



SIMPLIFYING IMMIGRATION LAW THE DRAFT BILL

November 2009



Simplifying Immigration Law The Draft Bill

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

November 2009

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MINISTERIAL FOREWORD

The Government is completing a radical overhaul of our whole immigration system. This is the biggest change since the Second World War. We have created a dedicated UK Border Agency which combines customs and immigration powers in a strong new Border Force at the frontier. We now count migrants in and out of the country to ensure visa compliance. The Points Based System allows us to raise or lower the bar for entry to ensure that migration continues to benefit the United Kingdom and avoid the negative impacts of sudden change.

As we make these changes we need to ensure that the law which underpins our work is in the best shape to support a fair and effective immigration system. Our legal framework needs to reflect the changes we have made and support continuing reform. It must enable the system to work more efficiently and effectively.

In taking forward our reforms – as we have faced up to the immediate challenges of new patterns of migration and of the misuse of our procedures – we have already made specific changes to the law which were necessary to support the wide-ranging changes of policy, process and organisation we have put in place. But we have also been clear that a wider reform and consolidation of the whole legal framework for immigration from the Immigration Act 1971 to the most recent Borders, Citizenship and Immigration Act 2009, is now needed, to build on those changes and ensure that the law as a whole is clear, consistent and comprehensible.

As part of that process we have to recognise that immigration law is very often subject to legal challenge. The current legislation needs to be considered together with the caselaw which interprets that legislation, so that over time the law has developed. We now have an important opportunity for Parliament to take stock of what the law is and decide the path forward, bringing clarity to an increasingly difficult area of law.

The draft Bill we are publishing today is the next step in a continuing process to meet the objective of a simpler legal framework – thereby providing a clear basis for the operation of our controls, and increasing our effectiveness in protecting our borders and removing those who do not have our permission to be here. As this document makes clear, we began that process two years ago as part of the reform of the then Immigration and Nationality Directorate and have consulted widely on our developing proposals. We are setting out now what we have achieved so far and what further work remains to be done. We want to ensure that the draft Bill is in the best possible shape when the Parliamentary timetable allows its introduction.



Phil Woolas MP
Minister for Borders and
Immigration

EXECUTIVE SUMMARY

Over the years we have had to respond to new patterns of migration and to misuse of our system, in a rapidly changing world. This has meant that it has been necessary to make a succession of specific changes to the law so that we could respond more effectively. Now is the time to build on the necessary changes we have already made, to take stock of what more is needed, and to consolidate and simplify the legal framework.

We have made the immediate legislative changes which were necessary to support the wide-ranging changes of policy, process and organisation we have already put in place. But we have also been clear that a wider reform of the legal framework for immigration is now needed, to build on those new provisions and ensure that the law as a whole is clear, consistent and comprehensible.

We published a paper in June 2007 which set out the case for simplification and the principles that would underpin our work. In February 2008 we published a Green paper which set out more detailed proposals. In July 2008 we published the draft (partial) Immigration and Citizenship Bill.

The Borders, Citizenship and Immigration Act 2009 brought customs work into the UK Border Agency. It also provided a vehicle for other priority changes which it was helpful to make immediately, while wider work to reform the legal framework continued.

The publication of a fuller draft Bill for further pre-legislative scrutiny by Parliament is the next step in a continuing process. The current draft Immigration Bill focuses on simplifying our immigration legislation. It does not replicate Part 1 of the 2009 Act, which confers customs functions on the UK Border Agency. Nor does it make further changes to nationality law, following Part 2 of the 2009 Act.

Simplification of immigration legislation is not an end in itself. It is crucial that the law delivers the

framework that the UK Border Agency needs to play its part in the Home Office's wider mission to protect the public and to meet its strategic objectives, which are:

- we will protect our border and our national interests
- we will tackle border tax fraud, smuggling and immigration crime
- we will implement fast and fair decisions.

Driving out unnecessary complexity means driving out unnecessary cost. It is more important than ever in current circumstances that we streamline the system as far as possible. We will focus intensively on this aim as we complete our work to reform the law.

THE BILL'S PROPOSALS

The starting point of the new law is that a person who is neither a British citizen nor exercising an entitlement derived from the European Economic Area requires permission to enter and stay here.

