

ILPA information sheet

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Crime and Courts Bill (HL Bill 4)

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The Crime and Courts Bill was published on 10 May 2012. Its consideration in Parliament has begun in the House of Lords. It was first debated at Lords' Second Reading on 28 May 2012. The progress of the Bill through Parliament can be followed at:

<http://services.parliament.uk/bills/2012-13/crimeandcourts.html>

This information sheet provides information about the contents of the Bill, as these relate to immigration. More information about the Bill is available from ILPA briefings to parliamentarians. Briefings on this Bill are available at:

<http://www.ilpa.org.uk/pages/briefings-on-the-crime-and-courts-bill-2012.html>

Removing full appeal rights in family visit appeals

Clause 24 of the Bill would remove the right of appeal against a refusal of entry clearance for the purpose of a family visit, except where the appeal is brought on the basis that the refusal is contrary to human rights or race discrimination laws. More information is given in the "Family Visit Visa Appeals" information sheet [<http://tinyurl.com/cyer6zx>].

Excluding in-country appeals rights in certain cases

Clause 25 of the Bill would give a power to the Home Secretary to exclude a person from appealing from within the UK against a decision to take away his or her leave (permission) to be in the UK, if the decision is taken while the person is outside of the UK. This could have particularly disastrous effects for refugees and stateless persons, who may have no country to which they can safely or lawfully go if the UK removes the leave that has been granted to them. The "MK (Tunisia) Judgment" information sheet [<http://tinyurl.com/cee3cda>] gives more information, as well as an example of a case that will be affected if this power in the Bill is brought into effect.

Increasing immigration officers' powers

Clause 26 (and Schedule 14) of the Bill would increase the powers of immigration officers. Many of the new powers it would give to immigration officers could be restricted to immigration officers specifically chosen by the Secretary of State to have these powers. The proposed new powers include powers to interfere with private radio and telephone equipment, install recording equipment on private property and conduct secret observation on people on private property. The powers also include powers to extend immigration officers' powers to search people, vehicles and premises and to confiscate private property.

The new powers in clause 26 are powers that are already held by other agencies – e.g. the police. However, clause 26 includes no provisions to make immigration officers, who are to receive these

new and extensive powers, more accountable. When in Opposition, Damian Green MP, now the Immigration Minister, said of the then Labour Government's extension of immigration officers' powers:

"There is a very serious underlying principle: it is relative easy for Ministers to say "My job is to increase security in this area and therefore I will take whatever measures need to be taken to do that." That always needs to be balanced against the appropriate use of those powers by the appropriate people." (Hansard HC, Borders, Citizenship and Immigration Bill Committee, First Sitting, 9 Jun 2009 : Column 22)

At that time, Damian Green was concerned about the need to ensure that immigration officers were appropriately trained and supervised. The Bill does nothing to tackle those concerns.

Increasing flexibility as to judges hearing immigration appeals

Clause 19 (and Schedule 13) would extend the types of judges who are permitted to sit in the First-tier Tribunal and Upper Tribunal, including when those tribunals are dealing with immigration and asylum appeals. While the range of judges, who may hear and decide appeals in these tribunals is being extended, the opportunities to challenge their decisions have been reduced. In England and Wales (though not Scotland) it has become harder to bring an appeal to the Court of Appeal against a decision of the Upper Tribunal. This is more fully explained in the April 2012 "Appeals – 'the second tier appeals test'" information sheet [<http://tinyurl.com/bp7zc6v>].

Crime and Courts Bill – House of Lords Second Reading debate

During the House of Lords Second Reading debate, many peers spoke about trafficking and the need to improve the work of the police and other agencies to tackle this. On clauses 24, 25 and 26 (referred to above), the following comments were made:

"...about Clause 24, which, as the Minister indicated, removes the full appeal rights in family visit cases... It is unfair to demand that applicants make a fresh application as an alternative to an appeal if so many applications are turned down for reasons that are no fault of the individual." (Hansard HL, 28 May 2012 : Columns 981-982 per Baroness Smith of Basildon)

"...in relation to Clause 25 concerning appeals against a decision to vary a person's leave to enter or remain in the UK when he or she is outside the jurisdiction when the decision is made. That could make it extremely difficult for the right to be exercised." (Hansard HL, 28 May 2012 : Column 1061, per Lord Beecham)

"There are concerns that giving ever greater police-like powers to immigration personnel is not matched by training or accountability requirements." (Hansard HL, 28 May 2012 : Column 1052, per Viscount Simon)