



The Speaker

Speaker's House Houses of Commons London SW1A 0AA

Monday, 09 January 2023

Dear Library Services,

Please place in the Library as a deposited paper a copy of the letter to me dated 9 January 2023 from the Clerk of Legislation.

Yours sincerely,

Rt Hon Sir Lindsay Hoyle MP
Speaker of the House of Commons

House of Commons Library
Library Corridor
Palace of Westminster



HOUSE OF COMMONS

9 January 2023

Dear Mr Speaker,

Nationality and Borders Act 2022 – mistake by Public Bill Office

I am writing to apologise for a mistake in the Nationality and Borders Act 2022.

Paragraph 8(2) of what is now Schedule 5 to the 2022 Act was inserted by a cut-and-paste error made by the Public Bill Office after Report (consideration) stage, before the Bill was passed to the Lords.

The words in that sub-paragraph do appear correctly in the similar paragraph 7(2) of that Schedule inserted as part of Government Amendment 95 made at Report (consideration) stage in the Commons.

The mistaken paragraph 8(2) was included in the “House Bill”, the text endorsed by the Clerk of the House which is carried up to the Lords and used as the authority to publish the Bill for the Lords, where it remained unnoticed in the text passed by the Lords and is now published in the Nationality and Borders Act 2022.

The Clerk of the Parliaments, who is responsible for the accuracy of published Acts of Parliament (Erskine May 6.32), has decided after careful consideration that a sub-paragraph in the text of a Bill passed by both Houses cannot be removed by way of a correction slip.

The provision in Schedule 5 to the Nationality and Borders Act 2022 alters the Immigration and Asylum Act 1999:

- 8 (1) Section 35 (procedure for penalties and objections against penalties) is amended as follows.
- (2) Omit subsection (3).
- (3) In subsection (1) after “section” insert “31A or”...

Section 35 of the Immigration and Asylum Act 1999 is about the procedure for the imposition of penalties under sections 31A or 32 of that Act (which may be imposed in circumstances where a carrier fails to secure a vehicle against, or carries, clandestine entrants).

Subsection (3) of section 35 sets out the grounds on which a person may object to a penalty: that they are not liable to it or that the amount is too high.

The effect of the Public Bill Office's error is to repeal subsection (3), so the grounds on which a person may object are no longer set out in section 35.

We are advised that, if a court were to give effect to the omission of subsection (3), the provision for objection in the rest of section 35 would still be operable and probably the same grounds would apply in any event.

The repeal of subsection (3) by the incorrectly inserted sub-paragraph 8(2) has not been commenced.

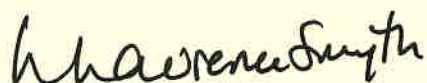
It will be up to the Government whether to leave sub-paragraph 8(2) out of the commencement regulations.

If and when this area of the law is consolidated, the Government would leave sub-paragraph 8(2) out of the consolidation, unless it has already been removed by another Act of Parliament before then.

The mistake was drawn to our attention by the Government on 6 September 2022. The Clerk of the Parliaments issued his final decision on 20 December.

I am very sorry that this mistake was not picked up in our normally thorough checking process. We expect that the new Lawmaker drafting and publishing software for Bills now being phased in will provide an opportunity to substantially reduce the risk of such a mistake being made in the future.

Yours sincerely,



Liam Laurence Smyth
Clerk of Legislation

Rt Hon Sir Lindsay Hoyle MP
Speaker
House of Commons