'Permission' will become the basic authorisation given or refused by the UK Border Agency – in an embassy overseas, on arrival at a port, on application after entry. It replaces the outdated and overlapping concepts of leave to enter, leave to remain, entry clearance, the right to abode and exemption from control. It will be easier to use and understand – a migrant either has permission or does not.

Temporary, time-limited, permission may be given for a particular purpose (visit, work, studies) and subject to conditions, for example in relation to permission to work and access to public funds. Permanent residents will be given permission without any time limit or conditions attached to it.

There will be a clear legal duty on migrants to ensure they have permission to be in the UK. Anyone who knowingly enters or stays here without having been given permission, or after it has expired or been cancelled, will be committing an offence.

The draft Bill provides the powers necessary to support our approach of increasingly “exporting the border”. It allows passengers to be examined overseas and allows juxtaposed controls to be operated in any location outside the UK.

This Bill will make it clear that a person without permission to be in the UK must go home. The Bill introduces a single, streamlined power of expulsion, replacing the current separate procedures for deportation and administrative removal. All those expelled can be banned from returning – for a fixed period, or indefinitely. As now, expulsion will be the automatic consequence of specified prison sentences.

As an alternative to detention, immigration bail will replace separate provision for temporary admission, temporary release and current bail procedures. It brings with it a broad menu of conditions to ensure contact and control of those awaiting decisions or expulsion.

We are simplifying the appeals system to improve its clarity and speed for those who need to use it whilst reducing the number of cases where repeated challenges create obstructions to enforcement. The Bill limits the grounds of appeal to whether the decision in question is in accordance with the Immigration Rules and otherwise in accordance with the law. It will not be possible to review any exercise of discretion on behalf of the Secretary of State.

The Bill sets out the UK Border Agency’s powers to obtain and retain biometrics to check and verify migrants’ identities. Powers in this area have been introduced piecemeal over time and it is right to bring the existing provisions together in a more broadly based power for the future.

The Bill supports the process of developing a more straightforward and streamlined model of the immigration and citizenship “products” for which migrants will apply and which our decision-making systems must deliver. The UK Border Agency’s caseworking systems and processes are being

reformed and increasingly aligned to deliver these products efficiently.

FURTHER WORK

We will continue to refine and simplify the contents of the Bill as we work towards its introduction. We are satisfied that its approach and structure are right and that it reflects current policy and supports its planned development. Specific areas of the law which are not yet covered in the draft Bill, but which will need to be included in the full Bill before it is introduced are: the regulation of immigration advisers, marriage, access to public funds and the common travel area.

The Bill itself is not the whole story – many of the detailed requirements and procedures for the immigration system are set out in the Immigration Rules. Comprehensive new primary legislation will be accompanied by a comprehensive revision of the Rules. Substantial reform of the Rules is already underway as major changes accompany the roll out of the Points Based System. As a further illustration of the direction of change we are now publishing a consultation document on the framework for the Rules in the future and a further draft of the consolidated protection rules we made available in July 2008.

Our aim is to produce a single, consistent and coherent framework of primary and subordinate legislation. Reforming the law is not a narrow legal exercise. Simplification is at the heart of the continuing transformation of the immigration system.

