



Borders, Citizenship and Immigration Bill 2

23rd April 2009

This information sheet updates information given in the January 2009 “Borders, Citizenship and Immigration Bill” information sheet. Further information about this Bill is given in the “Restrictions on Studies” and “Path to Citizenship 2” information sheets.

The Bill’s progress to date

On 22 April, the Bill completed its passage through the House of Lords. It will now be passed to the House of Commons to be considered by MPs.

All the debates on the Bill in the House of Lords can be seen on the parliamentary website, and the debates in the House of Commons will also be made available, at:
<http://services.parliament.uk/bills/2008-09/borderscitizenshipandimmigration.html>

The Bill has undergone significant changes during its passage through the House of Lords. The Government has introduced many of these changes. However, other changes have been imposed on the Government, and it may be that the Government will seek to reverse these changes during the Bill’s passage through the House of Commons. If the House of Commons makes any changes (including reversing the changes made by the House of Lords), the Bill will need to go back to the House of Lords so as to ensure that the final version of the Bill is approved by both Houses before it is enacted.

PACE Codes of Practice

The Bill contains power for the Government to introduce Codes of Practice, similar to those to which the police are subject under the Police and Criminal Evidence (PACE) Act 1984, for immigration officers. The Government first took this power on the passing of the Immigration and Asylum Act 1999. It has been little used. The Government says that it will bring together in one place all relevant PACE safeguards in relation to immigration and customs powers. However, it also says that it will not apply these safeguards to immigration powers of detention and removal.

IPCC investigations

The Government has amended the Bill so that it can extend the remit of the Independent Police Complaints Commission (IPCC) to investigate complaints of serious misconduct by private contractors. The IPCC role will remain limited to misconduct that takes place in the UK. The Government says it is considering whether arrangements can be made for independent investigation of misconduct by UK Border Agency officials and private contractors outside the UK. The August 2007 “IPCC Consultation” information sheet provides some background to this.

Short-term holding facilities

The Government has amended the Bill to allow people to be detained in short-term holding facilities for longer than 7 days, and to include people who are detained under non-immigration powers. The amendment raises several concerns.

Firstly, the Government amendment changes the definition of a short-term holding facility. In doing so, it appears to redefine any place where someone is held under immigration powers for less than 7 days as a short-term holding facility, regardless of who else is held there and for how

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long. People are sometimes held in police cells or prisons under immigration powers for less than 7 days. The effect of this making the police cells or prison a short-term holding facility does not appear to have been considered.

Secondly, short-term holding facilities are not designed to hold people for longer than 7 days; and no consideration appears to have been given as to whether it is appropriate to detain people, held under different immigration, policing and other powers, together in these facilities.

Naturalisation

A further update on the Bill's provisions regarding naturalisation may be found in the "Path to Citizenship 2" information sheet.

British Nationality Act 1981

The Government has accepted two amendments to the Bill, which will change the British Nationality Act 1981 in relation to certain children and stateless people.

Firstly, the Bill now includes provision so that children, including stateless children, who are able to register as British citizens under section 3(2) of the 1981 Act, will be able to do so up until their 18th birthday (rather than, as now, merely within their first year). This will benefit several children, whose British parents were not born in the UK (but whose grandparents were). A good character test will apply to children over 10.

Secondly, the Bill now includes provision to enable a British National (Overseas), who has no other citizenship or nationality, to register as a British citizen. This will not apply to someone who has given up another citizenship or nationality since 19th March 2009. British Nationals (Overseas) have that status because of a connection with Hong Kong.

Common Travel Area

The Government was defeated on its proposal to allow for the introduction of immigration controls on journeys within the Common Travel Area. This has been removed from the Bill. The Government may seek to reintroduce the proposal during the Bill's passage through the House of Commons.

Transfer of Judicial Review

The Government was defeated on its proposal to allow the High Court to transfer immigration and nationality law judicial review applications to the Upper Tribunal of the new Tribunal Service, which was introduced by the Tribunals, Courts and Enforcement Act 2007. This proposal has been removed from the Bill and replaced with a more restrictive power that would allow for the transfer of fresh claim judicial reviews (i.e. where the UK Border Agency has refused to accept that submissions it has received amount to a fresh claim for asylum), but not others. There has also been included provision to prevent the Government from restricting appeals to the Court of Appeal. As regards fresh claims, further background as to what is a fresh claim is given by the May 2007 "Fresh Asylum Claims" information sheet. The Government may seek to reverse its defeat during the Bill's passage through the House of Commons.

Trafficking

The Government has accepted an amendment that will change section 4 of the Asylum and Immigration (Treatments of Claimants, etc.) Act 2004. This change will mean that the trafficking of babies and very young children can be prosecuted in the UK.