



MAKING CHANGE STICK

AN INTRODUCTION TO THE IMMIGRATION AND CITIZENSHIP BILL



FOREWORD



The biggest shake-up to our border protection and immigration system for over 45 years is well underway. Now we propose to replace almost all our current immigration laws to make sure these changes stick. The changes we propose will mean:

- **strong borders**, with fingerprint checks overseas; the introduction of a strong new force at the border equipped with modern powers; counting people in and out of the country; and the introduction of identity cards for foreign nationals.
- **selective migration**, through the Australian style points based system, ending low skilled migration from outside Europe, and overhauling other routes into the UK for visitors and family members, including spouses.
- ensuring newcomers **earn the right to stay** by learning English, paying taxes and obeying the law.
- **playing by the rules**, enforcing the deal that newcomers make – including the automatic deportation of foreign criminals and civil penalties for the employers who do not make the right checks and employ illegal workers; and with faster decision making in a firm but fair system – to help people who need our protection and to act against migrants who break the law.
- **managing any local impacts**, with full access to benefits and social housing reserved for citizens and permanent residents and migrants contributing a little extra to the cost of local services.

To ensure these changes take real effect, we propose a fundamental overhaul of the law.

We will use this reform to cut red tape and accelerate the speed of our work. It will help us make fair decisions that are right first time more often. The new law will say what it means and mean what it says, and will be easier for the UKBA to enforce.

A handwritten signature in black ink that reads "Liam Byrne". The signature is fluid and cursive, with a long horizontal line underneath it.

Liam Byrne M.P.

Minister of State for Borders and Immigration
HM Treasury Minister with responsibility for
Revenue Protection at the Border

Minister for the West Midlands

CHAPTER 1: NEW LEGISLATION – OVERVIEW

Ten measures will be at the heart of the Bill and the Immigration Rules:

Strong borders

- new powers for frontline UKBA officers at foreign ports and airports to cancel visas or refuse permission for carriers to carry foreign nationals to Britain.
- bringing customs and immigration powers at the border into the 21st century, including new powers to take and check fingerprints; strengthening our ability to export the border – enabling UKBA officers to act effectively wherever in the world it is operationally necessary; consolidating and strengthening civil penalties for bringing inadequately documented passengers and clandestine entrants to the UK. Carriers' liability will be extended to bringing passengers here who claim to be British citizens or EEA entrants but cannot prove it.

Selective migration

- we rule out an amnesty; instead the Bill proposes a clear legal duty on migrants to ensure they have permission to be in the UK. Anyone who knowingly enters or stays here without permission after it has expired or been cancelled will be committing an imprisonable offence. We propose a new and straightforward single concept of permission to be here.
- 'Permission' will become the basic authorisation given or refused by UKBA – in an embassy overseas, on arrival at a port, on application after entry. It replaces the outdated and complicated notions of leave to enter, leave to remain and entry clearance. It will be easier to understand and use – a

migrant either has permission or does not. There will be a single new power to cancel permission, whether the person is in the UK or elsewhere, replacing revocation, curtailment, variation and cancellation.

- those without 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.

Earning the right to stay

- migrants will now have to earn their right to stay in the UK. Economic migrants will need to speak English and prove they can hold down a job paying taxes to qualify for citizenship. Committing even minor crimes will slow down citizenship. Serious crimes will trigger automatic deportation. Citizenship will also be slowed down for those who don't make an effort to integrate. We will take powers to ask migrants to pay a little extra towards local public services. We have proposed ideas for speeding up and slowing down the path to citizenship. We welcome scrutiny on whether we have these ranges right.

The Bill makes the necessary changes to nationality law to enable the implementation of our new approach to earned citizenship, details of which are set out in the response to our earlier consultation which we are publishing separately today.

- automatic bans on returns with new powers to exclude criminals and immigration offenders for fixed terms or indefinitely, and new powers to require foreign nationals to repay costs to taxpayers if they ever want

another visa once their exclusion period has been served.

Playing by the rules

- the Bill confirms wide detention and tagging powers for illegal immigrants with new power to require large 'bail bonds' for those awaiting decisions or expulsion.

These powers will bring together powers to detain those without permission and who are awaiting a decision, those who cannot immediately be required to leave and those who are in the process of being removed. We will grant 'immigration bail' if appropriate, as an alternative to detention with a tough menu of conditions (including residence, reporting, financial securities and electronic monitoring) to ensure contact and control. Immigration bail would replace separate provision for temporary admission, temporary release and current bail procedures.