CHAPTER ONE: WHY WE NEED TO SIMPLIFY THE LAW

- 1.1 Why do we need to simplify immigration law?
Over the years we have had to respond to new patterns of migration and the abuse of our system during a period of rapid change in the world. This has meant that it has been necessary to make a succession of specific changes to the law so that we could respond more effectively. Now is the time to build on the changes we have already made, to take stock of what more is needed, and to consolidate and simplify the legal framework as a whole.
- 1.2 The Immigration Act 1971 remains the foundation of the legal framework for the immigration system nearly forty years after it was passed but the scale and nature of international travel is now vastly different. As a result, the scale and scope of the work of the UK Border Agency has increased and diversified.
- 1.3 In addition to the primary legislation passed in response to these developments, there are the Immigration Rules, a range of specific statutory instruments, and a host of guidance and instructions. It is not always straightforward to know what the law currently provides on a particular issue.
- 1.4 This complexity leads to inefficiency in decision-making, increasing both delays in dealing with applications and the risk of mistakes. Applicants can find it difficult to understand how they can come to or stay in the United Kingdom legitimately and what is expected of them. This lack of transparency reduces confidence in the effectiveness of the system.
- 1.5 Important changes have already been made to make the immigration system clearer and easier to understand – particularly the introduction of the Points Based System. The Points Based System has made the routes migrants take to work and study in the UK much more straightforward. And we are building on those improvements to ensure there is a clear pathway on from temporary migration to citizenship for those migrants who want to make their home here. Work is underway in many other areas to improve the effectiveness of immigration processes and the services they deliver. We now have an important opportunity in reforming the overarching legislation to bolster and encourage that wider process of strengthening and improvement.
- 1.6 We have already made adjustments to the Points Based System in response to the difficult economic conditions we are facing. This experience underlines the importance of a legal framework which can adapt and flex in response to changing circumstances. It is a further spur to ensuring that the immigration system operates in as efficient and effective a way as possible. Driving out unnecessary complexity means driving out unnecessary cost. It is more important than ever in current circumstances that we streamline the system as far as possible and eliminate unnecessary costs. We will focus intensively on this aim as we complete our work to reform the law.
- 1.7 Our aim is to produce a single, consistent and coherent framework of primary and secondary legislation, with a new set of Immigration Rules. This will support the process of improving the guidance and instructions which sit below the legislation – on which work is already underway. It will complement the work which is happening in parallel radically to improve the Agency's business systems and processes through the Immigration Case Work Programme.

CHAPTER TWO: SIMPLIFICATION – WORK IN PROGRESS

- 2.1 The Government made a commitment to the simplification of immigration legislation in its review of the immigration system in July 2006. We were clear that this was a major project which would take time to complete. The publication of this fuller draft Bill for further pre-legislative scrutiny by Parliament is the next step in a continuing process.
- 2.2 The process began with the initial consultation paper we published in June 2007 which set out the case for simplification and the principles that would underpin our work <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/simplification1stconsultation/>. In February 2008 we published a Green paper which set out our more detailed proposals for reforming the law alongside the Government's proposals for a new path to citizenship <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/pathtocitizenship/>. In July 2008 we published the draft (partial) Immigration and Citizenship Bill and supporting documents <http://ukba.homeoffice.gov.uk/managingborders/simplifying>.
- 2.3 We have reflected on the comments and submissions we received from Parliament, stakeholders and staff in response to those publications as we have continued to work on the draft Bill – and will continue to do so as we prepare for its introduction.
- 2.4 There have also been other significant developments since we published the partial draft Bill last year. Our planning for the future legal framework needs to be responsive to the policy and organisational changes we have made. Our aim is to ensure that the developing legislation supports and enables the wider reform of the immigration system.
- 2.5 Following the Government's review of border controls in November 2007 http://www.cabinetoffice.gov.uk/media/cabinetoffice/corp/assets/publications/reports/border_review.pdf the UK Border Agency has taken responsibility for customs detection work at the frontier and for issuing visas overseas, alongside the Home Office's existing immigration and nationality functions.
- 2.6 The Borders, Citizenship and Immigration Act 2009 was introduced to make the necessary legal provision for customs work to be brought into the Agency. It also provided a vehicle for other priority changes which it was helpful to make immediately, while the wider work to reform the legal framework continued. The Act made changes to nationality law to allow the introduction of a new approach to earned citizenship, alongside other necessary adjustments to the law in this area. It introduced a new statutory duty for the UK Border Agency to safeguard and promote the welfare of children. It also strengthened powers and procedures in other areas, including combating people trafficking.
- 2.7 The passing of the Borders, Citizenship and Immigration Act 2009 means that there have been some adjustments to the scope of the draft Bill published today.
- 2.8 The current draft Immigration Bill does not replicate Part 1 of the 2009 Act, which confers customs functions on the UK Border Agency. Those provisions do not bear directly on the Agency's immigration functions and are a bridge to the separate legislative framework for customs functions. We have focused on our core objective of simplifying immigration legislation and are not seeking to make changes to customs law at this stage.

2.9 That focus also means that there are no changes to nationality law in the draft Bill. Part 2 of the Borders, Citizenship and Immigration Act amended the British Nationality Act 1981. No further substantive changes to nationality legislation are proposed and there is no comparable need for consolidation in this area. In response to our initial consultation there was no great demand that the project should include simplification of nationality legislation, with a large majority of respondents feeling that it should be left alone or consolidated separately.

