

# **BORDERS, CITIZENSHIP AND IMMIGRATION BILL [HL]**

---

## **EXPLANATORY NOTES ON COMMONS AMENDMENTS**

### **INTRODUCTION**

1. These explanatory notes relate to the Commons Amendments to the Borders, Citizenship and Immigration Bill [HL], as brought from the House of Commons on 14 July 2009. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Commons Amendments themselves, refer to Commons Bill 86, the Bill as first printed for the Commons.
3. These notes need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Commons Amendments.
4. All the Commons Amendments were in the name of the Minister.

### **COMMENTARY ON COMMONS AMENDMENTS**

#### **Part 1: Border Functions**

##### ***Commons Amendments 1 to 4***

5. Clause 1 enables the Secretary of State and the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") to exercise concurrently those functions in relation to general customs matters which are currently exercisable solely by the Commissioners.
6. Commons Amendment 2 would make provision to clarify the extent of the "general customs functions", which may be exercised by the Secretary of State and general customs officials, including functions under Community law, and to ensure, in particular, that the information protection regime established by Part 1 of the Bill applies to those functions. The amendment provides that the relevant customs functions are those exercisable by the Secretary of State in accordance with clause 1;

those exercisable by general customs officials in accordance with clause 3; those conferred on the Secretary of State or general customs officials by, or by virtue of, clauses 22 to 24 (investigations and detention); and those under Community law that are exercisable by the Secretary of State or a general customs official in relation to any matter (other than one listed in paragraphs (a) to (e) of clause 1(2)) in relation to which functions under Community law are exercisable by the Commissioners or officers of Revenue and Customs.

7. As the term “general customs functions” may draw in certain functions to which Part 1 should not apply, Commons Amendment 3 would provide for modifications to be made by order under clause 2 to exclude particular functions from, or include particular functions in, the definition of “general customs functions” as appropriate. In particular, this would enable the ancillary provisions in the Bill, such as those in clauses 14 to 21 relating to the use and disclosure of information, to be applied only to those provisions to which they are relevant. Commons Amendments 1 and 4 are consequential on Commons Amendment 2, and would amend respectively subsection (5) of clause 1 and clause 5 of the Bill to reflect the new definition of a “general customs function” in clause 1(8).

#### ***Commons Amendments 5 to 8***

8. Commons Amendment 5 would amend clause 7 of the Bill and is similar in purpose to Commons Amendment 2. It would make provision to clarify the extent of the “customs revenue functions” which may be exercised by the Director for Border Revenue and customs revenue officials, including functions under Community law, and to ensure, in particular, that the information protection regime established by Part 1 of the Bill applies to those functions. The amendment would provide that the relevant customs functions are those exercisable by the Director of Border Revenue in accordance with clause 7; those exercisable by customs revenue officials in accordance with clause 11; and those (i) conferred by or by virtue of clauses 22 to 24, or (ii) under Community law, which are exercisable by the Director or customs revenue officials. Commons Amendments 6 to 8 are consequential on Commons Amendment 5.

#### ***Commons Amendments 9, 10 and 25***

9. Commons Amendment 10 would leave out clause 25 and Commons Amendment 9 would insert a new clause to replace clause 25. The new clause would amend section 147 of the Immigration and Asylum Act 1999 so as to change the definition of “short-term holding facility”. Its effect would be to allow such facilities either to be used solely to hold detained persons (as defined in section 147 of the 1999 Act) for periods of not more than seven days or for such other period as may be prescribed, or to hold such persons subject to the same time limit and other persons for any period. The “other persons” would include individuals arrested in relation to customs or immigration crime, in which case their detention would be subject to the provisions of the Police and Criminal Evidence Act 1984 and the accompanying Codes of Practice (or the equivalent provisions in Scotland and Northern Ireland)

*These notes relate to the Commons Amendments to the Borders, Citizenship and Immigration Bill [HL] as brought from the House of Commons on*

10. Commons Amendment 25 is consequential on Commons Amendments 9 and 10 and would make necessary changes to the Schedule of repeals.

***Commons Amendment 11***

11. Commons Amendment 11 is related to the changes that would be made by Commons Amendments 1 to 8. It would amend clause 26 to clarify that that clause, which provides for the making of transfer schemes by the Commissioners for Her Majesty's Revenue and Customs, applies to things done by the Secretary of State, the Director of Border Revenue or designated customs officials in connection with a relevant function as previously exercised by the Commissioners or an officer of Revenue and Customs, including things done under Community law.

***Commons Amendments 12 and 13***

12. Commons Amendments 12 and 13 would amend clause 28. Taken together these amendments would require the Chief Inspector to report on (i) the UK Border Agency's practice and procedure in relation to criminal matters, both immigration and customs-related, and (ii) whether customs functions are being appropriately exercised by the Secretary of State and the Director of Border Revenue.

