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Immigration Bill – Day 5

Following our debate on Day 5 of the Committee stage of the Immigration Bill on 9 February, Lord Ashton, Lord Keen and I promised to write on a number of issues raised. I would like to thank peers who contributed to the debate and I hope this letter provides clarification and reassurance on the matters we discussed.

European Migration

Turning first to Baroness Lister's questions in relation to the report in the Independent on Sunday regarding the migration crisis in Europe, to the best of my knowledge there is no intention in the EU to criminalise those offering humanitarian efforts in the migration crisis, and as such I believe this report is unfounded. I might add that draft Council Conclusions on Migrant Smuggling are currently being formulated with input from all Member States including the UK. The draft proposed by the Presidency foresees no contradiction with Council Directive (2002/90/EC) which defines the facilitation of unauthorised entry, transit and residence. This text provides for Member States to exempt persons providing humanitarian assistance to migrants from sanctions; quite the opposite to the inference of the article.

The draft Council Conclusions will be put to the March Justice and Home Affairs Council for approval. I can assure concerned peers that the UK would oppose any amendments calling for legislation to criminalise genuine humanitarian assistance to migrants.

Dual Nationality

During the debate on dual nationality Lord Marlesford, Lord Wallace of Saltaire, Lord Swinfen and Lord Green of Deddington raised a number of important issues on which I would like to provide clarification.

I would like to emphasise that information on dual nationality is gathered during the application process for passports and for citizenship. This information forms part of the passport and nationality databases and this intelligence is available to border staff as well as other law enforcement agencies.

Whilst we do not consider that a dual national database is appropriate, feasible or would bring additional security benefits, we do recognise the need to ensure that law enforcement agencies and others are able to access data appropriately. As Lord Ashton indicated during the debate, we will continue to look at ways to enhance how information is gathered at the point of application and how it is shared effectively to help prevent and detect crime. The focus is on ensuring that known information about individuals is available to all relevant law enforcement agencies. We see that as an appropriate and achievable way forward.

Placing details of other passports held in the British passport is already in operation in cases where a dual national has a passport issued by another state in a different name. For example, a woman born overseas who marries a UK citizen and obtains British citizenship may hold a passport in her maiden name. In some cases, the country of origin does not permit a change of name. In those cases, we will issue a UK passport in the married name with an observation in the British passport that the person is also the holder of a passport issued in the woman's maiden name and the country of issue of that passport. That is by exception and recognises departure from the rule of "one name for all purposes".

We do not envisage a similar approach for all dual nationals where the name and biographical details as well as the photograph of the person will be the same in both passports. There are challenges around placing information in a British passport as an 'observation' for every dual national that mean the value of such a process would be limited. The observation may be in the passport for ten years and unless we are informed by the issuing authority or the applicant, we wouldn't know whether the information remained accurate. Alternatively, if details of the overseas passport were recorded the British citizen would have to purchase a new British passport on each occasion that the person changed their overseas passports. The holding of dual nationality is a matter for the individual. That person may not wish their country of origin to be aware that they hold British citizenship. It may also be the case that travelling to certain countries with an observation of a second citizenship status impacts on that person's ability to enter that country.

As Lord Ashton indicated during the debate, we have discussed the proposed measures with security agencies. The routine recording in the observation page of details of other passports held by dual nationals is not considered to have clear security benefits. It would not be an effective use of resources nor proportionate to routinely stop and check all British citizens entering and leaving the UK who held a dual national passport. Instead, a targeted, intelligence-led approach is in place to intervene with persons entering or leaving the UK. This provides a proportionate response and there are already more appropriate security powers in place. Schedule 1 to the Counter-Terrorism and Security Act 2015 enables the police to seize and retain any travel documents of any nationality at ports if they have reasonable suspicion an individual is travelling to engage in terrorism-related activity outside the UK. What constitutes reasonable suspicion will of course depend on the circumstances in each individual case.