2.10 As we have said, simplification of immigration legislation is not an end in itself. It is crucial that the simplified legislation delivers the framework that the UK Border Agency needs to play its part in the Home Office's wider mission to protect the public and to meet its strategic objectives, which are:

- we will protect our border and our national interests
- we will tackle border tax fraud, smuggling and immigration crime
- we will implement fast and fair decisions.

2.11 The following chapter describes how the proposals in the draft Bill will help support those objectives. The contents of the draft Bill and its overall structure are summarised in the Annex to this document. We are publishing explanatory notes alongside the draft Bill, which give a fuller, clause-by-clause, description of its provisions, together with an impact assessment.

CHAPTER THREE: HOW THE PROPOSED LEGISLATION SUPPORTS OUR WIDER OBJECTIVES

WE WILL PROTECT OUR BORDER AND OUR NATIONAL INTERESTS

- 3.1 More than 100 million people cross the border into the UK each year. Whether people are travelling here for short or longer periods, migration brings real benefits – visitors, students, investors, business people can all contribute to economic growth and enrich our cultural life.
- 3.2 As a member of the European Union the UK's citizens benefit from the right to move freely to other member states, and live and work there if they wish. In return, people from other European countries have entitlements to come here.
- 3.3 Within the framework of its international obligations, the UK has the right to decide who can enter and stay here and on what terms. That is made clear in the draft Bill. Our starting point is that a person who is neither a British citizen nor exercising an entitlement derived from the European Economic Area requires permission to enter and stay here.
- 3.5 'Permission' will become the basic authorisation given or refused by the UK Border Agency – in an embassy overseas, on arrival at a port, on application after entry. It replaces the outdated and overlapping concepts of leave to enter, leave to remain, entry clearance, the right to abode and exemption from control. It will be easier to use and understand – a migrant either has permission or does not. Those without permission will be under an explicit duty to regularise their stay.
- 3.6 In most cases it will be for an individual migrant to apply for permission. But the draft Bill also proposes that permission can be granted by order to certain groups – primarily groups who are currently exempt from immigration control, like diplomats, some visiting service personnel and Commonwealth citizens with the right of abode. Under the new structure we think it is more logical to start from a position where these groups need permission but then facilitate their entry by providing for permission to be given to them automatically and evidenced by proof of membership of that group.
- 3.7 Temporary, time-limited, permission may be given for a particular purpose (for example, a visit, work, or studies) and subject to conditions (for example, in relation to permission to work or access to public funds). Permanent residents will be given permission without any time limit or conditions attached to it. We have set out separately our proposals for the pathway from temporary residence to citizenship and permanent stay <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/221878/earning-the-right-to-stay/>. Our continuing work to reform the legal framework will take full account of the results of that consultation.
- 3.8 There will be a clear legal duty on migrants to ensure they have permission to be in the UK. Anyone who knowingly enters or stays here without having been given permission, or after it has expired or been cancelled, will be committing an offence.
- 3.9 Where a person's circumstances change or they commit an offence or they do not comply with the conditions of their permission, for example they work when they do not have permission to do so, the Bill provides a straightforward power to cancel the permission.

- 3.10 In some cases it is clear before the person enters the UK, or while they have left temporarily, that their permission should be cancelled. The Bill ensures that UK Border Agency staff at posts overseas and at foreign ports and airports can cancel permission to prevent people arriving in the UK who have no right to do so or who may cause harm.
- 3.11 The draft Bill provides the powers necessary to support our approach increasingly of “exporting the border”. It allows passengers to be examined and juxtaposed controls operated in any location outside the UK whenever agreement has been reached with a host government to allow that.
- 3.12 Exporting the border requires close co-operation between the UK Border Agency and carriers operating services to the UK. The Bill maintains powers to require information from carriers to support the e-Borders system and to operate authority to carry schemes. Carriers will continue to be liable to penalties for carrying inadequately documented passengers or clandestine entrants.
- 3.13 The Bill also simplifies the existing framework for use of immigration powers at the border, including a single power to take and check fingerprints and other biometrics, enabling the UK Border Agency to create and verify a secure identity for all those subject to immigration control.