We are in the process of reviewing all existing sanctions for breaches of immigration law with a view to bringing forward a more effective array of exclusion provisions, civil penalties and criminal sanctions.

- confirming tough measures to prevent organised illegal immigration by attacking illegal working with civil penalties for employers who do not make the necessary checks, including checks on the new ID cards for foreign nationals.
- simplifying our appeals system to cut red-tape and obstructions to enforcement, while making sure our system is more sensitive for vulnerable groups.

The Bill will let us simplify today's appeals system which is too complicated and slow. We will streamline today's seven different grounds for appeal. Appeals will be restricted to whether a decision was not in accordance with the Rules and the law. We are considering what further changes bearing on onward rights of appeal from the Tribunal and the handling of judicial review cases may be possible.

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.

We are especially committed to ensuring that the UKBA becomes more sensitive in its treatment of children. The draft Bill includes a clause to ensure that immigration and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children, in other words, the duty prescribed in section 11 of the Children Act 2004.

Managing any local impacts

- reserving full access to benefits for citizens and permanent residents, while ensuring migrants contribute a little extra to the cost of local services.

Our earlier consultations show widespread support for our ambition to reform and strengthen the law. But many want to see the detail to understand what we propose in practice. Today's draft Bill will help that debate.

The Bill builds on the consultation papers published in June 2007 and February 2008. It is the next stage in what continues to be a consultative process. We want views from Parliament and the wider public before finalising the full Bill.

Today's draft Bill covers about two thirds of the final Bill we will propose to Parliament. The areas not included in today's draft Bill are summarised in Chapter 2.

A table summarising the contents of today's draft Bill, including the changes highlighted above, is at Annex A.

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.

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 to the Rules we are making available today a draft of a new, consolidated protection section, which would replace current asylum provisions which are spread across primary legislation, secondary legislation and the Rules.

CHAPTER 2: WHAT'S NOT INCLUDED IN TODAY'S DRAFT BILL

In this chapter we set out areas of the law which are not covered in the draft Bill, but which will be added to the full Bill before it is introduced. We summarise the state of play with them and our plans for their further development.

Strong borders

Powers for our strong new force at the border

One of the most significant changes we make this year is to introduce a strong new force at the border, combining customs, immigration and visa staff. We will legislate to build the agency itself, and to ensure our officers and staff have the powers they need to do their job in the modern world. The Agency has been established from 1 April 2008 in shadow form. An audit of new powers needed is underway and proposals will be in place for the full Bill.

We will legislate to move responsibility for customs work at the border from HMRC to the Agency. We will do this in a way which maintains three established principles:

- we will maintain taxpayer confidentiality;
- we will ensure that tax decisions continue to be taken at arm's length from Ministers.
- and we will establish robust protections for information.

The Government will work with the Scottish Executive to ensure that UKBA officers in Scotland have the full range of powers needed to protect Britain's borders. Where appropriate, this may involve empowering UKBA officers to detain for non-immigration matters at ports in Scotland.

Our new border force will work closely with the police. We have said that we will continue to consider the way policing is organised at the border alongside

the UK Border Agency. The Policing Green Paper, which we will publish shortly, is our chance to discuss options for the future – including a proposal by Association of Chief Police Officers (ACPO) to create a freestanding border police force alongside the UKBA. No decisions have been made yet. In taking the Policing Green paper forward we need to work closely with the Scottish Executive and Association of Chief Police Officers in Scotland (ACPOS) to ensure that the border in Scotland remains as safe as the rest of the UK and that our proposals take account of the legitimate role of the Scottish Ministers.

Stronger border controls that start abroad

Tougher checks abroad help keep Britain safe by stopping risks to our country coming close. Overseas controls – called juxtaposed controls – are key to creating offshore border controls for Britain. Our most important overseas controls are stationed in France. They are extremely successful. We want to provide new laws to help us develop these foreign controls elsewhere in the world.

