

Briefing on the Immigration Simplification Bill

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A (relatively short) **Borders Immigration and Citizenship Bill** was part of the Queen's Speech last week. To quote the Home Office website (the first of the two immediately below):

<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/bordersimmigrationandcitizenship>
<http://www.commonslader.gov.uk/output/page2653.asp>

'03 December 2008

'A bill will be brought forward to strengthen border controls, by bringing together customs and immigration powers, and to ensure that newcomers to the United Kingdom earn the right to stay.

'The purpose of the bill is to:

'Strengthen the border by:

- 'giving the UK Border Agency the powers it needs at the frontier bringing together customs and immigration functions to enable a fully integrated approach to border control; increasing operational effectiveness and border security;
- and ensure that newcomers to the United Kingdom earn the right to stay here;
- with changes to nationality law to implement the new path to citizenship within a firm but fair immigration system; and
- introducing a duty on UKBA to safeguard the welfare of children in its work.'

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The Government also intends to produce a new draft Immigration Simplification Bill which will probably include what is in the current draft (partial) Immigration and Citizenship Bill published in July (see the **Briefing** below) plus the bits that are currently missing from that draft. To quote the website <http://www.commonslader.gov.uk/output/page2668.asp>

'The purpose of the Bill is to:

'Replace the many existing Immigration Acts, dating back to 1971, with a single, simplified Act.

'The main elements of the Bill are:

'Replace ten separate pieces of immigration law, of which some of the earlier provisions have already been partially superseded by subsequent Acts, with a single Act of Parliament;

'Provide for sharper and more consistent set of immigration rules, which can continue to be quickly adjusted in response to changing circumstances.'

The following is a ***Briefing by Steve Symonds (Immigration Law Practitioners Association) delivered at a meeting on 29 November 2008 of the Barbed Wire Britain Network to End Refugee and Migrant Detention at Kidlington, Oxfordshire***

The UK Border Agency's simplification project and the draft (partial) Immigration and Citizenship Bill

The next session of Parliament opens on 3rd December 2008 with the Queen's Speech. This is when the Queen will announce to Parliament the Government's key legislative agenda. It is expected that a new Immigration Bill will be included in that speech.

The UK Border Agency's simplification project was formally announced in consultation, which opened in June 2007. It was indicated that simplification would include consolidation of the UK's primary legislation in the area of immigration. Until recently, therefore, it had been expected (and planned) that the forthcoming Queen's Speech would announce an Immigration and Citizenship Bill, which would:

- Make some discrete changes to nationality and naturalisation law; and
- Replace all the current Immigration Acts (there are more than ten) with one new legislative framework for the UK's system of immigration control.

This Bill has sometimes been referred to as the Simplification Bill

In July, the UK Border Agency published a draft of this Bill – the draft (partial) Immigration and Citizenship Bill. It was put out in draft for pre-legislative scrutiny (i.e. so that Parliament, and others, could review the proposed legislation before the Bill is formally introduced). It is "partial" in that it is incomplete. A short introduction to the proposed legislation is contained in a document called Making Change Stick – see:

[Http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/immigrationandcitizenshipbill/draftbill/makingchangestick.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/immigrationandcitizenshipbill/draftbill/makingchangestick.pdf?view=Binary)

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However, current indications are that the Queen's Speech will not include a complete Simplification Bill. Rather, we may get merely another Immigration Bill; and the full Simplification Bill may be put off – possibly until after the next election. At this time, I am unable to confirm any of this. The position should become clear after the Queen's Speech on 3rd December.

It should be noted, however, that the simplification project is about much more than the primary legislation. The project aims to replace (and in several respects reduce) primary and secondary legislation, Immigration Rules and policy instructions and guidance.

What is appended is taken from a briefing provided for Medical Justice in August 2008. It gives some information regarding the draft Bill and lobbying opportunities for when the full Bill is introduced. The references to the Bill's timetable must now be reconsidered in the light of additional information given here.

Steve Symonds, ILPA 28 November 2008

About ILPA

ILPA is a professional association with some 1,000 members, who are barristers, solicitors and advocates practicing in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, dissemination information and providing evidence-based research

and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups.

Further information about ILPA is available from our website: www.ilpa.org.uk

- Parliamentary briefings and submissions are available in the “Briefings” section of the website
- Consultation responses are available in the “Submissions” section of the website
- Concise information on a range of immigration law matters is provided on information sheets available in the “ Info Service” section of the website

The draft Bill – background and introduction

In June 2007, the Home Office launched a consultation – Simplifying Immigration Law. This was the start of a (simplification) process which aims to replace or rewrite:

- The many Immigration Acts, from the Immigration Act of 1971 onwards, with a single Immigration Act
- The Immigration Rules
- The Home Office policy/guidance instructions (e.g. APIs, IDIs, EIG etc.)