WE WILL TACKLE BORDER TAX FRAUD, SMUGGLING AND IMMIGRATION CRIME

- 3.14 The Borders, Citizenship and Immigration Act 2009 brought customs functions into the UK Border Agency, allowing customs and immigration checks to be joined up within a single border control. As well as guarding the border, the Agency tracks down and expels those who should not be here, investigates and prosecutes organisations that help or encourage individuals to break the law, and enforces compliance by employers and other organisations.
- 3.15 The Bill gives the UK Border Agency and its partners the powers necessary to ensure that migrants play by the rules and the public are protected from harm.

- 3.16 This Bill will make it clear that a person without immigration permission to be in the UK must go home. The Bill introduces a single, streamlined power of expulsion, replacing the currently separate procedures for deportation and administrative removal. This will help to make more effective our immigration powers to ensure people who have no right to be in the UK will leave. All those expelled can be banned from returning – for a fixed period, or indefinitely.
- 3.17 We will continue to target for removal those who cause most harm. As now, expulsion will be the automatic consequence of specified prison sentences. The current draft Bill does not reproduce the power for the courts to recommend that a person be considered for deportation. The Government introduced automatic deportation for foreign criminals sentenced to prison for over 12 months in the UK Borders Act 2007 and this has impacted significantly on the role of recommendations by the courts. When the Home Affairs Committee had earlier considered this power, it recommended that it be abolished. It would in future continue to be possible to consider expulsion outside the automatic criteria if it would be ‘conducive to the public good’. This combination of automatic and conducive powers offers a straightforward and effective way forward, but the Government will be glad to consider other views as scrutiny of its proposals continues, in particular the extent to which the current power is used – and is useful – in practice.
- 3.18 The powers in the Bill support the Agency’s continuing efforts in “enforcing the deal” http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/enforcementbusinessplan08_09/enforcementbusinessplan08_09.pdf?view=Binary. The Bill provides for enforcement powers where they are needed, not just at the ports but for detecting and responding to offences which come to light after entry.

- 3.19 The Bill brings together powers to detain those who are in the process of being expelled, and those without permission who are awaiting a decision on their case. As an alternative to detention there is a new power to require large ‘bail bonds’ for those awaiting decisions or expulsion in order to ensure they comply with bail conditions. Immigration bail will replace separate provision for temporary admission, temporary release and current bail procedures bringing with it a broad menu of conditions (including residence, reporting, financial securities and electronic monitoring) to ensure contact and control.
- 3.20 The Bill builds on measures to prevent illegal working, retaining the civil penalties for employers who do not make the necessary checks, which were successfully introduced last year.
- 3.21 The Bill consolidates existing criminal offences relating to immigration control and the penalties they carry. The need to be clear on the specific crimes in the immigration field, and to facilitate prosecutions for them where that is necessary, is part of the UK Border Agency’s wider contribution to combating crime. The Agency plans to publish a crime strategy early in the New Year which will reinforce our commitments in this area and set out more clearly our role in the wider criminal justice system in protecting the public and combating border and immigration crime. The Agency has a set of unique strengths that we can employ to support law enforcement partners, such as expelling or denying entry to foreign criminals. But the response to the threat posed by border and immigration crime such as the trafficking of drugs and human beings also requires the development of a range of different interventions and contributions by the Agency and its partners, which the strategy will describe.

WE WILL IMPLEMENT FAST AND FAIR DECISIONS

- 3.22 The Bill contains a range of provisions which support and underpin decision-making in individual cases, and the wider work of the UK Border Agency. We have reviewed and are simplifying the appeals system to improve its clarity and speed for those who need to use it whilst reducing the number of cases where repeated challenges create obstructions to enforcement. (The Bill assumes that the current proposals to make an order under the Tribunals, Courts and Enforcement Act 2007 to transfer responsibility for asylum and immigration appeals to the First-tier Tribunal will be acted upon.)
- 3.23 The Bill limits the grounds of appeal to whether the decision in question is in accordance with the Immigration Rules and otherwise in accordance with the law. It will not be possible for an appeal to be allowed simply on grounds that the immigration judge thinks the Secretary of State should have exercised his discretion differently.
- 3.24 The Bill clarifies which appeals can be heard in the UK and which from abroad. As now, applications which are certified as late or unfounded will not attract in-country appeals.
- 3.25 The Bill sets out the UK Border Agency’s powers to obtain biometrics to check and verify migrants’ identities. Powers in this area have been introduced piecemeal over time in different pieces of legislation. Using biometric information to secure identity is now central to immigration control and it is right to bring the existing provisions together in a more broadly based power for the future.
- 3.26 Similarly, provisions governing the obtaining and sharing of data are currently spread across a range of different Acts. Information is at the heart of the effective operation of the immigration system and the Border Agency’s wider partnerships. The Bill provides a properly regulated system for obtaining and sharing data.

