295)

Currently, there is no provision for independent scrutiny of serious allegations of misconduct at juxtaposed controls, or in the course of removals once the person or family being removed is outside the territorial jurisdiction of the UK, or at entry clearance posts, or by airline liaison officers when outside the territorial jurisdiction of the UK. Yet UK Border Agency officials or private contractors may exercise significant powers over very vulnerable persons in these situations.

AMENDMENT 5

Chris Huhne
Tom Brake
Paul Rowen

5

Page 30, line 5 [*Clause 39*], after ‘period’, insert ‘, save that periods during which A was in the United Kingdom with leave other than that conferring qualifying immigration status shall be disregarded for the purpose of considering whether A had qualifying immigration status for the whole period’.

Presumed Purpose:

This Amendment would write into the legislation the assurance given by Phil Woolas MP at Committee stage in the House of Commons that:

‘Somebody who spends two periods in the UK with a qualifying immigration status, and who in between is lawfully in the UK with an immigration status that is not a qualifying one, can have the two qualifying periods aggregated.’
(*Hansard* HC, Committee, Fourth Sitting, 11 Feb 2009 : Column 108)

AMENDMENT 4

Chris Huhne
Tom Brake
Paul Rowen

4

Page 30, line 6 [*Clause 39*], after first ‘the’, insert ‘average’.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe further the circumstances in which extended periods of absence from the UK in any 12 months period, which cannot reasonably be avoided (e.g. due to family bereavement or crisis; or because a UK-based employer requires a migrant to work overseas), shall not preclude or delay the path to citizenship of a migrant on the general route (see also Amendment 7, below). It will also allow Members of Parliament to probe the Government further as to how predictability, transparency and clarity will be provided if migrants, who are faced with the need to undertake extended absences, cannot foresee before the end of the qualifying period whether and how such absences will affect them. Under the provisions of the Bill, migrants would not be able to foresee this because of the intention that such matters will be left to the discretion of the Secretary of State when considering any naturalisation application.

Briefing Note:

Please see ILPA separate briefing for Report stage on the path to citizenship.

AMENDMENT 1

Chris Huhne
Tom Brake
Paul Rowen

Page 30, line 13 [*Clause 39*], leave out from ‘abode’ to end of line 14 and insert ‘,or a permanent EEA entitlement or refugee status or humanitarian protection;’.

Presumed Purpose:

This Amendment should be read with Amendment 2 (see below), for which it is needed to give effect by allowing an application for naturalisation to be made by someone with refugee or humanitarian protection leave (which leave is currently granted for 5 years’ periods).

AMENDMENT 40

Tom Brake
Paul Rowen

40

★ Page 31, line 11 [*Clause 39*], at end insert—

‘(10A) After sub-paragraph (5) (inserted by subsection (10) above) insert—

(6) The Secretary of State shall exercise his discretion under sub-paragraph (ba) above in favour of individuals recognised as having a refugee status in the UK, so as to treat time spent awaiting the outcome of their asylum claim as time spent with a qualifying immigration status, unless there are exceptional reasons why he should not.’’.

Presumed Purpose:

This would allow periods of time spent by refugees in the UK awaiting recognition of their asylum claims to count towards the qualifying period for citizenship.

Briefing Note:

The UK Border Agency has targets for resolving asylum claims within 6 months. However, these do not apply to all cases. These targets do not apply to any cases in the asylum (often called ‘legacy’ backlog). These targets only apply to a percentage of the newer cases (by end 2009, the target will apply to 75% of cases; and by end 2011 to 90% of cases). Accordingly, it is already contemplated that a significant number of cases will not be subjected to the 6 months target.

In the past, some asylum-seekers have waited several months or years for the resolution of their cases. To promote integration of those who are ultimately recognised to be refugees, it would be reasonable to ordinarily allow the period awaiting the final decision on an asylum claim to count towards qualifying period. Indeed, this approach ought to apply to others who are recognised as entitled to remain, such as those granted humanitarian protection leave.

AMENDMENT 7

Chris Huhne
Tom Brake
Paul Rowen

7

Page 32, line 18 [*Clause 40*], after first ‘the’, insert ‘average’.