Lord Wallace asked about carrying out a review of dual nationality. The UK does not place any restrictions on a British citizen holding dual nationality. We see that as part of the individual's recognition of their background and heritage. We have no plans to review our current approach. A requirement for a British passport holder to notify HMPO of any change in their overseas nationality status would not be proportionate. Providing up-to-date information outside the passport application process is not a requirement for any British passport holder. Applying such a requirement to a British citizen who holds dual nationality would be disproportionate on the grounds that the dual nationality status is not relevant to their UK citizenship status or the holding of a passport.

Lord Green raised the impact this issue has on the net migration figures. The Office for National Statistics ask respondents to the International Passenger Survey a series of questions to establish whether they are either long term immigrants or emigrants to the UK, this being the basis for the reporting of net migration figures. The passport being used for travel by a respondent does not alter the definitions applied to determine whether or not a person is a migrant. This means that dual nationality does not in itself alter the overall net migration figures. For example, an Australian dual national long term migrant to the UK arriving on a British passport would register in the survey as a British Citizen, but in other respects would still be counted in the same way as though they had travelled on an Australian passport (the criteria relate to there being a change of permanent residence and an intention to remain in the UK for 12 months or more, this being applied regardless of citizenship).

General Aviation

Lord Wallace raised some concerns about General Aviation (GA). I hope the following will reassure him that this Government takes the security of the UK's border security very seriously. The potential threat around General Aviation needs to be seen as one part of a much broader border security picture. By remaining outside of the Schengen area, we have preserved our ability to carry out full checks on all passengers on scheduled services entering the UK from outside the Common Travel Area, and we collect advance passenger information on all scheduled flight services. However that is not to say that we are ignoring the potential threat from GA sites. In addition, in the Government's response to the Independent Chief Inspector's recent report, we outlined how we will better manage both GA and General Maritime in future, including by investing in technology, improving operational practice, new flight/voyage passenger/crew data requirements and more collaborative working across the public, private and voluntary sectors.

Actions taken against GA arrivals are necessarily informed by intelligence as there are in excess of 3,000 private airfields in the UK. For GA, flights are risk assessed in advance of arrival, based on routing, passenger and crew details, and intelligence. Passenger and crew details are checked against watchlists and Border Force aims to meet all high risk arrivals, with a proportion of medium and low risk arrivals also being physically checked.

Looking ahead, Border Force will continue to develop its technological and response capability for GA and the collection and management of intelligence. The role of the GA/GM community and partners will also become increasingly important in detecting and referring on suspicious behaviour and the National Crime Agency is also involved in helping to develop this capability.

English language

The debate on Part 7 of the Bill raised concerns about customer-facing workers who communicate using British Sign Language and an amendment was proposed to specifically exclude "*persons whose first language is British Sign Language.*" Lord Keen agreed that he would reflect upon the observations made.

Part 7 creates a duty on public authorities to ensure that all their customer-facing workers speak fluent English or Welsh. It obliges public authorities to have a complaints procedure to deal with any concerns raised by members of the public regarding compliance.

In relation to customer-facing workers communicating using British Sign Language, I do not consider that an amendment is needed because these workers are not caught by this duty. The duty is the responsibility of the public authority who must ensure that the sign language interpreters they employ – provided for workers in line with the authority's obligations under the Equality Act 2010 – communicate in fluent spoken English.

As Lord Shipley stated in our discussion, it is perfectly acceptable to communicate in British Sign Language in the workplace. Any customer complaint under the duty in Part 7 regarding the use of British Sign Language by a customer-facing worker would not be valid. It would not relate to the duty to speak fluent English or Welsh and would be rejected by the public authority.

The Government Response to the open consultation on the draft Code of Practice (scheduled to be published to inform Report stage debate) will make this clear. As will the final version of the Code of Practice. The latter will be the practical guide for employers who must consider how to comply with this duty.

Tier 1 (Investor)

I have noted the concerns raised by peers in relation to the Tier 1 (Investor) route and have asked my officials to reflect upon the points made. I will provide a further response to peers concerns ahead of Report stage.

I hope that this letter provides colleagues with the reassurance and clarification they were seeking. I look forward to further debate on these important matters as the Bill progresses.

I am copying my response to all those who spoke on Day 5 of Committee stage and placing a copy of this letter in the House Library.

With best wishes,
Michael

The Rt Hon Lord Bates