A more secure Common Travel Area

Today, the law allows for a Common Travel Area (CTA) comprising the UK, Ireland and the Crown Dependencies (Guernsey, Jersey and the Isle of Man). The ability to travel freely for all CTA nationals is important in the special relationship between the constituent countries which make it up. But the principle of movement without controls regardless of nationality in the area is out of date. We therefore made a commitment to review the arrangements for the CTA in the 2007 'Securing the UK Border' strategy, the Cabinet Office 'Security in a Global Hub' report and the West review. The results of our review, undertaken in partnership with the Irish and Crown Dependency Governments, will be announced shortly. The legislation required to implement our proposals will be included in the Bill

before its introduction and following public consultation.

Medical examination at ports

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 arrangements for those procedures. We intend to include additional provisions in the full Bill.

Powers to lock down identity

Being sure who someone is is crucial to us being able to make the right checks, and then counting every one in and out of the country. Our powers have been introduced in a piecemeal fashion and are spread across the various Immigration Acts. It is not always clear which powers can be used, and by whom, in any given situation. We believe that a simpler approach would be to have one comprehensive power for the Agency to obtain and use biometrics in the situations and from the classes of individual that it legitimately needs to. Work is underway to achieve that.

The power to know what we need to know

Enforcing the rules in a firm but fair way is central to UKBA's work. But to do this effectively we often need information from others. The UKBA has a range of powers which enable other bodies including Government departments, the police, local authorities, employers and financial institutions to provide information to UKBA which are crucial to many of its functions. Some of those powers are permissive and others are coercive, notably the powers which require banks and local authorities to supply information to UKBA in suspected cases of asylum support fraud. These existing powers will be consolidated into the Bill as they continue to be an effective tool for ensuring that UKBA has the information it needs to do its work.

Selective migration

Inspection and oversight

UKBA leads the Government's work to control migration. Everyone has a big stake in UKBA doing that job well. Strong inspection helps guarantee this and helps ensure that UKBA is accountable to the public. The Government established the post of Chief Inspector for the then Border and Immigration Agency under sections 48-56 of the UK Borders Act 2007. Its remit currently covers asylum, immigration and nationality functions (except for the detention estate which will continue to be covered by the inspectorate of prisons). With the establishment of the UKBA, we need to widen the role to cover that of HM Inspectorate of Constabulary (inspection of HM Revenue and Customs) and the Independent Monitor for Entry Clearance (oversight of cases of refusal of entry clearance overseas which do not normally carry a right of appeal). We are also looking at widening the remit of the Chief Inspector and the Independent Police Complaints Commission (IPCC) to look at contractors, and also legislation relating to allowing the Police Ombudsman for Northern Ireland (PONI) to look at malpractice by UKBA staff.

Earning the right to stay

Fair rights to citizenship

In addition to the earned citizenship changes we intend to make a specific change to section 4C of the British Nationality Act 1981 in the interests of fairness. Currently people born to British mothers between 1961 and 1983, who would have become British automatically if women had been able to pass on citizenship in the same way as men at that time, can be registered as British citizens. Those born before 1961 remain at a disadvantage compared to the children of British men. We will remove the 1961 cut off date.

Playing by the rules

Sponsoring family visits

We will introduce a system for sponsoring family visitors to provide more assurance that a genuine application will be approved and processed quickly. The full Bill will include provisions to make sure that sponsors obtain a licence and face sanctions including civil penalties and jail if rules are broken.

Fair support for those who need our help

In the 'Path to citizenship' consultation paper we noted that the law relating to support for asylum seekers was particularly complex. Work is underway to develop more straightforward and effective arrangements for supporting those who need our help until it is decided that they are entitled to stay in this country or they must return home.

Swift and just appeals

We will be adding to the provisions on appeals in the draft Bill in a number of areas.

We will keep both the right of appeal for family visitor decisions and the definition of who may be regarded as the family member of a prospective family visitor. We are continuing to look at what evidence may be presented at appeal. We will introduce provisions for family visitor appeals in the full Bill.

In the 'Path to citizenship' consultation we said today's current right to appeal to the High Court for reconsideration of Tribunal decisions, and the increasing number of judicial reviews in immigration cases hampered swift action by UKBA. Work is currently underway to identify ways of reducing the burden on the High Court.

We have not yet drafted provision for the Special Immigration Appeals Commission. There are no major policy changes proposed but we want first to settle the appeals provisions and then ensure that the special considerations of appeals heard by SIAC are taken into account.

Immigration advisers

Many people rely on immigration advisers to help with their application for permission. We want advice available to be of the highest quality. Effective oversight of immigration advisers is therefore crucial. We will therefore consult on any necessary regulatory changes for inclusion in the full Bill.