***Commons Amendment 14***

13. Commons Amendment 14 would insert in clause 38 a definition of the term "Community law" for the purposes of Part 1 of the Bill. The term is used in Commons Amendments 2, 5 and 11.

**Part 2: Citizenship**

***Commons Amendment 15***

14. Commons Amendment 15 would remove clause 39 which was inserted at Report Stage in the House of Lords. The clause was described in the Explanatory Notes prepared when the Bill passed to the House of Commons as follows:

**"Clause 39: Exceptions to application of this Part**

142. Clause 39 provides that nothing in Part 2 shall affect an application made, prior to the date Part 2 is commenced, for indefinite leave to remain or British citizenship. It also provides that nothing in Part 2 shall affect an application made, in the twelve months after the date that Part 2 is commenced, for indefinite leave to remain."

**Part 3: Immigration**

***Commons Amendments 16 and 20***

15. Commons Amendment 16 would delete clause 51 which was added to the Bill at Report stage in the House of Lords. The effect of removing the clause is that an Order in Council under section 10 of the Immigration Act 1971 may include provision relating to immigration control for persons entering, or seeking to enter, the UK other

than by sea or air. Commons Amendment 20 is consequential on Commons Amendment 16.

#### **Part 4: Miscellaneous and General**

##### ***Commons Amendment 17 to 19, 21 and 23***

16. Commons Amendment 17 would remove clause 55 which was inserted at Report Stage in the House of Lords. This is linked to Commons Amendment 18. Clause 55 was described in the Explanatory Notes prepared when the Bill passed to the House of Commons as follows:

“27. Clause 55 relates to judicial review applications in asylum, immigration and nationality matters, and makes provision for fresh claims to be transferred by affirmative order into the Upper Tribunal of the unified tribunal system established under the Tribunals, Courts and Enforcement Act 2007 (“TCEA 2007”). The clause also removes the Lord Chancellor’s power under section 13(6) of the TCEA 2007 to restrict the test for onward appeals to the Court of Appeal in the case of asylum and immigration appeals from the Upper Tribunal.”

17. Commons Amendment 18 would insert a new clause in the Bill which amends the TCEA 2007 to provide for the mandatory transfer of certain immigration judicial review applications to the Upper Tribunal pursuant to the TCE 2007. The applications in question are those concerning a decision of the Secretary of State not to treat submissions as an asylum claim or human rights claim on the basis that the submissions are not significantly different from material that has previously been considered. Commons Amendment 19 and 21 are consequential on Commons Amendments 18 and 19.

18. Commons Amendment 23 would provide that the clause that would be inserted by Commons Amendment 18 cannot be commenced until the functions of the Asylum and Immigration Tribunal in relation to appeals under the Nationality, Immigration and Asylum Act 2002 have been transferred into the unified tribunals system.

##### ***Commons Amendment 22***

19. Commons Amendment 22 would insert subsections (8A) to (8D) in clause 60, which makes provision for the commencement of the Bill.

20. Clause 60(8A) would require that the commencement order bringing into effect clauses 40 to 42 contain certain transitional provisions. These provisions are to ensure that people who apply for British citizenship before the earned citizenship provisions are commenced will be treated under the current law in respect of the outstanding application (subsection (8A)(a)): that is they will have their application assessed against the criteria contained in the current British Nationality Act 1981 and

Schedule 1 to that Act.

21. Subsection (8A)(b), in conjunction with subsections (8B) and (8C), would require the order to also include transitional provisions for citizenship applications made by those with indefinite leave to remain on the date of commencement and those who have an application for indefinite leave to remain which is subsequently successful. The provisions must ensure that for a period of two years beginning with the date of commencement such persons can apply for British citizenship under the current law.

22. Subsection (8D) distinguishes the commencement order to which subsection (8A) applies from an order commencing the regulation making provisions in clauses 40 to 42 so that such an order can be made prior to the principal commencement order (which must include these transitional provisions).

23. For temporary migrants currently in the UK, the transitional arrangements will mean that the earned citizenship provisions will only apply to those who - as of July 2009 - have been here for three years or less. In some cases because of the shorter qualifying time for settlement, people who are already in the UK will be able to complete their qualifying period and apply for indefinite leave to remain before the new provisions come into force.

24. The amended clause would not prevent the Secretary of State from making additional transitional provisions for other groups as deemed appropriate.

***Commons Amendment 24***

25. Commons Amendment 24 would remove the privilege amendment made when the Bill passed from the House of Lords to the House of Commons.