Presumed Purpose:

See Amendment 4 (above). This Amendment operates similarly to that in relation to migrants on the family route.

AMENDMENT 2

Chris Huhne
Tom Brake
Paul Rowen

2

Page 35, line 21 [*Clause 41*], at end insert—

- ‘(6) In the case of an applicant with refugee status or humanitarian protection—
- (a) the number of years in the period is 5; and
 - (b) the activity condition is waived.’.

Presumed Purpose:

This would mean that refugees and those granted humanitarian protection could apply for naturalisation within 5 years of the grant following recognition of their status or entitlement; and would remove the activity condition from the requirements of the path to citizenship for these individuals.

AMENDMENT 22

Mr Damian Green
Mr Crispin Blunt

22

Page 35, line 21 [*Clause 41*], at end insert—

- ‘(6) Such prescribed activities may not include those activities that could be considered in the interests of a single political party.’.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government further as to its (still not well-developed) thinking in relation to the activity condition, and in particular as to what activities shall or shall not count and how this will be regulated.

Briefing Note:

The Government has made available a document dated 4 June 2009 and entitled ‘Document made available to the House to illustrate the Government’s emerging thinking on Active Citizenship’. That document, which was available for Committee stage, indicates that such activities as ‘canvassing for a political party’ are contemplated by Government as within those that shall count towards meeting the activity condition. See further the debate at *Hansard* HC, Committee, Fourth Sitting, 11 Feb 2009 : Column 110 *et seq.*

AMENDMENT 23

Mr Damian Green
Mr Crispin Blunt

23

Page 36, line 14 [*Clause 41*], at end insert—

(5A) None of the conditions in section 41(1) shall apply to anyone who entered the United Kingdom under the Highly Skilled Migrants Programme more than four years before the date of commencement appointed by the Secretary of State for Part 2.’.

Presumed Purpose:

This Amendment would provide limited transitional protection against the path to citizenship changes to be made by the Bill to those who came to the UK on the now-withdrawn Highly Skilled Migrant Programme (HSMP). The Amendments will allow Members to probe the Government as to its commitment to those on the HSMP, whom the Courts have required must be treated in line with the original promise as regards their route to settlement – see [2008] EWHC 664 (Admin) and [2009] EWHC 711 (Admin).

Briefing Note:

Government Amendment 17 (see below) sets out transitional protection for migrants who, when the Bill’s provisions are commenced, have progressed at least as far along the current path to citizenship as the making of an application for indefinite leave to remain.

Please see ILPA separate briefing for Report stage on the path to citizenship.

AMENDMENT 8

Page 43, line 42 [*Clause 49*], at and insert—

(10) The following periods of absence from the labour market shall be disregarded for the purposes of establishing whether an applicant is or has been in “continuous employment”—

- (a) periods of involuntary unemployment duly recorded by an employment agency or office lasting no more than six months,
- (b) all authorised employment absences (whether expressly or by custom) including maternity and paternity leave, illness, temporary cessations of work and sabbaticals, and
- (c) other periods of unemployment in circumstances where they have not resulted in the cancellation or refusal of immigration leave.’.

Presumed Purpose:

This will allow Members of Parliament to probe the Government further as to the meaning of ‘continuous employment’ in the Bill’s path to citizenship provisions.

Briefing Note:

At Committee stage, Phil Woolas MP indicated (*Hansard HC, Committee, Fourth Sitting 11 Feb 2009 : Column 107*) that discretion under the Bill would allow the Secretary of State to waive the continuous employment requirement where any period out of work was within the points-based system guidance which allows for migrant workers to remain in the UK despite being out of work for up to 60 days while looking for new employment. This may be particularly important for those that are made redundant or suffer abuse or exploitation at work. However, the Minister’s statement provides no predictability or clarity for migrants in these situations, since it will not be known at the time of the period out of work whether the discretion will be exercised in the migrant’s favour when he or she later comes to make any naturalisation application.

At a minimum, the Government ought to give a clear assurance that where someone is permitted to remain in the UK and/or to extend his or her leave to remain in the UK, regard having been had to his or her having been out of work for a period (within the relevant guidance), that the discretion in relation to the ‘continuous employment’ requirement will be exercised in the migrant worker’s favour.