Managing any local impacts

Limit access to services to those who earn it

In taking forward our proposals for earned citizenship, we need to simplify the current complex legislation on access to benefits and services and make it as clear and consistent as possible. We will establish a cross-Government working group to review the various terms used by different Departments to establish whether a person is 'resident' in the UK for the purpose of qualifying for access to certain benefits and services. A number of different legal terms are currently used, including 'ordinarily resident', 'habitually resident' and 'lawfully present'. Our objective will be to ensure that these terms operate and interact with each other as logically, simply, and effectively as possible; and in a way that meets our policy objective of ensuring that migrants can only access benefits and services where they have 'earned' the right to them. In Scotland public services are devolved and we will need to work with Scottish Ministers.

ANNEX A: REFORMING THE LAW – THE PRESENT DRAFT BILL

The following table summarises when legislative proposals to support the key measures we have described above will be made available:

Measure	Draft Bill	Full Bill
Strong borders		
Cancel visas abroad	/	
Modernise border powers and carriers' liability	/	/
Controls abroad		/
Secure CTA		/
Medical inspection	/	/
Locking down identity		/
Power to know what we need to know		/
Selective migration		
Permission	/	
Expulsion	/	
Inspection and oversight		/
Earning the right to stay		
Earned citizenship	/	
Fair rights to citizenship		/
Bar on return and repaying costs	/	
Playing by the rules		
Detention and "bail bonds"	/	
Illegal working	/	
Appeals	/	/
Protection	For Rules	For Rules
Fair support		/
Immigration advisers		/
Children	/	
Managing any local impacts		
Limit access to services		/

We will not be making substantive change in all areas of the law. But all will need adaptation to fit with new concepts, language and format. Consolidation and simplification will make the law as a whole clearer and easier to use.

The following measures are included in the draft Bill for the purposes of consolidation but will be largely unchanged in their effect:

- EEA entrants
- police registration
- hotel registration
- assistance to voluntary leavers
- detained persons and removal centres

The provisions in the draft Bill on offences largely replicate existing provisions. As noted above, we are in the process of reviewing all existing sanctions for breaches of immigration law with a view to bringing forward a more effective array of exclusion provisions, civil penalties and criminal sanctions.

The main provisions of the draft Bill are set out part by part in following table.

	what is in the draft Bill	what it replaces
PART 1: Regulation of entry into and stay in the UK	<p>A single concept of permission which will be simpler and easier to understand and use. Duty for all those in the UK without valid permission to make an application to regularise their stay. Power to grant permission to certain groups, primarily those currently exempt from control, by statutory instrument rather than primary legislation.</p> <p>Transit permission will be required for travellers passing through the UK without entering, on their way to another country. Again there will be power to confer permission by order in classes of case, rather than in response to individual applications.</p> <p>Powers under the Bill are generally assigned to the Secretary of State and will be delegated to officers in the UK Border Agency. This part of the Bill also provides for the designation of trained and suitable officials to carry out specific functions.</p>	<p>Entry clearance, leave to enter and leave to remain are currently separate concepts, although changes to the law since the Immigration Act 1971 have blurred the distinctions between them. A clearer power to cancel permission at the border, abroad and elsewhere will replace a number of separate powers. The changes will make the system clearer and provide a firmer basis for enforcement.</p>
PART 2: Powers to examine etc	<p>General powers to examine those who have arrived in or entered, or seek to enter the UK, and to examine those leaving the UK.</p>	<p>The examination powers broadly follow the powers currently available to examine passengers at ports, but are extended in-country and overseas.</p>
PART 3: Citizenship	<p>Ensuring that eligibility for citizenship and the time taken to obtain it is determined by the shared values of speaking English, making an economic contribution, obeying the law and being involved in the community.</p>	<p>These are amendments to the British Nationality Act 1981. The case for change is set out in the “Path to citizenship” and the response to that consultation.</p>