The *Path to Citizenship* Green Paper (particularly chapter 7), published in February 2008, provided the second stage of consultation on this process.

The draft Bill (and accompanying material) published on 14 July constitutes the third stage of consultation; and will provide an opportunity for pre-legislative scrutiny by Parliamentarians. Two Select Committees have called for written evidence in respect of the draft Bill:

- The Home Affairs Committee has called for evidence by 17 September
- The Joint Committee on Human Rights has called for evidence by 31 October

The draft Bill is partial – i.e. it is incomplete. The following broad areas are not included within the draft Bill, but are expected to be included in the Bill which will ultimately be presented to Parliament in order to replace the previous immigration Acts:

- The Asylum and Immigration Tribunal (onward appeals, statutory and judicial review)
- Asylum support
- Biometric provisions
- Immigration powers (arrest, search, etc.)
- Information sharing (e.g. between governments and departments)
- Inspection and oversight of the UK Border Agency
- Limiting access of immigrants to welfare and services
- Regulation of immigration advisers

The following areas are included within the draft Bill:

- Regulation of entry and stay in the UK
- Immigration powers to examine individuals
- Citizenship by naturalisation
- Expulsion from the UK
- Immigration powers to detain and for bail
- Regulation of removal centres, short term holding facilities and escorting
- Immigration offences

- Carriers' liability
- Illegal working
- Appeal rights
- Welfare and safety of children

It is currently anticipated that the Government will introduce a Bill in January 2009

The Parliamentary process- lobbying and influencing

As indicated, it is expected that the Government will introduce a Bill in January 2009.

To pass through Parliament a Bill must pass through both Houses; and be agreed by both Houses (with one exception – see below). The process described below begins in the House of Commons. However, a Bill can begin progress in either House, [provided it ultimately passes through both Houses

- -Bill is introduced to the House of Commons (First Reading)
- Bill is subject to a debate on the floor of the House of Commons (Second Reading)
- Bill is subject to scrutiny by Committee (a Public Bill Committee of MPs scrutinises the Bill, amendments may be debated, evidence may be taken)
- Outcome of Committee's scrutiny is reported to the House of Commons (Report)
- Bill is subject to a debate on the floor of the House of Commons (Third Reading)
- Bill is introduced to the House of Lords (First Reading)
- Bill is subject to a debate on the floor of the Lords (Second Reading)
- Bill is subject to scrutiny by the House of Lords (or a Grand Committee of the House of Lords) (amendments may be debated)
- Outcome of Scrutiny is reported to the House of Lords (Report)
- Bill is subject to a debate on the floor of the House of Lords (Third Reading)
- Bill returns to the House of Commons for debate on the floor of the House if there has been any amendment since the Bill left that House; if further amendments are made the Bill will pass between both Houses for debate of any amendments until it has been approved in full on the floor of both Houses (Ping Pong)
- (If the two Houses cannot agree, either the Bill fails and is abandoned or the Commons prevails after approving the Bill successively through Ping Pong)
- Bill receives Royal Assent (it becomes an Act)

This process may take several months; and the Committee scrutiny stages may take several weeks.

Key opportunities for lobbying and influencing are:

1. Consultation on the Bill: The Home Office has published two consultation documents with the draft Bill – I) a questionnaire with eleven questions, and ii) a short paper with ten statements of intent. The presentation of these consultation documents is highly leading in that responses are invited to general propositions, which largely anticipate agreement and which do not reveal the full implication or intention behind the proposition advanced.
2. Pre-legislative scrutiny: The Home Affairs Committee and Joint Committee on Human Rights will be considering the draft Bill. The latter will be specifically

interested in the human rights implications of the draft Bill *and also* relating to areas expected to be in the Bill (but not included in the draft).

3. Before the Bill is introduced: Areas of concern may be raised with Parliamentarians. Correspondence and/or meeting with constituency MPs in advance of the introduction of the Bill is a valuable means to highlight areas and level of concern to which MPs may need to react when the Bill is introduced.
4. Prior to Second Reading: The Second Reading debate will not discuss amendments. However, it is the time for Parliamentarians to express significant areas of concern in relation to the Bill. If a major issue is not raised at this stage, it may appear less of a concern if raised later.
5. Public Bill Committee stage: This is the first opportunity for Parliamentarians to put forward and debate amendments to the Bill. For any amendments to have real momentum behind them, it would be better if the area of concern (not the amendment) had been raised at the Second Reading.
6. Other stages: Amendments may be raised at later stages. However, after Report there are restrictions on what matters may be returned to at Third Reading. Also, if areas of concern have not been pursued at earlier stages, these may have little or no momentum. Ping Pong is not a stage for raising new amendments; it is a process specifically for seeking to reach agreement on outstanding matters between the two Houses.
7. House of Lords: The foregoing broadly applies to both Houses. However, since the Government holds a majority in the House of Commons, it is often the House of Lords where the government may come under most pressure. Nevertheless, for reasons of momentum, concerns expressed in the Commons may prove helpful to peers who are interested in pursuing these or similar concerns in the Lords.