Please see ILPA separate briefing for Report stage on the path to citizenship.

AMENDMENT 14

Chris Huhne
Tom Brake
Paul Rowen
Mr Damian Green
Mr Crispin Blunt

14

Page 44, line 4, leave out Clause 50.

Purpose:

This would remove the power currently contained in the Bill for the Government to introduce immigration controls on sea and air journeys within the Common Travel Area.

Briefing Note:

ILPA supports this Amendment. Further information is available from ILPA's briefing for Committee stage in the House of Lords (on what was Part 3, Clause 46).

AMENDMENT 41

Secretary Alan Johnson

41

★ Page 45, line 18, leave out Clause 54.

Purpose:

This removes the current transfer of judicial reviews provision in the Bill. See also Amendments 42-45.

Briefing Note:

The Government New Clause NC8 is to replace this provision (see above).

AMENDMENTS 31-36

Chris Huhne
Tom Brake
Paul Rowen

31

Page 45, line 21 [*Clause 54*], leave out paragraph (a).

32

Page 45, line 23 [*Clause 54*], leave out paragraph (c).

33

Page 45, line 26 [<i>Clause 54</i>], leave out paragraph (a).	34
Page 45, line 28 [<i>Clause 54</i>], leave out paragraph (c).	35
Page 45, line 31 [<i>Clause 54</i>], leave out paragraph (a).	36
Page 45, line 33 [<i>Clause 54</i>], leave out paragraph (c).	

Purpose:

These Amendments related to Clause 54; and would preclude the mandatory transfer of all immigration and nationality judicial reviews (or any subclasses of these) from the High Court to the Upper Tribunal – thereby ensuring that all immigration and nationality judicial reviews continue to be made to the High Court, while allowing the High Court judge in each case to decide to transfer the case if he or she considers that appropriate.

Briefing Note:

However, see Government Amendment 41 (above): Clause 54 is to be removed from the Bill. Clause 54 is to be replaced with Government New Clause 8 (see above).

AMENDMENT 37

Chris Huhne
Tom Brake
Paul Rowen

37

Page 45, line 33 [*Clause 54*], at end insert—

(3A) Nothing in section 31A of the Supreme Court Act 1981 (c. 54) (England and Wales transfer from the High Court to the Upper Tribunal), section 25 of the Judicature (Northern Ireland) Act 1978 (c. 23) (Northern Ireland: transfer from Judicature (Northern Ireland) Act 1978 (c. 23) (Northern Ireland: transfer from the High Court to the Upper Tribunal) or section 20 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (transfer from the Court of Session to the Upper Tribunal) shall permit the transfer of any application where the application calls into question a decision under—

- (a) the British Nationality Act 1981 (c. 61),
 - (b) any instrument having effect under an enactment within paragraph (a), or
- any other provision of law for the time being in force which

determines British citizenship, British overseas territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.’.

Purpose:

These Amendments would amend Clause 54 so as to preclude the transfer of any nationality judicial reviews from the High Court to the Upper Tribunal.

Briefing Note:

However, see Government Amendment 41 (above), as Clause 54 is to be removed from the Bill. Government New Clause NC8, which is to replace Clause 54, would mean that transfer of nationality judicial reviews continued to be precluded – thus satisfying the purpose of this Amendment (which ILPA supports).

AMENDMENT 38

Chris Huhne
Tom Brake
Paul Rowen

38

Page 45, line 33 [*Clause 54*], at end insert—

(3A) The Secretary of State must by affirmative order make provision for the transfer of fresh claim applications made under rule 353 of the Immigration Rules to the Upper Tribunal.

(3B) An order under the above subsection may not be made until after the Asylum and Immigration jurisdiction has been transferred to the First Tier Tribunal and Upper Tribunal.’.

Presumed Purpose:

This Amendment would allow Members of Parliament to probe the Government further as to the decision to remove the clause inserted by the House of Lords to replace what is currently Clause 54. The House of Lords’ amendment had, in part, sought to restrict the transfer of immigration and nationality judicial reviews from the High Court to the Upper Tribunal to those judicial reviews which concern decisions by the Secretary of State to refuse to treat further submissions as a fresh asylum or human rights claim.