3.27 There are important protections for the wider public in the proposed regimes for the management of biometrics and the wider use of data. The Bill includes other mechanisms for accountability and oversight of the Border Agency's work. These include continuing provision for the independent Chief Inspector of the UK Border Agency, and the Chief Inspector's relationship to other oversight bodies; and reproducing the recently introduced duty on the UK Border Agency to safeguard and promote the welfare of children.

3.28 The Bill supports the development of a more straightforward and streamlined model of immigration case working. The Immigration Case Work (ICW) Programme will promote new ways of working by simplifying and rationalising the 'products' migrants are able to apply for, and improving the processes the UK Border Agency uses to deliver these products effectively. These will be underpinned by the implementation of modern, fit for purpose IT systems.

CHAPTER FOUR: WHAT'S NOT INCLUDED IN TODAY'S DRAFT IMMIGRATION BILL

- 4.1 We will continue to refine and simplify the contents of the Bill as we work towards its introduction. While this is not a final draft we are satisfied that its approach and structure are right and – as the previous chapter describes – that it reflects current policy and supports its planned development. In this chapter we set out specific areas of the law which are not yet covered in the draft Bill, but which will need to be included in the full Bill before it is introduced.

REGULATION OF IMMIGRATION ADVISERS

- 4.2 We believe that the proper regulation of immigration advice is necessary to protect the often vulnerable individuals who need it and to identify and penalise the minority of advisors who might seek to take advantage of their clients or operate outside the regulatory framework. The UK Border Agency recently concluded a public consultation looking at how to strengthen the regulation of the immigration advice and services sector. The report summarising and responding to that consultation is being published in parallel with this draft Bill. It concludes that the responses largely support the view that we should consolidate the existing legislation that established the Office of the Immigration Services Commissioner (OISC) but make limited amendments to its functions and revenue raising ability.

MARRIAGE TO BRITISH CITIZENS AND PERMANENT RESIDENTS

- 4.3 We are considering how to reform the route for those wishing to enter or stay in the UK on the basis of marriage or another long-term relationship. We think the time is right to take stock of how the law has developed and modernise, in line with the approach set out in *Simplifying Immigration Law – A New Framework*

For Immigration Rules. At the same time, we will strengthen our case-working approach to ensure that we have robust measures in place to preserve the integrity of our processes. The vast majority of those applying for this route are in genuine relationships. But sham marriages persist and we are committed to tackling this abuse.

- 4.4 The law is clear that sham marriage confers no immigration rights. We are introducing rigorous new systems to help us identify abuse before we grant status on the basis of marriage. We will interview more applicants and we will consider taking new powers – to require the settled spouse or partner to provide biometric identity verification and to introduce civil penalties for those who make false statements to the UK Border Agency or who knowingly fail to notify us if their circumstances change. But decisions in the courts have weakened the current scheme for issuing certificates of approval before ceremonies take place. The scheme is no longer effective and it will be withdrawn: we will be bringing forward a Remedial Order under the Human Rights Act 1998 to achieve this.

MARRIAGE TO EEA NATIONALS

- 4.5 We will also introduce a package of measures to strengthen the registration regime for EEA nationals, third country spouses and family members. We want to enhance identity verification for those applying for residence on the basis of marriage to an EEA national, so that third country nationals cannot acquire free movement rights under a false identity. We will undertake more robust checks of the genuineness of these relationships. Where abuse is suspected, we will conduct face-to-face interviews so we can identify those who may have entered into a marriage of

convenience to an EEA national solely to gain residence rights in the UK. And we will focus enforcement resource to bring to justice the organised criminal networks who profit from facilitating sham marriage, as well as the individuals who benefit from it.