	what is in the draft Bill	what it replaces
PART 4: Expulsion orders & removal etc from the UK	<p>Single power to expel from the UK those who are refused permission; have overstayed or otherwise breached conditions attached to their permission; obtained permission by deception; are liable to automatic expulsion following a conviction; and whose presence is otherwise not conducive to the public good. An automatic bar from return to the UK after expulsion subject to a time period based on the reason for removal and with shorter periods for those who leave voluntarily. This part of the Bill also sets out powers to provide assistance to those leaving the UK voluntarily and to participate in international projects on migration. The main change from existing provision is to extend the ability to assist to nationals of European Economic Area countries who are victims of trafficking. (We are looking at how the new approach to the repayment of costs by those expelled will be applied to those helped to leave voluntarily.)</p>	<p>Powers and procedures for deportation and administrative removals are dealt with separately in the current immigration legislation. There is no automatic bar on return for those who are removed rather than deported. The new Bill retains the provisions for the automatic expulsion of foreign criminals enacted in the UK Borders Act 2007.</p>

	what is in the draft Bill	what it replaces
PART 5: Powers to detain & immigration bail	<p>This part of the Bill brings together powers to detain those without permission who are awaiting a decision, those who cannot immediately be required to leave and those who are in the process of being removed; and to grant “immigration bail” as an alternative to detention (the term is not yet settled and we will welcome comments on it).</p> <p>The detention powers consolidate existing provisions for a person to be detained while their case is considered or practical preparations are made for their departure.</p>	<p>The new provisions for immigration bail would replace the existing use of separate procedures for temporary admission, temporary release and bail. These are variously exercised under different arrangements by officials on behalf of the Secretary of State, chief immigration officers and the Asylum and Immigration Tribunal. A single power with a broad menu of conditions which can be attached – including residence, reporting, financial securities, and electronic monitoring – will allow greater clarity and control in these cases.</p>
PART 6: Detained persons and removal centres	<p>This part of the Bill consolidates existing provisions for removal centres in which immigration detainees may be held and for escort arrangements when detainees are moved.</p>	<p>No significant changes from existing provision.</p>
PART 7: Offences	<p>Consolidated provisions for criminal offences relating to immigration control and the penalties they carry – puts the key offences together, in one place and closes any loopholes.</p>	<p>This part of the Bill is also intended primarily to consolidate existing provisions and bring together in one place the range of criminal offences which have been created in different Acts. We are also taking the opportunity to review their coverage, to remove any unnecessary overlaps and duplication, and to consider whether it would be appropriate to add any further civil penalties alongside existing criminal sanctions.</p>

	what is in the draft Bill	what it replaces
PART 8: Carriers' Liability	Maintaining and strengthening provisions for the imposition of penalties for inadequately documented passengers and clandestine entrants.	This part of the Bill consolidates provisions for penalties for those bringing inadequately documented passengers and clandestine entrants to the UK. It extends carriers' liability to bringing passengers to the UK who claim to be British citizens or EEA entrants but cannot prove it.
PART 9: Illegal Workers	As now, civil penalties and a criminal offence for employing illegal workers. It is an important element of our wider partnerships to tackle immigration crime that employers play their part in checking that those they employ are entitled to work here.	This part of the Bill retains the civil penalty for employers employing illegal workers which was successfully introduced on 29 February 2008.
PART 10: Appeals	This part of the Bill retains the broad system of a "one-stop" right of appeal against specified immigration decisions to the Asylum and Immigration Tribunal. It introduces some simplification and clarification of currently complex provisions for appeals against immigration decisions to the Asylum and Immigration Tribunal. (We are considering further changes bearing on onward rights of appeal from the Tribunal and the handling of judicial review cases. We will bring forward further measures on appeals in the full Bill for introduction.)	Currently the AIT is able to review the SoS's exercise of discretion. Current provision sets out 7 grounds of appeal.

	what is in the draft Bill	what it replaces
PARTS 11-13: General supplementary provisions, definitions & final provisions	The concluding parts of the Bill are largely technical and follow existing provision. They include a new streamlined provision for setting fees for immigration applications and other services. New provision to allow a fee to cover a person's removal expenses to be charged if they return to the UK. Orders providing for fees to be charged will be subject to Parliamentary approval under affirmative procedure. Part 11 includes the new duty in respect of children.	There are also general provisions on the making of orders, rules and regulations; on giving notices; and on a range of definitions. There are standard provisions on money, repeals, commencement, extent, etc. The Bill generally extends to the United Kingdom, with a few provisions not applying to Scotland. There is power to extend provisions to the Channel Islands and Isle of Man by Order in Council.

The explanatory notes which accompany the draft Bill include more technical information about the detailed changes proposed and how they will differ from current provisions.