Briefing Note:

However, the aim of the part of the House of Lords amendment (described here) is now met by Government New Clause NC8 (see above).

AMENDMENT 26

Page 46, line 9 [*Clause 55*], at end insert—

(1A) In section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (trafficking people for exploitation), after section 4(5) add—

(5A) The Secretary of State shall publish a code of conduct to guide Entry Clearance Officers in their treatment of applications which they suspect involve human trafficking.”.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government as to what steps shall be taken, and specifically what guidance and training will be provided, to entry clearance officers in relation to trafficking.

Briefing Note:

Entry clearance officers deal with applications overseas for permission to come to or transit through the UK. In some instances, traffickers may seek to use ostensibly lawful means of entry or passage through the UK by obtaining a visa. The Amendment highlights one of the failings in relation to children (though it should be noted that trafficking is not restricted to exploitation of children) of the inclusion of the words “*who are in the United Kingdom*” in Clause 56 (*duty regarding the welfare of children*). The failing caused by these words results because the welfare and safeguarding duty to be introduced by that clause will not apply in circumstances where an application is being dealt with by an entry clearance officer in relation to a child who is to be trafficked to or through the UK – because the child will at that time not be in the United Kingdom.

AMENDMENT 24

Page 46, line 39 [*Clause 56*], at end insert—

(5A) The Secretary of State shall collect and publish statistics regarding detention of children during the relevant period, on a regular basis.’.

Presumed Purpose:

This will allow Members of Parliament to probe the Government as to the steps that have been or are to be taken in relation to improving the transparency of and the

monitoring of the detention of children by collecting and publishing statistics in relation to detention of children.

AMENDMENT 28

Chris Huhne
Tom Brake
Paul Rowen

28

Page **46**, line **39** [*Clause 56*], at end insert—

- ‘(5A) The Secretary of State has a duty to ensure that children held in detention centres—
- (a) have access to counselling;
 - (b) have access to English language classes; and
 - (c) receive education classes that are equivalent to what they would be entitled to if placed in state school education.’.

Presumed Purpose:

This will allow Members of Parliament to probe the Government as to the treatment of, provision of services to and impacts upon children in detention – specifically in relation to their mental health, and their access to education.

AMENDMENT 29

Chris Huhne
Tom Brake
Paul Rowen

29

Page **46**, line **39** [*Clause 56*], at end insert—

- The Secretary of State shall collect and publish monthly statistics regarding the detention of children, including figures relating to,
- ‘(5A) the number of children detained, the average length of period in detention, and the number of children with the same family in detention, their ages, nationalities and where they are detained.’.

Presumed Purpose:

This will allow Members of Parliament to probe the Government as to the steps that have been or are to be taken in relation to improving the transparency of and the monitoring of the detention of children by collecting and publishing statistics in relation to detention of children.

AMENDMENT 39

Chris Huhne
Tom Brake
Paul Rowen

39

★ Page 46, line 39 [*Clause 56*], at end insert—

(5A) The Director of Border Revenue and the Secretary of State have a duty, in the need to safeguard the welfare of children, to ensure that dawn raids are not used to—

- (a) remove and/or deport families with children, who are failed asylum seekers or illegal immigrants; or
- (b) remove and/or deport children of failed asylum seekers or illegal immigrants.’.

Presumed Purpose:

This Amendment will allow Members of Parliament to probe the Government as to the use of dawn raids for the detaining and/or removal of families and children.

AMENDMENT 42

Secretary Alan Johnson

42

★ Page 47, line 22 [*Clause 58*], leave out ‘54’ and insert ‘[*Transfer of certain immigration judicial review applications*]’.

Presumed Purpose:

See Amendment 41 (above), upon which this is consequential.

AMENDMENT 43

Secretary Alan Johnson

43

★ Page 47, line 37 [*Clause 59*], leave out ‘54 (transfer of immigration or nationality judicial review applications)’ and insert ‘[*Transfer of certain immigration judicial review applications*] (transfer of certain immigration judicial review applications)’.