PUBLIC FUNDS

- 4.6 We want to simplify provisions governing migrants' access to the welfare state and re-emphasise the key principle of immigration policy that full access to benefits and services should be reserved for those who have earned the right to stay in the UK. Existing immigration law excludes most categories of temporary migrant and those without lawful status from access to non-contributory social security benefits or local authority housing. We propose to build on that to ensure that people who come to the UK to work or study, or to join their family are not a burden on public funds. In doing so, we need to respect our international obligations and ensure we are fair – particularly to migrants who have worked legally in the UK and have paid taxes and National Insurance contributions.
- 4.7 The UK Border Agency is working with other Government departments to develop new legislation. We want clear provisions which can be operated consistently across the UK. We want to tackle the current complexities of definition and terminology – for example, different entitlements being based on whether people are 'ordinary resident', 'habitually resident', 'normally resident' and 'lawfully present'. We will ensure that any exceptions to our key principles are right and justifiable. We will publish draft clauses once these outstanding issues have been resolved.

COMMON TRAVEL AREA

- 4.8 The present law makes special provision for movement between the United Kingdom, the Crown Dependencies (the Channel Islands and Isle of Man) and Ireland. We made a commitment to review the arrangements for the Common Travel Area (CTA) in the 2007 strategy document 'Securing the UK Border and confirmed that in the Cabinet

Office's 'Security in a Global Hub' report and in the West review. The results of this work, undertaken in partnership with the Irish and Crown dependency Governments, were published in January 2009. This led to the inclusion of a clause modifying the current CTA arrangements in the Bill which became the Borders, Citizenship and Immigration Act 2009. It was not possible to secure the necessary Parliamentary support for that provision and it was removed from the Bill. We continue to believe that reform of the CTA is crucial. We are reflecting on how best to achieve this objective before bringing forward the necessary legislative changes in the final version of this Bill.

CHAPTER FIVE: WIDER SIMPLIFICATION – BEYOND THE DRAFT BILL

IMMIGRATION RULES

5.1 As we have said, the Bill itself is not the whole story – many of the detailed requirements and procedures for the immigration system are set out in the Immigration Rules. Comprehensive new primary legislation will be accompanied by a comprehensive revision of the Rules – and we intend to make a full draft of new Rules available when the full Bill is introduced. The Immigration Rules will set the practices to be followed in administering the new Immigration Act. The Immigration Rules do not currently, and will not, cover everything UK Border Agency does. They should provide a clear and accessible set of rules on matters where this degree of clarity and formality is necessary.

5.2 The Immigration Rules will be the framework for decision-makers in the UK Border Agency. UK Border Agency staff will use the Rules directly to make the right decisions, or take the right actions. The Immigration Rules will also be a key source of information on immigration for applicants.

5.3 The Immigration Rules will be subordinate legislation, made under the new Immigration Act. But the Rules are currently not a statutory instrument – and we think that should remain the case. This gives greater flexibility over their style and drafting. We need to use this flexibility so the Immigration Rules offer clarity and transparency, and help deliver consistent, high quality decisions.

5.4 The procedure to make Immigration Rules will remain the same. This procedure ensures Parliament is aware of Immigration Rules changes and there can be scrutiny of changes before they occur and the opportunity to disapprove the Rules.

5.5 Substantial reform of the Rules is already underway as major changes accompany the roll out of the Points Based System. As a further illustration of the direction of change we are now publishing a consultation document on the framework for the Rules in the future and further draft of the consolidated Protection Rules we made available in July 2008. We want to do a better job of honouring our international obligations to refugees. A new unified and straightforward set of Protection Rules will replace a complicated array of rules and regulations. This will be clearer for applicants and help ensure we make the right decision for refugees first time.

IMMIGRATION CASE WORK (ICW) PROGRAMME

5.6 The ICW Programme has four key principles, namely:

- Modernise the workplace;
- Improve efficiency;
- Quality and accuracy;
- Enhance customer service.

5.7 Improvements and change will be supported by INTEGRITY, the new case working IT system. This will be an integrated, user-friendly, flexible system with a modern look and feel to help staff and migrants navigate around it quickly and effectively.

5.8 Improvements and change will be underpinned by the 3 stage business process model ‘register-decide-conclude’ which will allow the Agency to create a simplified set of Immigration processes that are efficient, fully defined and standardised across the business.