Steps that may be taken in order to lobby and influence and further thoughts:

1. Written evidence to a Select or Public Bill Committee that is expressly scrutinising the Bill (or draft Bill) will be published on the Committee's website; and may be discussed and the discussion will be recorded with the Select Committee's report or in the transcript of the Public Bill Committee's debates.
2. Written evidence to either Committee may be sent to the Clerk to the Committee. However, it is useful to check who are the Committee members. This may be useful knowledge for lobbying an individual Parliamentarian or seeking to influence the Committee (e.g. if your constituency MP is on the Committee)
3. Letters to MPs or peers may help to raise their level of interest in a particular area. However, it is useful to consider how to influence any individual Parliamentarian (e.g. what is known of their interests in this area? What have they said previously on the subject? In the case of an MP, are they your constituency MP? Who do you know/and/or who can you influence, that may influence them?)
4. Broadly speaking, it is important to consider both what and who may influence Parliamentarians. In general, it is necessary to keep things simple; and where possible to support any particular concern with examples – all the better if the examples are real.

5. Given the all-encompassing nature of the Bill, this is an opportunity for lobbying on any matter related to immigration law – both what is and what is not included in the Bill

Specific matters: asylum, detention and healthcare

Some further, brief observations regarding these three areas are set out below.

Asylum

The following bullet points highlight some key areas of concern:

- Fundamental changes to the AIT appeals system, and for onward appeals against AIT decisions are expected. In 2003, a proposal to oust the jurisdiction of the higher courts was introduced though ultimately abandoned in what became the 2004 Act. However, the work of the higher courts is dominated by immigration matters; and a fresh attempt to seriously restrict judicial oversight of the AIT is a real possibility. It is also anticipated that the AIT may be brought into the new Tribunal structure, established under the Tribunals, Courts and Enforcement Act 2007.
- Detention and bail is addressed under the next subheading.
- The provisions in the draft Bill relating to citizenship by naturalisation would introduce significant delays for some refugees (or those granted other status – e.g. humanitarian protection) before they could secure a settled status in the UK.
- The proposed new ‘simplified’ scheme of expulsion orders, which merge deportation and removal provisions, would mean that asylum-seekers face bans on returning to the UK (despite meeting the Immigration Rules) if their claims are refused and they are removed.
- Increased immigration powers and risks for carriers would further raise the barriers that refugees face in seeking to reach and claim asylum in the UK.
- Those currently restricted to non-suspensive (out of country) appeals would lose any right altogether under the provisions of the draft Bill.

Detention

The following bullet points highlight some key areas of concern:

- There remains no automatic judicial oversight of immigration detention.
- The provisions in the Bill relating to the power of the AIT to grant bail introduce substantial restrictions on that power. The Home Office would be empowered to vary the conditions on which the AIT granted bail. If no appeal is pending, the AIT may require the consent of the Home Office in order to grant bail. The fundamental changes to the AIT (see above) may reduce the oversight of immigration detention by the High Court.
- The provisions currently propose that temporary admission, temporary release and bail be replaced with one concept – immigration bail. In such a new ‘simplified’ scheme, individuals who have never been detained will be ‘on bail’.
- Nothing in the Bill is particularly directed at the detention of children. However, clause 189 is to introduce a new duty on the Home Office to make arrangements to safeguard and promote the welfare of children. Of itself, this provides an opportunity for lobbying on the issue of detention of children, as raised at MJN’s previous open meeting.

Healthcare

- Neither healthcare nor asylum support are expressly addressed in the draft Bill. Asylum support will be addressed in the Bill to be introduced in January 2009. Healthcare may not be directly addressed in the Bill, but changes (further restrictions) in this area remain anticipated.
- Two recent judgements potentially have substantial implication for the provision of healthcare and support for asylum-seekers, particularly those who are refused asylum. *A v Secretary of State for Health* (High Court) has both extended and possibly blurred the circumstances in which refused asylum-seekers may be entitled to secondary healthcare in England (though with clear implications for elsewhere in the UK). *M v London Borough of Slough* (House of Lords) has significantly reduced the circumstances in which local authorities may be liable to provide support to those whose needs are accentuated by age, disability or ill-health; and as a consequence potentially increased the circumstances in which the Home Office may be liable to support. These judgements may increase the pressure on Government to seek to further restrict access to, and levels of, support and healthcare for asylum-seekers.
- In its *Making Change Stick* publication, the Home Office states: “ *The draft Bill confirms the power to require foreign nationals to submit to a medical examination as part of our examination at the border. We will modernise the arrangements for those procedures. We intend to include additional provisions in the full Bill*”. This may be one to look out for when the Bill is published.