Presumed Purpose:

See Amendment 41 (above), upon which this is consequential.

AMENDMENT 25

Mr Damian Green
Mr Crispin Blunt

25

Page 47, line 39 [*Clause 59*], at end insert ‘, provided this is no sooner than two years after the date of Royal Assent.’.

Purpose:

This Amendment would preclude the commencement of Clause 54 (*transfer of immigration or nationality judicial review applications*) at any time before two years have passed after Royal Assent.

Briefing Note:

However, see Government Amendment 41 and New Clause NC8, which will remove Clause 54 and replace it with a new provision (see above).

AMENDMENT 17

Secretary Alan Johnson

17

Page 48, line 11 [*Clause 59*], at end insert—

(8A) An order commencing sections 39 to 41 (acquisition of British citizenship by naturalisation) must include provision that the amendments made by those sections do not have effect in relation to an application for naturalisation as a British citizen if—

(a) the date of the application is before the date on which those sections come into force in accordance with the order (“the date of commencement”), or

(b) the date of the application is before the end of the period of 24 months beginning with the date of commencement and the application is made by a person who falls within subsection (8B) or (8C).

(8B) A person falls within this subsection if on the date of commencement the person has indefinite leave to remain in the United Kingdom.

(8C) A person falls within this subsection if the person is given indefinite leave to remain in the United Kingdom on an application—

- (a) the date of which is before the date of commencement, and
- (b) which is decided after the date of commencement.

(8D) The reference in subsection (8A) to an order commencing sections 39 to 41 does not include an order commencing those sections for the purpose only of enabling regulations to be made under the British Nationality Act 1981 (c. 61).’.

Presumed Purpose:

This Amendment would give effect to the assurance given by Phil Woolas MP at Committee stage as to transitional protection for those migrants who, at the time of commencement of the Bill’s path to citizenship provisions, have reached as far along the current path to citizenship as the making of an application for indefinite leave to remain. The transitional protection provided against the changes to be made by the Bill will apply to these individuals in respect of any application for naturalisation that is made within 2 years of commencement – see *Hansard* HC, Committee, Fourth Sitting, 11 Feb 2009 : Column 99-100.

Briefing Note:

However, the Amendment does not address those to whom the Minister confirmed there was ongoing thinking:

‘Concerns have been expressed about the position of those who are nearing the end of their temporary leave and who, under the current rules, would be eligible to apply for ILR. Clause 39(a) attempts to address those concerns. I assure hon. Members that we have given, and continue to give, thought to the transitional arrangements for that group. Our dilemma is how to devise arrangements that are rational, proportional and reasonable, but that also minimise the operational complexity and costliness of running two systems concurrently. We do not believe that migrants, as a matter of course, have a legitimate expectation that we will not change our policy. However, we would like to give the matter further consideration and return to it at a later stage.’
(*Hansard* HC, Committee, Fourth Sitting, 11 Feb 2009 : Column 100)

Please see ILPA separate briefing for Report stage on the path to citizenship.

AMENDMENT 44

Secretary Alan Johnson

44

★ Page 48, line 24 [*Clause* 59], at end insert—

No order may be made commencing section [*Transfer of certain immigration judicial review applications*] (transfer of certain immigration judicial review applications) unless the functions of

the Asylum and Immigration Tribunal in relation to appeals under Part 5 of the Nationality, Immigration and Asylum Act 2002 (c. 41) have been transferred under section 30(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15).'

Purpose:

See Amendment 41 (above) and Government New Clause NC8. This Amendment will mean that New Clause NC8 cannot be commenced unless and until the Asylum and Immigration Tribunal is transferred into the Tribunals Service.

AMENDMENT 16

Secretary Alan Johnson

16

Page **49** [*Schedule*], leave out lines 6 and 7.

Presumed Purpose:

See Amendment 15 (above), upon which this is consequential.

AMENDMENT 45

Secretary Alan Johnson

45

★ Page **50** [*Schedule*], leave out lines 11 to 15.

Presumed Purpose:

See Amendment 41 (above), upon which this is consequential.

For further information, please get in touch with:

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