- 5.9 One of the key functions of INTEGRITY will be to draw together electronically all case work interactions between the UK Border Agency and an individual. This will enable a case worker to gain a single accurate view of the customer in one central location thereby promoting efficiency, and improving quality and accuracy of case work decisions.
- 5.10 We will provide a better experience for customers in the future by utilising the internet as the primary channel for services and products such as electronic application forms, and providing proactive status updates to compliant customers.

MODERNISING GUIDANCE

- 5.11 We have recognised the need to ensure that as the Immigration Rules are revised we take the opportunity to reflect this in improved guidance within the UK Border Agency. We have started a project that is working to improve staff guidance so that it is easier to use and understand. This work will then allow us to look at guidance made available for those that interact with us. As the Rules are improved we expect to be able to reduce the amount of guidance required to support them. This will improve the link between legislation and guidance and ensure greater transparency in the system.

ANNEX

THE DRAFT BILL – SUMMARY BY PART

The draft Bill is inevitably a lengthy document. The following summary of the contents of its component parts may help readers to focus on areas of particular interest:

Part	Summary
Part 1: Permission to enter and stay in the UK	Sets out the basic building blocks of the new system. “Permission” replaces existing separate concepts of leave to enter and remain, entry clearance, right of abode and various categories of exemption from control. There is a new broad power to cancel permission, before, on or after entry. Makes provision for “transit permission”. Introduces the Immigration Rules.
Part 2: Immigration controls (incl. juxtaposed control; port facilities; passenger information; designated immigration officials)	Provides for the definition of control areas at ports – in the UK or overseas. Continued provision for duties of carriers, port managers and captains. New provision for designation of immigration officials to carry out specified functions.
Part 3: Powers to examine	Maintains powers to examine persons on arrival, require documents, search, etc. Key change is to enable some of the powers of examination to be exercised overseas.
Part 4: Biometrics	Brings together current piecemeal provision to take and retain fingerprints and other biometric information.
Part 5: Expulsion orders & removal	New single power of expulsion replacing existing separate provision for deportation and removal. Bar on return – indefinitely or for a specified period. Maintains power to assist voluntary returns.
Part 6: Detention & immigration bail	Brings together powers to detain in different circumstances and creates new single status of immigration bail. Replaces existing provision for temporary admission, temporary release and bail. Standard menu of conditions – including reporting, financial security, tagging – available in all cases.
Part 7: Detained persons & removal centres	Reproduces existing provision for management of removal centres, escorts, etc with little change.
Part 8: Powers to stop, arrest, enter & search etc (inc. disposal of property)	Brings together existing powers of arrest, entry, search, seizure and provides the power to stop and question persons in a designated area as to their immigration status.
Part 9: Appeals	Provides for rights of appeal. Key changes are simplification (and some restriction) of grounds of appeal.
Part 10: Special Immigration Appeals Commission	Reproduces current arrangements for SIAC without substantive change

Part 11: Support	Revised provision for supporting destitute asylum seekers. Public consultation is being conducted on proposed changes. Further clauses on public funds to be drafted – see paras 4.6-4.7 above.
Part 12: Information	Brings together current piecemeal powers to require and supply information through specific “gateways”
Part 13: Illegal working	Reproduces existing provision for civil penalty and criminal offence relating to illegal working.
Part 14: Carriers’ liability	Essentially reproduces existing provision but extends liability to include inadequately documented British citizens and EEA entrants.
Part 15: Civil penalty procedure	Brings together procedural issues currently provided separately for individual civil penalties under carriers’ liability, illegal working and biometrics.
Part 16: Inspection & oversight	Continued provision for an independent Chief Inspector of the UK Border Agency and relationship to other oversight bodies.
Part 17: Immigration advisers and immigration service providers (<i>to be drafted</i>)	Proposals included in accompanying consultation response but not yet in draft Bill. Please see para 4.2 above.
Part 18: Offences	Broadly reproduces existing criminal offences. Reduction of overlaps and clarification of some offences.
Part 19: General supplementary provisions	Reproduces the duty of the UK Border Agency to safeguard and promote the welfare of children. Other miscellaneous provisions including fees and the form of notices.
Part 20: Final provisions	Technical provisions including the geographical extent and commencement of the draft Bill.



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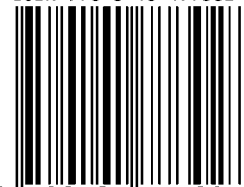
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